

Federal Tax I.D. No.: XX-XXXXXXX

Subcontract No.: SCXXX-XX
Job No.: XXX

SUBCONTRACT

THIS SUBCONTRACT AGREEMENT ("Subcontract") is effective on [INSERT DATE], 2016 by and between **Massman Construction Co.** located at **4400 W. 109th Street Suite 300, Overland Park, KS 66211-1319** ("Contractor"), and [INSERT SUBCONTRACTOR NAME] located at [INSERT SUBCONTRACTOR ADDRESS] ("Subcontractor").

WHEREAS, Contractor is obligated to furnish and pay for all the labor, materials, supplies, equipment and facilities and to perform all the work for the Project in strict accordance and full compliance with the Prime Contract; and

WHEREAS, Subcontractor has examined or waived examination of the Contract Documents and desires to perform a part of the Project;

NOW, THEREFORE, in consideration of the premises, IT IS MUTUALLY AGREED:

1. Capitalized terms used in this Subcontract without other definition shall mean the following:

- a. "Contract Documents" means the Prime Contract, which is incorporated herein by reference and is expressly made a part hereof, and this Subcontract and its Exhibits.
- b. "Contractor Group" means Contractor, its subcontractors (excluding Subcontractor Group), suppliers and vendors at any tier and any person acting for or on behalf of Contractor and their respective employees, agents, partners, joint venture partners, members, affiliates, shareholders, directors, officers and assigns and anyone for whose acts such persons may be liable.
- c. "Engineer" means the chief engineer or any other authorized representative of the Owner.
- d. "Exhibits" means the exhibits attached to this Subcontract.
- e. "Laws" means all federal, state, county, parish, city and municipal laws, ordinances, permits, approvals, rules, codes, judgments, decrees, executive orders, writs, orders, regulations and directives applicable to or having jurisdiction over the Work, Contractor Group, Subcontractor Group, Owner Group or the Project.
- f. "Losses" means any and all suits, judgments, losses, costs, damages (including delay, impact, acceleration (including constructive acceleration) and inefficiency damages), claims, overheads, profit, demands, causes of action, fines, penalties, obligations, liabilities and expenses, including expert fees and attorney fees.
- g. "Owner" means the [INSERT OWNER NAME].
- h. "Owner Group" means Contractor Group, Engineer, Owner, [INSERT OTHERS THAT APPLY] and their respective employees, agents, partners, joint venture partners, members, affiliates, shareholders, directors, officers and assigns and anyone for whose acts such persons may be liable.
- i. "Prime Contract" means the agreement dated [INSERT CONTRACT DATE & CONTRACT NUMBER], which Contractor entered into with the Owner, including, without limitation, the general, special and supplementary conditions, plans, drawings, specifications, permits, approvals, technical provisions, modifications, addenda, change orders and conditions for the Project and all other documents forming or by reference made a part of such agreement.
- j. "Project" means [PROJECT DESCRIPTION & LOCATION] under the Prime Contract and in strict accordance and full compliance with the Contract Documents.
- k. "Safety Rules" means all federal, state, city, parish, county, municipal and local safety rules and regulations including, without limitation, the Occupational Safety and Health Act of 1970, as amended, and all such safety or operation rules of Owner Group.
- l. "Site" means the Project site, including all access roads, right-of-ways, parking areas, storage areas, landings, barges, docks, easements, railroad crossings, staging areas and lay down areas used for the completion of the Work or Project, whether owned or leased.

m. "Subcontractor Group" means Subcontractor, its subcontractors, vendors, suppliers and their respective agents, employees, representatives, partners, joint venture partners, members, shareholders, directors, officers, assigns and invitees and anyone for whose acts such persons may be liable.

n. "Taxes" means (i) all taxes, contributions, interest and penalties under any federal, state, city, county, local or municipal Laws, including old age benefit, welfare benefit, health and welfare benefits for union workers, retirement contributions for union workers, social security or unemployment compensation, insurance law or otherwise, (ii) all taxes and contributions required to be withheld from or in respect of wages and salaries under any Law, fringe benefits for union works, and any interest and penalties, and (iii) all sales, use, income, occupation, or excise taxes, including interest and penalties, applicable to this Subcontract or anything related to the Work.

o. "Work" means the furnishing or performance of any and all shop drawing preparation, fabrication, engineering services, scheduling, cost control, submittals, procurement, fabrication, assembly, inspection, construction, construction management, management, supervision, quality control, quality assurance, trials, expediting, delivery to the Site for plant, labor, tools, equipment and material, and miscellaneous support services, either expressly or reasonably required or inferred to provide any and all of the work necessary to complete any and all items listed on Exhibit A as well as all things necessary or required to fulfill on a timely basis all of Subcontractor's obligations under the Contract Documents.

2. Subcontractor represents that it has the machinery, equipment, personnel and experience to perform the Work in the manner required and in the time allotted. Contractor shall have the same rights and privileges hereunder against the Subcontractor in relation to the Work as the Owner has against the Contractor under the Prime Contract. Subcontractor agrees to comply with and perform all terms of the Prime Contract applicable to the Work, to perform the same under the direction and to the satisfaction of the Contractor, Engineer and Owner and to procure at its own expense all permits and licenses required for the performance of the Work. The decision of the Contractor as to the performance of the Work and the true meaning of the drawings and specifications shall be final.

