

# Standard Form of Agreement Between Contractor and Subcontractor

---

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

---

AGREEMENT made as of the date specified below or in the Project Subcontract Agreement. This Standard Form of Agreement between Contractor and Subcontractor, as modified by the indicated insertions and deletions herein, serves as the Master Subcontract Agreement between The Geiler Company (Contractor) and its subcontractors. The terms and conditions of this Master Subcontract Agreement are incorporated by reference into each Project Subcontract Agreement entered into between Contractor and Subcontractor where such incorporation by reference is expressly referenced therein.

*(in words, indicate day, month and year)*

BETWEEN the Contractor

*(Name, address and other information)*

The Geiler Company, P.O. Box 11324, 6561 Glenway Ave, Cincinnati, Ohio 45211

and the Subcontractor:

*(Name, address, and other information)*

See Project Subcontract Agreement

With the Owner

*(Name, address, and other information)*

See Project Subcontract Agreement

For the following Project

*(include detailed description of Project location and address)*

See Project Subcontract Agreement

Which Contract is hereinafter referred to as the Prime Contract and which provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein is available to the Subcontractor.

The Architect for the Project is:

*(Name, address, and other information)*

See Project Subcontract Agreement

The Contractor and the subcontractor agree as follows:

## ARTICLE 1 THE SUBCONTRACT DOCUMENTS

GEILERMASTERSUBCONTRACT.DOC

**1.1** The Subcontract Documents consist of the following documents which are listed in descending order of authority of interpretation: (1) this Agreement, which consists of the Project Subcontract Agreement, this Master Subcontract Agreement and any other documents enumerated in the Project Subcontract Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreements between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement.

These form the Subcontract and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in the Project Subcontract Agreement.

**1.2** Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be this document, General Conditions of the Contract for Construction, current as of the date of this Agreement

**1.3** The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) the Contractor and any Sub-subcontractor or other supplier of the Subcontractor, or (4) between any persons or entities other than the Contractor or Subcontractor.

**1.4** The Subcontractor shall be furnished copies of the Subcontract Documents upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction

## **ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES**

**2.1** The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of this document current as of the date of this Agreement, apply to this Agreement pursuant to Paragraph 1.2. Those provisions of the Prime Contract that apply to the Work of the Subcontractor, the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under such documents, has against the Contractor, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

**2.2** The Subcontractor shall enter into agreements with Sub-Subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Subcontractor, assuming toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other, and having the benefit of all rights, remedies and redress each against the other which the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

## **ARTICLE 3 CONTRACTOR**

### **3.1 SERVICES PROVIDED BY THE CONTRACTOR**

**3.1.1** The Subcontractor shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflicts or interference in the Contractor's Work and shall expedite written responses to submittals made by the Contractor. As soon as practicable after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will inform the Subcontractor of its obligations to plan and perform the Subcontractor's Work properly. The Subcontractor shall be notified promptly of subsequent changes in the construction and submittal schedules and additional scheduling details.

**3.1.2** To the extent provided by the Owner, the Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work.

**3.1.3** Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor, if at all, only at the Contractor's discretion and on mutually satisfactory terms.

### **3.2 Communications**

**3.2.1** The Contractor shall make available to the Subcontractor information received from the Owner, which comes into the Contractor's possession subsequent to execution of this Subcontract and which reasonably affects this Subcontract

**3.2.2** The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor or unless the authorized representatives are not readily available.

**3.2.3** The Contractor shall permit the Subcontractor to request directly from the Architect or Engineer information regarding the Work by the Subcontractor at the sole discretion of the Contractor.

**3.2.4** If Hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a Subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall comply with applicable laws and regulations with respect to any required written notice of chemical composition thereof.

**3.2.5** If the Contractor asserts or defends a claim against the Owner which relates to the Work of the Subcontractor, and the Subcontractor is made a party to such a claim, the Contractor shall make available to the Subcontractor information relating to that portion of the claim which relates to the Work of the Subcontractor. The Contractor reserves the Right of Offset for reasonable administrative and legal costs and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said claims.

### **3.3 CLAIMS BY THE CONTRACTOR**

**3.3.1** Liquidated damages for delay, if provided for in Paragraph 9.3 of this Agreement, shall be assessed against the Subcontractor to the extent caused or preventable by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable. If the Prime Contract provides for liquidated damages for delay, or if Contractor is otherwise liable to Owner for delay damages, Subcontractor shall be liable for any liquidated or other damages which may be assessed by Owner to the extent attributable to unexcused delay caused by Subcontractor. In the case of delay which is only partly the fault of Subcontractor, Contractor shall make a reasonable allocation of liquidated damages or other delay damages among the parties responsible and Subcontractor hereby agrees that such allocation shall be binding unless Subcontractor promptly notifies Contractor of its dispute with such allocation and conclusively demonstrates that there is no reasonable basis for the allocation. The Contractor reserves the Right of Offset for reasonable administrative and legal costs and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said claims.

### **3.4 CONTRACTOR'S REMEDIES**

**3.4.1** If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor or other monies owed the Subcontractor on other Subcontracts, per the Right of Offset. If the Owner, Architect/ Engineer or Contractor, by notice to the Contractor and/or the

Subcontractor, rejects or orders to be removed and replaced any Work performed or materials furnished by Subcontractor which are determined not to comply with the requirements of the Subcontract Documents, Subcontractor, within one working day after such notice, shall proceed to take down the rejected Work, remove the rejected material from the Project, repair (or pay the cost of repairing) damage to the work of others caused thereby, and replace the same with Work and materials complying with the Subcontract Documents. If Subcontractor does not commence such replacement Work promptly or does not diligently complete such removal and replacement, Contractor, by written notice, may take over completion of such removal and replacement. In such event, Subcontractor shall promptly pay Contractor's costs or, without limiting any other remedy, such costs may be withheld from future payments otherwise due Subcontractor. The Contractor reserves the Right of Offset for the cost of those remedies as well as reasonable administrative and legal costs and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said claims.

## **ARTICLE 4 SUBCONTRACTOR**

### **4.1 EXECUTION AND PROGRESS OF THE WORK**

**4.1.1** The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other Subcontractors or Owner's own forces. Subcontractor shall keep itself informed as to the progress of the work of others and shall commence its Work promptly upon notice from Contractor, and shall perform its Work thereafter promptly and in such manner as not to delay Contractor, any separate Contractor engaged by the Owner, or other persons performing work on the Project. Any overtime or other acceleration required to remedy noncompliance with the preceding sentence shall be at the Subcontractor's sole expense. Any change in applicable schedules submitted to Subcontractor by Contractor shall be binding on Subcontractor with no additional compensation unless Subcontractor notifies Contractor of any objection within 72 hours after receiving the revised schedule and then only to the extent Owner approves additional compensation of the Contractor therefore. If Contractor directs Subcontractor to schedule overtime work not otherwise required by this Subcontract, and not made necessary or appropriate as a result of Subcontractor's failure to perform as required by the Contract Documents, and Subcontractor makes a timely claim, Subcontractor shall receive an increase in compensation equal to the premium portion of the wages paid to its employees, plus taxes, and fringe benefits payable thereon, but excluding any allowance for overhead and profit, consequential damages or other costs, unless specifically authorized by Contractor.

**4.1.2** The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors. The Subcontractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in the Work or in the completion of the entire Project such Shop Drawings, Product Data, Samples, or similar submittals as may be necessary or appropriate to completely describe the details and construction of the Work. Approval of Shop Drawings or other submittals by Contractor, Owner, Architect or Engineer shall not relieve the Subcontractor from responsibility for deviations from drawings, specifications, or other contract documents nor shall it relieve Subcontractor from responsibility for errors of any sort in such shop drawings or schedules. Nor shall it relieve Subcontractor from its responsibility for properly matching and fitting its Work with contiguous work.

