



## SUBCONTRACT

<b>Date:</b>	<b>Subcontract Number:</b>
<b>Project:</b>	<b>CGS Superintendent:</b>
<b>Project Owner:</b>	<b>CGS Project Manager:</b>
<b>Project Address:</b>	<b>Project Architect:</b>

## SUMMARY OF TERMS

**THIS SUBCONTRACT** (“Subcontract”) is made as of the above date between CG Schmidt, Inc., 11777 West Lake Park Drive, Milwaukee, WI 53224 (“CGS”), and the following subcontractor (“Subcontractor”):

**Subcontractor Name:**

**Subcontractor’s Authorized Representative:**

**Address:**

**Telephone:**

**Fax:**

**Mobile:**

**E-mail:**

for the following portion of the Project activities (the “Work”):

All site inspection; labor, supervision and administration; services performed; materials, tools, fixtures, and equipment delivered and incorporated into, used in performance of, or stored offsite from, the Project; trade union and related benefit fund compensation and benefits; federal, state and local employment, sales, and other taxes and royalties; bonuses and other fringe benefits; licenses, permits, approvals, tariffs, duties or similar charges; shop drawings and other submittals related to the supply and performance of construction on the Project furnished by Subcontractor and its subcontractors and suppliers of every tier per the Subcontract Documents set forth in Paragraph 1.1 and .

See Exhibit A for additional terms related to scope of Work.

**Subcontract Amount:** \$ Phase:

**Payment Retainage:** %

**Application for Payment Submittal Date:** day of each month

**Payment/Performance Bonds Required:** Yes: No:

**Labor Rates for Changes (including overhead and profit):**

**Prime Agreement has Delay Liquidated Damages:** Yes: No:

**Submittal of Exhibit C-1 Affidavit Required:** Yes: No:

**Submittal of Exhibit C-3 Affidavit Required:**

Yes:

No:

This Subcontract is subject to the Wisconsin Department of Workforce Development Prevailing Wage laws, including without limitation Wis. Stats. §§ 66.0903, 66.0904, 103.49 and 103.50, as applicable, and all related provisions of the Wisconsin Administrative Code (collectively, and as amended, modified, supplemented or superseded from time to time, the "Prevailing Wage Laws"). With the submission of the final Subcontractor Application for Payment (and as a pre-condition to Subcontractor's receipt of final payment), Subcontractor shall complete and submit to CGS an original notarized affidavit certifying compliance with the Prevailing Wage Laws, on the form required by the Wisconsin Department of Workforce Development.

The Project Owner is a tax exempt entity and has chosen to save on the imposition of sales, use or similar taxes by making certain direct purchases of materials/equipment that will be incorporated into the Project, Subcontractor will be required to provide a detailed list of all materials and equipment necessary for its Work (sorted by supplier) and their costs, with applicable sales and use taxes separately calculated. Where the Project Owner makes such direct purchases, Subcontractor will remain responsible for selecting the materials, approving the purchase orders in writing, coordinating the acquisition and delivery of them so as not to delay the progress of the Work, receiving, unloading and inspecting them for quality, damage and sufficiency for use, and installing them into the Work all in compliance with the Subcontract Documents. Subcontractor will also review and, if appropriate, approve the invoices from each material or equipment supplier that furnishes the Project Owner with direct purchases for the Work. Should any directly purchased material or equipment fail within the warranty period specified for it under this Subcontract or the Subcontract Documents, Subcontractor shall correct, repair or replace them per warranty requirements of the Subcontract Documents and will hold CGS harmless from any additional costs associated with their correction. Notwithstanding any other provision in this Subcontract to the contrary, and to effectuate the direct purchase process, CGS will assign portions of this Subcontract to the Project Owner or to Richards Street Supply, LLC, a separate resale entity, established for direct purchases. Subcontractor shall have the same obligations and duties to the Project Owner or resale entity that Subcontractor has to CGS.

## **ARTICLE 1 - SUBCONTRACT DOCUMENTS**

- 1.1 Subcontract Documents.** The Subcontract between CGS and the Subcontractor includes all the terms and conditions of this Subcontract and its Exhibits; the Project general, supplemental and any special conditions; the Project design drawings, specifications and all addenda; and all the terms and conditions of the Agreement between CGS and Project Owner (the "**Prime Agreement**") applicable to the Subcontractor's Work, including, but not limited to, any Contract Documents identified in that Prime Agreement; and the Project Manual (collectively, the "**Subcontract Documents**"). The Subcontract Documents form the entire and integrated agreement between the parties and supersede all prior bid materials, proposals, negotiations and/or agreements, written or oral, between Subcontractor and CGS, except to the extent expressly referenced in these Subcontract Documents. In the event of any inconsistencies between the terms of this Subcontract and the terms of the other Subcontract Documents, within or between parts of the Subcontract Documents, or between the Subcontract Documents and applicable laws, statutes, ordinances, building codes, rules and regulations, Subcontractor shall provide the better quality or greater quantity of Work and comply with or conform its Work to the most stringent legal or contractual requirements.
- 1.2 Review.** Before execution of this Subcontract, Subcontractor acknowledges that it has had the opportunity to review the Subcontract Documents and that its Subcontract Amount is based on the requirements in such Subcontract Documents. Upon Subcontractor's request, CGS shall furnish a copy of the Prime Agreement or any of the other Subcontract Documents.
- 1.3 Flow-Down Compliance.** Subcontractor agrees that it will comply with the requirements of the Subcontract Documents. Subcontractor further agrees to assume toward CGS the obligations and responsibilities, including any administrative and procedural duties, that CGS assumes toward the Project Owner under the Prime Agreement to the extent applicable to Subcontractor's Work. Subcontractor also agrees to similarly bind its subcontractors and suppliers to comply with the Subcontract Documents' requirements applicable to the portion of the Work they perform or supply, and to comply with the requirements for Applications for Payment and accompanying affidavits pursuant to Paragraph 6.2 and its subparagraphs.

## **ARTICLE 2 - SCHEDULE**

- 2.1 Commencement.** Subcontractor will commence its Work upon receipt of written notification from CGS, and will proceed with a sufficient workforce, supervision, materials, tools and equipment to ensure the efficient and timely completion of the Work in accordance with the Subcontract Documents and any additional schedule requirements as outlined in Exhibit A.
- 2.2 Schedule Compliance.** Time is of the essence of this Subcontract. Subcontractor shall cooperate with CGS in planning of the Work and will provide input and information necessary for CGS' development of a Progress Schedule for the Project (the "**Progress Schedule**"). Subcontractor shall perform its Work in accordance with the Progress Schedule provided by CGS. CGS may at its discretion amend the Progress Schedule to change the time, order and priority in which portions of the Work are performed and all other matters relative to the Subcontractor's Work. The Progress Schedule and all subsequent changes shall be available to the Subcontractor at the Project site. Should Subcontractor fail to timely commence, continue and/or complete its Work as required under the current Progress Schedule, except as a result of causes identified in Paragraph 2.3 below, Subcontractor hereby agrees to indemnify CGS for any loss or damages, including liquidated damages imposed under the Prime Agreement, to the extent caused by such delay. The time provided in the most current Progress Schedule for the completion of Subcontractor's Work shall hereafter be referred to as the "**Subcontract Time.**"
- 2.3 Delay.** Unless precluded by the Subcontract Documents, at CGS' sole discretion the Subcontract Time may be extended by the period of critical path delays caused by natural disasters, acts of God, governmental acts or restrictions, war, civil disturbance, fire or other casualty, interference by the Project Owner or third parties that are unaffiliated with Subcontractor and outside of Subcontractor's control, or other causes that could not be reasonably anticipated by and are beyond Subcontractor's control. If Subcontractor intends to request an extension of time to perform as a result of such an unavoidable event, Subcontractor must give CGS written notice within seven (7) days after the event giving rise to the request and follow the procedures in Article 4 for seeking a Change Order; otherwise such a claim for extension, and any costs attributable to it, shall be deemed waived. Subcontractor shall only be entitled to an increase in the Subcontract Amount, or additional compensation or damages arising from delay of its Work, to the extent that CGS actually recovers from the Project Owner such amounts on Subcontractor's behalf, or CGS approves such changes in writing to Subcontractor. Under no circumstances shall CGS have any liability to Subcontractor for any damages alleged to have been suffered by Subcontractor for: (a) unabsorbed indirect (i.e. home office) overhead; (b) additional costs associated with multiplicity of changes and their cumulative or synergistic impact upon the performance of the Work; and (c) special, incidental or consequential damages arising from or related to delay, or acceleration to overcome delay, and its consequent "impact" or "ripple effect" on the Work ("Delay Damages"). Such Delay Damages are to be awarded solely at CGS' option after Subcontractor presents a timely request under Article 4 and consistent with other requirements of this Subcontract.