3. (a) Subcontractor shall begin the Work as soon as instructed by Contractor and shall carry the same forward promptly, efficiently and at a speed as determined by the Contractor that will not cause delay in the progress of work of the Owner Group. Contractor may require Subcontractor to prosecute its Work in one area(s) or in a different sequence in preference to other parts of the Work or other sequences.

(b) Time is of the essence and the Work shall be completed according to the schedule, which may be modified by Contractor from time to time. Subcontractor acknowledges that delays may occur from any number of reasons and changes may be made in such schedule or sequence and Contractor shall not be liable therefor. Subcontractor waives all claims against Contractor, Engineer or Owner for Losses that may result therefrom.

(c) Subcontractor shall defend, indemnify and save harmless the Contractor Group from all Losses that the Contractor Group may sustain or incur by reason of any delay(s), including concurrent delays, caused or contributed to by the Subcontractor Group. Payment of such amounts shall not release the Subcontractor from any other obligation hereunder, nor affect any other cause of action which the Contractor otherwise might have against the Subcontractor for the same or any other breach.

(d) If the Owner or its Engineer delays the Subcontractor in any way, Subcontractor's sole and exclusive remedy shall be an extension of time for completion equal to the period of delay for any such delay that Contractor receives as an extension of time from the Owner and Subcontractor waives all Losses arising therefrom. If the Contractor delays the Subcontractor in any way, Subcontractor's sole and exclusive remedy shall be an extension of time for completion equal to the period of delay as determined by the Contractor and Subcontractor waives all Losses arising therefrom

(e) An extension of time, even if otherwise permissible under the Prime Contract or this Subcontract, shall be waived by Subcontractor for any cause or under any circumstances unless the Subcontractor files a written notice of claim therefor with the Contractor within 7 calendar days after the cause therefor or circumstances underlying the same commenced. If the parties fail to agree on the extension, if any, to be allowed on such claim, the Engineer shall determine the same, and his decision, to the extent concurred in by the Owner and granted to Contractor by the Owner, shall be final and binding on all parties.

(f) Subcontractor, prior to commencement of Work and from time to time thereafter, shall submit to Contractor, promptly upon request therefor, any and all data and information required under the Contract Documents, or requested by the Contractor, relating to the order, data and nature of Work to be performed hereunder, to be organized in such form or manner as Contractor, Owner or Engineer shall require, whether in a so-called "Critical Path" or "Network Analysis System," or otherwise, and all such submissions shall reflect completion of the Work within the time for completion required hereunder. Subcontractor understands that Contractor will rely on such data and information, accepts responsibility for errors therein and will perform its Work in accordance therewith. In the event Subcontractor does not carry out the Work at such rates of progress or fails to meet such schedules or sequences as required, Contractor may, at its option and without any liability or obligation to pay Subcontractor additional compensation therefor, require Subcontractor to accelerate the Work and increase its hours worked and the number of qualified supervisory personnel and workers and the amount of equipment employed in the performance of the Work to such extent as Contractor may deem necessary or desirable, or Contractor may exercise any other remedy it might have.

(g) Subcontractor shall furnish and pay for all labor, materials, supplies, equipment and facilities and perform all Work incidental thereto that is necessary or required for the construction and completion of the Work in strict accordance and full compliance with the Contract Documents and in all respects as is therein required of the Contractor.

(h) Subcontractor at all times shall supply adequate tools, appliances and equipment, a sufficient number of properly skilled and licensed workmen, and a sufficient amount of materials and supplies of proper quality to efficiently and promptly prosecute said Work. Subcontractor accepts sole and exclusive responsibility for the Work, shall provide continuous supervision for the Work, and no advice, recommendations or assistance which representatives of the Owner Group may give to Subcontractor shall operate to relieve Subcontractor from complete responsibility for safety and the means and methods of the Work. Subcontractor, whenever requested to do so by Contractor, shall discharge or replace any employee designated by Contractor or Owner to have violated any Safety Rules.

(i) Contractor reserves the right to route transportation of all materials required in the performance of this Subcontract. Subcontractor agrees to provide and place without cost to Contractor all inserts, sleeves, bolts, anchors, hangers, supports and the like, in masonry, concrete or other construction that Contractor may require to be provided or placed, in, through or to connect with the Work.

(j) The Subcontractor has carefully inspected the Site, verified whatever dimensions it deems necessary and appraised itself of the existence of any unusual conditions which might affect the Work and has made Contractor aware of any conditions that could adversely affect the execution of the Work.

(k) The Subcontractor shall promptly prepare and submit all shop drawings, material samples and manufacturer's literature and manuals for the Work and materials under this Subcontract. Approval of shop drawings and materials by Contractor, Engineer or Owner shall not relieve Subcontractor of any contractual responsibility, liability or obligation set forth in the Contract Documents or this Subcontract.

4. Subcontractor has the risk of loss for the Work until Contractor has issued a final acceptance certificate for the Work, which is conditioned upon approval by Owner or Engineer. Subcontractor shall turn the Work over to the Contractor in good condition and free and clear of any and all Losses, encumbrances or liens and shall defend, indemnify and hold harmless the Owner Group from all Losses incurred or sustained by Owner Group in connection with or by reason of any and all Losses, encumbrances or liens arising out of the Subcontractor's performance of this Subcontract or the Work. Subcontractor, as often as requested by the Contractor, shall furnish it a sworn statement showing the names and addresses of all persons and firms who did or may furnish labor or materials for the Work and the amount due or to become due each of them, together with such additional reports and classified material as it may desire and on such forms as it may prescribe. Subcontractor hereby grants the Contractor a paramount lien and security interest upon all materials, tools, appliances and equipment of the Subcontractor at or near the Site or used in connection with the Work as security for performance of this Subcontract.

5. Subcontractor shall comply with and abide by Laws. Subcontractor shall maintain, preserve and permit inspection of records and reports pertaining thereto, and Subcontractor shall require compliance with the Prime Contract and all Laws by all suppliers and lower tier subcontractors with whom Subcontractor may contract for anything relating to the Work.

6. Contractor agrees to pay the Subcontractor for the Work and everything required of the Subcontractor in and by this Subcontract in accordance with the unit price schedule the sum of [] Dollars [\$], subject to the additions and deductions as may be agreed upon in advance in writing, payable as the Work progresses, to the extent the Work is approved in periodic estimates of the Engineer and payment is made therefor by Owner to Contractor. No payment shall be due unless and until the Contractor receives payment from the Owner for the Work. Subcontractor understands that the Owner is a limited liability company with limited assets and accepts the credit risk of partial payment or non-payment by Owner. Contractor at its option may retain [] per cent (%) of each such estimate until it has received final payment under the Prime Contract and may withhold payment of any estimate until Subcontractor has furnished Contractor with evidence satisfactory to it that Subcontractor has paid in full for everything it is required to pay for the Work through the date of the estimate and has performed all other obligations under this Subcontract to said date. Final payment hereunder shall be made within twenty (20) days after all of the following items have occurred: (i) completion of the Project; (ii) written acceptance of the Project by the Engineer; (iii) a full release, in a form acceptable to Contractor, of any and all Losses against Owner Group and the Project has been received by the Contractor; and, (iv) full payment therefor has been made by the Owner to Contractor. Contractor may make payment to Subcontractor by means of a joint check to Subcontractor and its sub-tier suppliers or vendors after Contractor has received actual or constructive notice of late or non-payments by Subcontractor to its subcontractors and vendors. No payment, whether on account, partial or final, shall operate as an approval or acceptance of Work done or materials furnished or affect Contractor's rights or Subcontractor's liabilities and obligations. Any acceptance of the Work shall not relieve or discharge Subcontractor of its guarantees or warranty obligations.

7. Subcontractor, before commencing any Work, shall obtain and deliver to the Contractor separate payment and performance bonds, with the Contractor as obligee, in a sum not less than the amount of the Subcontract and in a form and with surety thereon satisfactory to the Contractor for the faithful performance of this Subcontract as required in Exhibit H. Anything herein to the contrary notwithstanding, if the Subcontractor fails to furnish said bond ten (10) days before commencing Work hereunder, the Contractor then or at any time thereafter may terminate this Subcontract, and Subcontractor shall not be entitled to any payment for or in respect of any Work done at the Site or elsewhere, nor to reimbursement or compensation for orders placed or anything else done in preparation for or performance of the Work, and no payment made or forbearance granted by the Contractor shall operate as a waiver of the rights herein granted to the Contractor. Should any contract modifications result in an increase in the amount of this Subcontract, Subcontractor shall increase the amounts of such bonds accordingly, and it will be the responsibility of Subcontractor to include in its proposal the cost and rate for such additional bond premiums or Subcontractor waives entitlement thereto.

8. Contractor reserves the right to order changes in the Work, by modifying the same, adding thereto or subtracting therefrom. Every such order, to be valid, must be signed by the Contractor's authorized representative and specify over his signature the amount to be added or deducted from the contract price and the number of days to be added to or subtracted from the completion time by reason thereof. If the Subcontractor shall object to the price and time changes specified in any such order, the Subcontractor shall give written notice within 5 working days of such objections to the Contractor, and in such event the amount of money and number of days in time to be added or subtracted shall conform to the determination of the Engineer, less appropriate allowances to the Contractor for overhead and profit, and the Engineer's determination thereof, to the extent concurred in by the Owner, shall be absolutely final and binding on both parties. In any event, the Subcontractor shall not be entitled to be compensated for extra or changed work under any circumstances unless the same shall have been ordered as above provided and paid for by the Owner.

With respect to changes, alterations or extra work ordered by Owner, Contractor shall not be liable to the Subcontractor for a sum or time extension greater than Contractor receives in a change order from Owner for such changes, alterations or extra work. Any payments to Subcontractor for such work ordered by Owner shall be conditioned upon a prior recovery therefor by Contractor from Owner. In the event of a deduction as a result of a change in Work ordered by Owner, then the deduction taken by the Owner shall be controlling on the Subcontractor. If there is a dispute as to any changes, deductions, alterations or extra Work, Subcontractor shall diligently proceed with such Work as directed by Contractor and shall not slow down or stop the Work.

9. If the Subcontractor is in material default, including, without limitation: (i) if Subcontractor fails to furnish materials of the quality or do Work in the manner or time required by the Contract Documents; (ii) if Subcontractor fails to provide workmen in numbers and experience and equipment in kind and capacity suitable to Engineer, Owner or Contractor; (iii) if Subcontractor fails to keep pace with the progress schedule formulated from time to time by the Contractor or delay or impede the work of Owner Group on the Project; (iv) if Subcontractor fails to promptly pay for all labor and material used in connection with the Project; (v) Subcontractor fails in any other manner to perform the whole or any part of any covenant or agreement contained in the Contract Documents; or, (vi) a petition in bankruptcy or for an arrangement shall be filed by or against Subcontractor, then and upon the occurrence of any such event (and the Contractor's finding and judgment with respect thereto shall be final and bind the Subcontractor absolutely), Contractor shall have the right, but not obligation, after sending the Subcontractor notice of its intention by mail or e-mail twenty-four (24) hours in advance:

- (a) to provide materials and labor in addition to or in place of any supplied by Subcontractor and deduct the cost thereof and expense relating thereto from the Subcontract price payable hereunder;
- (b) to bar Subcontractor from the Site (with or without terminating this Subcontract) and take over and complete the Work either by itself or by contracting with others to do so or by any combination of such methods, all at the expense of Subcontractor, and for that purpose to take possession of, use and consume, without notice, demand or legal process and without liability therefor or on account thereof, all materials, tools, appliances, machinery, equipment and facilities of Subcontractor at, near or in transit to the Site together with all contracts of Subcontractor for materials on order and bills of lading for material en route, same being hereby assigned to Contractor;
- (c) to withhold any further payment hereunder from Subcontractor until all Work shall be wholly finished; and
- (d) pay for all of the same and deduct the amount paid from any money that is then or would thereafter otherwise be due Subcontractor.

In every such case, Subcontractor shall not be entitled to receive any further payment hereunder until all Work shall be wholly finished, whereupon, if the Losses incurred by the Contractor in completing the Work and performing the other obligations of Subcontractor hereunder, shall exceed the unpaid balance that otherwise would have been due to Subcontractor therefor, Subcontractor immediately will pay Contractor the full amount of the difference, and on Subcontractor's failure to do so, the Contractor, among other rights and remedies, shall have the right, pursuant to the security interest and lien provided for herein, to sell all materials, tools, appliances, equipment and facilities of Subcontractor not previously used or consumed in the performance of the Work and to apply the proceeds of such sale(s) to the obligation of Subcontractor, who nevertheless shall remain liable for any deficiency.

In the event of the exercise of any default rights by Contractor as set forth above, all Losses incurred, all moneys expended therefor, including, but not limited to, the cost of materials, labor, subcontractors, equipment expense and rentals, supplies, services, insurance, taxes, appliances, tools, utilities, supervision, administration, job overhead, travel, legal and accounting fees and expenses, general office overhead, profit at a rate of 10% of the actual cost of Work performed, shall be deducted from the Subcontract price.

Should Contractor employ an attorney to enforce any provision of this Subcontract or to collect Losses for default or breach of the Subcontract or to recover on any bond, Subcontractor and its sureties agree to pay Contractor such attorney's fees and costs of collection.

10. (a) To the fullest extent permitted by Law, Subcontractor agrees to defend, indemnify and hold harmless the Owner Group from all Losses that Owner Group may incur or sustain in connection with, arising from, related to or in consequence of (i) personal injury or property damage, including death or destruction, alleged to have been caused by any act or omission of Subcontractor Group; (ii) any breach of Laws by Subcontractor Group; (iii) any claims filed by any employee of the Subcontractor Group and such employee's family, heirs and assigns (iv) the failure of the Work to comply with all Laws or the Contract Documents; (v) employer's liability or worker's compensation claims filed by any employee of the Subcontractor Group; (vi) the vitiation of any insurance policy required of the Subcontractor Group; (vii) any hazardous materials brought to the Site by the Subcontractor Group; (viii) failure of Subcontractor Group to pay all Taxes as required in Article 11; (ix) any unauthorized disclosure or use or infringement of any trade secret, patent, copyright, trademark or registered design, device, material, process or mark

related to the Work or this Subcontract; (x) the possession, transportation, storage or use of explosives; and, (xi) the creation or maintenance of a dangerous condition on the Site, which condition occurred due to the acts or omissions of the Subcontractor Group or for which the Subcontractor Group had knowledge of or could have had knowledge of the condition in time to warn of or repair said condition. In claims against any person or entity indemnified under this Article 10 by an employee of the Subcontractor Group, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Article 10 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor Group under workers compensation acts, disability benefit acts or other employee benefit acts.

(b) Subcontractor agrees to procure at its expense insurance coverage conforming to the requirements of the Prime Contract in forms, types and in amounts and underwritten by insurance companies as required by the Prime Contract and acceptable to the Contractor, including but not limited to: Worker's Compensation (including USL&H or Jones Act coverage when applicable) and Employer's Liability Insurance; Comprehensive General Public Liability Insurance and Comprehensive Automobile Bodily Injury and Property Damage Insurance, including Liability Coverage for (a) all operations, (b) subcontract work and, (c) non-owned vehicles. Subcontractor agrees to furnish Contractor certificates from the respective insurers that such insurance is in effect and will not be canceled without thirty (30) days written notice from them to Contractor in advance and to furnish Contractor true copies of such policies upon request. Subcontractor shall maintain all of the foregoing insurance coverage in force until the Work is fully completed, including repair or replacement of Work to meet warranty obligations or correct latent or hidden defects. All insurance provided by Subcontractor Group hereunder shall (i) provide primary coverage and any insurance maintained by the Owner Group shall be in excess of this insurance and shall not contribute to it; and (ii) be endorsed to include a waiver of subrogation in favor of the Owner Group.

(c) Subcontractor will cause such policies of insurance to name Owner Group as additional insureds by endorsement. The requirement for and the furnishing of insurance shall not satisfy the indemnity obligations of Subcontractor hereunder, and all the indemnity obligations shall remain in full force and effect. Contractor Group shall have no liability for the payment of any deductibles under any insurance procured by Subcontractor Group irrespective of the cause giving rise to the insurance claim, including the fault of the Owner Group.

11. Taxes are included in the price to be paid Subcontractor under this Subcontract, and Subcontractor assumes, accepts exclusive liability for, and agrees to pay all Taxes. If Contractor pays any such Taxes, Subcontractor on demand shall reimburse Contractor or Contractor may deduct the same from sums otherwise due Subcontractor.

12. Subcontractor shall not place or erect any temporary field office, shed, or warehouse without first obtaining from the Contractor its written approval of the size and location thereof. Subcontractor shall provide and maintain its own telephone, electric light, power, water and gas service, but Subcontractor, if authorized by Contractor, may use such connections, if any, as Contractor may supply and Subcontractor must pay Contractor its estimate of Subcontractor's fair share of any utility or special service which Contractor may furnish.

13. (UNION) Except as hereinafter provided, on all Work performed on the Site, Subcontractor shall comply with, observe and conform to the wage scales and labor policies of the Contractor and shall execute and bind itself to all terms and provisions of any collective bargaining agreements executed by Contractor or on Contractor's behalf, specifically including the terms and provisions of any such agreements providing for hiring and union-security and for the making of payments into or under health and welfare or other fringe benefit funds or plans, to the extent that the terms and provisions of such agreements can legally be applied to the Work. Subcontractor agrees that if any portion of such Work is further subcontracted, such lower tier subcontractor or vendor shall be contractually obligated to execute and bind itself to observe the terms and provisions of such collective bargaining agreements to the same extent as is herein required of Subcontractor, and that an express provision imposing such obligation upon the lower tier subcontractor or vendor shall be included in any such lower tier contract. Subcontractor shall defend, indemnify and hold harmless Owner Group from and against any Losses resulting in any way, directly or indirectly, from its failure to comply with the requirements of this Article. Subcontractor further agrees to provide proper identification of its employees.

(NON-UNION) Subcontractor shall supply only labor which is in harmony and compatible with all other labor being used by Contractor and other subcontractors on the Project. Neither Subcontractor nor its employees

shall engage in any activities which cause or are likely to cause a strike, work stoppage, picketing or any other labor dispute at the Site. In the event Subcontractor or its labor become involved in any labor difficulties or disputes as referred to in this paragraph, or cause any strike, picketing or work stoppage by the employees of Contractor, the Subcontractor or any other subcontractor or supplier on the Project, Subcontractor agrees to take immediate steps to resolve such difficulties or disputes; and, if same are not immediately resolved, Contractor may, at its option, invoke the provision of Article 9 of this Subcontract. Subcontractor agrees that if any portion of the Work is further subcontracted, such lower tiered subcontractor shall be bound by and observe the provisions of this Article to the same extent as herein required of Subcontractor and that this Article shall be included in any lower tier subcontract. Subcontractor shall defend, indemnify and save Owner Group harmless from and against any Losses resulting in any way, directly or indirectly, from its failure to comply with the requirements of this Article. Subcontractor further agrees to provide proper identification of its employees.

14. Subcontractor shall cooperate fully with all others working on the Project and shall not permit or commit any act that interferes with others. Whenever it may be useful or necessary for Contractor or Owner to do so, Contractor shall be permitted to occupy and/or use any portion of the Work that has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by Owner, but such use and/or occupation shall not relieve Subcontractor of its guarantee of said Work nor of its obligation to make good at its own expense any defect in materials and/or workmanship that may occur or develop prior to Contractor's release from responsibility to Owner.

15. The Subcontractor agrees to observe and comply with all Safety Rules. To the fullest extent permitted by Law, Subcontractor shall defend, indemnify and hold harmless the Owner Group from any Losses and corrective measures the Owner Group may sustain by reason of the Subcontractor's failure to comply with any Safety Rules. If the Contractor shall maintain first aid service at the Site, Subcontractor shall bear the Contractor's estimate of its fair share of the cost thereof.

16. Subcontractor shall provide sufficient, safe and proper facilities at all times for inspection by the Contractor and the Engineer of the Work and materials of the Subcontractor, whether in the field, at shops or at any place where such materials may be in preparation, assembly, manufacture, storage or installation. Within forty-eight (48) hours after receipt of notice from Contractor to do so, Subcontractor shall proceed to take down and remove from the Site all portions of the Work and all material, installed or not installed, which the Contractor or Engineer shall reject or condemn as unsound or improper or as in any way failing to conform to the Contract Documents and proceed forthwith at the cost of the Subcontractor to correct and remedy all Work so rejected or condemned and all other work which may be damaged or destroyed by the removal or correction of such rejected or condemned Work. If in the opinion of the Contractor it would be inexpedient to correct or remedy all or any part of the Work or materials so rejected or condemned, then Contractor, at its option, may deduct, from the payments due or to become due to Subcontractor, such amount or amounts as in Contractor's judgment will represent the difference between the fair value of the Work and materials so rejected or condemned and the value thereof if the same had complied with the Contract Documents.

17. Subcontractor agrees to remove all of his waste and surplus material as often as required by Contractor, and if Subcontractor fails to do so, Contractor may do so at Subcontractor's expense and such costs incurred by Contractor will be deducted from any sums otherwise due Subcontractor.

18. Subcontractor shall perform Contractor's guarantee and warranty to the Owner under the Prime Contract with respect to the Work. In addition thereto, if anything done or furnished hereunder by or for the Subcontractor or related to the Work shall fail in the use or operation within the warranty period as determined by the Engineer or Owner under the Prime Contract, by reason of any defect in material or workmanship, Subcontractor shall repair or replace the same and all other parts of the Project that may have been damaged or moved or be damaged or moved or required to be replaced as the result of any such defect and to effect such replacement, including all in and out costs or repair or replacement costs, all to the satisfaction of the Engineer, Owner and Contractor, and Subcontractor shall defend, indemnify and hold harmless Owner Group from all Losses arising out of Subcontractor's failure to do so. Subcontractor shall not be entitled to final payment hereunder until he furnishes Contractor its written guarantee, signed also by its surety, setting forth and confirming the above responsibilities and liabilities.

19. Any decision concerning the Work, or termination thereof, the quality or classification of anything done hereunder, the intentment or application of the Prime Contract, extensions of time to complete, or claims for payment or compensation thereunder in respect of Work done or omitted hereunder which is binding

upon Contractor shall bind Subcontractor and its surety absolutely, whether such decision be made by the Owner, the Engineer or any officer, agency, court or tribunal empowered to render the same by the Prime Contract or any procedure referred to therein or contemplated thereby. Contractor may dispute, appeal from and in every manner resist and litigate any and every such decision, for itself or for the benefit of Subcontractor, without being deemed thereby to have admitted any obligation or liability to Subcontractor, and if the decision shall go against Contractor, then Subcontractor shall be bound thereby, and nothing previously said, done, contended or stipulated by Contractor shall be offered or received in evidence in any proceeding of Subcontractor against Contractor. In any and all events, Subcontractor shall bear a just part of all costs and expenses incurred by Contractor in any proceedings, appeal or litigation involving a claim which, if allowed, would result in a payment(s) or relief to Subcontractor or an extension of time or relief from assessment of liquidated or actual damages, in the proportion that the amount claimed for the benefit of Subcontractor shall bear to the whole amount sought in the same proceeding, appeal or litigation. Contractor shall not be under any obligation to assert or continue the prosecution of any claim for the benefit of Subcontractor, nor to maintain or continue any proceeding, appeal or litigation thereon, and may refrain from asserting or completely abandon the same at any stage in the discretion of Contractor, unless Subcontractor demands presentation or continuation at its own expense and with its own counsel. In any and all events, the prosecution of any such claim shall be at the risk of Subcontractor, and Contractor shall have no responsibility or liability for or in relation to the outcome thereof.

20. In no event shall Contractor Group be liable to Subcontractor for loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; cost of replacement power; governmental and regulatory sanctions, fines and penalties; and claims of customers for such damages; or for any special, consequential, incidental, indirect, punitive, or exemplary damages in any way arising from or related to the Project, the Work or performance or non-performance of this Subcontract.

21. Subcontractor's rights and remedies with respect to this Subcontract and the Work shall be exclusively those expressly set forth in this Subcontract and are in lieu of any others available at law or otherwise. Subcontractor shall, if requested by Contractor, agree to the assignment of this Subcontract to a third party and shall continue performance uninterrupted.

22. As between Contractor and Subcontractor, Subcontractor assumes sole responsibility and waives all rights and claims against Contractor for all loss of or damage to property owned by or in the custody of Subcontractor Group and any items at the Site or in transit thereto (including, but not limited to, construction work in progress) however such loss or damage shall occur, including the fault or negligence of Owner Group. Subcontractor agrees to maintain appropriate property insurance and shall require its insurers to waive all rights of subrogation against Owner Group for claims covered under any property insurance that Subcontractor Group may carry.

23. Contractor, from its equipment pool at the Site, may lend or lease at Subcontractor's written request, manned or unmanned equipment for use by Subcontractor in the performance of the Work. Such usage will be scheduled by Contractor for time intervals that will not, in Contractor's opinion, interfere with or delay the progress of its work or the work of other subcontractors. Such equipment and personnel furnished to operate the same shall be under Subcontractor's exclusive direction and control while in Subcontractor's custody for use in the performance of the Work, and Contractor shall have no right to exercise any control over or to give any directions with respect to such use. Subcontractor's use of Contractor's equipment and personnel shall be at Subcontractor's sole risk, and the responsibility and liability for everything done or omitted by Subcontractor during or with respect to such usage shall rest exclusively and solely with the Subcontractor. All personnel engaged or involved in the operation of such equipment during Subcontractor's usage thereof are constituted employees of Subcontractor even though in the general employ of Contractor and not on Subcontractor's direct payroll. Subcontractor agrees to schedule such equipment for coverage under Subcontractor's comprehensive public liability policies, and further agrees to provide equipment floater insurance. Subcontractor shall not be required to provide installation floater insurance on such equipment. Subcontractor, by commencing use of Contractor's equipment shall be deemed conclusively to have satisfied itself that such equipment is in good condition and repair and fit for the use intended and personnel possess the skill required to perform the work involved. Contractor has made no warranty, express or implied, with respect to any of such equipment, makes available such equipment on an as-is, where-is basis, and shall have no liability to Subcontractor for or by reason of or resulting from a breakdown or downtime of equipment or casualty of any kind affecting the use thereof. Subcontractor shall keep such equipment in good condition and shall not use the equipment beyond its capacity of for a purpose for which it was not designed or intended and upon completion of such usage or

prior thereto on demand of Contractor, shall return such equipment in essentially the same condition it was received, except for normal wear. Contractor shall be responsible for all maintenance and repair of equipment and will provide insurance coverage for such equipment. Subcontractor agrees to defend, indemnify and hold harmless Owner Group from and against all Losses that they or any of them may sustain or incur on or with respect to Losses asserted against any of them in any manner relating to or involving activities or use of such equipment or personnel on the Work or while under Subcontractor's control or direction.

