

EXHIBIT C:

Subcontract

NAME
ADDRESS
PHONE

SUBCONTRACT

Subcontractor	Date _____	Job No.
Name		Contractor's Prime
Address		Contract Purchaser
City		
Phone No.		Job Location

This Subcontract Agreement is made this ___ day of _____, 1999, by and between _____, a Michigan corporation with offices located at _____, (hereinafter referred to as _____ the "Contractor") and _____, a _____ corporation located at _____, (hereinafter referred to as "Subcontractor").

Terms and Conditions

In consideration of the mutual promises contained in this Subcontract, Contractor and Subcontractor agree as follows:

1. Scope of Work/Contract Documents

a. Subcontractor agrees to furnish all materials and perform all work set forth in this Subcontract and the Prime Contract, as further set forth in Exhibit A and incorporated herein by reference, under the general direction of Contractor. Subcontractor shall at all times be deemed an independent contractor.

b. The Contract documents for this Agreement consist of this Agreement and any Exhibits attached hereto and incorporated herein by reference, the Prime Contract, the terms and conditions of the Prime Contract [General, Supplementary, and Modifications of the General Conditions and Supplemental General Conditions], all the Contract Drawings, Specifications, _____ and all modifications issued after the execution of the Prime Contract, and any other documents defined as Prime Contract documents in the Prime Contract between Contractor and the Owner.

c. The Subcontractor acknowledges that it has carefully examined and understands the Prime Contract documents and has received copies of any which it requested. Obligations between Contractor and the Owner pursuant to the Prime Contract shall not inure to the benefit of Subcontractor. Contractor's obligations to Subcontractor are only those which are specifically stated in this Subcontract. Subcontractor agrees to be bound to Contractor under this Subcontract by every obligation which Contractor owes the Owner under the Prime Contract documents, which are incorporated in this Subcontract for such purposes only. If a conflict exists between the description of the work and the standards for material and workmanship as between the Prime Contract documents and this Subcontract, the Prime Contract documents shall prevail. If a conflict exists between the Prime Contract documents and this Subcontract as to the obligations and rights of the parties, this Subcontract shall prevail.

d. Subcontractor further acknowledges that it has investigated and examined the site in connection with which the work covered by this Subcontract will be performed, has thoroughly informed itself as to all difficulties involved in the completion of the work, and Contractor has made no representations of any kind with reference to the scope of the work, job site conditions or any other matter not specifically stated in this Subcontract.

e. Subcontractor agrees to provide and pay for all labor, equipment, materials, supplies, tools and supervision to diligently perform all of the Subcontract work. The work shall be performed to the satisfaction of Contractor, the Owner and Architect/Engineer. The work shall include all items of work specifically listed in the Prime Contract Specifications and drawing, as well as any and all other work incidental or related thereto and customarily provided in Subcontractor's line of work as reasonably necessary to complete such work for inspection and approval under the Prime Contract documents. The work shall be performed in a skillful and workmanlike manner with material and equipment being both new and of the best kind and grade for the purposes intended. Subcontractor agrees that it will, without additional compensation, perform, conform and abide by all decisions issued by Contractor, when Contractor has been directed by the Owner or Architect/Engineer to perform, conform and abide by similar decisions without additional compensation. Subcontractor further agrees to provide, at its own expense all temporary and permanent tools, water, heat, light, power, electricity, ventilation, storage space, shop and working drawings, tests, samples, models, guarantees, permits licenses, construction easements, unloading facilities and services, inspection fees, royalties and license fees, and all other items necessary for the proper performance of its work. Subcontractor, before proceeding with any work under this Subcontract will accurately check and verify all previous and surrounding work done by others and determine the correctness of such work.

f. With respect to any ambiguity, misunderstanding or misconception as to which Subcontractor has given written notice to Contractor prior to commencement of work, Contractor's interpretation shall be final and binding. Failure of Subcontractor to timely notify Contractor of the ambiguity or conflict shall constitute a waiver of any resulting claim and Subcontractor will be obligated to make any change necessary. Subcontractor shall field measure all work relating to its work. The failure of Subcontractor to detect any existing discrepancies or non-conformities and disclose the same to Contractor, in writing, before commencement of its work, shall relieve Contractor of any and all responsibility for the same, and Subcontractor shall be liable for all resulting damages, costs and expenses arising as a result of discrepancies and non-conformities which should have been discovered by it.

g. Subcontractor's labor, services and materials shall strictly comply with all federal, state and local laws and the regulations of any agency with jurisdiction over the work and as specifically set forth in paragraph 17 hereof. Unless authorized by a written change order or emergency field order, Subcontractor shall not substitute or deviate from the Prime Contract plans and specifications. Subcontractor shall correct any such deviation or substitution at its own expense and without delaying overall progress on the project. Failure to so correct such work shall constitute a material breach of this Subcontract. Subcontractor shall protect its own work from outside forces, including water from whatever source, unstable earth and other conditions and risks existing or encountered during the performance of its work. Contractor does not assume any obligation to perform any protective or remedial work which is within the scope of the work required to be completed by Subcontractor.