## **ARTICLE 3 - SUBCONTRACTOR'S RESPONSIBILITIES**

- 3.1 Work Performance.** Subcontractor shall be responsible for the means, methods, techniques and sequences of its Work, except to the extent expressly directed under the Subcontract Documents. Subcontractor shall furnish the Work in an efficient, diligent and orderly manner, including being responsible for any necessary layout and staking of Work to Project benchmarks, and furnishing accurate written reports and information regarding the status of the Work to CGS at its request. Subcontractor shall use clear, objective communications and participate efficiently to resolve issues that arise concerning the Work. Subcontractor shall submit to CGS a list of proposed subcontractors that will perform Work on the Project. Subcontractor may not utilize a subcontractor unless CGS approves in writing prior to the lower tier commencing any work. Subcontractor shall ensure that any of its subcontractors comply with the same standards of performance and workmanship in performing the Work as required of the Subcontractor. CGS shall have the right to cause Subcontractor to remove any of its subcontractors that fail to comply with these requirements. Every part of the Work herein described shall be executed in strict accordance with the Subcontract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in the Work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work, and shall be new and the best of their respective kinds, except such materials as may be expressly provided in the Subcontract Documents to be otherwise.

- 3.2 Site Inspection.** Subcontractor acknowledges that its Subcontract Amount is based on its previous inspection of the Project site. Prior to commencement of Work, Subcontractor will again make a Project site inspection. If the Subcontractor discovers any discrepancies between its observances and the Subcontract Documents, Subcontractor shall promptly report them to CGS.
- 3.3 Storage.** CGS may advise Subcontractor as to the availability, if any, of storage areas at the Project site. To the extent Subcontractor uses these areas, Subcontractor will be solely responsible for keeping them and their contents secure. Subcontractor is responsible for any damage or loss, whether by theft, accident or otherwise, to all its own materials, tools or equipment and those under its care, custody or control, whether in storage areas or elsewhere, until installed.
- 3.4 Submittals.** The Subcontractor shall, at its expense, make all field measurements necessary to prepare, and shall promptly furnish all submittals, including shop drawings, product data, samples and any other information or certifications required by the Subcontract Documents, so as to cause no delay in the Work or in the activities of CGS, the Project Architect, or other trades working on the Project. If resubmissions are necessary, all changes shall be clearly identified. No substitution shall be made in the Work depicted in a submittal unless permitted under the Subcontract Documents, and then only upon the Subcontractor first receiving all approvals required thereunder for the substitution in writing and after clearly noting on the submittal itself the change from Project requirements so substituted.
- 3.5 Professional Services.** To the extent required by law or necessary for the means and methods and/or scope of the Work to be furnished under this Subcontract, Subcontractor shall require all architectural, engineering or other design services to be provided and sealed by professionals licensed in the state where the Project is located ("**Professional Services**"). These professionals shall perform their design services with the care that a reasonable professional in the same field practicing in the same geographic area as the Project site would use. CGS, the Project Owner and the Project Architect shall be entitled to rely on the accuracy and completeness of the designs and certifications provided by such professionals. Professional Services shall be furnished such that the designs conform, and are coordinated, with the Project designs prepared by the Project Architect, as may be amended.
- 3.6 Meetings.** Subcontractor shall attend all weekly and any specially called Project site meetings as requested by CGS and immediately before and during the progress of its Work. The Subcontractor's representative at such meetings shall be fully authorized to make binding decisions on behalf of the Subcontractor. CGS shall have the right to approve or reject the designated Subcontractor's representative, which approval shall not be unreasonably withheld.
- 3.7 Cleanup.** At all times, Subcontractor shall keep the Project site and surrounding staging areas, if any, clean of obstructions and debris arising out of its operations and Work. CGS will deduct from any balance due or to become due the Subcontractor the cost of cleanup if (a) CGS provides written notice to the Subcontractor that Subcontractor must clean up the Project site and (b) Subcontractor fails to commence cleanup at the Project site within twenty-four (24) hours thereafter. CGS is not required to provide advance notice to the Subcontractor where cleanup is performed by CGS to rectify a safety hazard or emergency condition resulting from Subcontractor's failure to maintain a clean work site.
- 3.8 Cooperation.** Subcontractor shall supply a sufficient number of competent workers and shall maintain good control and discipline over them, including providing a full-time supervisor on the Project site while Work is being performed. CGS shall have the right to cause Subcontractor to remove its employees that in CGS' opinion lack skill or fail to safely perform the Work. Subcontractor shall cooperate with CGS and other trades at the Project site, including the Project Owner's forces, in the scheduling and performance of the Project, and shall not injure, damage or interfere with their performance of the Project. If required by CGS, the Subcontractor shall participate in the preparation of coordination drawings and sequencing in areas of congestion, specifically noting and advising CGS of potential conflicts between the Work of the Subcontractor, other trades or the Project Owner's own forces.
- 3.9 Use of CGS Equipment.** The Subcontractor agrees that CGS' equipment will not ordinarily be available for the use of the Subcontractor. Such use shall be solely at CGS' discretion and on mutually satisfactory terms not inconsistent with this Subcontract. In the event Subcontractor is permitted to use CGS' equipment, Subcontractor agrees to accept its condition "as is" and the sole risk of such use shall be borne by Subcontractor. Unless otherwise agreed in writing by Subcontractor and CGS, Subcontractor shall be responsible for and shall reimburse CGS for CGS' costs to repair or replace any CGS equipment damaged because of Subcontractor's use of equipment (excluding ordinary wear and tear), whether or not such damage is caused by misuse of the equipment.
- 3.10 Work Conformance.** The Subcontractor agrees that CGS, the Project Owner and Project Architect will each have the authority to reject Work of the Subcontractor that does not conform to the Subcontract Documents. If completed Work is required to be uncovered, Subcontractor shall expose it for examination, and within twenty-four (24) hours notice from CGS that it is defective or non-conforming, shall commence to correct it at Subcontractor's expense, including any associated restoration costs as may be incurred by others. If Subcontractor fails to continue corrections in a timely manner CGS shall have the right to correct such defective or non-conforming Work and CGS shall have the right to either backcharge Subcontractor for all reasonable costs under Paragraph 9.2, or offset such costs against payments next due to Subcontractor hereunder. In the event Subcontractor, due to no fault of its own, uncovers any completed Work and such Work was not defective or non-conforming, then CGS shall pay all costs incurred by Subcontractor in uncovering and restoring such Work. If Subcontractor has covered its own Work or that of another in violation of the Subcontract Documents or in violation of a directive issued to Subcontractor by CGS, Subcontractor shall expose such Work for examination and shall restore the covering Work, all at its own cost and expense.
- 3.11 Compliance with Laws.** The Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority applicable to the performance of the Work and this Subcontract, including, but not limited to, equal employment opportunity and non-discrimination obligations. Subcontractor shall not discriminate against any individual with respect to hire, discharge, compensation, terms, conditions or privileges of employment, or segregate its facilities because of a person's age, race, color, religion, sex, handicap, national origin, sexual orientation, military service, or other status protected by law, or against any company because of its disadvantaged business enterprise status. The Subcontractor shall secure and pay for all permits, fees, tests and licenses necessary for execution of the Work and as described in the Subcontract Documents. The Subcontractor shall comply with and pay taxes, social security, unemployment compensation, worker's compensation and other fringe benefits applicable to the performance of this Subcontract. The Subcontractor shall comply with and pay all sales and/or use taxes in accordance with the laws of the state in which the project is located. Subcontractor shall furnish, at CGS' request, evidence of compliance with these requirements and the payment of any fee, tax, charge or penalty under them.

- 3.12 Labor Compliance.** Subcontractor agrees that while performing Work activities covered by CGS' labor agreements, Subcontractor will also have in effect a written labor agreement with the union which is a party to CGS' labor agreements and that has jurisdiction in the Project site area over the pertinent classifications of the Work, and Subcontractor shall abide by the terms and conditions of such labor agreement. CGS has labor agreements with North Central States Regional Council of Carpenters; Laborers International Union, Local 113; Operating Engineers Union, Local 139; and Operative Plasterers & Cement Masons International Union, Local 599.
- 3.13 Site Conditions.** Subcontractor shall utilize construction (and design, if applicable) means and methods that limit moisture and/or growth of mold, mildew, spores, any other form of fungi or bacteria, and any toxin secreted there from ("**Microorganisms**"), including, but not limited to, keeping materials dry during transit and storage; utilizing only dry materials not contaminated with Microorganisms; and using proper construction sequencing (i.e., not closing-in any building component until it has an adequate chance to dry). Subcontractor shall promptly inform the CGS Project Manager in writing of any potential conditions involving moisture or Microorganisms that Subcontractor encounters immediately before and during Subcontractor's Work at the Project site, including, but not limited to, any signs of inappropriate moisture inside the Project building; materially wet or water-damaged material or building components; Microorganism growth on any building materials; Microorganism presence or growth in, on, or about the interior or exterior of the Project building; and any construction scheduling and/or sequencing issues related to moisture and/or Microorganisms concerns. The Subcontractor shall be responsible for all loss or damage to the extent caused by Subcontractor's failure to comply with these site conditions requirements.
- 3.14 Close-Out Documentation.** Subcontractor shall submit record drawings of as-built changes to Project designs arising out of the Work and to shop drawings or other designs prepared for the Work; copies of all operation and maintenance manuals and information, suitably indexed and bound; warranties; test results and certifications; proof of surety consent, if required under any bonds furnished hereunder; and final waivers of lien or bond rights pursuant to Paragraph 6.9, as required by the Subcontract Documents in exchange for final payment made to Subcontractor.
- 3.15 Charge-Back.** Subcontractor shall timely commence, continue and/or complete its Work as required under the Progress Schedule, except as a result of causes identified in, and with respect to which CGS has granted an extension or extensions under Paragraph 2.3, and shall promptly correct, at its own costs, Work rejected at any time by CGS or the Project Owner or Project Architect as being defective or not in conformity with the Project requirements. If Subcontractor fails to comply with its obligations under this Paragraph, CGS may, forty-eight (48) hours after the giving of written notice to Subcontractor of delay or defective work, remedy Subcontractor's failure, utilizing persons, firms, equipment and materials at CGS' reasonable discretion, and Subcontractor shall pay CGS for all such costs (including CGS mark-up of 15% for overhead) incurred on demand or CGS may deduct and withhold from any payments otherwise due to Subcontractor, on this Project or any other Project where Subcontractor has performed work, such amounts as backcharges against the Subcontract Amount.
- 3.16 Project Owner Occupied Site.** If the Project Owner will occupy the Project site during the performance of the Work, the Subcontractor shall take all reasonable measures appropriate to maintain Project Owner's access to the Project site and to minimize disruption to the Project Owner's occupancy and business operations.
- 3.17 Quality of Materials.** All materials and/or equipment (excluding Subcontractor's tools and equipment) to be incorporated into the Project shall be of good quality and new, unless otherwise required or permitted by the Subcontract Documents. In all instances in which the Subcontract Documents require materials to be of a designated manufacturer or specific brand name, Subcontractor warrants that the materials it uses or supplies are in fact produced by the designated manufacturer and/or are of the designated specific brand, and that they are genuine and non-counterfeit.
- 3.18 Sales and Use Tax Exemption.** In the event that the Project Owner is a tax exempt entity and chooses to save on the imposition of sales, use or similar taxes sales a Wisconsin Sales and Use Tax Exemption Certificate will be attached hereto as Exhibit D. Subcontractor is responsible for compliance with all state laws related to sales, use or similar taxes.

#### **ARTICLE 4 - CHANGES**

- 4.1 Pricing and Schedule.** CGS may direct the Subcontractor, without notice to Subcontractor's surety, if any, and without invalidating this Subcontract, to make changes in the Work, including additions, deletions or other revisions in scope or services provided. Upon Subcontractor's receipt of such directive, whether initiated by CGS or the Project Owner, or arising otherwise from changes outside the Subcontractor's control that affect its Work, Subcontractor shall provide (i) pricing; and (ii) a description or estimate of any impacts upon the Subcontract Time, in sufficient time, detail and form to allow CGS to promptly provide the Project Owner with such information for CGS' and Project Owner's evaluation in accordance with the requirements of the Subcontract Documents.
- 4.2 Change Order Requests.** Upon notice to Subcontractor of CGS' approval of Subcontractor's submittal pursuant to Paragraph 4.1 above, and in any case before Subcontractor's commencement of such changed or revised Work, Subcontractor shall promptly submit a written Change Order Request to CGS for adjustment to the Subcontract Amount, adjustment to the Subcontract Time or any other modification of Subcontract terms. Except in the case of a proper Field Authorization (as defined in Paragraph 4.5 below), CGS shall have no obligation to pay for changed or revised Work that Subcontractor performs without first submitting a Change Order Request and receiving CGS' approval through a Change Order (as defined in Paragraph 4.5 below). Each Change Order Request will reflect a specific individual change in the Work and shall not include multiple changes unless approved by CGS, which approval shall not be unreasonably withheld. Change Order Requests must be itemized, identifying the cost, quantity and type of labor hours, quantities of materials, equipment rental fees, its subcontractor costs, and any other items that are involved in the change, together with a mark-up consistent with the requirements of this Article. Change Order Requests further must be submitted in accordance with any additional requirements identified in the Subcontract Documents.
- 4.3 Mark-up.** Unless otherwise fixed in the Subcontract Documents, mark-ups for Subcontractor's overhead and profit on all additive and deductive changes shall be limited to no more than the following percentages of the actual costs: materials - 10%, equipment - 10%, its subcontractor work - 5%. Costs associated with Project management, administrative and estimating activities and home office costs are included in these mark-ups and shall not be separately charged.

- 4.4 Labor Rates.** The Labor Rates for Changes identified in the Summary of Terms of this Subcontract include all fringe benefits, taxes, overhead and profit related to them, and shall be used for calculating all time and materials Change Order Requests. Labor rates for overtime Work shall be based on employee hourly overtime wages and taxes paid, without additional benefits and overhead mark-up.
- 4.5 Change Orders.** Upon CGS' acceptance of a Subcontractor Change Order Request or at CGS' own initiative, CGS will issue a written Change Order reflecting adjustment to the scope of Work, adjustment to the Subcontract Time and/or adjustment to the Subcontract Amount as a result of such change in the Work ("**Change Order**"). Changes to the Work will be effective only upon Subcontractor's receipt of a written Change Order signed by CGS' Project Manager. In addition, CGS' Project Manager or Project Superintendent may authorize a field change for activities requiring immediate action or emergencies affecting health or safety ("**Field Authorization**"). Such Field Authorizations shall be confirmed by Subcontractor's submittal of a Change Order Request to CGS within twenty-four (24) hours. Subcontractor will promptly commence the changed Work upon notice of a Field Authorization or upon receipt of a Change Order executed by CGS. Subcontractor may reserve the right to pursue dispute resolution as provided in Article 11 as to the Subcontract Amount, the Subcontract Time or other Subcontract terms related to the change. The Subcontractor will modify its Schedule of Values to reflect the adjustment reflected in the Change Order. Subcontractor may only include Change Order amounts in its Applications for Payment after an executed Change Order is received. If CGS rejects a Change Order Request for any reason, Subcontractor shall complete the work in dispute ("**Disputed Work**") without additional compensation therefor. Subcontractor, however, retains all rights under Article 11 to challenge CGS' determination regarding Disputed Work and to otherwise seek resolution of issues relating to Disputed Work. CGS shall have no obligation to compensate Subcontractor for any changes to the Work performed by Subcontractor unless and until an executed Change Order has been received by Subcontractor. In no event shall Subcontractor be entitled to any monetary claim or extension of time in connection with any individual or cumulative changes, matters, circumstances or conditions that have previously been addressed by a Change Order. A Change order resolves all claims or adjustments resulting from the subject matter thereof.

#### **ARTICLE 5 - SAFETY COMPLIANCE**

- 5.1 Safety Compliance.** The Subcontractor, its employees, agents, its subcontractors and suppliers, will perform all Work on the Project in a safe and responsible manner and in compliance with all local, state and federal safety laws and statutes. The Subcontractor shall observe and abide by the safety rules and policies established by CGS for the Project and will maintain procedures to safeguard itself, CGS, the Project Owner, Project Architect, other trades and the public using any existing or new facilities to avoid damage or loss to property or persons in performing the Work.
- 5.2 Prevention of Accidents.** Notwithstanding anything set forth in CGS' safety policy, prevention of accidents at the Project site arising out of performance of the Work shall remain the Subcontractor's responsibility. CGS reserves the right to cause Subcontractor to dismiss from the Project site any of its employees or its subcontractor(s) who violate safety requirements. Subcontractor shall not create or allow, and shall promptly report to CGS, any unsafe conditions at the Project site, whether involving the Work or otherwise.
- 5.3 Protective Gear.** Subcontractor agrees that all personnel performing the Work, including persons involved with material and equipment deliveries, will wear hard hats and safety glasses at all times on the Project site, and that other appropriate personal protective equipment, such as warning vests, protective footwear, hearing protection, harnesses and lead lines, will be utilized when necessary for the particular Work activities Subcontractor undertakes.
- 5.4 Notice.** Subcontractor will verbally notify CGS' Superintendent immediately following any accident or injury, and promptly confirm the notice in writing. A detailed written report shall be furnished to CGS' Project Manager within twenty-four (24) hours after any accident, injury, or near miss event.
- 5.5 Hazardous Conditions.** If hazardous substances including, but not limited to, lead, polychlorinated biphenyl (PCBs), asbestos or other chemicals, toxic substances, contaminants, or explosives ("**Hazardous Substances**") will be used or removed in the performance of Subcontractor's Work, Subcontractor will submit to CGS a hazardous Work plan and shall exercise extreme care to ensure that any unlawful exposures or harmful conditions do not occur. Subcontractor agrees that it will indemnify, defend and hold CGS harmless from all claims, damages or losses CGS sustains as a result of Subcontractor's negligent, reckless, or intentional mishandling or misuse of hazardous substances and/or explosives. Subcontractor shall be responsible for properly disposing of all unused or removed hazardous materials and related remaining waste that is generated in performance of its Work, unless otherwise specified in the Subcontract Documents.
- 5.6 Pre-Existing Hazardous Conditions.** If the Subcontractor encounters any pre-existing Hazardous Substances that are not identified as part of the Work under the Subcontract Documents, Subcontractor shall immediately stop Work in the area and avoid any disturbance of them. Subcontractor shall immediately advise CGS' Superintendent of the condition and shall not return to its Work in the area until directed by CGS. If Subcontractor improperly disposes of any Hazardous Substances or related waste, Subcontractor shall be solely liable for any loss or damage that may arise from such improper disposal, including attorneys' fees and costs incurred by CGS to address or correct such activities.
- 5.7 Safety Data Sheet Compliance.** Subcontractor shall comply with all governmental right-to-know laws, including providing to CGS' Superintendent prior to commencement of Work at the Project site copies of all Safety Data Sheets (SDS) for each regulated material or substance it uses on this Project; providing training for employees and its subcontractors who will use or apply those materials and substances; and properly labeling all containers of Hazardous Substances brought to the Project site or used in performance of the Work.

## ARTICLE 6 - PAYMENT

- 6.1 Schedule of Values.** Unless another process is required to be used in the Subcontract Documents, before commencing construction at the Project site, the Subcontractor shall submit for CGS' approval a schedule allocating the Subcontract Amount to the various parts of the Work of this Subcontract in such detail as CGS and/or the Project Owner may require ("**Schedule of Values**"). To the extent requested by CGS, Subcontractor will break out specific sub-costs within general conditions, assemblies, building components, allowances, insurance and/or bond premiums, or segregate costs into specified line items or phase codes as directed by CGS. In applying for payments, the Subcontractor shall submit Applications for Payment based upon percentage of completion of the line items of Work as identified in its approved Schedule of Values. Applications for Payment will not be processed for payment until the Schedule of Values is submitted and approved by CGS.
- 6.2 Applications for Payment.** Subject to the requirement that Subcontractor be in compliance with all Subcontract terms, after this Subcontract is executed by Subcontractor, delivered to CGS, and accepted by CGS, CGS shall pay Subcontractor the Subcontract Amount, as may be amended by Change Orders, in monthly payments in amounts equal to the percentage of Work completed less retainage. Each month during performance of the Work, Subcontractor shall furnish a fully completed "Subcontractor Application for Payment" in the form attached to this Subcontract as Exhibit C on or before the Application for Payment Submittal Date indicated in the Summary of Terms of this Subcontract for the portion of the Work properly completed during the preceding month. Late Applications for Payment will not be processed until the next subsequent Application for Payment Submittal Date. Applications for Payment must be accompanied by:
- .1 a fully completed AIA G702/703 Application for Payment form or other schedule of values in a form and with sufficient detail acceptable to CGS; and
  - .2 for "cost plus fee" or "time and materials" portions of the Work, copies of all material supplier and its subcontractor invoices and tickets for daily labor and equipment charges approved by CGS.
  - .3 Subcontractor may request payment for certain materials and equipment stored off the Project Site. CGS may, at its discretion, make payment for materials and equipment stored off the Project site, provided Subcontractor furnishes evidence of appropriate security arrangements and insurance coverage for such items.
- 6.3 Textura.** CGS shall have the right, at CGS' sole discretion, to process all Subcontractor Applications for Payment using the Textura-CPM™ ("Textura") payment management system. This includes, but is not limited to, lien waivers, sworn statements and the like. CGS may elect to withdraw or terminate the use of Textura at its sole discretion. Subcontractor shall be responsible for all fees and costs owed to Textura associated with Subcontractor's use. Subcontractor expressly represents and warrants to CGS that it shall permit only authorized representatives of the Subcontractor to use Textura. Subcontractor shall be fully responsible for protecting such access and use. CGS may rely on the truth and accuracy of any and all documents and actions of the Subcontractor relative to its access and use of Textura, without independent review or confirmation.
- 6.4 Change Adjustments.** Change Order Requests to Subcontractor's Subcontract Amount may not be included on Applications for Payment until Subcontractor receives a Change Order signed by CGS confirming the adjustment unless CGS gives advance authorization to do so. Authorized changes are to be added to or deducted from the Subcontract Amount, with each Change Order itemized separately on the Subcontractor's Schedule of Values or as directed by CGS.
- 6.5 Adjustment of Payment Amount.** CGS may reject, in whole or part, a Subcontractor Application for Payment or nullify a previously approved Subcontractor Application for Payment as may be reasonably necessary to protect CGS or the Project Owner from loss or damage based upon:
- .1 Subcontractor's material failure to perform the Work as required by this Subcontract;
  - .2 loss or damage to the extent caused by the Subcontractor to the Project Owner, CGS or others to whom CGS may be liable;
  - .3 Subcontractor's failure to properly pay for labor, materials, equipment or services furnished in connection with the Work required by this Subcontract;
  - .4 rejected, non-conforming or defective Work that has not been timely corrected;
  - .5 delay in performance of the Work where CGS reasonably concludes the Work will not be completed as required by the Subcontract Time as security for damages that may be sustained by CGS as a result of the Subcontractor's delay; and/or
  - .6 Subcontractor's failure to provide documentation required under this Subcontract.
- CGS may further adjust the amount of payment otherwise due under an Application for Payment to offset for backcharges as provided elsewhere under this Subcontract. CGS shall notify the Subcontractor in writing at the time of adjusting, disapproving or nullifying all or part of the amount due under an Application for Payment, stating the reasons for doing so. Subcontractor shall be paid in the net amount of its approved Application for Payment within seven (7) days after Project Owner's payment is made to CGS for that portion of the Work. Nothing in this Paragraph 6.4 shall limit or eliminate CGS' other rights and remedies under this Subcontract, the Subcontract Documents, or at law or in equity.
- 6.6 Retainage.** Retainage shall only be paid to the Subcontractor after Subcontractor's substantial completion of its Work and within seven (7) days after Project Owner's payment to CGS of such Retainage, or such earlier time as CGS, in its sole discretion, may release all or a portion of the Retainage. CGS may always withhold such portion of the Retainage as is necessary to cover costs to fully complete the Subcontractor's remaining Work.
- 6.7 Sub-Subcontractor/Supplier Payments.** Subcontractor shall receive as trust funds and pay all its subcontractors and suppliers for their respective portion of the Work in, or in connection with, the performance of this Subcontract within seven (7) days after receipt of payment from CGS for them. Subcontractor further shall require that all its subcontractors and suppliers delegating or sub-subcontracting Work include in their contract(s) or purchase order(s) an identical payment requirement to such persons or entities and shall furnish satisfactory evidence when requested by CGS to verify compliance with this requirement. If CGS believes that any of Subcontractor's subcontractor(s) and/or supplier(s) are not being timely paid, then CGS may, in its discretion, issue joint checks to the Subcontractor and its unpaid subcontractor(s) and/or supplier(s), or make direct payment of amounts properly due to such unpaid subcontractor(s) or supplier(s) in satisfaction of their claims, and in accordance with Paragraph 6.4 above, deduct the amounts so paid from any amount owed or to be owed to Subcontractor by CGS on this Project or otherwise, or, if in excess of such amount owed or to be owed, then Subcontractor shall reimburse CGS upon receipt of written notice of such an overage

payment. CGS' right to issue joint checks or make direct payments shall not create an obligation on the part of CGS to exercise that right on the part of any subcontractor, supplier or creditor. Subcontractor agrees to indemnify, hold harmless and defend CGS and the Project Owner against any loss, cost, damage, expense (including reasonable attorneys' fees and costs) that may be sustained by reason of Subcontractor not making timely payments to its subcontractor(s) and/or supplier(s), but only if Subcontractor has been paid all amounts then due and owing under this Subcontract in accordance with Paragraph 6.5 above.

**6.8 Liens/Bonds.** Subcontractor agrees to hold harmless, indemnify and defend CGS and the Project Owner from and against any loss, cost, damage, expense (including reasonable attorneys' fees and costs), liability, or judgment, which CGS or the Project Owner may sustain in connection with any bond or lien claim arising out of the Work performed under this Subcontract. Subcontractor shall indemnify CGS and the Project Owner for any unpaid Subcontract Amount due its subcontractor(s) or supplier(s) in excess of the unpaid amount due the Subcontractor from CGS. If directed by CGS, Subcontractor shall further furnish and pay for a bond as security against or to remove any such lien filed by Subcontractor's subcontractor(s) or supplier(s).

**6.9 Lien Waivers and Affidavits.** If required in the Summary of Terms of this Subcontract, or if requested by CGS, and within seven (7) days after receipt of any progress payment from CGS, Subcontractor shall submit to CGS a corresponding completed "Subcontractor Affidavit Regarding Unconditional Partial Waiver, Release of Lien and/or Bond Rights & Indemnity" in the form attached to this Subcontract as Exhibit C-1. If required in the Summary of Terms of this Subcontract, or if requested by CGS, Subcontractor shall also submit the following additional information with its Affidavit:

- .1 for all progress payments after the initial progress payment, a completed "Sub-subcontractor/Supplier Affidavit Regarding Unconditional Waiver, Release of Lien and/or Bond Rights & Indemnity" in the form attached to this Subcontract as Exhibit C-3 for any portion of the Work performed by any sub-subcontractor or supplier identified in Subcontractor's last preceding Affidavit having an aggregate contract amount including change orders, equal to or greater than ten thousand dollars (\$10,000);
- .2 for all progress payments after the initial progress payment, on any portion of the Work performed by the Subcontractor, or any of its subcontractors or suppliers of any tier, identified in Subcontractor's last preceding Affidavit, that utilized workers that are members of any trade union, or subject to any union benefit plan or collective bargaining agreement, Subcontractor shall supply a waiver in a form satisfactory to CGS from such trade union and/or the party administering each such benefit plan or collective bargaining agreement (collectively, a "**Waiving Union Party**"), in which the Waiving Union Party waives all lien rights attributable to contributions required under union contracts for labor costs paid through the previous progress payment (a "**Union Waiver**").

CGS reserves the right to withhold progress payments until the requirements of Paragraph 6.9 are fulfilled.

**6.10 Final Payment.** Subcontractor's final payment waiver shall be unconditional and cover the entire Work, as may be amended. With the submission of the final Subcontractor Application for Payment, a "Subcontractor Affidavit Regarding Unconditional Full & Final Waiver, Release of Lien and/or Bond Rights & Indemnity" in the form attached to this Subcontract as Exhibit C-2 must be completed, executed and attached. If requested by CGS, Subcontractor also shall revise, execute and submit its "Sub-subcontractor/Supplier Affidavit Regarding Unconditional Waiver, Release of Lien and/or Bond Rights & Indemnity" as provided in Exhibit C-3 as applicable under Subparagraph 6.9.1 to reflect any changes in sub-subcontractor(s) or supplier(s) of any tier furnishing any portion of the Work. If requested by CGS, Subcontractor shall also submit final Union Waivers for each Waiving Union Party that supplied Union Waivers during construction of the Work. Final payment will only be made after the Subcontractor has completed the Work consistent with the Subcontract Documents, the Project Architect has issued a "Certificate of Substantial Completion" covering Subcontractor's completed Work, and CGS has received final payment from the Project Owner for Subcontractor's Work.

**6.11 Non-Waiver.** Payments by CGS, including final payment, shall in no way relieve the Subcontractor of liability for obligations assumed under this Subcontract, including warranty obligations, or for faulty or defective Work discovered after payment.

**6.12 Audit.** CGS shall have access at all reasonable times to audit Subcontractor's Project financial records, personnel and Project records necessary for confirming costs of the Work or Change Orders to the extent performed on a time and materials or cost plus fee basis, or as otherwise required under the Subcontract Documents.

## **ARTICLE 7 - INDEMNITY**

**7.1 Indemnity.** To the fullest extent permitted by law, Subcontractor agrees to indemnify and hold harmless CGS, CGS' other subcontractors, the Project Owner, the Project Architect, and their respective officers, directors, consultants, employees, and agents (collectively, "**Indemnitees**") from all claims, citations, penalties, forfeitures, judgments, losses, damages, and other expenses of any nature, including but not limited to incidental damages, consequential damages, liquidated damages, reasonable attorneys' fees and costs of collection and appeal (collectively, "Claims"), arising from bodily injury, damage to real or personal property, Project delays, cost overruns, or any other harm or injury of any nature, caused in whole or in part by any fault, negligence, or reckless or intentional acts or omissions of Subcontractor, its subcontractors, its suppliers, or any of its employees, consultants, or agents in the performance of the Work. In the event that the Prime Agreement described in Paragraph 1.3 limits CGS' obligation to indemnify the Project Owner, Project Architect, and their respective officers, directors, consultants, employees and agents, and in that event ONLY, the Subcontractor's obligation to indemnify the Project Owner, Project Architect, and their respective officers, directors, consultants and agents will be limited in an identical manner.

**7.1.1 Scope of Indemnification Includes Indemnitees' Own Negligence.** Subcontractor's duty to indemnify the Indemnitees expressly applies even if the Claim is CAUSED IN PART BY AN INDEMNITEES' OWN NEGLIGENCE.

**7.1.2 Limited Apportionment Exception.** In the event an occurrence as described in Article 7.1 is caused in part by CGS' own negligence, Subcontractor's indemnity obligations shall be apportioned so that CGS is responsible for the proportionate share attributed to CGS' own negligence. This apportionment exception does not apply, however, to any Claims in which CGS's apportioned percentage of fault is 15% or less, and/or the Claim involves an alleged or proven failure on the part of CGS, whether in whole or in part, to do as follows:

- .1 supervise or inspect the performance of Subcontractor, its employees, agents, its subcontractors and suppliers;



- .2 prevent, detect, or minimize Work that does not conform to the Subcontract Documents; and/or
- .3 enforce Safety Compliance or to prevent injury to persons or damage to property in areas where Subcontractor is exercising sole or shared control

- 7.2 **Duty to Defend.** In addition to the duty to indemnify and hold harmless under Paragraph 7.1, Subcontractor agrees to defend Indemnitees, with counsel chosen at Indemnitee's reasonable discretion, against all Claims in which Subcontractor's fault, negligence, or reckless or intentional acts or omissions is alleged.
- 7.3 **Attorneys' Fees for Breach.** In the event Subcontractor breaches its obligations to Indemnitees under Paragraphs 7.1 or 7.2, Subcontractor shall pay Indemnitees' reasonable attorneys' fees and costs of collection and appeal incurred in enforcing Subcontractor's obligations.
- 7.4 **No Effect on Insurance and Bonds.** It is expressly understood and agreed that Subcontractor's obligations under this Article 7 are in addition to its obligations under Article 8. Nothing in this Article 7 shall affect in any way Subcontractor's obligations under Article 8 to obtain insurance or furnish surety bonds, or the terms and coverage of such insurance and bonds as specified in Article 8.
- 7.5 **No Effect on Subcontractor's Other Obligations.** It is expressly understood and agreed that nothing in this Article 7 shall affect in any way Subcontractor's other obligations to CGS under the Subcontract Documents, or to any other beneficiaries of the Subcontract Documents.
- 7.6 **No Limitation.** Subcontractor's duty to indemnify the Indemnitees shall not be limited in any way by a limitation on an amount or type of damages, compensation, or benefits payable by or for Subcontractor under workers' compensation laws, disability benefit laws, or any other employee benefit laws.

### **ARTICLE 8 - INSURANCE & BONDS**

- 8.1 **Insurance Coverage.** Subcontractor shall comply with all the terms and conditions relating to insurance set forth in Exhibit B hereto, which is incorporated herein by reference.
- 8.2 **Payment and Performance Bonds.** If required in the Summary of Terms of this Subcontract, or if requested by CGS, Subcontractor, at its expense and included within the Subcontract Amount, shall furnish surety bonds to secure the faithful performance of the Work and the payment of all obligations for it, from a surety licensed to do business in the state where the Project is located and rated AM Best at A- or better. Bonds shall be on AGC Document No. 606 and 607 or AIA Document 311 forms, and shall be furnished before Subcontractor commences its Work at the Project site or receives any payments under this Subcontract. It is understood and agreed that authorization is hereby granted to CGS to withhold payments to the Subcontractor until CGS receives such properly executed surety bond. CGS' receipt of a non-conforming surety bond without objection as to its terms, or failure to collect such surety bond, shall not waive or limit Subcontractor's obligations to provide a surety bond compliant with the terms of this Subcontract.

### **ARTICLE 9 - WARRANTY**

- 9.1 **Scope of Warranty.** Subcontractor warrants that its Work shall be free of defects and shall be performed in conformity to the requirements of the Subcontract Documents. Subcontractor warrants its Work for conformance with the Subcontract Documents and against any defects in materials and/or workmanship for the period(s) called for in the Subcontract Documents or for twenty-four (24) months, whichever is longer, commencing on the date of the written final acceptance of the Project by the Project Owner. Unless other requirements are specified in the Subcontract Documents, Subcontractor shall furnish three (3) copies of its written special warranties ("**Warranty**") with its final Application for Payment. CGS' failure to collect such Warranty, or CGS' receipt of a non-conforming Warranty without objection as to its terms, shall not waive or limit Subcontractor's obligations to provide Warranty compliant with the terms of this Subcontract.
- 9.2 **Warranty Corrections.** Within three (3) days (or within twenty-four (24) hours, if life safety or code compliance concerns exist) after notice from CGS or the Project Owner, Subcontractor shall inspect and commence to correct non-conforming or defective Work under warranty. If Subcontractor fails to undertake the repair or replacement promptly, or to continue corrections in a timely manner, CGS shall have the right to replace, repair or otherwise remedy the non-conformance or defect, and backcharge Subcontractor for all reasonable costs thereof, including a fifteen percent (15%) mark-up for CGS' overhead and administration of the warranty correction, from any amount due or to become due to Subcontractor from CGS on this Project or otherwise.

### **ARTICLE 10 - TERMINATION**

- 10.1 **Termination by Project Owner or Labor Dispute.** Should the Prime Agreement for the Project be terminated for any reason, or the progress of the Work delayed due to conditions beyond CGS' control, or should a labor dispute involving Subcontractor's or its subcontractor(s)' employees or agent(s) disrupt or delay the Project through Work stoppage, picketing, jurisdictional disputes or similar actions or failures to act, CGS may, in its sole discretion, terminate this Subcontract without any liability to the Subcontractor, except that the Subcontractor will be entitled to payment for that portion of its Work properly completed at date of termination as provided in Paragraph 10.3.
- 10.2 **Termination for Cause.** If Subcontractor:
- .1 fails to comply with the requirements of this Subcontract;
  - .2 fails to perform the Work to the quality standards required under the Subcontract Documents;
  - .3 has any proceeding filed by or against it under any bankruptcy, liquidation, reorganization, adjustment of debt, insolvency, dissolution, receivership, or similar federal or state law or statute; and/or
  - .4 causes delays in its own Work or interferes with CGS' or others' timely completion of the Project,

then CGS may, without prejudice to any other remedy CGS might have, terminate this Subcontract for cause if Subcontractor has not commenced to correct and does not continue thereafter to diligently cure such default within two (2) days after written notice from CGS. If Subcontractor does not timely start and diligently continue correction, then CGS may give written notice that this Subcontract is terminated for cause, Subcontractor's Work on the Project site shall cease, and no further payment of the Subcontract Amount shall be made until after the Project is completed. CGS may take control of any of Subcontractor's materials, tools, equipment or information at the Project site to complete the Work (items not consumed completing the Work will be returned to Subcontractor after the Work is accepted). Any reasonable costs CGS incurs, plus fifteen percent (15%) for its overhead and administration, to a) complete the unfinished portion of the Work; b) address any other harm caused by Subcontractor to CGS, other Project trades, the Project Owner, Project Architect or third parties; and/or c) pay for any liquidated or other damages arising from Subcontractor's failure to comply with the requirements of this Subcontract, from Subcontractor's failure to perform the work to the quality standards required under the Subcontract Documents, and/or from Subcontractor's delay in its own Work or interference with CGS' or others' timely completion of the Project, will be deducted from any amount due or to become due Subcontractor by CGS on this Project or otherwise. If there is a remainder due for Subcontractor's correctly performed Work to the date of termination after this deduction has been made, it will be paid to the Subcontractor. If the cost of completion, damages and/or remedying harm exceeds the remainder of the Subcontract Amount, Subcontractor shall pay CGS the additional amount upon written demand by CGS providing evidence of the costs incurred and the balance owed. Any tools, equipment or unused materials not already paid for by the Project Owner shall be returned to the Subcontractor upon completion of the Work by CGS. In cases of Subcontractor dishonesty, severe safety violation or other exigent circumstances CGS may, in its sole discretion, terminate Subcontractor immediately for cause without affording an opportunity to cure.

**10.3 Termination for Convenience.** CGS may terminate this Subcontract for CGS' convenience upon three (3) days written notice. Upon termination for convenience, Subcontractor will be entitled to payment for that portion of its Work properly completed at date of termination and any necessary demobilization expenses, including cost of non-returnable materials and restocking fees, plus:

- .1 five percent (5%) of the total of these costs for Subcontractor's net overhead and profit for the Work if no payment for net overhead and profit is received from the Project Owner; or
- .2 such other amount as CGS receives for Subcontractor's net overhead and profit for the Work from the Project Owner that terminates CGS for convenience.

**10.4 Waiver.** Other than amounts due as provided in Paragraphs 10.1 through 10.3 above, Subcontractor shall not receive, and hereby expressly waives, all other consequential, incidental, special or other damages, lost profits, extended or home office overhead, lost opportunity, or any other losses it may sustain or incur arising out of termination of this Subcontract by CGS.

#### **ARTICLE 11 - DISPUTE RESOLUTION**

**11.1 Good Faith Negotiations.** If any dispute arises between Subcontractor and CGS related in any way to this Subcontract or the rights and obligations of the parties to it, the parties shall endeavor to reach resolution through good faith negotiations between representatives of the parties, who shall possess the necessary authority to resolve such matter. If the parties' representatives are unable to resolve such matter, senior representatives of the Subcontractor shall be informed in writing that resolution was not effected. Upon receipt of such notice, the senior representatives of the Subcontractor and CGS shall meet within seven (7) days to endeavor to reach resolution. If the matter remains unresolved after thirty (30) days from the date of the senior representatives' first discussion, the dispute shall be resolved pursuant to Paragraph 11.2. CGS may bypass the good faith negotiation process if the dispute involves alleged theft, violence or safety issues or matters that require law enforcement or injunctive action.

**11.2 Binding Dispute Resolution.** Should any dispute arise between Subcontractor and CGS related in any way to this Subcontract or the rights and obligations of the parties to it, and in the event such dispute cannot be resolved through good faith negotiations as described in Paragraph 11.1, the dispute shall be resolved, in CGS' sole discretion, by binding arbitration or litigation. Should CGS exercise its exclusive right to resolve the dispute by arbitration, then the parties shall use good faith efforts to select a mutually acceptable arbitrator within fourteen (14) days after CGS gives Subcontractor notice of CGS' election of arbitration. If the parties are unable to select an arbitrator, then the parties shall submit the dispute to the American Arbitration Association which will appoint a single arbitrator under its "Construction Industry Arbitration Rules" then in effect. The award issued by the arbitrator, or a final adjudication/judgment arising from court proceedings, shall be final and binding upon the parties, shall include attorneys' fees and costs to the prevailing party or parties, and may be entered as a judgment in any court having proper jurisdiction. The parties agree that if arbitration is elected: (a) CGS, in its sole discretion, shall determine which additional parties, if any, may be joined or added in the proceeding; (b) the parties shall equally share in the fees and costs of the arbitrator during arbitration; (c) the arbitration shall be completed in no more than 120 days after the arbitrator is selected/appointed; (d) there shall be limited discovery; and (e) CGS shall be entitled to its attorney's fees, costs and expenses if it is required to compel Subcontractor's participation in the arbitration.

**11.3 Jurisdiction, Venue, and Waiver of Right to Trial by Jury.** Any binding dispute resolution as provided in Paragraph 11.2 shall be held in Milwaukee, Wisconsin. In the event CGS elects not to exercise its right to resolve the dispute by arbitration, or in the event a dispute between CGS and Subcontractor, or any portion thereof, is found to be non-arbitrable, then the parties hereby agree that the dispute or portion thereof (as the case may be) shall be subject to exclusive jurisdiction and venue in the courts of either Milwaukee County, Wisconsin or the United States District Court for the Eastern District of Wisconsin. In any such dispute or portion thereof adjudicated in the courts of Milwaukee County, Wisconsin or the United States District Court for the Eastern District of Wisconsin, Subcontractor expressly waives any right to trial by jury.

#### **ARTICLE 12 - INTERPRETATION**

**12.1 Amendment.** This Subcontract may not be amended or modified except in writing executed by both parties. Acceptance, on one or more occasions, by CGS of performance that does not strictly conform to the terms of this Subcontract shall not be a waiver of CGS' right to require strict conformance thereafter.

**12.2 Assignment.** Subcontractor shall not assign this Subcontract or portions thereof, or sell or assign the proceeds of this Subcontract, without the prior consent of CGS, which shall not be unreasonably withheld. Neither an assignment nor consent thereto will relieve the Subcontractor from its obligations under this Subcontract unless expressly permitted by CGS in writing.

- 12.3 Interpretation.** Interpretation of this Subcontract shall be governed by the laws of the State of Wisconsin, excluding choice of law provisions that might permit application of another jurisdiction's laws. Titles of paragraphs in this Subcontract may not be used to limit interpretation or scope of duties or obligations hereunder. Plural tense shall include the singular and singular shall include the plural tense throughout this Subcontract.
- 12.4 Enforceability.** If any portion of this Subcontract shall be found to be unenforceable, then, to the greatest extent possible, the remainder of the Subcontract shall remain in full force and effect, and binding on the parties. Failure of one party to insist on strict compliance with the terms of this Subcontract in any one or more instances shall not be construed as a waiver or relinquishment of such compliance as respects further performance.
- 12.5 Execution.** This Subcontract may be executed in multiple parts and joined together to form a single, binding contract. For purposes of executing this Subcontract, and any Change Orders, Waivers or notices required under it, a facsimile signature shall be as binding as an original.

### **ARTICLE 13 - OTHER PROVISIONS**

- 13.1 Conflict of Interest.** The Subcontractor shall disclose to CGS the existence of any in-progress or uncompleted contracts that were in place between the Subcontractor and the Project Owner prior to the date of this Subcontract. The Subcontractor shall not enter into any contracts directly with the Project Owner while the Work covered under this Subcontract remains uncompleted without first securing written approval from CGS, which approval shall not to be unreasonably withheld.
- 13.2 Waiver of Consequential Damages.** To the extent the Prime Agreement contains a comparable waiver by CGS and Project Owner of claims for consequential damages against one another, CGS and Subcontractor hereby waive claims against one another for consequential damages arising out of or related to this Subcontract. Notwithstanding the foregoing, in the event a third party seeks to recover, or actually recovers, consequential damages from CGS under circumstances in which Subcontractor is obligated to defend or indemnify CGS under Article 7 above, then this Article 13.2 shall not apply to or otherwise limit Subcontractor's obligation to defend and indemnify CGS against such third party claims for consequential damages.

**Exhibit A**

**BETWEEN CG SCHMIDT, INC.  
AND**

**Subcontract No. -**

**SUPPLEMENTAL TERMS**

Attached to and forming a part of that certain Subcontract agreement for \_\_\_\_\_ between \_\_\_\_\_ and CGS:

**1. Contract:**

The Subcontractor specifically:

- .1 Agrees that all written correspondence exchanged prior to execution of this Subcontract is replaced by the terms and conditions set forth in the Subcontract.
- .2 Agrees that in the event of any inconsistencies between terms of this Subcontract and the terms of the other Subcontract Documents, within or between parts of the Subcontract Documents, or between the Subcontract Documents and applicable laws, statutes, ordinances, building codes, rules and regulations, Subcontractor shall provide the better quality or greater quantity of Work and comply with or conform its Work to the most stringent legal or contractual requirements.
- .3 Agrees that a certificate of insurance and additional insured endorsements for Subcontractor and any of its subcontractors are to be submitted to coi@cgschmidt.com prior to commencement of Work. Hard copies will NOT be accepted. The certificate of insurance is to list the required additional insured, including the Project Owner, Project Architect and CGS.
- .4 Agrees all invoices are to be submitted monthly by the Application for Payment Submittal Date specified in the Summary of Terms of this Subcontract utilizing the "Subcontractor Application for Payment" form attached to this Subcontract as Exhibit C.

**2. Safety:**

The Subcontractor specifically:

- .1 Acknowledges that all OSHA and CGS safety policies will be enforced by Subcontractor. CGS' Project Manager, Superintendent, Foreman or Safety Director may have any Subcontractor/Supplier employee removed from the Project site if they refuse to follow instruction as to safety or work flow.
- .2 Agrees that its employees will wear hard hats and safety glasses at all times. Warning vests or other suitable garments marked with or made of reflective or high visibility material will be required for all personnel at all times or until otherwise directed by the CGS Project team. Personal protective equipment will be utilized when necessary and as required by all relevant OSHA standards relating to the Work of all Subcontractor personnel.
- .3 Agrees that any employee working on the site will be subject to a drug and alcohol-testing program that consists of testing if there is a cause, as well as post accident or post near-miss testing. It is understood that the specific details will be available in separate testing protocol.
- .4 Agrees that SDS information on all products and materials to be used on site or supplied to the site is to be submitted to CGS' Project Manager prior to the commencement of Work.
- .5 Agrees that the six foot (6') tie-off rule applies for all trades unless other adequate fall protection accommodations are provided.
- .6 Agrees that all construction temporary power shall have GFCI protection. All extension cords plugged into permanent power shall have GFCI protection at the source of that power. Agrees to provide all task lighting and extension cords required to complete its Work.
- .7 Agrees to submit weekly safety meeting minutes conducted by the onsite supervisor and signed by all employees on site. Agrees to submit a written accident report and inform CGS' Project Manager immediately in the event of an accident involving Subcontractor personnel.
- .8 Agrees to have its employees attend a monthly CGS jobsite Safety Stand Down, which occurs on the first Wednesday of each month from 7:00 a.m. to 7:15 a.m. or other day/time as designated by the CGS Superintendent.

**3. Performance:**

The Subcontractor specifically:

- .1 Agrees that Subcontractor's Project foreman/superintendent will be required to attend weekly and any specially called Project site meetings.
- .2 Recognizes that Change Order Requests shall be valid only if authorized by CGS' Project Manager before commencement of the additional Work. The CGS Superintendent is not authorized to approve Work or materials in addition to the original Subcontract scope of Work. No delays in the completion of the Project will be allowed due to Subcontractor not requesting timely approval of changes. All Change Order Requests must be accompanied by documentation of quantity and cost of materials to be used, and list all labor hours and costs, including equipment costs and any associated mark-ups. Claims for extras submitted after additional or changed Work has been performed without prior approval will not be approved or paid.
- .3 Agrees to layout of its Work from grid lines established by CGS.
- .4 Agrees that no signs or advertisement shall be displayed on the Project site without the approval of the Project Owner and CGS, except the posting of Subcontractor's legal and trade notices and cautionary signage required by law.
- .5 Agrees that its employees will park their vehicles as directed by CGS' Project Manager or Superintendent.
- .6 Agrees the Project site is a non-smoking campus. Smoking will be limited to personal vehicles only. Workers will receive one (1) warning. If a worker is observed to smoke a second time outside their vehicle, they may be removed from the Project site.
- .7 Agrees that no radios will be allowed on the Project site.
- .8 Agrees that no foul language is to be used on the Project site. Any worker using foul language will receive one (1) warning. If they use foul language a second time, they will be removed from the Project site.
- .9 Agrees to collect and discard into refuse containers its debris on a weekly basis or as required by CGS' Project Manager or Superintendent.

- .10 Agrees to furnish ALL shop drawings, samples or other submittals to CGS in time to allow for processing in order for items depicted in the submittals to be received on site as required to meet the Subcontract Time. Shop drawings and written submittals shall be transmitted via e-mail or through a File Transfer Protocol (FTP) site in digital file formats as required by CGS. Where electronic transmission of submittals is not possible or available, Subcontractor shall furnish up to eight (8) physical samples or printed copies unless a greater or lesser quantity is allowed by CGS. Assume a minimum two (2) week duration for the submittal processing by CGS.
- .11 Agrees to develop coordination drawings as required to complete its Work.
- .12 Agrees that all required field measurements are to be taken by Subcontractor to ensure its materials will fit field conditions. No compensation will be paid to correct errors resulting from inadequate or erroneously determined field measurements.
- .13 Agrees that all Work shall be installed in accordance with State and local inspection authorities' field directives. Subcontractor is responsible for coordinating inspections regarding its Work with CGS and the respective inspection agency.
- .14 Agrees that Subcontractor shall provide a sufficient workforce to meet its obligations in accordance with the current Progress Schedule. All Work shall be performed in the sequence and at such times as required by the current Progress Schedule or as directed by CGS' Project Manager.
- .15 Agrees that all work schedules and delivery dates must be coordinated with CGS' Project Manager. Work must be coordinated with all other trades to be sure that Work is completed on time. If required to meet the current Progress Schedule, Subcontractor will make arrangements as necessary to complete its Work at no additional cost.
- .16 Agrees to coordinate off-hours construction with CGS' Project Manager. No off-hours Work will be allowed without prior approval by CGS.
- .17 Agrees that it is responsible for all materials required to complete its Work. Subcontractor is responsible for any shortages of materials necessary to complete its Work.
- .18 Agrees that all hoisting, shipping charges and taxes, as required by the state in which the project is located, are included in the Subcontract Amount.
- .19 Agrees that unless otherwise approved in advanced by CGS' Project Manager, all deliveries must have a minimum of twenty-four hours advance notice and all deliveries must be made between the hours of 7:00 a.m. and 3:00 p.m., Monday through Friday. Deliveries not made between these hours will be rejected.
- .20 Agrees to protect its materials delivered to and stored on the Project site from damage due to moisture. If its materials get wet, they must be removed and replaced by Subcontractor.
- .21 Agrees that no storage is available on site. Subcontractor is responsible for storage of all materials required for its Work.
- .22 Agrees that its closeout materials required will include final lien waivers, pursuant to Paragraph 6.9 of the Subcontract, a supplier's materials list of all products used, warranty contact name, address and telephone numbers, manufacturer's warranties and contractor's warranties. All these closeout materials must be delivered before release of Retainage.

4. **Summary of Contract and Scope of Work:**

**Exhibit B**

**BETWEEN CG SCHMIDT, INC.  
AND**

**Subcontract No. -**

**SUBCONTRACT INSURANCE REQUIREMENTS**

Attached to and forming a part of that certain Subcontract agreement for between and CGS:

1. **Insurance Coverage.** Subcontractor shall maintain without interruption at all times during the progress of the Work, including the warranty period, insurance furnished by companies licensed to do business in the state where the Project is being constructed and rated by AM Best at A- or better, or as otherwise acceptable to CGS. The coverage must be primary and not excess over, or contributory with, any other insurance held by CGS, the Project Owner, Project Architect or other trades on the Project.

**NOTE: Failure to comply with these insurance requirements may result in delayed payment and/or Subcontractor's termination for cause.**

Minimum insurance coverage and limits shall be no less than the following, except that if the Subcontract Documents specify higher or greater coverage, Subcontractor shall furnish it:

<u>COVERAGE</u>	<u>LIMITS</u>
<b>.1 Workers' Compensation</b>	Per Statute
<b>.2 Employers Liability</b>	\$100,000 Each Accident/Injury \$100,000 Each Employee \$500,000 Policy Limit Disease
<b>.3 Commercial General Liability</b>	<b>Provide current edition of ISO CG 00 01</b> \$1,000,000 Per Occurrence \$2,000,000 General Aggregate (Per Project-Per Location) \$2,000,000 Products / Completed Operations Aggregate \$1,000,000 Electronic Data Liability \$1,000,000 Personal & Advertising Injury (Contractual Liability Exclusion-Deleted)
<b>.4 Automobile Liability</b>	\$1,000,000 Each Occurrence (owned, non-owned and hired vehicles)
<b>.5 Umbrella</b> Provide the following limits unless otherwise required by the Subcontract Documents:	
	Each Occurrence & In Aggregate
Curtain Wall Subcontractors	\$5,000,000
Electrical Subcontractors	\$5,000,000
HVAC Subcontractors	\$5,000,000
Fire Protection Subcontractors	\$5,000,000
Plumbing Subcontractors	\$5,000,000
Structural Steel Subcontractors	\$5,000,000
Elevator Subcontractors	\$5,000,000
Cranes 100 Ton and Larger, Temporary Hoisting Facilities	\$5,000,000
All other Subcontractors	\$1,000,000

**COVERAGE MEETING ALL REQUIREMENTS FOR ANY INSURANCE INCLUDED IN EXHIBIT B MUST BE CONTINUED FOR A MINIMUM PERIOD OF TWO (2) YEARS FOLLOWING PROJECT SUBSTANTIAL COMPLETION.**

2. **Certificates of Insurance.** Prior to commencement of Subcontractor's field operations at the Project site, certificates of insurance conforming to the terms of this Subcontract must be delivered to CGS, via [coi@cgsschmidt.com](mailto:coi@cgsschmidt.com) including the written endorsements set forth in Paragraph 3. The certificate of insurance must utilize the most current Acord Form. All of Subcontractor's insurance policies required herein shall contain a provision that coverages and limits afforded thereunder shall not be canceled, or materially changed, and that restrictive modifications shall not be added prior to policy expiration without notice to CGS. CGS shall have the right to examine any policy required under this Subcontract. Authorization is hereby granted to CGS to withhold payments to the Subcontractor or to exercise any other remedy provided under the Contract Documents until CGS receives such properly executed certificate of insurance. CGS' receipt of a non-conforming certificate of insurance without objection as to its terms, or failure to collect such certificate, shall not waive or limit Subcontractor's obligations to provide insurance compliant with the terms of this Subcontract.

3. **Additional Insureds.** Subcontractor's commercial general, automobile and umbrella liability insurance shall name CGS, the Project Owner, Project Architect, and any others required by the Subcontract Documents, as additional insureds on a primary and non-contributory basis. Subcontractor's Work must be covered on an additional insured endorsement attached to the policy currently in force. A copy of the endorsement(s) must accompany the certificate of insurance furnished to CGS by Subcontractor. Acceptable endorsement forms include CG 20 10 (11/85); CG 20 37 (10/01) used in combination with CG 2010 (10/01); CG 2010 (7/04) used in combination with CG 2037 (7/04); or such other endorsement(s) that provides equivalent coverage as may be approved in advance of performance of Subcontractor's Work in writing by CGS.
4. **Coverage Term.** If Subcontractor's commercial general liability insurance coverage is provided on a claims-made basis, the policy date or retroactive date shall predate this Subcontract. The termination date of all policies required under this Article and any applicable extended reporting period(s) shall be no earlier than the termination date of coverages required to be maintained after final payment under the Subcontract Documents. Completed operations coverage shall be maintained for a period of two (2) years following Project substantial completion, or such longer period as required under the Subcontract Documents.
5. **Sub-Subcontractor Insurance.** The Subcontractor shall obtain equivalent insurance coverage from each of its subcontractor(s) before permitting them to perform any of the Work on the Project site, unless express written consent is provided by CGS, which consent shall not be unreasonably withheld. If requested by CGS, Subcontractor shall forward its subcontractor's certificate of insurance to CGS. It is understood and agreed that authorization is hereby granted to CGS to withhold payments to the Subcontractor until CGS receives such properly executed certificate of insurance requested from any of its subcontractor(s).
6. **Non-Limitation.** It is understood and agreed that the insurance coverages and limits required above shall not limit the extent of the Subcontractor's responsibilities and liabilities specified in the Subcontract Documents or by law.
7. **Equipment Insurance.** CGS may furnish, erect or provide equipment, appurtenances and devices, motorized or otherwise, at the Project site. Should Subcontractor use such items, the Subcontractor agrees to insure against any claims of injury or damage caused by them and their use while in Subcontractor's care, custody or control. This coverage must name CGS as an additional insured party. Physical damage insurance against damage to the items themselves shall be on an actual cash value basis. Subcontractor shall also insure, by endorsement, rider or otherwise, its own materials, tools and equipment from theft, damage or loss on the Project site.
8. **Insurance of Stored Materials.** It is the obligation of the Subcontractor to adequately arrange property insurance for materials provided, including while in transit and/or temporarily stored offsite covering financial interests of Subcontractor, CGS and Project Owner as applicable at time of any loss. Such property insurance shall not have a deductible higher than \$5,000 without written consent of CGS.
9. **Waiver of Subrogation.** Subcontractor waives any rights of subrogation against CGS and its insurers. A waiver of subrogation, by endorsement or otherwise in writing, in favor of CGS, the additional insured required by Subcontract and its insurers shall be included with proof of Subcontractor's commercial general, automobile, umbrella, workers' compensation/employers' liability, and equipment insurance coverages. Subcontractor hereby waives all rights against CGS, its insurers and those required to be named as additional insureds for Subcontractor's losses covered and/or paid by the proceeds of insurance maintained by Subcontractor under this Agreement. The Subcontractor shall require its subcontractor(s) to provide similar waivers in writing to CGS.
10. **Professional Liability Insurance.** To the extent Subcontractor furnishes Professional Services as part of its Work, Subcontractor shall maintain, or cause its professional designers to maintain, professional liability insurance with limits of \$2,000,000 per occurrence and in the aggregate, or such higher amounts as the Subcontract Documents provide, and having a deductible no greater than \$50,000. This insurance will cover the professional designers and all persons for whose acts they are liable, against liabilities arising out of or in connection with acts, errors or omissions in their performance of Professional Services for the Project. A company that is licensed to do business in the state where the Project is located shall furnish the professional liability insurance. This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from the following: habitational or residential operations, mold and/or microbial matters and/or fungus and/or biological substances, and punitive, exemplary or multiplied damages.
11. **Contractor's Pollution Liability Insurance.** To the extent Subcontractor's Work includes (a) building enclosure systems, including all materials that physically separate the exterior environment from the interior environment, (b) HVAC, electrical, plumbing or fire protection, (c) drywall or insulation, (d) building foundations, or (e) abatement contracting services Subcontractor shall maintain Pollution Liability insurance with limits of not less than \$2,000,000 per claim and in the aggregate, or such higher amounts as the Prime Agreement provides, and having a deductible no greater than \$25,000. Coverage shall name CGS, Project Owner, Project Architect, and any others required by the Subcontract Documents as additional insureds on a primary and non-contributory basis. Coverage shall include Completed Operations extending two (2) years following Project substantial completion, or such longer period as required under the Subcontract Documents. The definition of Property Damage shall include clean-up costs. The definition of Pollutant shall include, but not limited to, any form of fungus, mold, bacteria, and legionella bacteria. If such insurance is written on a claims-made basis, the policy retroactive date shall be prior to the start of Subcontractor's Work. Renewal policies during this period shall maintain the same retroactive date.
12. **Deductibles.** CGS shall have no obligation to pay any deductibles under Subcontractor's policies of insurance required hereunder, and Subcontractor agrees that it shall be solely responsible for the payments of any such deductibles. Moreover, if the Subcontract Documents provide that CGS or its subcontractors are responsible for the payment of any deductibles pursuant to the builder's risk policy for the Project, then Subcontractor shall be responsible for the payment of any builder's risk deductibles if Subcontractor is responsible in whole or in part for the underlying occurrence(s) giving rise to the claim under such builder's risk policy.
13. **Project Specific Requirements.** The following items shall be included on the certificate of insurance:
  - .1 Name of Project (PROJECT NAME)
  - .2 List of Additional Insured Required by Subcontract (CG Schmidt, Inc., (PROJECT OWNER), (PROJECT ARCHITECT), (OTHER ADDITIONAL INSURED))
  - .3 List of Additional Insured Endorsements As required per Paragraph 3 above.

Project Name  
Subcontractor  
Subcontractor Number



**By execution below Subcontractor agrees to the terms and conditions of the Subcontract and all exhibits thereto.**

**SUBCONTRACTOR:**

**CG SCHMIDT, INC.:**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Nicole C. Barham  
\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

Risk Manager  
\_\_\_\_\_  
(Printed Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

Phase: