

Appendix A

Terms and Conditions

1. **CONTRACT.** This Agreement provides for the furnishing of labor, materials, equipment and services in connection with the construction of a portion of the Project (such portion, the "Work" or "Subcontractor's Work"). If there is any dispute between this Agreement and any Owner document, then the terms and conditions of this Agreement will control. This Agreement may only be amended by a separate writing signed by Subcontractor and Contractor.

2. **SUBCONTRACT DOCUMENTS.** The Subcontract Documents consist of (1) this Agreement; (2) modifications issued after execution of this Agreement; and (3) plans, drawings, specifications or other technical data prepared for the Project and signed by the parties hereto or identified by the Architect.

3. **PAYMENT TERMS.** Subcontractor does not accept the risk of Contractor's receipt of payments from any source, and in no event will payments to Subcontractor be based upon or subject to, Contractor's receipt of payment from Owner or Owner's lender for Subcontractor's Work.

(a) **Quotes.** Any quotation that Subcontractor makes, in whatever form, regarding its products or its services with respect to the Work, unless the same is included in this Agreement, is not binding, but is revocable and subject to change at any time without notice to Contractor until such time as it is included in this Agreement.

(b) **Progress Payments.** Contractor shall make progress payments of the Contract Sum to Subcontractor in accordance with pay applications or invoices made by Subcontractor to Contractor from time to time. Subcontractor shall submit a schedule of values to Contractor prior to submitting Subcontractor's first application for payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by Subcontractor. The schedule of values shall allocate the entire Contract Sum among the various portions of Subcontractor's Work.

(c) **Stored Materials.** Monthly progress payments to Subcontractor shall include the value of material stored at the jobsite or an offsite location prior to incorporation into the Work.

(d) **Retainage.** A five percent (5%) retainage may be held from all progress payments, provided that such retainage shall be reduced to two and a half percent (2.5%) when the Work is fifty percent (50%) complete.

(e) **Non-Payment.** If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven (7) days from the due date, then interest will accrue on the unpaid balance at the rate of one and a half percent (1.5%) per month or the maximum rate allowed by applicable law, whichever is lower. Subcontractor may, upon notice to Contractor, stop the Work until payment has been received. If the Work is stopped due to the lack of payment, the Contract Sum may be increased by the amount of Subcontractor's reasonable costs of demobilization, delay and remobilization.

(f) **Final Payment.** When Subcontractor's Work is substantially complete, final payment, constituting the entire unpaid balance of the Contract Sum, including retainage, shall be made by Contractor within thirty (30) days following Subcontractor's issuance of an application for payment. Substantial completion means that the Work has been sufficiently completed in accordance with all Subcontract Documents such that all other Project trades that require the completion of the Work in order to undertake their work could commence to undertake their work (regardless of whether such trades do commence their work).

4. **TIME.** Time is of the essence of this Agreement. Subcontractor shall provide Contractor with all requested scheduling information and coordinate its Work with that of all other contractors, subcontractors and suppliers so as not to delay their performance or damage their work on the Project.

5. **FORCE MAJEURE.** *If (a) the Contractor is delayed at any time in the commencement or progress of the Work by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, pandemic, epidemic, government actions resulting from a pandemic or epidemic, now existing or future orders of any governmental authority that impacts Contractor's ability to operate at full capacity or at all, or other causes beyond the Contractor's control including unanticipated weather conditions (each, a "Force Majeure Event"), or (b) the Contractor is delayed in the commencement or progress of the Work by reason of labor or material shortages due to Contractor's fulfilling other work performed under agreements predating this contract which other work was adversely affected by one or more Force Majeure Events, then the schedule and completion date shall be adjusted by Change Order for such time as the completion date is so extended, as a result of the delay, and without decrease in the contract sum. Contractor's request for an extension of time due to the lost days arising from the above referenced causes of delay shall not be unreasonably withheld, and Contractor will not be held financially responsible for any delays in the schedule of the Work or the*

schedules of other contractors or suppliers as a result of any of the aforementioned causes of delay.

6. **MODIFICATIONS.** Contractor may request in writing that Subcontractor make changes to the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, so long as the Contract Sum and the time are adjusted accordingly. Subcontractor, prior to the commencement of such changed or revised Work, shall submit to Contractor written copies of a claim for adjustment to the Contract Sum and time for such revised Work in a manner consistent with requirements of the Subcontract Documents. No modification with respect to the Work will be binding on Subcontractor unless the same is in writing and signed by an authorized representative of Subcontractor.

7. **WARRANTY.** Subcontractor warrants the Work against defects in materials or workmanship for a period of one (1) year from the date of substantial completion. If warranted material or workmanship is defective, then Subcontractor's obligation will be limited to, in Subcontractor's sole discretion, repairing, replacing, crediting or refunding the defective material or workmanship. Repaired or replaced materials or workmanship are warranted only for the remainder of the original warranty period.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS. WITH THE EXCEPTION OF THIS WARRANTY, SUBCONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

This warranty will not apply if any part of a purportedly defective Work (a) is altered, modified or repaired by anyone other than an authorized representative of Subcontractor; (b) is not maintained in accordance with Subcontractor's instructions; (c) is altered, covered or modified by the work of any other subcontractor or contractor of Owner after it is completed by Subcontractor; or (d) is improperly maintained, repaired, misused, or damaged by force majeure, as described in Section 5 of this Agreement, or if the failure is due to the fault or negligence of anyone other than an authorized representative of Subcontractor.

8. **LIMITATION OF LIABILITY.** Subcontractor's liability for any and all claims arising out of or in connection with the Work will be limited to direct damages of Contractor and will under no circumstances exceed the Contract Sum. Under no circumstance will Subcontractor be liable to Contractor or to any other person under this Agreement for any special, incidental, indirect, consequential or punitive damages, including without limitation damages based on lost goodwill, lost sales or profits, delays in delivery, work stoppages, production failures, impairment of other goods, or any other cause, whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise.

9. **UNIONS.** It is recognized that Subcontractor may be utilizing employees affiliated with the International Union of Brick Layers and Allied Craftsmen Laborers' International Union of North America in connection with the performance of its Work contemplated by this Agreement. Contractor hereby consents to the use of such employees in connection with the performance of Subcontractor's Work under this Agreement.

10. **TERMINATION.**

(a) **Termination by Subcontractor.** Subcontractor may terminate this Agreement for nonpayment of amounts due under this Agreement for thirty (30) days or longer. In the event of such termination by the Subcontractor, or in the event of a termination by Subcontractor for any other reason which is not the fault of Subcontractor, sub-subcontractors, suppliers or their agents, employees or other persons performing portions of the Work under contract with the Subcontractor, Subcontractor shall be entitled to recover from Contractor payment for the Work executed and for proven loss with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and damages.

(b) **Termination by Contractor.** If Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Agreement and fails to commence and continue correction within a ten (10) day period of receipt of written notice from Contractor, Contractor may, by written notice to Subcontractor, terminate this Agreement and finish the Subcontractor's Work. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Subcontractor's Work and other damages actually incurred by the Contractor and not expressly waived, such excess shall be paid to Subcontractor. If such expense and damages exceed such unpaid balance,

Subcontractor shall pay the difference to Contractor. A termination by Contractor under this Section 9(b) voids Sections 7 and 10 of this Agreement.

(c) **Termination for Convenience.** Either party may terminate this Agreement at any time for any reason upon ninety (90) days prior written notice to the other party. Upon termination of this Agreement, Subcontractor will cease all performance of the Work. Contractor will compensate Subcontractor in full for any Work executed in accordance with this Agreement up to the time of cancellation or termination of this Agreement, including the cost of supplies, materials and other expenses incurred, and if such termination is made by Contractor, Contractor will compensate Subcontractor for Subcontractor's reasonable overhead and profit.

11. **INDEMNITY.** Subcontractor agrees to indemnify and hold harmless Owner, Contractor, Architect, and their respective directors, officers, managers, employees, agents, shareholders and members, (each, an "Indemnified Party"), and to defend any Indemnified Party against any claims, damages, losses and expenses brought against or incurred by any Indemnified Party arising out of Subcontractor's Work under this Agreement, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of Subcontractor, the Subcontractor's sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12. **DISPUTES.** Any claim arising out of or related to this Agreement, except those waived in this Agreement, shall be subject to arbitration administered by the American Arbitration Association in accordance with its Construction Mediation Procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration. The award of the arbitrator(s) will be binding on each party. The judgment upon the award rendered by the arbitrator(s) may be entered and enforced in any court having jurisdiction thereof.

(a) **Governing Law.** Any dispute shall be governed by the law of the state of Michigan.

(b) **Attorneys' Fees.** In any adversarial proceeding by which a party seeks to enforce its rights under this Agreement, the prevailing party will be awarded all reasonable costs incurred in the investigation and prosecution of such proceeding, including reasonable attorneys' fees.

13. **INSURANCE.** The Subcontractor agrees to carry at its expense, commercial liability, property damage and bodily injury liability insurance protecting the Contractor against all claims and liability for injuries to persons and for damages to public or private tangible property arising out of or in connection with the Work under this Agreement in the following amounts:

Worker's Compensation Insurance:

\$1,000,000 Each Occurrence
\$1,000,000 Each Employee for Injury by Disease

Automobile Liability Insurance with a combined single limit for bodily injury and property damage liability of \$1,000,000 per accident covering owned, non-owned and hired automobiles.

Commercial General Liability Insurance with the following limits of liability:

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

Professional Liability Insurance with limits of \$2,000,000 per occurrence/aggregate.

13. **HEALTH AND SAFETY.** Subcontractor shall take reasonable safety precautions with respect to the performance of this Agreement and assure that all of its employees and subcontractors receive essential health and safety training. Subcontractor shall comply with applicable health and safety laws and regulations.

14. **RESPIRABLE CRYSTALLINE SILICA.** Contractor will be responsible for controlling dust (which may include respirable crystalline silica) on the project site regardless of its source(s) including, but not limited to, windblown onto the site, generated by truck and equipment travel regardless of who is operating the truck or equipment, or generated by other parties. Subcontractor shall only be responsible for control of dust generated by the performance of its work activities or work activities it directs through its sub-subcontractors. These work activities may include cutting, sawing, drilling, grinding, attaching, patching or altering the precast.

Subcontractor shall designate a competent person to make frequent and regular inspection of the job site, materials and equipment to identify existing and foreseeable respirable crystalline silica hazards. Subcontractor shall have the right to stop work and restrict access to the affected area(s) under the applicable OSHA standard if it can show, through appropriate monitoring devices or other methods, that the dust being generated is in excess of OSHA requirements related to total dust or respirable crystalline silica.

Any civil penalties imposed by OSHA or other regulatory bodies against the Subcontractor due to non-compliance with the dust standards and due to no fault of this Subcontractor or its sub-subcontractors shall be the responsibility of Contractor.

15. **DAMAGES.** If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

16. **MATERIAL STORAGE.** Subcontractor shall be responsible for storage of its materials on-site. All materials shall be stored in a safe and organized manner.

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

18. **TAXES.** The Subcontractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Subcontractor that are legally enacted when bids are received or negotiations concluded.

19. **PERMITS AND FEES.** Subcontractor shall secure and pay for required permits and fees necessary for proper execution and completion of the Work.

20. **MISCELLANEOUS.**

(a) **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, then the provision will be enforced to the maximum extent permissible and the other terms and conditions of this Agreement will remain in full force and effect.

(b) **Survival.** All provisions of this Agreement that, by their nature, are intended to survive the termination, cancellation, completion or expiration of this Agreement, including without limitation any indemnities and limitations of liability, will continue as valid and enforceable obligations of the parties despite any such termination, cancellation, completion or expiration, except as set forth in Section 9(b) above.

(c) **Assignment.** Neither party shall assign this Agreement as a whole without the prior written consent of the other party.

(d) **Notices.** Any and all notices, demands or other matters required or permitted to be given under this Agreement must be in writing and will be deemed given when personally delivered to the party to whom it is addressed or, in lieu of such personal service, (1) when deposited in the United States Mail, certified mail, return receipt requested, postage prepaid, to the corresponding address set forth at page 1 of this Agreement; (2) when sent by facsimile with proof of transmission; or (3) when sent by electronic mail. Notices personally served shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated on the 5 day after mailing or upon receipt, whichever occurs first; notices sent by facsimile or electronic mail shall be deemed communicated on the date of transmission.

(e) Facsimile or electronic signatures shall be sufficient for the purpose of executing, negotiating and finalizing the Agreement.

(f) **Waiver.** No waiver by Subcontractor of any provision under this Agreement is effective unless explicitly set forth in writing, with a specific reference to this Agreement, and signed by Subcontractor. No failure to exercise, delay in exercising, or partial exercise of any right or remedy under this Agreement by Subcontractor will serve to waive or preclude any other or further exercise of such right or remedy, and no signed and written waiver by Subcontractor will operate to waive any failure, breach or default not expressly identified in such waiver.

(g) **Standard Terms of Seller.** No terms, provisions or conditions of any purchase order, acknowledgment or other business form that Contractor may use in connection with the Project will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Subcontractor to object to such terms, provisions or conditions.