2. Contract Price and Payment

a. In full consideration for the complete and timely performance of all obligations required of the Subcontractor under this Subcontract, Contractor shall pay to the Subcontractor the lump sum(s) or unit prices indicated in Exhibit B attached hereto. The contract price shall be changed only by a written Change Order, executed by Contractor and the Subcontractor.

b. By the fifth day of each month, Subcontractor shall submit to Contractor a written invoice for payment for the proportionate value of the work completed through the end of the proceeding month, from which shall be deducted a reserve of 10%, all previous payments and all other charges for material, labor, equipment or services furnished by Contractor to Subcontractor or chargeable to Subcontractor. The invoice shall be on a form provided by Contractor or acceptable to Contractor, and shall be accompanied by such other documents as Contractor may reasonably require to support or verify the request for payment. The balance of the amount of the invoice, as approved by Contractor, shall be paid by Contractor to Subcontractor within ten (10) days after Contractor receives payment from the Owner for the work included in the invoice .

c. Determinations of quantities of work, amounts of payment due, quality of work or materials, backcharges and changes of time by Contractor shall be final and binding upon Subcontractor. Subcontractor shall make no claims against Contractor for quantities of money, time, work, materials or damages which exceed determinations of the same and awards of the same by Owner to Contractor.

d. Contractor shall make final payment of reserved amounts, if any, and amounts otherwise withheld from progress payments after Subcontractor achieves final completion of all of its work and all of the obligations provided for in this Subcontract, after receipt by Contractor of a certificate of final acceptance by Owner of the entire project as provided for in the Prime Contract, and after the passage of 30 days after receipt by Contractor of final payment by Owner as provided for in the Prime Contract.

e. Subcontractor shall submit to Contractor with each invoice for monthly progress payment and with its request for final payment, an affidavit signed by an officer of the Subcontractor, showing that its labor, materials and other bills related to the Subcontract work have been paid through the date of invoice, and listing every party which has furnished labor, materials, supplies and services to Subcontractor for the project, listing each party by name, address and telephone number. Subcontractor shall also furnish to Contractor with its monthly and final invoice, certified payrolls and a listing of every labor union representing its employees who furnished labor during the preceding period along with evidence in form acceptable to Contractor that Subcontractor has paid all applicable wages, payroll taxes and fringe benefits which have accrued through the date of invoice. Subcontractor shall also furnish to Contractor, with its monthly invoices partial releases of claims and waivers of lien effective through the date of invoice, and with its request for final payment full unconditional waivers of lien and releases of claims from every party which furnished labor, materials, equipment, supplies and services in connection with the Subcontractor's work. Subcontractor shall submit to Contractor along with its request for final payment a full unconditional and final waiver of lien and release of all claims arising under this Subcontract and in connection with the project. If Subcontractor fails to furnish such documents in form acceptable to Contractor, Contractor may withhold Payment until such documents are furnished.

f. Notwithstanding any other provision in this Subcontract to the contrary, Subcontractor acknowledges that it relies solely on the credit and ability to pay of the Owner and not upon the Contractor's assets, creditworthiness or ability to pay, for payment for work performed under this Subcontract. Subcontractor agrees that as a condition precedent to Contractor's obligation to make any payment to Subcontractor, the Contractor must first have received payment under the Prime Contract from the Owner. In the event that the Contractor does not receive all **or any** part of the payment from the Owner in respect of Subcontractor's work whether because of a claimed defect or deficiency in the Subcontractor's work or for any other reason whatsoever, the Contractor shall not be liable to the Subcontractor for any sums in respect thereto. In the event that Contractor shall incur any cost or expense of any nature in preparing for the prosecution of, and prosecuting any claim against the Owner, whether by means of negotiations, arbitration or legal action, arising out of the Owner's inability or refusal to pay the Contractor for work done by the Subcontractor, Contractor shall be entitled to deduct such costs and expenses, including legal fees, from the amount due Subcontractor. The Subcontractor agrees that the liability of the surety on the Contractor's payments bond, if any, for a payment to the Subcontractor, is subject to the same conditions precedent of payment by the Owner, as are applicable to the Contractor's liability to the Subcontractor.

g. Acceptance by Subcontractor of final payment from Contractor constitutes a waiver of all claims of every type relating to the Subcontract work, including but not limited to differing site conditions, changes in the work ordered by Contractor or Owner, changes in scope of work, changes of time, breach of contract, breach of warranty, misrepresentation and non-payment, except those claims which are pending and unresolved, properly submitted prior to the Subcontractor's application for final payment.

h. Prior to commencement of Subcontractor's work, upon request by Contractor, Subcontractor shall submit to Contractor for approval a schedule of values of the parts of the Subcontract work aggregating the Subcontract price and supported by such evidence as is acceptable to Contractor.

i. If at any time Contractor justifiably believes that it or the Owner might become subject to any claim, claim on a bond or lien, or if a lien is recorded with respect to the project site or premises, by anyone claiming amounts due from

