



New Subcontractor Qualification Form

GENERAL INFORMATION

Company Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____

Email: _____

Main Contact Name: _____

Services Provided: _____

ORGANIZATION

1. How many years has your organization been in business as a Contractor? _____

2. How many years has your organization been in business under its current name? _____

3. Under what other or former names has your organization operated? _____

4. If your organization is a corporation, please answer the following:

• Date of Incorporation: _____

• State of Incorporation: _____

• President's Name: _____

• Vice President's Name(s): _____

• Secretary's Name: _____

• Treasurer's Name: _____

5. What is the company's business structure?

Please check the following that best describes your firm:

Corporation

Individual

Partnership

Joint Venture

Other

If other, please specify:

6. If your organization is a partnership, please answer the following:

i. Date of Organization: _____

ii. Type of Partnership (if applicable): _____



COMPANY CAPABILITIES

1. Past Projects: _____

(If more space is needed, please attach a separate sheet to the back of this qualification form.)

2. Number of Employees: _____ Average Crew Size: _____
 Union Non-Union

3. Largest Project Dollar Value: _____ Average Project Value: _____

4. Estimating Capabilities: _____

5. Conceptual Estimating Capabilities: _____

6. Design Capabilities: _____

7. In House Engineer: Yes No If no, engineer of record: _____

8. Equipment Owner: _____

9. Special Capabilities: _____

SAFETY

***** Please furnish Cunningham-Limp with a copy of your safety manual *****

1. What is your company's Experience Modifier Rate (EMR)? _____
Must provide documentation from the past three years with this qualification form.

2. What is your company's MIOSHA incident rate? _____
Must provide a copy of the OSHA 300 or 200 Logs for the past three years with this qualification form.

4. In the past 3 years, has your company had any MIOSHA violations or warnings? None
If so, please list details, including any fine amounts:



FINANCIAL

Please provide banking information and contact:

Federal ID#: _____

or S.S.N: _____

Incorporated: Yes No

Partnership: Yes No

Sole-Proprietor: Yes No

Line of Credit Limit: _____

SURETY

- Contact Name: _____
- Bonding Company: _____
- Location: _____
- Name of Agent: _____
- Phone Number: _____
- What is your single limit bonding capacity? _____
- What is your total limit bonding capacity? _____
- What is your available bonding capacity? _____

EXPERIENCE

1. List the Categories of work that your organization normally performs with its own forces:

2. Claims and Suits (If the answer is yes to ANY of the questions below, please attach details)

- Has your organization ever failed to complete any work awarded? Yes No
If yes, please describe (another sheet may be attached if more room is required)

- Are there any judgements, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers? Yes No
If yes, please describe (another sheet may be attached if more room is required)

EXPERIENCE CON'T

- Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? Yes No
If yes, please describe (another sheet may be attached if more room is required)

- Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? Yes No
(If yes, please attach an additional sheet to this qualification form)

3. List major work in progress below

Project Name	City	State	Work Value / Under Contract
Total worth of work in progress and under contract:			

- Total worth of work from previous year or last 12 months: _____
- On a separate sheet, list the major projects your organization has completed in the past five years including the project name, its location (city and state), contract value and a contact with phone number for reference.
- State the average annual amount of construction work completed during the past five years below.

2015	2014	2013	2012	2011

- Please list your proposed team (include resumes, highlighting experience)
 - Project Manager: _____
 - Project Superintendent: _____



REFERENCES

1. Please provide four (4) client and four (4) supplier references.

Client

Suppliers

Company: _____
Contact: _____
Phone: _____

Company: _____
Contact: _____
Phone: _____

Company: _____
Contact: _____
Phone: _____

Company: _____
Contact: _____
Phone: _____

Company: _____
Contact: _____
Phone: _____

Company: _____
Contact: _____
Phone: _____

Company: _____
Contact: _____
Phone: _____

Company: _____
Contact: _____
Phone: _____

2. Please provide Cunningham-Limp with a copy of your company resume (if available).

*****Please review attached sample subcontract for payment terms, insurance requirements, etc.***

TO BE COMPLETED BY CUNNINGHAM-LIMP

Received:

INTERNAL APPROVAL

Operations: _____ Date: _____

Finance: _____ Date: _____

ADMIN ENTERED INTO SYSTEM

Date: _____

Cunningham-Limp Development Company
General Contractor

28970 Cabot Dr., Suite 100
Novi, MI 48377
Ph: (248) 489-2300
Fax: (248) 489-2310

SUBCONTRACT

To: SAMPLE FORM ONLY

Subcontract No.: -
Date: SAMPLE FORM ONLY
Job: SAMPLE FORM ONLY
Job Address: SAMPLE FORM ONLY

Owner: SAMPLE FORM ONLY
Architect: SAMPLE FORM ONLY

(Subcontractor)

Project Description (Work): SAMPLE FORM ONLY

Total Subcontract Amount: \$ SAMPLE

Included Addendum, RFIs, Plans: SAMPLE FORM ONLY

Specific Exclusions: SAMPLE FORM ONLY

Date of Commencement of Work: SAMPLE FORM ONLY
Date of Completion of Work: SAMPLE FORM ONLY

By:
Its:
(Subcontractor)

CUNNINGHAM-LIMP DEVELOPMENT COMPANY
By:
Its:
(Contractor)

Date: SAMPLE

Date: SAMPLE

1. **Prime Contract:** Subcontractor acknowledges that **Cunningham-Limp Development Company** (Contractor) has agreed to furnish certain labor and materials to the project (the Project) described in this Subcontract (Subcontract) pursuant to a certain contract between Contractor and the Owner of the Project (the Prime Contract), a copy of which has been made available to Subcontractor. Subcontractor shall be bound by the terms of the Prime Contract and all documents incorporated therein, including, without limitation, the general, supplemental and special conditions, and Subcontractor assumes toward Contractor, with respect to the Work, all of the obligations and responsibilities that the Contractor has assumed toward the Owner under the Prime Contract.

2. **Performance of the Work.** Subcontractor shall furnish and perform the Work in a good and workmanlike manner and in strict accordance with this Subcontract and the Prime Contract, all applicable laws, codes, ordinances and regulations and the plans and specifications described on the first page of this Subcontract (the Plans and Specifications) (collectively, as the same may be amended, modified and/or supplemented in accordance with the provisions of this Subcontract, the Contract Documents). If a conflict exists between or within the Plans and/or Specifications, Subcontractor shall comply with the provision that imposes the greater duty. Subcontractor represents and agrees that it: (i) has carefully examined and understands the Contract Documents; (ii) has investigated the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed; (iii) enters into this Subcontract on the basis of its own examination, investigation and evaluations of all such matters; (iv) does not rely upon any opinions or representations of Contractor or Owner or of any of their officers, agents, partners, members, shareholders or employees except as expressly set forth in the Contract Documents; and (v) is licensed to perform the Work (if so required by applicable law) and, otherwise, is qualified to perform the Work. Contractor makes no warranty or representation that the Plans or Specifications meet all governmental laws, codes, ordinances or regulations now existing or hereafter promulgated.

3. **Terms of Payment.** Receipt of payment by Contractor, from the Owner, for the Subcontractor's Work is a condition precedent to payment by Contractor to Subcontractor for Subcontractor's Work. Subcontractor hereby acknowledges that it relies on the credit of the Owner, not Contractor, for payment of Subcontractor's Work. The contract amount shall be payable to Subcontractor as follows:

(a) Not less than ten (10) days prior to Subcontractor's first application for payment, Subcontractor shall provide to Contractor a Schedule of Values allocating the entire contract amount among the various portions of the Work, which Schedule of Values shall be prepared in such a form and supported by such data to substantiate its accuracy as Contractor may require. The Schedule of Values shall be used as a basis for reviewing each application for payment.

(b) Contractor shall pay Subcontractor within ten (10) business days following Contractor's receipt of (i) payment from the Owner of the Project with respect to that portion of the Work for which Subcontractor seeks payment; and (ii) proper waivers of lien and sworn statements from Subcontractor and any subcontractors, suppliers and laborers furnishing labor or material through or under Subcontractor.

(c) Applications for payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage completion shall be the lesser of (i) the percentage of that portion of the Work which has actually been completed or (ii) the share of the contract amount allocated to that portion of the Work in the Schedule of Values.

(d) Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(i) Take that portion of the contract amount properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the contract amount allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10%).

(ii) Subcontract aggregate of previous payments made by Contractor.

(iii) Subcontract amounts that are determined to have been improperly paid to Subcontractor pursuant to previous applications for payment as a result of errors subsequently discovered by Contractor.

(e) Retainage and the unpaid balance of the contract amount shall be paid within ten (10) days after the last of the following to occur:

(i) Final completion of the Work in accordance with the Contract Documents (including, without limitation, all punch list work).

(ii) Acceptance of the Work by Contractor, the Owner of the Project and the Project Architect.

(iii) Proper evidence that all entities supplying labor and/or material in connection with the Work have been fully paid (including all fringe benefits) and Contractor's receipt of as-built drawings of the Work and all operation manuals and written warranties and guaranties contemplated by the Contract Documents.

(f) No payments made under this Subcontract shall be construed as evidence of Subcontractor's proper or complete performance of the Work or Subcontractor's obligations hereunder, and no payment shall be construed to be an acceptance of defective Work.

(g) Subcontractor agrees to promptly pay the amounts due to all subcontractors, consultants, suppliers and laborers furnishing labor and/or materials to the Project through or under Subcontractor.

(h) Subcontractor shall not stop the Work in the event of a dispute as to payments owed provided that all uncontested amounts properly due Subcontractor have been paid in accordance with this Subcontract.

(i) All payment requests shall be submitted on AIA G702/G703 Application and Certificate for Payment forms or such other form as required by Contractor with an accompanying Sworn Statement in accordance with the billing date set forth in this Subcontract. Said request shall not include unapproved change order work and may be rejected if unapproved change order work is included on the payment request.

4. Commencement and Completion. Subcontractor agrees that the Work shall be started by the Commencement Date set forth in the Subcontract and shall be completed by the Completion Date set forth in this Subcontract or as indicated in the Contractor's most recent schedule. Subcontractor shall sequence and complete the Work as to insure that the Contractor completed the entire Project by the Completion Date as required under the Prime Contract. Subcontractor recognizes that Contractor shall suffer financial loss if the Work is not completed within the time specified above and further agrees that Subcontractor shall be liable to Contractor therefore.

5. Attendance at Meetings: Updated Work Schedule. A duly authorized representative of Subcontractor shall attend all periodic job meetings held on site at Contractor's field office or such other location as reasonably may be designated by Contractor, at which time Subcontractor shall present an updated Work Schedule subject to Contractor's approval and be prepared to discuss the details of the Work. In addition to Subcontractor's obligation to provide updated Work Schedules to Contractor at periodic job meetings, Subcontractor shall provide Contractor with updated Work Schedules at such other times as Contractor may request from time to time through the course of construction.

6. Supervision of Construction. Subcontractor shall supervise the Work using its best skill and attention. Subcontractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work or the requirements of the Plans and Specifications. Subcontractor shall be responsible to Contractor for the acts and omissions of its employees, subcontractors and their agents and employees, and other persons performing any of the Work through or under Subcontractor. Subcontractor shall at all times enforce strict discipline and good order among its employees, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him or her. Subcontractor shall also be liable for any fines/violations/remediation for causing or allowing employees to work in an unsafe environment as deemed by MIOSHA/OSHA requirements.

7. Work of Others. Should Subcontractor, its subcontractors or suppliers cause damage to the Work of any other contractor, subcontractor and/or supplier on the Project, Subcontractor agrees to compensate such other contractor, subcontractor and/or supplier to the extent of its/their damage. If Subcontractor fails to pay such costs within ten (10) days after receipt of written notice from Contractor, Contractor may deduct the amount thereof from any sums due or to become due Subcontractor hereunder.

8. Cleanup and Removal. Subcontractor shall maintain the areas in which it performs the Work in a clean, neat and safe condition and shall comply promptly with instructions from Contractor with respect thereto, upon completion of each stage, or when requested by Contractor. Subcontractor shall remove from the areas in which it performs the Work, to the satisfaction of Contractor, all of Subcontractor's

rubbish, debris, materials, tools and equipment; and if Subcontractor fails to do so promptly, Contractor may, after twenty-four (24) hours' notice to Subcontractor, remove the same to any place of storage or dumping ground, at Subcontractor's risk and expense and without responsibility for loss, damage or theft. All storage or removal costs incurred by Contractor shall be deductible from any payment or balance due Subcontractor hereunder.

9. Theft, Loss, and Damage to Work. Subcontractor shall be responsible for any loss, damage, or theft of its materials, work performed, and equipment pending completion of the Work. In the event such loss, damage, or theft should occur; Subcontractor shall not be relieved of its contractual responsibility to perform all Work prior to the Completion Date and in accordance with the Schedule.

10. Lien Waivers: Trust Fund: Miscellaneous Rights of Contractor.

(a) Subcontractor shall pay, or cause to be paid in full, for all materials, labor, and any and all obligations incurred in its performance under this Subcontract, or by its agents, suppliers, contractors or subcontractors, working under or through Subcontractor. Any and all payments to Subcontractor are conditioned upon prior delivery to Contractor of full waivers of liens, lien rights and payment bond rights for all labor and materials furnished by Subcontractor, its subcontractors, suppliers and any person or entity working through or under them for Work completed at the time of such payment. No payment hereunder shall be made until and unless said waivers are furnished with each payment request.

(b) Subcontractor agrees that all payments received by it shall be deemed to be, and constitute, a trust fund, and shall be first used and applied by Subcontractor in payment for all materials, labor and any and all other obligations incurred in connection with the work, prior to their use and application by Subcontractor for its own or any other purpose.

(c) In addition, Subcontractor hereby grants to Contractor the following rights: (i) to request names, phone numbers, copies of agreements and account status reports as to any of Subcontractor's own suppliers, subcontractors, labor unions or workmen; (ii) to audit Subcontractor's records to verify the account status of any Subcontractor's own suppliers, subcontractors, labor unions or workmen; and (iii) to make direct payment of amounts properly payable to any of Subcontractor's own suppliers, subcontractors, labor unions, or workmen where Contractor determines that Subcontractor has failed to make required payments to such entities. Any such payments so made by Contractor shall be deemed a proper credit in like amount against amounts due from Contractor to Subcontractor. Payment by Contractor to any subcontractor, laborer or supplier of Subcontractor shall not relieve Subcontractor of any obligations to Contractor under these General Terms and Conditions. Contractor, in its sole discretion, may make payment by checks payable jointly to Subcontractor and any subcontractor, laborer or supplier of Subcontractor.

(d) With each invoice submitted, the Subcontractor shall furnish a Sworn Statement listing each of its subcontractors, suppliers, laborers and union funds relating to the Project showing the amounts due and unpaid to each, together with waivers of liens from all sub/subcontractors and suppliers.

11. Permits, Bonds and Taxes. Subcontractor, at its own expense and cost, shall apply for and obtain all necessary permits and inspections as required by law for the performance of the Work. Subcontractor is responsible for paying all required taxes, bonds and licenses relating to the Work.

12. Warranty. NEITHER THE FINAL NOR ANY PROGRESS PAYMENTS SHALL RELIEVE SUBCONTRACTOR OF RESPONSIBILITY FOR FAULTY MATERIALS OR WORKMANSHIP. SUBCONTRACTOR HEREBY WARRANTS THAT THE WORK SHALL BE WITHOUT FAULT OR DEFECT FOR THE PERIOD SET FORTH IN THE PRIME CONTRACT OR FOR A PERIOD OF ONE (1) YEAR FROM FINAL COMPLETION OF THE PROJECT, WHICHEVER IS LONGER. SUBCONTRACTOR AGREES TO COMMENCE CORRECTIVE ACTION WITHIN FIVE (5) BUSINESS DAYS OF BEING NOTIFIED BY CONTRACTOR OF WORK WHICH IS INCOMPLETE OR DEFECTIVE. SUBCONTRACTOR AGREES TO PERFORM AND COMPLETE AT ITS COST ANY WARRANTY WORK WITH ALL DUE DILIGENCE. IF SUBCONTRACTOR FAILS TO PERFORM THE REQUIRED CORRECTIVE ACTION IN A TIMELY FASHION, CONTRACTOR MAY CAUSE THE WORK TO BE PERFORMED BY OTHERS AND SUBCONTRACTOR SHALL BE RESPONSIBLE FOR ALL COSTS OF SAME AND CONTRACTOR MAY DEDUCT SUCH COSTS FROM ANY PAYMENTS DUE SUBCONTRACTOR, WHICH REMEDY SHALL BE IN ADDITION TO AND NOT A LIMITATION OF ALL RIGHTS AND REMEDIES OF CONTRACTOR UNDER THE APPLICABLE SUBCONTRACT, THESE GENERAL TERMS AND CONDITIONS, OR UNDER LAW OR IN EQUITY.

13. Insurance and Indemnification.

Subcontractor shall, at its own expense, maintain at least the following minimum insurance coverages or such greater coverages or limits as referenced in the Prime Contract:

A. Provide for and maintain through an insurance company licensed in the state of Michigan WITH A BEST'S RATING OF A -, VIII OR BETTER and acceptable to the Contractor, COMMERCIAL general liability, employer's liability and worker's compensation, comprehensive automobile insurance AND UMBRELLA/EXCESS for the Subcontractor and its employees with limits in amounts and other coverages as set forth below and to furnish Certificates of Insurance of such insurance coverages to the Contractor. The Subcontractor shall not perform work on the site until an insurance certificate evidencing coverages, limits, and other requirements outlined below has been provided to the Contractor.

1. Provide Contractor with a Certificate of Insurance on an Accord Certificate Form 25-S, or a comparable form, which is satisfactory to Contractor. A 30-Day notice of cancellation is required. The words "Endeavour to" and "but failure to mail such notice shall impose no obligations or liability of any kind upon the company, its agents or representative" shall be stricken or removed from the notice of cancellation.

2. The Insurance Certificates shall reflect the following types of coverages in amounts not less than that stated:

i. Worker's Compensation Insurance covering your statutory obligation in the state(s) which the work for us is to be performed and Employer's Liability Insurance with limits of \$500,000.00 Each Accident, \$500,000.00 Disease – Policy Limit and Disease – Each Employee \$500,000.00.

ii. Automobile Liability Insurance with a combined single limit for bodily Injury and Property Damage Liability of \$1,000,000.00 per accident covering your owned, non-owned, and hired automobiles.

iii. Commercial General Liability Insurance written on an Occurrence Policy Form which includes coverage for your operations, personal injury, XCU (explosion, collapse and underground), Independent contractors, contractual and products/completed operations with the following limits of liability; PER JOB SITE AGGREGATE.

a.	General Aggregate	\$2,000,000.00
	Products/Comp.	2,000,000.00
	Personal and Adv. Injury	1,000,000.00
	Each Occurrence	1,000,000.00

b. Products/Completed Operations Liability must be maintained for not less than three (3) years after acceptance of your work.

iv. Excess or Umbrella Liability Insurance with occurrence/aggregate limit of \$5,000,000.00 occurrence/aggregate excess/umbrella.

v. PROFESSIONAL LIABILITY INSURANCE WITH LIMITS OF \$2,000,000.00 PER CLAIM AND AGGREGATE WHEN PROVIDING PROFESSIONAL DESIGN SERVICES ASSOCIATES WITH THIS AGREEMENT.

3. **CUNNINGHAM-LIMP DEVELOPMENT COMPANY, AND THE OWNER SHALL BE NAMED AS ADDITIONAL INSUREDS ON THE GENERAL LIABILITY, AUTOMOBILE AND UMBRELLA POLICIES REQUIRED HEREUNDER. SUBCONTRACTOR AGREES THAT THE ADDITIONAL INSURED ENDORSEMENTS SHALL COVER COMPLETED OPERATIONS.**

4. The General Liability coverage for the additional insureds shall be "work performed" and "shall be primary with other insurance maintained by the additional insured being excess and noncontributing to the Subcontractor's insurance." Language to this effect shall be provided on the Certificate of Insurance. Any deviation in coverage provided by the Standard 1986 ISO Simplified General Liability Policy must be clearly noted and shall be finding hereunder until accepted in writing by the Contractor.

5. General LIABILITY and auto liability limits may be attained by individual policies or by a combination of individual, umbrella, and/or excess liability policies.

6. THERE SHALL BE NO RESIDENTIAL EXCLUSION IN ANY POLICY THAT IS PROVIDED TO SATISFY THESE REQUIREMENTS IF THE PROJECT IS OF A RESIDENTIAL NATURE.

7. Waiver of Subrogation: SUBCONTRACTOR SHALL WAIVE AND REQUIRE ITS INSURERS PROVIDING COVERAGE BY THESE REQUIREMENTS, INCLUDING WORKER'S COMPENSATION, TO WAIVE SUBROGATION RIGHTS AGAINST THE CONTRACTOR, OWNER AND ALL OTHER ADDITIONAL INSURED FOR LOSSES AND DAMAGES INCURRED AND/OR PAID

UNDER THE INSURANCE POLICIES REQUIRED BY THESE REQUIREMENTS OR OTHER INSURANCE APPLICABLE TO SUBCONTRACTOR OR ITS SUBCONTRACTORS, SUPPLIERS, ETC. AND WILL INCLUDE THIS SAME REQUIREMENT IN CONTRACTS WITH THESE PARTIES. IF THE POLICIES OF INSURANCE REFERRED TO IN THIS PARAGRAPH REQUIRE AN ENDORSEMENT TO PROVIDE FOR CONTINUED COVERAGE WHERE THERE IS A WAIVER OF SUBROGATION, THE OWNERS OF SUCH POLICIES WILL CAUSE THEM TO BE SO ENDORSED.

Contractor and Subcontractor waive all rights they may have against each other, the Owner, the Architect/Engineer and other consultants, and other subcontractors for damages covered by builder's risk or other property insurance, except rights they may have to the proceeds of such insurance. Subcontractor shall require its vendors, suppliers, and sub-subcontractors, by written agreement, to waive all rights they may have against the same parties for damages covered by builder's risk or other property insurance except the rights to proceeds of such insurance.

8. Subcontractor assumes and undertakes the entire risk of any and all personal injuries and/or property damage arising out of or in any connected with the Work. To the fullest extent permitted by law, Subcontractor shall indemnify, hold harmless and defend Contractor and the Owner of the Project, their respective officers, members, directors, employees, sureties, agents and representatives from and against any and all damages, expenses, claims and suits of whatever kind or nature (including attorney fees) arising out of or in any way connected with the Work. The provisions of this section shall survive termination of this subcontract.

14. Time is of the Essence. Time is of the essence of Subcontractor's performance of the Work. Subcontractor agrees to complete the Work by the Completion Date, and to do the Work at greater or lesser speeds and at such times and in such quantities as in Contractor's judgment are required for the best possible progress of the construction of the Project or as shall be specifically requested by Contractor. Subcontractor also shall so conduct the Work as to facilitate and so as not to interfere with or delay the work of Contractor any other subcontractor or contractor employed on the job.

15. Alterations/Change Orders/Claims.

(a) No additions, deductions, changes or alterations shall be made to the Work and no claim for changed or extra work or materials (in any event, Additional Work) shall be recognized except on written order signed by the Project Manager or an officer of Contractor. No other employee of the Contractor will be authorized to alter or issue change orders to this Contract. The amount to be paid by, or credited to, Contractor as a result of any such additions, deductions, changes or alterations shall be stated in the order.

(b) All claims by Subcontractor for (i) loss or damage against Contractor; and/or (ii) an extension of the completion date, however arising, shall be made to Contractor within five (5) days from (i) the date Subcontractor first sustains any such loss or damage; or (ii) the date on which the event giving rise to an alleged delay or need for an extension of the Completion Date first occurs. If Subcontractor fails to make such claim within that time by a written statement setting forth all items of loss, damage and/or delay, as applicable, the amount and details thereof, or if Subcontractor fails to render each day thereafter a written itemized statement of the details and amounts of any continuing claim for each loss, damage or delay duly verified by Subcontractor, its rights to damages and reimbursement therefore and any rights to any extension of the Completion Date shall be deemed to have been waived and forfeited and Subcontractor shall not be entitled to any payment, or any extension of the Completion Date, on account of any such claimed loss, damage or delay, notwithstanding anything to the contrary herein. Subcontractor shall only be entitled to payment for any such claims upon Contractor's actual receipt of payment from the Owner for Subcontractor's claim(s).

16. Subcontractor's Default. If Subcontractor (i) fails to perform the Work or any part thereof with promptness and diligence; (ii) delays the progress of the Project; (iii) becomes bankrupt or insolvent; (iv) fails to sufficiently supply properly skilled workmen or materials of proper quality; (v) fails to pay its subcontractors, suppliers or laborers the amounts properly due said persons or entities; (vi) fails to pay workers' compensation or other employee benefits; (vii) fails to comply with the safety provisions of these General Terms and Conditions, its own safety plan or any safety plan of Contractor, or with any safety order, regulation or requirement of any governing authority having jurisdiction over this Project; (viii) shall file a voluntary petition in bankruptcy or be adjudicated insolvent, obtain an order for relief under Section 301 of the Bankruptcy Code, file any petition or fail to contest any petition filed seeking any reorganization

or similar relief under any laws relating to bankruptcy, insolvency or other relief or debtors, or seek or consent to or acquiesce in the appointment of any trustees, receiver or liquidator of any of its assets or property, make an assignment for the benefit of creditors; or make an admission in writing of its inability to pay its debts as they become due; (ix) defaults on any other contract with Contractor, or (x) fails in any other respect to comply with the Contract Documents, then, in addition to any other remedies available at law or in equity and/or under this Subcontract:

(a) Contractor may require that Subcontractor utilize, at Subcontractor's own expense, additional labor, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to Subcontractor's default; and/or

(b) After forty-eight (48) hours' written (or oral, confirmed in writing) notice to Subcontractor, Contractor may remedy Subcontractor's default by whatever means Contractor may deem necessary or appropriate, including, without limitation, providing such labor and materials as may be necessary to properly complete the Work, whereupon Contractor may deduct the cost and expense thereof from any money then due or thereafter to become due Subcontractor under the applicable Subcontract; and/or

(c) After giving Subcontractor forty-eight (48) hours' written (or oral, confirmed in writing) notice, terminate the applicable Subcontract, without thereby waiving or releasing any rights or remedies against Subcontractor or its sureties; and/or

(d) Contractor may recover from Subcontractor all costs incurred by Contractor to complete the Work plus a ten percent (10%) markup for overhead and profit, and further recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential, and all reasonable attorneys' fees suffered or incurred by Contractor as a result of said default(s); and/or

(e) Contractor may bar Subcontractor from the job site and to take possession for the purpose of completing the Work included under the Contract Documents, all materials, tools, scaffolding, apparatus, machinery and equipment thereon, and to employ or contract with any other person or persons to finish the Work.

(f) Subcontractor shall not be entitled to receive any further payment under this Subcontract until the Work shall be wholly finished, at which time if the unpaid balance of the amount to be paid on this Subcontract shall exceed the expense incurred by Contractor in finishing the Work, then such unpaid balance, after deducting any loss, damage or expense, by reason of Subcontractor's failure to adequately perform, including damages for delays, and expense for attorney's fees, shall be paid to Subcontractor by Contractor. In case the costs, expenses, losses and damage of such work exceeds the unpaid balance, Subcontractor shall immediately pay the amount of such excess to Contractor.

(g) If, as a matter of law, the Contractor does not have the right, due to a bankruptcy proceeding involving the Subcontractor, to exercise the remedies provided for in this Subcontract, then if Subcontractor, as debtor or its trustee, wishes to assume the applicable Subcontract, in addition to curing or adequately assuring the cure of all the Subcontractor's defaults existing under this Subcontract on the date of filing of the proceedings and thereafter, Subcontractor, as debtor, or its trustee, must also furnish adequate assurances of future performance under this Subcontract.

(h) In the event that Contractor is later determined to have improperly terminated this Subcontract under this Article 16, such termination shall be deemed to have occurred under the following Article 17.

17. Contractor's Right to Terminate Contract. Anything to the contrary herein notwithstanding, Contractor, in its sole discretion, may terminate this Subcontract at any time, without cause, by giving at least forty-eight (48) hours' prior written notice of such termination to Subcontractor. Upon any termination of a Subcontract, and subject to all of the terms and provisions herein contained, Subcontractor shall be entitled to payment for all accepted Work furnished and installed by it pursuant to this Subcontract on a pro-rata basis. No profits shall be allowed on the uncompleted portion of the Work. Contractor shall only be liable for labor and materials properly furnished up to the date of termination and/or profits shall be allowed on the uncompleted portion of the Work. Contractor shall only be liable for labor and materials properly furnished up to the date of termination and/or materials ordered for Project, but only to the extent Subcontractor is liable for the cost thereof and has no ability to return uninstalled material. In the event of the termination of the contract between Contractor and the Owner of the Project, this Subcontract shall also be terminated. It is also understood and agreed that the Owner may have the right to approve or disapprove the employment of Subcontractor if the Owner does not approve Subcontractor, this Subcontract shall become null and void.

18. No Liability for Delays. Contractor shall not be liable to Subcontractor for any extra compensation or for any damages or additional costs that Subcontractor suffers or incurs from delays,

interruptions and/or accelerations in performing the Work or furnishing materials, or other causes attributable to Contractor, Contractor's other Subcontractors or Owner. Subcontractor's sole remedy for delay, accelerations and/or interruptions shall be an extension of the Completion Date.

19. **Waiver and Remedies.** The waiver by Contractor of any default or of any breach of the terms of this Subcontract shall not be deemed a waiver of any subsequent breach.

20. **Assignment.** Subcontractor shall not assign all or any part of this Subcontract, nor any Work, nor any payments due or to become due hereunder, without first obtaining Contractor's written consent. In the event that Owner requests assignment of this Subcontract, Subcontractor consents to such assignment.

21. **Entire Agreement: Amendments: Governing Law.** Contractor and Subcontractor acknowledge that this Subcontract constitutes the whole agreement between them concerning the subject matter hereof. **This Subcontract may not be modified or amended unless the modification or amendment is made in writing by duly authorized representatives of the Subcontractor and either (i) the representative who executed this Subcontract on behalf of Contractor or (ii) an Officer of Contractor.** This Subcontract shall be governed by and construed in accordance with the laws of the State of Michigan.

22. **Fees of Collection.** If Contractor shall incur any cost or expense, including attorney fees, in preparing or prosecuting any claim against the Owner or in securing payment of the contract balances for work done by Subcontractor, Contractor shall be entitled to deduct Subcontractor's pro rata share of such costs and expenses from the amount due to Subcontractor.

23. **Mediation/Arbitration.** At Contractor's sole discretion, any dispute between Contractor and Subcontractor in any way relating to the Work or this Subcontract, may be submitted to mediation and/or arbitration pursuant to the Construction Industry Rules of the American Arbitration Association then in effect. Such Mediation/Arbitration shall take place at the American Arbitration Association's Southfield, Michigan, office. Any decision of any Arbitrator rendered pursuant to an arbitration initiated or consented to by the Contractor may be enforced by a court of competent jurisdiction.

24. **Surety Bonds.** The Contractor shall have the right to require the Subcontractor to furnish payment and/or performance bonds covering the Work in such form and amounts as the Contractor requires and with sureties that are reasonably acceptable to the Contractor. If bonds are required in connection with Subcontractor's initial performance of the Work, all surety bond premiums shall be the obligation of the Subcontractor. If bonds are required by Contractor subsequent to the Subcontractor beginning its work, the actual costs of such premiums shall be reimbursed to Subcontractor by Contractor.

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