**4.1.3** The Subcontractor shall within five (5) days of the execution of this Agreement submit to the Contractor a schedule of values allocated to the various parts of the Work of this Subcontract, aggregating the Subcontract Sum, made out in such detail as the Contractor may require or as required by the Owner, and supported by such evidence as the Contractor may require. In applying for payment, the Subcontractor shall submit statements based upon this schedule.

**4.1.4** The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment which may be in preparation,

manufacture or transit. Subcontractor shall promptly, so as to avoid any delay, specifically alert Contractor to any conditions which could result in delays or claims as soon as such conditions are known to Subcontractor.

**4.1.5** The Subcontractor agrees that the Contractor and the Architect will each have the authority to reject Work of the Subcontractor which does not conform to the Prime Contract.

**4.1.6** The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of the Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements. Contractor at its option and without assuming any responsibility to anyone to do so, may issue joint checks payable to Subcontractor and its Sub-subcontractors and materials suppliers for that portion of any payment to Subcontractor which Contractor determines, in good faith, to be due parties of a lower tier.

**4.1.7** The Subcontractor shall take all necessary precautions to protect properly the Work of other contractors on the project and any existing structures, systems, materials and equipment etc. from damage caused by operations under this Subcontract and will be responsible for the costs of repair of such damage. The Contractor reserves the Right of Offset for the cost of those remedies as well as reasonable administrative and legal costs and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said repairs.

**4.1.8** The Subcontractor shall cooperate with the Contractor, other subcontractors and the Owner's own forces, whose Work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and promptly advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces. The Subcontractor shall lead drawing coordination if required by the specifications or if requested by the Contractor.

**4.1.9** The Subcontractor, prior to beginning the Work, shall carefully inspect the Subcontract Documents and immediately notify the Contractor of any claimed ambiguities or errors in the Subcontract Documents affecting its Work. The Subcontractor shall prevent damage to utilities, whether indicated on the Drawings or not, and shall be responsible for assuring adequate inspection by all applicable utility location services prior to commencing Work.

Before beginning any Work which is dependent upon prior work of others, Subcontractor shall thoroughly inspect such prior work and immediately notify Contractor of any claimed deficiencies. Subcontractor's failure to so notify Contractor shall result in Subcontractor's assumption of all responsibility for such ambiguities, errors, and deficiencies. No increase in Subcontractor's compensation shall apply if Subcontractor fails to promptly notify Contractor and obtain Contractor's instructions before continuing with affected work. Failure to so notify Contractor promptly after discovery shall render Subcontractor responsible for such latent defects. In case of dispute as to whether such other work is defective or deficient, Subcontractor nevertheless shall proceed immediately with its work when notified by Contractor to proceed.

## **4.2 LAWS, PERMITS, FEES, AND NOTICES**

**4.2.1** The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and the orders of public authorities bearing on the performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work per local, state and Federal requirements and/or if the furnishing of which is required of the Contractor by the Prime Contract.

**4.2.2** The Subcontractor shall comply with federal, state and local tax laws, social security acts, prevailing wage, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this subcontract.

## **4.3 SAFETY PRECAUTIONS AND PROCEDURES**

**4.3.1** The Subcontractor shall take all reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations and orders of the local, state and Federal public authorities for the safety of persons and property and, with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within 24 hours any injury to an employee or agent of the Subcontractor which occurred at the site or which otherwise is connected with the Work. The Subcontractor shall comply with all safety programs established by the Owner or Contractor or contained in the specifications. Without assuming any responsibility to do so, Contractor may, without notice to Subcontractor, correct any safety hazard created or permitted by Subcontractor and bill Subcontractor for the costs of such correction. The Contractor reserves the Right of Offset for the cost of those remedies as well as reasonable administrative and legal costs and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said claims.

Subcontractor, by the next working day after any if its personnel is involved in an accident at the Project involving personal injury or death or damage to property, shall deliver to Contractor a report thereof in detail satisfactory to Contractor.

**4.3.2** If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to introduction of such substances to the site give written notice of the chemical composition thereof, including provision of the applicable, current Material Safety Data Sheet (MSDS) to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

**4.3.3** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substances, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. If so provided in the Prime Contract, the Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay, and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

**4.3.4** To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, Owner, Architect, Contractor's other Subcontractor's, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from Subcontractor's use of any hazardous material or provided that such claim, damage, loss or expense is attributable to fines, penalties or environmental clean up costs or bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity. The Contractor reserves the Right of Offset for the cost of those remedies as well as reasonable administrative and legal costs and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said claims.

#### **4.4 CLEANING UP**

**4.4.1** The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors.

**4.4.2** As provided under Subparagraph 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

#### **4.5 WARRANTY**

**4.5.1** The Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise expressly required or permitted by the Subcontract Documents, that the Work of this Subcontract will be free from defects and that the Work will conform to the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized in writing in advance may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, improper modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by Subcontract Documents and shall remain in affect after completion of the Work for a period of time not less than that provided in the Prime Contract for Contractor's warranty to Owner. The Contractor reserves the Right of Offset for the cost of those remedies as well as reasonable administrative and legal costs and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said warranties.

#### **4.6 INDEMNIFICATION**

**4.6.1** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 4.6. The Contractor reserves the Right of Offset for the cost of those remedies and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said claims.

**4.6.2** In claims against any person or entity indemnified under this Paragraph 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts the Subcontractor may be liable, the indemnification obligation under Subparagraph 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **4.7 REMEDIES FOR NONPAYMENT**

**4.7.1** If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of the Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate adjustment, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilizations

**4.7.2** If the Prime Contract contains a prohibition or other restriction on the placement of any lien on Owner's property or the Project site, such prohibition or other restriction shall also be applicable to Subcontractor. Irrespective of whether the Prime Contract contains a prohibition or other restriction on liens, if a lien is filed against the Project by the Subcontractor, its subcontractors, material suppliers of any tier or any of their respective laborers, related to any Work performed by or under Subcontractor, Subcontractor shall promptly cause such lien to be removed, and if Subcontractor does not do so, the Contractor reserves the Right of Offset for the cost of those remedies and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said claims. Subcontractor, with each application for payment, shall furnish to Contractor a satisfactory waiver of lien and if requested, evidence as to the status of its accounts, including the names of all its Sub-subcontractors and material suppliers, the original amounts of its contracts and the amounts paid and due thereon along with lien waivers and other evidence, satisfactory to Contractor, that Subcontractor's Sub-subcontractors, suppliers, and employees have been paid in full for the work performed.

## **ARTICLE 5 CHANGES IN THE WORK**

**5.1** The Owner may from time to time make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification affecting Subcontractor's Work issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work which would be inconsistent with the changes made by the Modifications to the Prime Contract.

**5.2** The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract documents. Subcontractor expressly acknowledges and agrees that Contractor shall not be obligated to make any payment to Subcontractor, under this Article or otherwise, in the absence of receipt of the corresponding payments to Contractor from the Owner or General Contractor or in the absence of the work being performed.

**5.3** The Subcontractor shall make all claims promptly to the contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract and Prime Contract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound. Subcontractor shall not be entitled to any increase in compensation by reason of any delay except to the extent that Subcontractor gives timely notice of its claims and either (1) such delays are the fault of the Contractor, or (2) Owner fully compensates Contractor for such delays under the Prime Contract. Compensation for delays shall be limited to reasonable, unavoidable costs and shall not include last profits or lost income.

**5.4** Subcontractor shall not substitute materials (including "or equal") substitutions without Contractor's prior written approval. Any proposed deviations or substitutions in plans or specifications desired by Subcontractor shall be submitted (in writing only) to Contractor for prior written approval, and if approved, Subcontractor shall be responsible for any additional cost to Contractor or others resulting from such deviations or such substitutions.

**5.5** The Subcontract Sum and/or Subcontract Time may be reduced by Contractor in the event the scope of Work under the Subcontract is reduced.

## **ARTICLE 6 MEDIATION AND ARBITRATION**

### **6.1 MEDIATION**

**6.1.1** Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Subparagraph 4.1.5 and except those waived in this subcontract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**6.1.2** The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Subcontract and the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or of a legal or equitable proceeding, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.



**6.1.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Venue of any litigation between Contractor and Subcontractor shall be in Hamilton County, in the State of Ohio, per the laws of the State of Ohio. If any third-party litigation affected by the Work is pending in another location, the Contractor may require that any related claims between the Contractor and Subcontractor be resolved in such other forum. Notwithstanding the limitations or joinder in Paragraph 6.2 upon request by the Contractor, the Subcontractor agrees to join in any arbitration between the Contractor and the Owner or third parties in which the Subcontractor's performance is at issue. Any provisions in the Prime Contract as to the manner and procedure for arbitration shall govern any arbitration hereunder.

## **6.2 ARBITRATION**

**6.2.1** Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Subparagraph 4.1.5 and except those waived in this Subcontract, shall be subject to arbitration. The parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 6.1.

**6.2.2** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, and shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Subcontract and with the American Arbitration Association, and a copy shall be filed with the Architect.

**6.2.3** A demand for arbitration shall be made within the time limits specified in the conditions of the Prime Contract as applicable, and in other cases within thirty (30) days of when the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be banned by the applicable statute of limitations.

**6.2.4** Limitation on Consolidation or Joinder. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Subcontract shall include, by consolidation or joinder or in any other manner, any person or entity not a party to the Subcontract under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial. This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**6.2.5** Claims and Timely Assertion of Claims. The party filing notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

**6.2.6** Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE 7 TERMINATIONS, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT**

## **7.1 TERMINATION BY THE SUBCONTRACTOR**

**7.1.1** The Subcontractor may terminate the Subcontract for nonpayment amounts due under this subcontract for 90 days or longer. In the event of such termination by the Subcontractor for any non payment not resulting from a reason which is not the fault of the Subcontractor, or its materialmen, Sub-subcontractors or their agents or employees or their persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work properly executed in accordance with the Contract Documents through the date of termination. In no event whether under this Subcontract or otherwise, shall Subcontractor be entitled to indirect or consequential damages and legal fees and Subcontract hereby expressly waives any and all claims therefore.

## **7.2 TERMINATION BY THE CONTRACTOR**

**7.2.1** If the Subcontractor fails or neglects to carry out the work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within seven days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such expense shall be paid to the Subcontractor with retainage and warranty reserve being withheld for the warranty period. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor. In lieu of terminating the Subcontract, Contractor, to the extent permitted by law, may terminate Subcontractor's right to proceed with the Work, in whole or in part. In such event, whether or not the Subcontract is terminated, Contractor shall have the right to finish the affected Work by whatever method it may deem expedient, including, without limitation, the taking over of Subcontractor's outstanding subcontracts and taking possession of and using Subcontractor's tools, equipment, scaffolding, materials and supplies at the Project or in transit to or in connection with the Work. The Contractor reserves the Right of Offset for the cost of those remedies and to withhold such monies from contract draws or other monies owed the Subcontractor on other Subcontracts, until the resolution of said claims.

**7.2.2** If the Owner terminates the Contract for the Owner's convenience or otherwise, the Contractor shall deliver written notice to the Subcontractor.

**7.2.3** Promptly upon receipt of written notice of termination the Subcontractor shall:

- .1** cease operations as directed by the Contractor in the notice;
- .2** take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work;  
and
- .3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

**7.2.4** In case of such termination for the Owner's convenience or otherwise, the Subcontractor shall be entitled to receive payment for Work properly executed in accordance with the Contract Documents upon payment by the owner.

## **7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE**

**7.3.1** The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor is without cause, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum if so provided by the Prime Contract.

**7.3.2** An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible;
- .2 that an equitable adjustment is made or denied under another provision of this Subcontract; or
- .3 The Prime Contract does not provide for such increases.

#### **7.4 ASSIGNMENT OF THE SUBCONTRACT**

**7.4.1** In the event of termination of the Prime Contract by the Owner, the Contractor may assign this Subcontract to the Owner, with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents.

**7.4.2** The Subcontractor shall not assign the Work of this Subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract without the written consent of the Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor.

#### **ARTICLE 8 THE WORK OF THIS SUBCONTRACT**

**8.1** The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the work, except to the extent specifically indicated in the Subcontract Documents to be the responsibilities of others.

See Project Subcontract Agreement

#### **ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**9.1** The Subcontractor's date of commencement is the date from which the Contract Time of Paragraph 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

See Project Subcontract Agreement

**9.2** Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontract shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**9.3** The Work of this Subcontract shall be substantially completed not later than (see below) , subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.

See Project Subcontract Agreement

Insert provisions, if any, for liquidated damages relating to failure to complete on time.

See Project Subcontract Agreement

**9.4** With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

**9.5** No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Paragraph 5.3.

## **ARTICLE 10 SUBCONTRACT SUM**

**10.1** The Contractor shall pay the Subcontractor in current funds for performance of the subcontract the Subcontract Sum specified in the Project Subcontract Agreement, subject to additions and deductions as provided in the Subcontract Documents.

**10.2** The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:

See Project Subcontract Agreement

**10.3** Unit prices, if any, are as follows:

See Project Subcontract Agreement

**10.4** Time & Materials Work. If Contractor directs Subcontractor to perform any Changes in the Work on the basis of time and materials, or if work is to be performed on a "Time and Materials, Not To Exceed" basis, and the Subcontract Documents include a list of designated "Time and Materials Rates" or words of similar effect, then such rates shall apply; otherwise, the charges shall be reasonable and customary as determined by Contractor. All Subcontractor Time and Material requests for payment shall include labor, material, equipment and rentals at cost with reasonable and proper documentation as requested by the Contractor. Requests must also conform with the language of the Prime Contract.

## **ARTICLE 11 PROGRESS PAYMENTS**

**11.1** Based upon proper applications for payment submitted to the Contractor by the Subcontractor for Work properly performed in accordance with the Contract Documents, corresponding to applications for payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. In addition to any other requirements specified herein, payment by the Contractor to Subcontractor is conditioned upon submittal by Subcontractor to Contractor of proper applications for payment, which applications shall include fully executed lien waivers, continuing evidence of insurance and such other documentation as required by Contractor or the Owner under the Prime Contract. Payments received by the Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Subcontractor for those contractors or suppliers that performed the Work or furnished materials, or both, under this Subcontract with the Subcontractor for which payment was made to the Subcontractor by the Contractor.

**11.2** Unless otherwise agreed in writing the period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

See Project Subcontract Agreement

All billing must have the Subcontract number and Job number included on them for payment order to be processed.

**11.3** Subject to the requirements of the Project Subcontract Agreement, provided proper application for payment, as specified above, is received by the Contractor not later than the 15<sup>th</sup> day of a month, the Contractor shall include the Subcontractor's Work properly performed in accordance with the Contract Documents covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment within fourteen working days after the Contractor receives payment from the Owner for such work. Subcontractor expressly acknowledges and agrees that Contractor shall not be obligated to make any payment to Subcontractor, under this Article or otherwise, in the absence of receipt by Contractor of the corresponding payment from the Owner or General Contractor.

**11.4** If a proper application for payment is received by the Contractor after the application date is fixed above, the Subcontractor's Work properly performed in accordance with the Contract Documents covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

**11.5** Each application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents and as accepted by Contractor. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

**11.6** Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

**11.7** Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

**11.7.1** Take that portion of the Subcontract Sum properly allocable to properly completed Work as determined by multiplying the percentages completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work which have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted.

**11.7.2** Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

**11.7.3** Subtract the aggregate of previous payments made by the Contractor; and

**11.7.4** Subtract amounts, if any, calculated under Subparagraph 11.7.1 or 11.7.2 which are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause which is the fault of the Subcontractor; Subtract amounts related to Work rejected by Contractor as provided above and further subtract any amounts pursuant to Paragraph 3.3: 3.4: 4.3: 4.4: 4.6 or otherwise.

**11.8** Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

## **11.9 SUBSTANTIAL COMPLETION**

**11.9.1** When the Subcontractor's Work or a designated portion thereof is substantially complete in accordance with this Subcontract and with the requirements of the Prime Contract, the Contractor shall, upon proper application by the Subcontractor, make prompt application for payment for such Work following receipt by Contractor of payment therefore from Owner. Within 30 days following issuance by the Architect of the certificate for payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the provisions of this Subcontract and with the certificate to cover costs of items to be completed or corrected by the Subcontractor and subject to the same provisions as set forth in subparagraph 11.7.4 above. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, subject to the same provisions as set forth in subparagraph 11.7.4 above, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

## **ARTICLE 12 FINAL PAYMENTS**

**12.1** Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents and the Prime Contract, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. This includes any and all, equipment start-up, close out documentation, maintenance manuals, owner training, commissioning, testing and balancing reports, as-built drawings, extra materials and submission of applicable guarantees and warranties required by this Subcontract or the Prime Contract. Subcontractor expressly acknowledges and agrees that Contractor shall not be obligated to make any payment to Subcontractor, under this Article or otherwise, in the absence of receipt by Contractor of the corresponding payment from the Owner or General Contractor.

See Project Subcontract Agreement for additional requirements.

**12.2** Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.

## **ARTICLE 13 INSURANCE AND BONDS**

**13.1** The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability: The Subcontractor shall purchase and maintain insurance limits to the extent shown in the Prime Contract specifications or as directed or required by the Contractor.

**13.2** Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor.

**13.3** Certificates of insurance acceptable to the Contractor and naming Contractor and Owner as additional insured's shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force until after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

**13.4** The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract if requested.

**13.5** The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

**13.6** Performance Bond and Payment Bond: The Contractor has the option to request that the Subcontractor provide a performance and payment bond for the work of the Subcontractor. The Contractor will reimburse the Subcontractor the cost of this bond.

See Project Subcontract Agreement

### **13.7 PROPERTY ISURANCE**

**13.7.1** When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

**13.7.2** If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

**13.7.3** Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for through the application for payment process.

### **13.8 WAIVERS OF SUBROGATION**

**13.8.1** The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, such of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate written agreements similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise.

## **ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS**

**14.1** The Contractor shall furnish and make available to the Subcontractor the following temporary facilities, equipment, and services; these shall be furnished at no cost to the Subcontractor unless otherwise indicated below:

See Project Subcontract Agreement

**14.2** Specific working conditions:

See Project Subcontract Agreement

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**15.1** Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

**15.2** Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate.

See Project Subcontract Agreement

**15.3** Retainage and any reduction thereto is as follows: Retainage of 10% will be held.

See Project Subcontract Agreement

**15.4** The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages du to either party's termination in accordance with Article 7.

**ARTICLE 16 ENUMERATING OF SUBCONTRACT DOCUMENTS**

**16.1** The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated as follows:

Also see Project Subcontract Agreement

**16.1.1** This executed Standard Form of Agreement Between the Contractor and Subcontractor.

**16.1.2** The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement;

**16.1.3** The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

See Project Subcontract Agreement

**16.1.4** Other Documents, if any, forming part of the Subcontract Documents are as follows:

See Project Subcontract Agreement

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
CONTRACTOR *(Signature)*  
The Geiler Company

\_\_\_\_\_  
SUBCONTRACTOR *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*