Subcontractor, Subcontractor shall have five (5) days after written notice from Contractor to obtain a discharge of the claim or lien or bond over the claim or lien. Upon failure of Subcontractor to do either, Contractor at its discretion shall have the right to discharge the claim or lien and deduct the amount (including attorney fees and expenses) from any amount due to Subcontractor. If damage is caused by Subcontractor to other project work, or if it appears to Contractor that Subcontractor will breach any other provision of this Subcontract resulting in potential damages to Contractor or the Owner, Contractor shall have the right to retain out of any payment then due or thereafter to become due to Subcontractor, in addition to the customary retainage, an amount sufficient to indemnify itself and the Owner from any such loss or damage, including legal fees and other disbursements, which either might sustain in remediating such damage, discharging such claim or lien or correcting such breach. Should there prove to be any such claim after all payments are made, Subcontractor shall indemnify and hold harmless Contractor and the Owner, upon demand, from any money that Contractor or the Owner shall pay in discharging any claim or lien or correcting any breach, and all legal fees and expenses incurred in connection therewith.

j. No payment made under this Subcontract shall be conclusive evidence of the performance of the Subcontract either in whole or in part, and no payment including final payment shall be construed to be an acceptance of defective work or improper materials. Entrance upon the site and use by Contractor or the Owner or Architect/Engineer does not constitute acceptance of defective work or improper materials as between Contractor and the Subcontractor.

k. If the Owner issues a Change Order or any other directive which shortens the time for completion of the work, changes the work or takes any action which results in acceleration, suspension, change in performance or sequence of Subcontractor's work or interferes with the performance of Subcontractor's work, Contractor may order equivalent adjustments in Subcontractor's schedule, and Subcontractor shall not be entitled to compensation for such changes or adjustments unless Owner grants Contractor compensation, and in such case, the amount of compensation shall be limited to the actual direct cost incurred as a result of the change and shall not exceed that proportionate share of compensation granted by Owner to Contractor which the Subcontract work bears to the total project work for which time was shortened.

1. Subcontractor shall bear the cost of all damages incurred by Contractor and its other Subcontractors for which Subcontractor is responsible, including legal fees and expenses. In the event any other contractor, supplier or subcontractor should damage Subcontractor, Subcontractor shall neither be entitled to nor seek any compensation from Contractor, but shall only seek recovery of its damages directly from the responsible other contractor, supplier or subcontractor.

3. Time of Performance

a. Time is of the essence of this Subcontract. Subcontractor shall commence work within five (5) days after Contractor issues its notice to commence. Subcontractor shall complete all of its work and its obligation under this Subcontract on or before

For purposes of this section, "completion of its work" means acceptance of its work by Contractor and the Owner or its representative.

b. The time of completion shall be changed only by Change Order signed by Contractor and Subcontractor. Subcontractor may request extensions of time in writing, setting forth the reasons for the request. Contractor may grant extensions in its sole discretion, and Subcontractor shall not be entitled to a time extension unless and to the extent the Owner grants Contractor a time extension in respect of the causes stated in Subcontractor's request.

c. Subcontractor shall prepare a project schedule for its work in a form acceptable to Contractor. Subcontractor shall revise and update the schedule upon request by Contractor. The schedule, as approved by Contractor, shall become part of this Subcontract and Subcontractor shall be obligated to achieve the milestone dates contained in the schedule.

d. Subcontractor shall prosecute each part of its work in a prompt and diligent manner, furnishing sufficient forces, controlling its Subcontractors and arranging for delivery of materials and supplies so as to assure proper and timely performance of its work in strict compliance with approved schedules. Subcontractor shall promptly increase its work force, accelerate its performance and the performance of its subcontractors and suppliers including working overtime, weekends and holidays, all without additional compensation, if, in the opinion of

Contractor, such work is necessary to maintain proper progress or conform to approved schedules.

e. Subcontractor shall neither delay nor adversely affect the performance of Contractor or any of Contractor's other subcontractors at the project site. Subcontractor shall fully cooperate and coordinate its work with Contractor and any of its other subcontractors at the site.

f. Contractor shall not be liable to Subcontractor for any damages or costs due to delays, accelerations, non-performance, interferences with performance, suspensions, changes in the performance or sequence of Subcontractor's work, unless such damages directly result from fraudulent misrepresentation or intentional tortious conduct of Contractor. Should Subcontractor's performance, in whole or in part be interfered with or delayed, or be suspended in the commencement, prosecution or completion, for reasons beyond Subcontractor's control and without its fault or negligence, Subcontractor's exclusive remedy shall be a request for an extension of time. Subcontractor acknowledges that the Subcontract price is calculated in part upon the basis that Subcontractor shall not be entitled to damages for delay and that Contractor owes no duty, obligation or liability to Subcontractor as a result of any delay, interference, suspension, or other event, except for the reasonable determination of extensions of time; provided, however, that if the cause of the delay is attributable to the act or inaction of the Owner, Contractor shall only be obligated to grant an extension of time if and to the extent the Owner grants an extension of time to Contractor. Should Subcontractor, as a result of a delay attributable to an act or inaction or other omission of the Owner suffer delay damages, and further, should Contractor submit a claim to the Owner on Subcontractor's behalf, Subcontractor will be entitled to receive compensation for such delays only to the extent that the Contractor recovers compensation on behalf of the Subcontractor from the Owner. Notwithstanding the above accommodation to Subcontractor, Contractor shall continue to owe no duty, obligation or have any liability to Subcontractor as a result of any delay, interference, suspension or other event caused by the actions or inactions of the Owner, or directly a result from the fraudulent misrepresentation or intentional tortious conduct of Contractor, except for the reasonable determination of an extension of time.