24. Indemnities against, releases from, and limitations on liability, and limitations on remedies expressed in this Subcontract, as well as waivers of rights, including, but not limited to, subrogation rights, shall apply even in the event of the fault, tort (including negligence), strict liability, breach of contract or warranty, or other basis of liability of the party indemnified or released or whose liability is limited or allocated to the indemnitor, or against whom remedies have been limited, and shall extend to the officers, directors, partners, joint venture partners, members, shareholders, employees, licensors, agents, subcontractors, vendors and related and affiliated entities of such party.

25. The following Exhibits No. A, B, C, D, E, F, G, H, I and J are part of this Subcontract:

- Exhibit A – Scope of Work
- Exhibit B – Special Conditions
- Exhibit C – Price Schedule
- Exhibit D – Milestone Schedule
- Exhibit E – Payment Milestones
- Exhibit F – Labor & Equipment Rates for Extra Work [Project Plans & Specifications]
- Exhibit G – Insurance Requirements
- Exhibit H – Performance and Payment Bonds
- Exhibit I – Subcontract Safety Program Requirements
- Exhibit J – Statutory Employer Provision
- Exhibit K - Partial and Final Lien Waivers

The Contract Documents contain the entire agreement between the parties. If there is any ambiguity or inconsistency between the Contract Documents, the highest standard of performance shall govern as interpreted by Contractor, which shall be binding on the parties. All additions thereto or changes therein must be in writing and signed by both parties in order to be operative and if not shall not be binding or enforceable.

26. The provisions of this Subcontract that by their nature are intended to survive the termination, cancellation, or expiration of this Subcontract or completion of the Work or Project, including, without limitation, the warranties and guarantees of Subcontractor, the defense, hold harmless and indemnification obligations of Subcontractor, and any express limitations of or releases from liability or limitations on remedies, shall continue as valid and enforceable obligations notwithstanding any such termination, cancellation, or expiration of this Subcontract or completion of the Work or Project. To the extent any provision of this Subcontract is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Subcontract.

27. This Subcontract and all disputes between the parties shall be governed by the laws of the State of [] and the jurisdiction and venue for any action between Contractor and Subcontractor shall be solely and exclusively in [].

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate on the day and year first above mentioned.

MASSMAN CONSTRUCTION CO.

Signature

Henry J. Massman, IV

Printed Name

Date

President

Title

[SUBCONTRACTOR NAME]

Signature

Printed Name

Date

Title

Exhibit B – Special Conditions

In consideration for the compensation under this Subcontract and the opportunity to perform, Subcontractor hereby grants Contractor a lien upon, security title to, and a purchase money security interest in all of Subcontractor's materials, work in progress and raw materials related to the pre-cast slabs, including after acquired property of like kind, located at the Site or off-Site, and Subcontractor further agrees that Contractor has a purchase money security interest in all proceeds of the above (collectively "Collateral") to secure any and all of Subcontractor's obligations under the Subcontract, with Contractor having all rights and remedies granted to a secured party by the Uniform Commercial Code and all other provisions of law. Further, Subcontractor hereby assigns to Contractor any and all accounts and rights which the Subcontractor may have with respect to any of its subcontractors and vendors or third parties by reason of the resale or transfer of the Collateral. Subcontractor authorizes and appoints Contractor to act as Subcontractor's attorney-in-fact in order to execute and file all documents necessary for Contractor to perfect a purchase money security interest in the Collateral.

Additional Special Conditions are from the flowdowns of the Prime Agreement between the Owner and Contractor.

Exhibit J – Statutory Employer Provision

Missouri - In all cases where the employees of either Contractor, Subcontractor or any contractors, subcontractors, agents, representatives, or invitees are covered by the Missouri Worker's Compensation Act, the parties agree that all work and operations performed by these employees pursuant to this Subcontract are an integral part of, and essential to, the ability of both to generate goods, products and services of both for purposes of the Missouri Worker's Compensation Act. Furthermore, the parties agree that both are the principal or statutory employer of any of these employees for the purposes of the Missouri Worker's Compensation Act. Irrespective of either parties' status as the statutory employer (as defined in the Missouri Worker's Compensation Act) of any of these employees, each party shall remain responsible for the payment of Missouri Worker's Compensation benefits to its payroll employees only, and shall not be entitled to seek contribution for any such payments from the other. Nothing in this Subcontract shall in any way change any party's obligation to pay indemnity or contribution to another pursuant to any statute, regulation, contract or otherwise in the event any such firm is deemed to be the statutory employer of any of these employees or pays compensation benefits of any nature.

Louisiana - Contractor and Subcontractor agree all work performed by Subcontractor pursuant to this Subcontract is an integral part of, and is essentially to the ability of Contractor to generate its goods, products, or services. Subcontractor's employees (including direct, borrowed, special or statutory employees) are covered by Louisiana worker's compensation, U.S. Long shore, or similar law, and for the purposes of this Subcontract and Subcontractor agrees that Contractor is the statutory employer of Subcontractor's employees pursuant to Louisiana R.S. 23:1061 or similar law. Subcontractor shall remain at all times, however, primarily responsible for the payment of the worker's compensation benefits to its employees, and shall not be entitled to seek contribution for any such payments from Contractor.

General Provision - In all cases where the employees of either Contractor, Subcontractor or any contractors, subcontractors, agents, representatives, or invitees are covered by a worker's compensation act or USL&H act, the parties agree that all work and operations performed by these employees pursuant to this Subcontract are an integral part of, and essential to, the ability of both to generate goods, products and services of both for purposes of such acts. Furthermore, the parties agree that both are the principal or statutory employer of any of these employees for the purposes of such acts. Irrespective of either parties' status as the statutory employer (as defined by such acts, as applicable) of any of these employees, each party shall remain responsible for the payment of statutory compensation benefits to its payroll employees only, and shall not be entitled to seek contribution for any such payments from the other. Nothing in this Subcontract shall in any way change any party's obligation to pay indemnity or contribution to another pursuant to any statute, regulation, contract or otherwise in the event any such firm is deemed to be the statutory employer of any of these employees or pays compensation benefits of any nature.

Exhibit K – Progress and Final Payment Release Forms

Subcontractor shall submit the following forms, as applicable, with each payment application:

PROGRESS PAYMENT WAIVER AND RELEASE

To: [MCC/JV/Project Contractor]

Project: [Name of Project]
Job No. _____

Subcontractor: [Insert Name]

Estimate No.: _____ Through: [date of last work covered by estimate]

The undersigned, by its duly authorized and appointed agent, does hereby declare that receipt of the amount of \$_____ will represent payment in full up to and including the above referenced estimate for all materials, costs, expenses, damages, delay damages, backcharges, losses, claims, services, labor, including taxes thereon, and everything else done to date by the undersigned, its subcontractors, material vendors, suppliers, agents and employees for the above referenced project (collectively "Costs"), except for retained amounts as shown in the above referenced estimate. The undersigned further hereby declares that all such subcontractors, material vendors, suppliers, agents, and employees have been paid in full, or the proceeds hereof will be used to pay them in full (except for retained amounts which are not in excess of the amount retained on the above referenced estimate), and that all federal and state payroll taxes, fringe benefits and other obligations have been paid in full or the proceeds hereof will be used to pay them in full. The undersigned does hereby forever waive, relinquish and release all Costs, bond claims and lien rights for and in connection with this project, up to and including the above referenced date.

The undersigned understands that the recipient is relying on these express representations in making payment to the undersigned.

This payment and release shall not be construed to impair any warranty and guaranty obligation of the undersigned for such work performed or materials furnished.

[Name of Subcontractor]

Signature: _____

Title: _____

Date: _____

EXHIBIT K - FINAL PAYMENT WAIVER AND RELEASE FOR SUBCONTRACT

KNOW ALL MEN BY THESE PRESENTS that _____ (“Subcontractor”) entered in a subcontract with _____ (“Contractor”) for the performance of work and the furnishing of material for the construction of a project for _____ (“Owner”), which subcontract is by this reference incorporated herein. Subcontractor does hereby acknowledge that all sums due it for everything done by it or its subcontractors, vendors, suppliers, agents and employees in the performance of said work and the furnishing of said material have been received and does hereby represent that all work performed and any material furnished by it are free and clear of all liens and claims and that no governmental charges, levies or taxes are delinquent or due and unpaid. Subcontractor further represents that all its subcontractors, vendors, suppliers, agents and employees have been paid in full all final sums due them in connection with the performance of said work and furnishing of said material, or anything done or omitted by them, in connection with the construction of said project or otherwise. Subcontractor does hereby release and fully, finally and forever discharge and agrees to defend, indemnify and hold Contractor and Owner harmless of and from any and all suits, actions, claims and demands of whatsoever kind or character arising out of or in any manner related to anything and everything done or omitted by Subcontractor or its subcontractors, vendors, suppliers, agents and employees, or others, in connection with the subcontract or the performance of said work, furnishing said material, or otherwise. Subcontractor acknowledges that nothing herein contained shall be construed to impair any obligation of Subcontractor for or in relation to work performed or equipment, fixtures or materials furnished or installed, or any warranties or guarantees with respect thereto, under or in connection with said subcontract. In the event the Owner contests, seeks to recover, deducts or otherwise renegotiates any sums paid to Subcontractor with respect to said project, Subcontractor shall be bound thereby and shall promptly reimburse to Contractor the full amount of any overpayment so determined, and Subcontractor shall defend, indemnify and save Contractor harmless in connection therewith.

Dated this ____ day of _____, 20 ____.

By: _____

Title: _____

STATE OF _____)

COUNTY OF _____)

On this ____ day of _____, 20__ before me the undersigned, a Notary Public, personally appeared _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed in the capacity stated, and as the free act and deed of said company and with the authority of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in my office in the day and year last above written.

My Commission Expires:

Notary Public