g. In the event Subcontractor fails to complete the Subcontract work by the above completion date, Subcontractor shall be liable to Contractor for liquidated

damages in the amount of _____ per calendar day until final acceptance; provided, however, if Contractor is determined by a court of competent jurisdiction or by arbitration award to be liable to the Owner for damages as a result of delay caused by Subcontractor, the liquidated damage clause shall be null and void and Subcontractor shall indemnify and hold Contractor harmless for all damages for which it is so found to be liable plus attorney fees and expenses.

4. Acceptance of Materials and Workmanship

a. All materials and workmanship furnished or performed by Subcontractor shall be subject to final inspection, tests and acceptance by Contractor and Owner upon completion of all Subcontract work and regardless of whether previously paid for by Contractor.

b. At any time during manufacture, installation or performance of the work, the materials and workmanship furnished or performed by Subcontractor shall be subject to inspection, tests and approval. Failure of Contractor and Owner to discover defective workmanship or material shall not prejudice the rights of Contractor and the Owner upon final inspection and testing. If facilities of Contractor are not available, Subcontractor shall furnish at its expense such facilities as may be necessary for the making of such inspection and tests.

c. If upon inspection or test any material or workmanship shall be found to be defective or to fail to conform to the requirements of the Subcontract, Prime Contract, laws or regulations, Subcontractor at its own expense, shall immediately correct the workmanship and materials so that they conform to the above requirements. If Subcontractor fails to make the necessary corrections within two (2) days of notice by Contractor, Contractor may, at its option, replace or correct the nonconforming workmanship or materials, at the expense of Subcontractor; Contractor may withhold from payments due or to become due to Subcontractor sufficient sums to induce Subcontractor to make the corrections or it may reduce the Subcontract price by an amount equal to Contractor's direct costs of making the corrections plus overhead and profit.

d. Subcontractor shall also comply with any clean-up orders issued by Contractor. Contractor shall have the right to withhold a reasonable amount from

monies due Subcontractor in order to induce Subcontractor to perform such clean-up and may deduct its own costs of performing the clean-up plus overhead and profit in the event of a failure by Subcontractor to perform clean-up.

5. Changes in the Work

a. Contractor and the Owner may order changes in the work. Ordinary field modifications which do not substantially increase Subcontractor's cost or time of performance shall be performed by Subcontractor without any adjustments to the contract price or time of completion. Subcontractor shall not proceed with work covered by bulletins, shop drawings and other submittals approved by the Architect/Engineer, until it receives written authorization from Contractor. Subcontractor shall not be entitled to, nor shall it receive any increase or upward adjustment in its Subcontract price unless the amount and liability are acknowledged in writing by Contractor. Otherwise, Subcontractor shall proceed at its own risk and expense. No alteration, addition, omission, or change shall be made in the work, or the method or manner of performance of the work, except upon a written change order signed by Contractor and Subcontractor. Any change or adjustment in the contract price by virtue of such change order shall be specifically stated in the change order.

b. Prior to the issuance of any change order, Subcontractor shall furnish to Contractor supporting data called for by the Prime Contract, including a detailed breakdown showing the difference in value of the work, the labor, services and materials altered, added, omitted or changed by the proposed change order. If unit prices are stipulated in the Subcontract or if no unit price is stipulated and a unit price is agreed to by the parties, and they are applicable to the work covered by the change, all adjustments to the contract price as a result of such changes, whether increases or decreases, shall be made in accordance with these unit prices, which shall be deemed to include direct and indirect expenses and profit. If unit prices are not applicable to the changed work, and Contractor and Subcontractor cannot agree upon a price increase or decrease in respect of the changes ordered, the change order price shall be calculated based upon the force account provisions of the Prime Contract documents, or upon the basis of actual and demonstrated costs plus an agreed to fixed fee or fixed percentage fee (which sum shall be deemed to constitute the value of job site overhead, home office overhead and profit), whichever is less. Provided, however, that Contractor, in its sole discretion, may elect to delete the

work from the Subcontract and award it to another Subcontractor if Subcontract unit prices are not applicable and the parties cannot agree upon the amount by which the contract price should be adjusted in respect of the ordered changes. If Contractor elects to proceed upon a force account basis if allowed by the Prime Contract or cost plus a fee basis, Subcontractor shall prepare daily time and material invoices which shall be submitted to Contractor on a daily basis and which shall afford Contractor an opportunity to verify the accrual of direct and indirect costs. Notwithstanding anything in this section to the contrary, if the change in the work results from a change ordered by the Owner, the amount to which Subcontractor shall be entitled for compensation in respect of the change shall be limited to the amount which Contractor becomes entitled to receive from the Owner less a reasonable deduction for work performed by Contractor and Contractor's overhead and profit. If an agreement as to monetary allowance or other term in the change order cannot be reached, Contractor may direct, in writing, Subcontractor to perform the work with final adjustment reserved until final completion of both this Subcontract and the Prime Contract. The monetary amount for the performance of any change order shall not exceed the allowance set forth in Subcontractor's schedule of values, if it is applicable.

c. Subcontractor shall not refuse or delay performance of the ordered change or the other Subcontract work, if Contractor directs Subcontractor in writing to proceed with such work. The failure of Subcontractor to immediately commence performance of any change order when so directed in writing, regardless of whether all terms have been agreed upon, may be deemed a material breach of this Subcontract.

d. Payment for work covered by change orders shall become due to Subcontractor in the progress payment due following approval of the change order work, subject to the terms of Paragraph 2f above.

e. Unless specifically included in the change order, no monetary or time allowance will be granted to Subcontractor, directly or indirectly. Any extension of time needed as a result of the proposed change order shall be stated in the change order.

6. Submittals and Approvals

Subcontractor shall submit to Contractor all shop drawings and other submittals reasonably necessary and incidental to the Subcontract work. Such shop drawings and submittals shall be in the form and number required by Contractor. The failure to furnish proper shop drawings and submittals and unreasonable delays in the submission of the same shall constitute a material breach of this Subcontract. Approval by Contractor or the Architect/Engineer of shop drawings and submittals by Subcontractor shall not relieve Subcontractor of liability for any deviations from the plans and specifications, other Prime Contract documents and this Subcontract, unless such deviation is specifically called to Contractor's attention in writing.

7. Bonds

Subcontractor, at its own expense, shall furnish to Contractor in a form satisfactory to Contractor, duly executed performance, payment and maintenance bonds, underwritten by sureties acceptable to Contractor, in the full amount of this Subcontract. Subcontractor's failure to deliver acceptable bonds within ten (10) calendar days after written notice of demand shall constitute a material breach of this Subcontract.

8. Claims

a. Contractor shall not be liable to Subcontractor for payment of any claims Subcontractor may have as a result of differing site conditions, changes in the work ordered by Owner, delays, suspensions, accelerations and interferences in the work ordered by Owner, or misrepresentations, breaches of contract and breaches of warranty by Owner. Any claim asserted by Subcontractor for such items arising out of the conduct of Owner shall be submitted through Contractor to Owner. The processing of such claims by Contractor shall be Subcontractor's sole and exclusive remedy against Contractor with respect to such claims.

b. Subcontractor shall notify Contractor in writing of any claim which it intends to assert against Contractor or any other party, including the Owner, within ten (10) days of the occurrence of the circumstances giving rise to such claim. Such written notice shall contain a statement of the date on which the claim arose, the circumstances giving rise to the claim, the identity of the party which Subcontractor considers to be liable for the claim, the impact of the circumstances upon Subcontractor's operations and the calculation of the resulting damages if they are

known. Failure to give written notice to Contractor within ten days of the occurrence of the circumstances giving rise to the claim shall constitute a waiver by Subcontractor of any rights arising out of such circumstances. If Subcontractor is unable to calculate its damages at the time of giving the original notice, it shall so notify Contractor and it shall give written notice to Contractor of the calculation of the damages within 30 days of the date on which the damages are known to Subcontractor or completion of the affected work, whichever occurs first.

c. Subcontractor shall bear its own costs for prosecuting its claims and shall retain responsibility for the presentation of proofs if the claim is one which Contractor must process to the Owner or other parties. Contractor, upon written request of Subcontractor, shall process Subcontractor's claim through the entire administrative proceeding and institute any arbitration, action or proceeding to recover damages in respect of an affirmative claim by Subcontractor, or of a deduction or refusal to pay by the Owner in respect of Subcontractor's work. In such event, Subcontractor shall pay all costs attributable to such activity by Contractor including attorney fees and render all assistance requested by Contractor. Subcontractor shall be bound by the determination of the administrative proceeding, arbitration, legal action or other proceeding and shall be entitled only to its proportionate share of any actual net recovery, less overhead and profit to Contractor and less Contractor's expenses and attorney fees in handling the matter. Should a court or other agency require security in respect of such action, Subcontractor shall post such security. Subcontractor represents that it will not submit false or insupportable claims to be processed by Contractor, and shall indemnify and hold Contractor harmless against any claims, damages or penalties incurred by Contractor as a result of false or insupportable claims, including without limitation, disallowance of Contractor's own claims as a result of Subcontractor's false or insupportable claims.

9. Insurance

Prior to starting work, Subcontractor, at its own expense, shall procure and maintain in force until final acceptance of its work, insurance in accordance with attached Exhibit "C". The policies of insurance shall be issued by companies acceptable to Contractor and in form acceptable to Contractor. Before starting work, Subcontractor shall furnish to Contractor copies of the insurance policies and certificates of insurance. Subcontractor shall not cancel or allow the insurance

company to cancel without replacement any of the required insurance policies. Contractor and the Owner shall be named as an additional insured on each of the policies. No policy of insurance shall permit cancellation without fifteen (15) days prior written notice of cancellation to Contractor. Failure of Subcontractor to maintain the above required insurance shall constitute a material breach of this Subcontract and Contractor shall have the right at its sole discretion to provide the required insurance at Subcontractor's expense.

10. Indemnification

Subcontractor agrees to the following indemnification provisions:

- (1) Subcontractor shall indemnify Contractor, Owner and Architect/Engineer against and save them harmless from any and all claims, suits, liabilities, expense, or damages for any alleged or actual infringement or violation of any patent right arising in connection with the Subcontract and anything done thereunder;
- (2) Subcontractor assumes the entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever (including death) to all persons, whether employees of the Subcontractor or otherwise, and to all property, caused by, resulting from, arising out of or occurring in connection with the execution of the Subcontractor's work. Except to the extent, if any, expressly prohibited by statute, should any claims for such damage or injury (including death) be made or asserted, whether or not such claims are based upon Contractor's, Owner's or Architect/Engineer's alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of Contractor and/or Owner, Subcontractor shall indemnify and save harmless Contractor and Owner and Architect/Engineer, their officers, agents, servants and employees from and against any and all such claims, and further from and against any and all losses, costs, expenses, attorney fees, liability, damage or injury, that Contractor and the Owner, their officers, agents, servants or employees may directly or indirectly sustain, suffer or incur as a result thereof, and Subcontractor agrees to and does hereby assume, on behalf of

Contractor, Owner and Architect/Engineer, their officers, agents, servants and employees the defense of any action at law or in equity which may be brought against them by reason of such claims, and to pay on behalf of Contractor and Owner or Architect/Engineer, their officers, agents, servants and employees, upon their demand, the amount of any judgment that might be entered against any of them. Subcontractor's indemnity and hold harmless obligations shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the sole negligence or willful misconduct of the parties indemnified or held harmless;

- (3) Subcontractor shall indemnify Contractor, the Owner and the Architect/Engineer, their officers, agents, servants or employees, against and save them harmless from any claims, liabilities or causes of action arising out of the failure of Subcontractor to fulfill any of the obligations provided for in this Subcontract. In the event that any claims, losses, costs, expenses, liabilities, damages or injuries are asserted or threatened against Contractor or the Owner, their officers, agents, servants or employees, Contractor shall have the right to withhold from any payments due or to become due to Subcontractor an amount sufficient in its judgment to protect and indemnify it and the other indemnitees against any such claims, losses, costs, expenses, liabilities, damages, or injuries, including legal fees and disbursements.

11. Taking Over Performance/Termination of Subcontract

- a. If Subcontractor at any time refuses or neglects to supply a sufficient number of properly skilled workman or materials of the proper quantity and quality, or fails in any respect to prosecute the work or any separable portion of the work with promptness and diligence or fails in the performance of any of its obligations required by this Subcontract, the Prime Contract documents, the laws or regulations or becomes unable to perform any of its obligations because of insolvency or bankruptcy, Contractor may, after 48 hours written notice to Subcontractor, take over the work and provide any such labor or materials, and deduct the cost including overhead and profit from any money due or thereafter to become due to Subcontractor under this Subcontract in addition to the above remedy, Contractor

may terminate this Subcontract and Subcontractor's right to proceed with the Subcontract work.

b. In the event of such termination, Contractor may enter upon premises within the control of Subcontractor and, for the purpose of completing the work, take possession of all materials, equipment, tools, appliances and supplies belonging to or under the control of Subcontractor, and may finish the work by whatever method it may deem expedient including entering into a Subcontract with another party for the completion of Subcontractor's work. In such event, Subcontractor shall not be entitled to any further payment until its Subcontract obligations are completed.

c. If the unpaid balance of the Subcontract shall exceed Contractor's expense in finishing the work, plus compensation for additional managerial and administrative services and such other costs and damages as Contractor may suffer, including attorney fees, Contractor shall pay such excess to Subcontractor thirty (30) days after final acceptance is issued by the Owner and Contractor receives final payment from the Owner, subject to the terms of Paragraph 2f and 2g. If such expense, compensation, costs and damages shall exceed such unpaid balance, Subcontractor and its sureties, if any, shall be liable for and shall pay the difference to Contractor. Failure of Contractor to exercise any of its rights pursuant to this paragraph shall not excuse Subcontractor from compliance with the provisions of this Subcontract nor prejudice any rights which Contractor might have to recover damages for such default.

d. Contractor shall have the right to terminate this Subcontract for convenience upon fourteen (14) days written notice to Subcontractor, provided, however, that if the termination is caused by the Owner, Contractor may terminate this Subcontract with an equal amount of notice as that provided by the Owner. Any termination for convenience shall be without prejudice to any claim which any party might have against the other. Upon receipt of such notice of termination, Subcontractor shall immediately discontinue its work and placing of orders for materials and supplies unless the notice of termination directs otherwise. Thereafter, Subcontractor shall only do such work as may be necessary to preserve and protect work already in progress and to protect material, plant and equipment on the work site or in transit. If such termination occurs, the parties agree that:

- (a) The obligations of Subcontractor shall continue as to work already performed;
- (b) Subcontractor shall be entitled only to pro rata compensation for the portion of the Subcontract already performed, including material for which it has made firm contracts;
- (c) Subcontractor shall not be entitled to recover reimbursement for lost home office overhead and profit in respect of work not performed.

12. Responsibility for Work and Security

Subcontractor shall be responsible for all materials delivered and work performed until completion and final acceptance of its work at which time Subcontractor shall deliver its completed work to Contractor. Contractor shall not be responsible for Subcontractor's work, materials and equipment until after final acceptance by Owner. Subcontractor shall be responsible for provisions of any necessary security until after final acceptance of its work.

13. Superintendent and Notice

Subcontractor shall designate a competent superintendent, who shall have complete charge of all Subcontractors work. Contractor may deliver to such superintendent any notices due to Subcontractor.

14. Guarantee and Warranty

Subcontractor, in addition to all other guarantees and warranties contained in this Subcontract and the Prime Contract documents, and not in limitation of Contractor's other legal rights, warrants and guarantees that its work is in strict and absolute conformity with the Subcontract, the Prime Contract documents, laws and regulations and that it shall, for a minimum of one year after the date of final acceptance of the entire work by the Owner, perform any maintenance or corrective work without cost as directed by Contractor. Contractor may demand assurance by bond or otherwise by Subcontractor, at Subcontractor's sole expense, that it will abide by its guarantee and warranty. Subcontractor shall also supply to Contractor, upon demand, any guarantees and warranties required by the Prime Contract

documents of suppliers of equipment and materials. Failure to furnish such guarantees and warranties shall constitute a material breach of this contract.

15. Arbitration or Legal Action

a. If the Prime Contract documents provide for compulsory binding arbitration, Contractor and Subcontractor agree that all disputes, controversies or claims arising out of or relating to this Subcontract, including without limitations allegations of fraud, shall be settled in arbitration in the American Arbitration Association in accordance with its Construction Industry Rules. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

b. If disputes between the parties are to be litigated in a legal action or if judgment is to be entered upon an arbitration award, Subcontractor hereby agrees to jurisdiction of the courts of the State of Michigan including the Court of Claims, and agrees to accept service of process as if it were personally served within such jurisdiction.

c. Subcontractor agrees to participate in, and be bound by any arbitration, legal action, administrative or other proceedings, which directly or indirectly relate to this Subcontract or project and for which Contractor demands, by written notice that Subcontractor participate. In the event that such proceedings, arbitration or legal action is commenced before the Subcontract work is completed, Subcontractor shall continue completion of the work unless otherwise directed if requested by Contractor. In the event of any proceeding, arbitration or legal action, Subcontractor shall upon demand by Contractor make available all of its project records, estimate and bid records and cost records for review and copying.

d. Any claim, arbitration, legal action or other proceeding must be filed or commenced within two (2) years of the date of accrual of the cause of action or within two (2) years of final acceptance of the project, whichever occurs first. Failure to file or commence within this period shall constitute a waiver of the right to prosecute the claim, arbitration, legal action or other proceeding against Contractor and the Owner.

e. Subcontractor shall be liable to Contractor for all costs, disbursements and expenses, including attorneys fees incurred by Contractor (a) as a result of Contractor's pursuing any extra, change, addition, claim or dispute against any other party on behalf of Subcontractor; (b) As a result of Subcontractor's breach or threatened breach of any provision in this Subcontract; (c) as a result of Contractor's having to defend or take part in any action or proceeding which directly or indirectly relates to acts or omissions of Subcontractor or its Subcontractor's or suppliers; or (d) as a result of Contractor's having to enforce its rights under this Subcontract against Subcontractor.

f. The validity, interpretation and performance of this Subcontract shall be governed by the laws of the State of Michigan.

16. Nondiscrimination

In connection with the performance of work under this Subcontract, the Subcontractor agrees as follows:

- a. The Subcontractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, sex, height, weight or marital status. The Subcontractor will take affirmative action to insure that applicants are employed and that employees are treated during employment, without regard to their race, religion, color, national origin, age, sex, height, weight or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship .
- b. The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, sex, height, weight or marital status.
- c. The Subcontractor or his collective bargaining representative will send to each labor union or representative of workers with which he

has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or worker's representative of the Subcontractor's commitments under this paragraph.

- d. The Subcontractor will comply with all published rules, regulation, directives, and orders of the Michigan Civil Rights Commission relevant to Section 6, 1976 PA 453, as amended, which may be in effect prior to the taking of bids for any individual state project.
- e. The Subcontractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, programs, and employment statistics of each subcontractor as well as the Subcontractor himself, and said Subcontractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission, and/or its agent, for purposes of investigation to ascertain compliance with the rules, regulations, and orders of the Michigan Civil Rights omission relevant to Section 6, 1976 PA 453, as amended.
- f. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that the Subcontractor has not complied with the contractual obligations under this Agreement, the Michigan Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Board may order the cancellation of the Contract found to have been violated, and/or declare the Subcontractor ineligible for future contracts with the state and its political and civil subdivisions, departments and officers, and including the governing boards of institutions of higher education, until the Subcontractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the Subcontractor is declared ineligible to contract with as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission, in which cancellation of an existing contract is a

possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.

- g. The Subcontractor will include, or incorporate by reference, the provisions of the foregoing Subparagraphs 1. through 6. in every Subcontract or Purchase Order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every Subcontract or Purchase Order that said provisions will be binding upon each Subcontractor or Seller.

17. Prevailing Wage and Fringe Benefit Rates

- a. The rates of wages and fringe benefits to be paid to each class of construction mechanics by the Subcontractor and all the Subcontractor's Subcontractors and their Subcontractors and all construction persons in privity of Contract with the Subcontractor, shall be not less than the wage and fringe benefit rates found in the Michigan Department of Labor schedule of occupational classification and wage and fringe benefit for the locality in which the work is to be performed which is attached as Exhibit C. The term "Subcontractor" shall include all lessors, general contractors, prime contractors, project managers, or trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.
- b. The Subcontractor and all the Subcontractor's Subcontractors and their Subcontractors and all persons in privity of contract with the Subcontractor shall have no fewer journeyperson construction mechanics per apprentice than that provided in the attached Michigan Department of Labor schedule of occupational classifications and apprentice-journeyperson ratios for construction mechanics at the location of this project. For purposes of this determination, apprentice shall mean only those apprentices enrolled in a registered apprentice program.

- c. The Subcontractor and all the Subcontractor's Subcontractors and their Subcontractors and all persons in privity of contract with the Subcontractor shall keep posted on the construction site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates and apprentice-journeyman ratios as prescribed in the Contract and the address and telephone number of the Department of Labor office responsible for enforcement, and shall keep an accurate record showing the name and occupation of the actual wages and benefits paid to each construction mechanic and apprentice employed in connection with said Contract. This record shall be available for reasonable inspection of the Office of the Facilities, Department of Management and Budget, or the Michigan Department of Labor.
- d. In case there is an omission of any trade from the list of wage rates and fringe benefits to be paid to each class of mechanics by the Subcontractor, it shall be understood that the trades omitted shall also be paid not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed.
- e. A finding by the Michigan Department of Labor that the Contractor as a result of non-compliance of the Subcontractor, the Subcontractor or his Subcontractor is in violation of the requirements of the Subcontract or Prime Contract shall be final for all purposes, unless the Subcontractor or his Subcontractor files a written request with the Department of Management and Budget for a hearing with respect to the validity of the Department of Labor's findings within ten (10) business days from receipt of the Department of Management and Budget's notice of findings.
- f. The Owner and Contractor, if Owner withholds monies from Contractor pursuant to the terms of the Prime Contract as a result of Subcontractor's violation, shall be entitled to withhold twice the amount of the underpayment reported in the Department of Labor's determination until Subcontractor or his Subcontractor satisfies the reported underpayment or the determination is found erroneous after a hearing conducted upon the request of the Subcontractor or his subcontractor.

18. Schedule of Occupation Classifications Prevailing Wage and Fringe Benefit Rates

- a. Attached as Exhibit C is the schedule of occupational classifications, apprentice-journeyperson ratios, and prevailing wage and fringe benefit rates as required under Paragraph 17 of these conditions. This schedule is part of the Supplementary Conditions of the Contract for Construction, and all of the Contracts for the construction of the facility.

19. Miscellaneous

a. This Subcontract is not assignable by Subcontractor without prior written approval of Contractor. Subcontractor shall comply with and be bound by any labor agreements executed by or applicable to Contractor and applicable to the Subcontract work and shall do anything necessary to resolve labor disputes without causing expense or delay to Contractor.

b. This Subcontract embodies the entire agreement between Contractor and Subcontractor. Subcontractor represents that in entering into this Subcontract, it did not rely on any previous oral or written representations, inducement or understandings of any kind or nature.

c. This Subcontract cannot be modified or altered except in writing, signed by Contractor and Subcontractor.

The parties have signed this Subcontract made in _____, Michigan on the ____ day of _____, 20_ as effective on the date first set forth above.

CONTRACTOR

SUBCONTRACTOR:

, a Michigan corporation
By: _____

a _____ corporation
By: _____

Its: _____

Its: _____

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AND

DATED: