

MASTER SUBCONTRACT AGREEMENT

**VAUGHN INDUSTRIES
SUBCONTRACT AGREEMENT**

PROJECT NAME: Job Name **JOB #:** VI Job # < IF YOU WANT PAID, THIS NUMBER MUST APPEAR ON EVERY INVOICE.>

PROJECT MGR: Project Manager **SENT BY:** Your Name Here

SUBCONTRACTOR: Name of Sub

INSTRUCTIONS:

Attached you will find our subcontract agreement for the above-named project. In order to successfully enter into a subcontract agreement with Vaughn Industries, LLC, it is vital that you complete, sign and promptly return the forms.

UPON COMPLETION, RETURN THE ENTIRE AGREEMENT AND SUPPLEMENTAL DOCUMENTS AS REQUIRED TO OUR OFFICE WITHIN 48 HOURS OF THE SUBCONTRACT AGREEMENT DATE.

Upon completion, return complete packet to:

Vaughn Industries, LLC
1201 East Findlay Street
Carey, Ohio 43316
ATTN: Kayla Breedlove
(FAX: 419-396-6224 or EMAIL: kbreedlove@vaughnindustries.com)
EOE State License #20114

MASTER SUBCONTRACT AGREEMENT

Vaughn Industries, LLC
1201 E. Findlay St.
Carey, OH 43316

This Master Subcontract Agreement ("Agreement"), is made by and between Vaughn Industries, LLC ("Contractor") and Name, Address _____ ("Subcontractor"), on ____ Date _____.

WHEREAS, Contractor desires to engage the services of Subcontractor to provide labor, material, equipment and services necessary to perform work in connection with construction projects, from time to time, in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, Subcontractor deems itself qualified and capable of supplying the Contractor with labor, material, equipment and services and is willing to provide such work in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

1. **ATTACHMENTS.** This Agreement consists of the terms and conditions herein and the following addenda, which are incorporated herein by reference and made a part hereof:

ATTACHMENT 1 – Project Specific Subcontract (hereinafter "Subcontract")
ATTACHMENT 2 – Insurance Requirements
ATTACHMENT 3 – Lien Waivers
ATTACHMENT 4 – Schedule of Values
ATTACHMENT 5 – W-9
ATTACHMENT 6 – Vaughn Industries Drug Free Workplace acknowledgement
ATTACHMENT 7 – Sample I-29 Form

2. **GOVERNING PROVISIONS**

- 2.1 This Agreement sets forth the general terms and conditions which will apply to all labor, material, equipment and services furnished and performed by Subcontractor as set forth on Attachment 1 hereto. Any terms or conditions contained in Subcontractor's proposal, invoice or other instruments provided by Subcontractor will be void, unless specifically incorporated in this Agreement.
- 2.2 If the nature of certain project-based work requires specific elements of this Agreement to be modified, deleted, or otherwise changed, then the changes shall be mutually agreed upon and incorporated by written amendment or addendum to the Subcontract, which shall in no way constitute a modification in the terms of any previous or subsequent work under other Subcontract. In the event any Subcontract provision is inconsistent and conflicts with a provision of this Agreement, the Contractor's Contract or any Contract Documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern. This Agreement may be updated as Contractor requires, at which time the Contractor will tender a new replacement Master Subcontract Agreement.
- 2.3 The execution and delivery of this Agreement does not constitute a guaranty or commitment by Contractor that will offer any Subcontract to Subcontractor, neither does it constitute a guaranty or commitment by Subcontractor that Subcontractor will accept any Subcontract offered. This Agreement is not exclusive and Contractor shall have the right to hire other subcontractors to provide services similar to those provided by Subcontractor.

3. **CONTRACT DOCUMENTS.** The contract documents for each Subcontract offered and accepted hereunder shall include: i) the applicable Subcontract and all attachments thereto, including change orders, ii) this Agreement, iii) all documents enumerated in the agreement between the Contractor and its customer, whether such customer be the Owner, Owner's representative, General Contractor, Mechanical Contractor or otherwise, for the project ("Contractor's Contract"), including, but not limited to, higher tier project contracts, the plans, specifications, drawings, general conditions, special or supplemental conditions identified therein, and all addenda or modifications issued prior to or after the execution of the Subcontract ("Contract Documents"). The Contract Documents form part of the Subcontract, are fully incorporated by reference, and are as fully a part of the Subcontract as if attached. The Contract Documents are available for Subcontractor's review upon Subcontractor's request, and Subcontractor agrees that prior to acceptance of any Subcontract Subcontractor

will carefully read and review the Contract Documents. Subcontractor shall promptly notify Contractor of any inconsistency, error or omission in the Contract Documents affecting the Subcontractor's Work.

4. **SCOPE OF WORK AND PRICE.** The work to be performed by the Subcontractor shall be as set forth in each Subcontract issued by the Contractor and accepted by the Subcontractor whereby Subcontractor agrees to provide and pay for all labor, materials, equipment, services and other items necessary and reasonably inferable from the Contract Documents to complete the construction and services work for the Subcontract project ("Work"). The price for Subcontractor's Work shall be as set forth in the applicable Subcontract, subject to adjustments as provided for herein and the Contract Documents. The Subcontract price includes, without limitation, and Subcontractor shall pay for all labor; materials, tools, equipment, and supplies; federal, state and local taxes; transportation; storage facilities; supervision; fringe benefits costs; insurance premiums; royalties, permit and license fees; offices; telephones; shop drawings and all things necessary to complete the performance of the Work covered by the Subcontract, unless specifically excluded in the Subcontract. Execution of the Subcontract by the Subcontractor is a representation that the Subcontractor has investigated the site, is familiar with the conditions under which the Work is to be performed, has verified all information furnished by Contractor, and enters into the Subcontract based on its own examination of the Contract Documents and the conditions of the project, not on any representations of Contractor.
5. **COMMENCEMENT AND COMPLETION.** TIME IS OF THE ESSENCE and Subcontractor agrees to perform its work diligently and expeditiously so that the entire project may be completed in accordance with the Contract Documents and the project schedule. Subcontractor will begin the Work upon the Commencement Date set forth in the Subcontract and finish the Work by the Completion Date set forth in the Subcontract. Subcontractor confirms by execution of the Subcontract that the time for completion is a reasonable period for performing the Work.
6. **PAYMENT**
 - 6.1 Payment. The Subcontract sum, subject to adjustment as provided for herein, will be paid by Contractor to Subcontractor in monthly installments as the Work progresses, or as otherwise designated in the Subcontract if lump sum or milestone payments apply. In the event the Work is to be performed on a time and material or unit price basis, the price set forth in the Subcontract shall be deemed an estimated total price for the Work and Subcontractor shall furnish documentation supporting its costs with each invoice. At Contractor's direction, Subcontractor's applications for payment shall be accompanied by a sworn affidavit listing subcontractors and suppliers with addresses and amount due or to become due each under the Subcontract, lien waivers from Subcontractor and its subcontractors in form attached hereto as **Attachment 3** (or AIA G706 and G706A or statutory form), certified payroll reports, if applicable, and other instruments required under the Contract Documents.
 - 6.2 Schedule of Values. If required, Subcontractor shall, prior to submission of its first payment application, submit a schedule of values in such detail and support by such evidentiary data to substantiate its accuracy as Contractor may reasonably require. The Schedule of Values shall be on form attached hereto as **Attachment 4** (or AIA G703). If Contractor does not approve the Schedule of Values, Subcontractor shall correct and resubmit as necessary.
 - 6.3 Progress Payments. Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to the applications for payment submitted by the Contractor to the Owner, and certificates for payment issued by the Owner, the Contractor shall make progress payments to the Subcontractor as provided below and elsewhere in the Subcontract documents. The Contractor will review the application and, if satisfactory, the application will be incorporated into the Contractor's next regularly scheduled application to its customer. If Contractor does not approve the application, Contractor will notify Subcontractor and when the basis for the disapproval is corrected and resubmitted, Contractor will process the application. Contractor will pay Subcontractor not later than ten (10) days (or within such shorter period required by law or the Contract Documents) after Contractor receives payment from its customer. However, a fully executed Subcontract Agreement along with all required Attachments must be on file and accepted by Contractor prior to release of any Payment.
 - 6.4 Final Payment. Final payment will be paid within thirty (30) days of Contractor's receipt of final payment. Acceptance of final payment by the Subcontractor, a subcontractor or material supplier shall constitute a waiver of all claims by that payee.
 - 6.5 Retention. Contractor reserves the right to withhold and retain from each progress payment a rate of ten percent (10%), or such rate as otherwise stipulated in the Subcontract. If the Contract Documents provide for reduction of retainage upon a specified percentage of completion and if the work is satisfactory, the Subcontractor's retention will also be reduced when its Work has attained the same percentage of completion and Contractor's retention for the Work has been so reduced by Contractor's customer. The

retention shall be paid to Subcontractor after Contractor's receipt of final payment, all close-out requirements have been satisfactorily fulfilled, final acceptance of the Work by Contractor and Owner, and Subcontractor's deliverance of a release discharging contractor and Owner from all claims arising out of or under the Subcontract.

- 6.6 Condition Precedent. To the fullest extent permitted by law, Contractor's receipt of payment from Contractor's customer shall be an express condition precedent to any obligation of Contractor to make any progress payment, final payment or retention payment to Subcontractor. Subcontractor shall have the right, upon request, to receive from Contractor such information as Contractor has obtained relative to Owner's financial ability to pay for Subcontractor's Work, including any subsequent material variation in such information. Provided, however, Contractor does not warrant the accuracy or completeness of the information. If the laws of any State in which the project is located hold the foregoing payment condition unenforceable, the parties agree that payment shall not occur until the passage of a reasonable time from when payment from the Contractor's customer is due. For purposes herein, "reasonable time" shall mean a period of time for Contractor to pursue commercially reasonable strategies for recovery and collection efforts, not to exceed one hundred eighty (180) days from the date the Subcontractor's Work is installed and accepted by Contractor's customer.
- 6.7 Payment Not Acceptance. No payment to Subcontractor made under the Subcontract or use of the Work by Owner shall constitute or imply acceptance by Contractor or Owner of any portion of the Work.
- 6.8 Payment to Subcontractors/Suppliers. Subcontractor agrees and covenants that all monies received shall first be used for the payment of all labor and materials used in the Work. In the event Contractor has a good faith reason to believe that labor, material, or other obligations incurred in the performance of Subcontractor's Work are not being promptly paid, Contractor shall give written notice to Subcontractor and may take any steps deemed necessary to insure that payments are utilized to pay such obligations. If upon receipt of notice, Subcontractor does not: i) furnish evidence to the satisfaction of Contractor that the monies owing have been paid, or ii) post a bond protecting the Contractor and Contractor's surety, if applicable, Owner, and the premises from a claim or lien, then Contractor shall have the right to withhold from any payments due or to become due to Subcontractor a reasonable amount to protect the Contractor from any loss, damage or expense, including attorneys' fees, that may arise out of or relate to any such claim or lien, until such claim or lien has been satisfied by the Subcontractor. Furthermore, Contractor shall have the option, but not the obligation, of issuing a joint check or paying such obligation directly to the claimant and recover the amount from Subcontractor or deduct such payment from any monies due or to become due to Subcontractor, plus a reasonable fee to cover administrative costs, unless Subcontractor demonstrates that such sums are not due and provides Contractor adequate security and protection.
- 6.9 Payments Withheld. To the extent permitted by law, Contractor shall have the right to withhold monies due or to become due to Subcontractor, and Contractor may reject a Subcontractor payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage caused by the Subcontractor and based upon:
- 6.9.1 Repeated failure to execute the Work in accordance with the project schedule; or
 - 6.9.2 Rejected, nonconforming or defective Work not timely corrected; or
 - 6.9.3 Failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Work; or
 - 6.9.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract sum; or
 - 6.9.5 Loss or damage caused by Subcontractor to Contractor, Owner, or others to whom Contractor may become liable; or
 - 6.9.6 Reasonable evidence that the Work will not be completed within the contract time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 - 6.9.7 Delayed, incomplete or inaccurate submission of required instruments under the Contract Documents, including, but not limited to; affidavits that indebtedness for the Work have been paid or otherwise satisfied, partial or final waiver and release of liens, certificate of insurance (or expired), payment and performance bonds or consent of surety as applicable, certified payroll records or other reports, certifications or instruments as applicable, copy of business license, sales tax numbers or proof of valid contractor's license for the state in which the project is located; or
 - 6.9.8 Failure to satisfy required close-out procedures; or
 - 6.9.9 Failure to adequately substantiate the amount due, or so long as a good faith dispute exists, as to the amount due; or
 - 6.9.10 Overstatement of Work performed in any application for payment; or

- 6.9.11 Monies previously paid to Subcontractor, payment of which was not properly chargeable; or
- 6.9.12 Back-charges authorized in accordance with the Contract Documents; or
- 6.9.13 Contractor's customer is withholding payment to Contractor due to actions or omissions of Subcontractor; or
- 6.9.14 Any other event of default not remedied.

Contractor shall give written notice to the Subcontractor of such disapproval or nullification of an application for payment stating the specific reasons for such disapproval or nullification and when the basis for the withholding has been remedied, the Subcontractor shall be promptly paid the amounts previously withheld.

- 6.10 Set off. Except to the extent prohibited by law, it is agreed that Contractor shall have the right to withhold payment from Subcontractor under the Subcontract and assert as an offset to any payments which may be due and owing for damages sustained by Contractor due to default of Subcontractor and any other amount owed Contractor on other projects.
- 6.11 Title and Risk. Title to all materials, equipment and Work covered by applications for payment shall pass upon payment made therefore, free and clear of all liens, claims, security interests or encumbrances. However, this provision shall not be considered as relieving Subcontractor from the sole responsibility and protection for all materials and Work upon which payments have been made, the restoration of any damaged work or the maintaining of insurance thereon; nor shall it be considered as a waiver of the right of Contractor or Owner to require fulfillment of all the provisions of the Subcontract.

7. PROGRESS OF WORK

- 7.1 Progress Schedule. As soon as practicable, Contractor will provide Subcontractor a copy of the estimated progress schedule of Contractor's work at the job site. Contractor reserves the right to revise the progress schedule as Contractor deems necessary as project conditions warrant. If Subcontractor deems any change to the Progress Schedule, not caused by Subcontractor's fault or neglect, requires an adjustment to the Subcontract price or time, Subcontractor shall submit such claim request in accordance with the claims process provided for in Section 10 herein. The progress schedule and all subsequent changes and additional details shall be submitted to the Subcontractor reasonably in advance of the required performance, provided, it shall be Subcontractor's responsibility to monitor the progress schedule and be aware of any subsequent changes and any additional scheduling details and advise Contractor of the status of Subcontractor's progress on a regular basis.
- 7.2 Submittals. Subcontractor shall prepare and deliver all its submittals such as drawings, schedules, samples, product data, material lists, manufacturers' literature, inspection reports or other submissions required by the Contract Documents, or otherwise reasonably requested by Contractor, complete and timely in a manner consistent with the progress schedule. Subcontractor shall be responsible for delays caused by its failure to do so and for any deviation from the plans and specifications. Subcontractor shall resubmit any drawings or submittals returned for correction within three (3) business days. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Contract Documents unless express written approval is obtained from Contractor authorizing such deviation, substitution or change. When professional certification of performance criteria of materials, systems or equipment is required for the Work by the Contract Documents, Contractor shall be entitled to rely upon the accuracy and completeness of such certifications by Subcontractor.
 - 7.2.1 If the Subcontractor's submittals do not contain sufficient information and the Architect/Engineer must perform more than two reviews with respect to any submittal, the Subcontractor shall pay the additional costs and expenses incurred by the Contractor as a result of such additional reviews by the Architect/Engineer. In addition, the Contractor may withhold from sums due or coming due the Subcontractor amounts to cover such additional costs and expenses.
- 7.3 Progress and Emergency. If the subcontractor should neglect, fail or refuse to perform any portion of its Work which affects the even flow progress of the project as required to maintain the current progress schedule, or any Work of an emergency nature, the Contractor has the right to supplement Subcontractor's workforce or to perform, or have others perform, such Work without prejudice to any other remedy Contractor may have and charge the reasonable costs to the Subcontractor.
- 7.4 Consequence of Delays. To the extent Subcontractor is responsible for any delays in the time or sequence of the progress schedule, at Contractor's direction, Subcontractor shall submit for approval a schedule demonstrating the method and means by which the required rate or progress will be regained. Subcontractor shall be liable for all resulting costs and damages arising out of delays caused by or attributable to the Subcontractor, including, without limitation, any liquidated damages as may be

assessed by the Owner against Contractor under the Contract Documents, or otherwise incurred by Contractor. Any such damages shall be deducted from payments due Subcontractor, and if such damages exceed the amount of payments due, Subcontractor shall pay Contractor such excess damage promptly upon demand.

- 7.5 Testing and Inspections. Subcontractor shall secure and schedule all tests, approvals and inspections for the proper execution and completion of the Work required by the Contract Documents, and in a timely manner so as not to delay the progress of the project. Subcontractor is responsible for all costs associated with such tests, approvals and inspections and any failure, correction or unpreparedness thereof.
- 7.6 Suspension of Work. Contractor may order Subcontractor to suspend, delay or interrupt the Work in whole or in part for such period of time as Contractor may determine. Subcontractor's sole remedy for suspension or delay shall be an extension of time for performance of Subcontractor's Work.
- 7.7 Protection of the Work. The Subcontractor shall at all times effectively secure and protect its materials (including material stored off-site), tools, equipment and Work from all risk of loss, theft, casualty or damage until final acceptance of the Work by the Contractor and Owner. Subcontractor shall carry adequate insurance to protect Subcontractor and otherwise protect the Owner's interest in the Work. In the event Subcontractor suffers any loss, theft or damage, Subcontractor will promptly repair and/or replace same at its sole cost and expense. Any damage to the Subcontractor's Work caused by Contractor, or one of Contractor's other subcontractors, shall be promptly remedied at the expense of the responsible party. Contractor shall use commercially reasonable efforts to assist the Subcontractor in recovery of losses or damages caused by such other subcontractors, but in no event shall Contractor be liable for such loss or damage nor shall Contractor be responsible to extend any of its own funds in assisting Subcontractor as provided for herein. This provision shall not preclude the Subcontractor from seeking recovery from any other trade.
- 7.8 Clean-up. Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or debris caused by its operations on a daily basis and clean, to the reasonable satisfaction of Contractor, all dirt, grease, marks, etc. on walls, ceilings, floors, fixtures, etc. deposited or placed thereon as a result of the performance of the Work. If Subcontractor refuses or fails to perform clean up, as and when directed by Contractor, after twenty-four (24) hours written notice for opportunity to correct, Contractor, through its own forces or others, may proceed with clean up and Subcontractor will pay the actual cost of labor plus a reasonable percentage of such cost to cover supervision, insurance, overhead and other costs, which shall either be back-charged against Subcontractor or paid on demand as determined by Contractor.

8. CORRECTION OF WORK

- 8.1 Subcontractor agrees that Contractor has the authority to reject any portion of the Work that does not conform to the requirements of the Contract Documents and to require additional inspection or testing, in accordance with Section 7.5 herein. Subcontractor shall promptly correct, at Subcontractor's expense, Work rejected by Contractor as failing to conform to the requirements of the Contract Documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed.
- 8.2 If Subcontractor defaults or fails or neglects to carry out the Work in accordance with the Contract Documents and to promptly correct any deficiencies, Contractor, shall issue a written notice to Subcontractor for the opportunity to correct such default or failure. If after five (5) business days' Subcontractor fails to correct the default, and without prejudice to any other remedy Contractor may have, Contractor may make good such deficiencies and may deduct the reasonable costs of correction, including compensation for any services and expenses made necessary because of any deficiency, from the payment then or thereafter due to Subcontractor, if payments then or thereafter due the Subcontractor are not sufficient to cover such amounts, Subcontractor shall pay the difference to the Contractor. Alternatively, at Contractor's option, Contractor may terminate the Subcontract for cause of default under the terms of Section 15.2 (Termination for Cause) herein.

9. WARRANTY.

- 9.1 Subcontractor warrants and guarantees its Work as required by the Contract Documents. Without limiting the foregoing, Subcontractor warrants that all materials and equipment furnished by Subcontractor will be of good quality and new unless otherwise permitted by the Contract Documents, that the Work performed will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Subcontractor will, at its expense and at Owner's convenience, promptly

and satisfactorily replace any material and correct any workmanship found to be defective or otherwise not in conformity with these and the Contract Document requirements that appear within one (1) year from substantial completion of the Work or such longer period or from such other commencement date as required by the Contract Documents. If requested by Contractor, Subcontractor shall execute a separate instrument of warranty and guarantee embodying the provisions of this condition. Subcontractor does hereby assign and transfer to Contractor and Owner all warranties or guarantees heretofore or hereafter received by Subcontractor for any Work performed or materials furnished pursuant to the Subcontract.

- 9.2 Without limiting the foregoing, Subcontractor is responsible for all damage resulting from defects in the Work during the warranty period and all costs and expenses necessary to correct, remove, replace and/or repair the Work and any other work or property which may be damaged in correcting, removing, replacing or repairing the Work and Subcontractor shall reimburse Contractor for all damages, costs and expenses, including attorneys' fees, incurred by Contractor resulting therefrom.

10. CHANGES

- 10.1 It is expressly understood and agreed that no charge for any additional or extra work or materials will be allowed the Subcontractor unless the same has been ordered in writing by the Contractor prior to the date on which said additional or extra work is started or materials are ordered, and the basis upon which the extra work is to be done and paid for, if at all, has been agreed upon and is reflected in a written change order. It is further understood and agreed that no extension of time will be allowed the Subcontractor for performing additional or extra work unless that additional number of calendar days to be allowed is specifically stated in a written change order. If the Subcontractor claims that any instructions, by drawings or otherwise, involve additional or extra work or materials or extra cost to him, he shall give the Contractor written notice thereof within twenty-four (24) hours of having received such instructions, or from the time the cause of the claim begins, and shall not proceed with the work until after he has received written authority from the Contractor to proceed. It is mutually agreed that claims made in any other manner are to be considered void.
- 10.2 Substitutions or alterations shall not be made in the work shown or described by the Contract Documents, except upon a written order signed by a properly authorized officer of Contractor.
- 10.3 In the event that the Subcontractor executes any additional or extra work upon the basis of materials and labor, as herein set forth, he agrees to, and shall furnish each day to the representative of the Contractor, payroll sheets, material tickets and documentation for other charges covering all work performed that day, containing the signature of the Contractor's project representative thereon which shall accompany each application for payment presented to the Contractor. Without the proper documents and signatures, the Contractor may declare such application unsubstantiated and no payment on the application shall be made until all charges are documented to the reasonable satisfaction of Contractor.
- 10.4 An extra work order prepared by the Subcontractor and presented to the Contractor for review and signature shall not, if signed, obligate the contractor to pay any additional compensation to the Subcontractor. Rather, the Contractor's execution of a Subcontractor prepared extra work order shall only be an acknowledgement that the work described therein has been performed.
- 10.5 Contractor may order changes in the Work, without invalidating the Subcontract, consisting of additions, deletions or other revisions, with the Subcontract price and time being adjusted accordingly. Contractor shall issue a written Change Order Request detailing the nature of requested change.

11. SUBCONTRACTOR'S ADDITIONAL RESPONSIBILITIES/OBLIGATIONS

- 11.1 Independent Contractor. Nothing contained in the Subcontract shall be construed to imply a joint venture, partnership or principal-agent relationship between the parties; and neither party by virtue of the Subcontract shall have any right, power, or authority to act or create any obligations, express or implied, on behalf of the other party. Subcontractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating and supervising all portions of the Work under the Subcontract and shall be responsible for the acts and omissions of Subcontractor's employees, subcontractors and their agents and employees and for all applicable employer taxes, benefits and insurance.
- 11.2 Subletting. Without Contractor's prior written consent, Subcontractor may not subcontract or assign any of the work to be performed under the Contract Documents or the amounts due to Subcontractor under the Contract Documents. Subcontractor shall furnish a complete list of the names and addresses of all proposed subcontractors it plans to contract with in regard to the Work. Subcontractor shall not contract with any subcontractor or supplier to whom Contractor reasonably objects. Contracts between

Subcontractor and its subcontractors shall require each lower-tier subcontractor, to the extent of the work to be performed by the subcontractor and its general obligations, to be bound by the terms of the Subcontract and the other Contract Documents, and to assume toward Subcontractor all the obligations and responsibilities which Subcontractor assumes toward Contractor and others under the Contract Documents. Subcontracting by Subcontractor shall not abrogate any obligation or liability of Subcontractor or its surety (if any) under the Subcontract. If any subcontractor shall fail to perform to the reasonable satisfaction of Contractor, Contractor shall have the right to rescind its approval and require the performance be by Subcontractor or through another approved subcontractor all without additional cost to Contractor.

- 11.3 Waivers of Liens. Provided Contractor has made all payments for undisputed amounts due to Subcontractor as required under the Subcontract, the Subcontractor shall not at any time allow any mechanics lien to be filed upon the project premises, nor allow any stop notices to be delivered to Contractor, Owner, lender or other third party, nor allow any claim to be filed against any project bond provided by Contractor, in relation to labor performed or material furnished under the Subcontract. If any lien, claim or notice is filed or received, Subcontractor shall notify Contractor and agrees to immediately cause it to be discharged or released at Subcontractor's expense by payment, bonding over or otherwise. Upon failure of the Subcontractor to do so, Contractor is authorized to use whatever means it deems best to cause such lien or claim to be discharged, including issuance of joint checks and the expenses thereof, including any obligation assumed by deposit, bond, indemnity or otherwise, plus reasonable administrative, professionals' and attorneys' fees shall be paid by the Subcontractor upon demand or at Contractor's election may be deducted from amounts due to Subcontractor.

Contractor shall have no obligation to make payment to Subcontractor until such time Contractor fully performs its obligations under this Article. Subcontractor shall comply with all of the requirements of the mechanic's lien laws of the state in which the Project is located, including issuance of Owner's "Notice of Commencement" to all its sub-tier contractors and suppliers as well as require them to provide a "Notice of Furnishing" to the Contractor and Owner.

- 11.4 Communications and Publicity. Unless otherwise provided in the Contract Documents and except for emergencies, Subcontractor shall direct all communications relating to the Work and the project to the Contractor. Subcontractor shall not deal directly with the Owner or others in connection with the Work or anything project related, unless otherwise approved in writing by the Contractor. Subcontractor shall not make news releases, publicize or issue advertising pertaining to the Subcontract or the Work without first obtaining the written approval of Contractor and Owner.
- 11.5 Use of Contractor's Equipment. The Subcontractor, its employees, suppliers, subcontractors or agents shall not use Contractor's tools or equipment without the express written permission of Contractor's designated representative and, if permitted, in accordance with Contractor's terms and conditions for such use. Subcontractor's use shall be at Subcontractor's sole risk and expense and Subcontractor shall thoroughly inspect and test the equipment and make its own determination that such equipment is adequate for the safe and efficient performance of the Work before use. Subcontractor accepts all responsibility and liability for any accident, injury or damage caused directly or indirectly by any of Subcontractor's operations during such use or resulting from Subcontractor's use of the tools, equipment or hoisting equipment, except to the extent such injury or damage results from the sole negligence of the Contractor's employee operating the tool or equipment.
- 11.6 Government Contracts. If the Subcontract is for the performance of work under a public project, or private project requiring similar conditions, Subcontractor agrees to comply with all site security programs, applicable Federal Acquisition Regulation (FAR) clauses and certification requirements, including without limitation, those with regard to labor priority, prevailing wage rates, payroll reporting, debarment, no influence, non-segregation, affirmative action, EEO, Statement and Acknowledgement 1413, payment of subcontractors, drug testing, criminal and/or other background checks on employees assigned to the Work and associated reporting, and any other provisions required by the Contract Documents, which will be complied with and promptly furnished by Subcontractor.

11.6.1 If the subcontract is for performance of work on a State of Ohio public improvement project, Subcontractor must, at a minimum, meet the requirements specified in Section 153.03 of the Ohio Revised Code. The Subcontractor must be listed as "approved" on the BWC's state construction database throughout the duration of the Subcontractor's Work.

11.6.2 Subcontractor is subject to the EEO Clause in Section 202 of Executive Order No. 11246, as amended by Executive Order No. 11375, and the applicable rules and regulations of the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance (41 CFR 60.1.4,

60.250.4, 60.741.4), and other Federal and State laws and regulations pertaining to equality of opportunities and affirmative action policies.

- 11.7 Audit. Subcontractor agrees to cooperate with Contractor and to make available for inspection, audit and copying, during normal business hours and on reasonable advance notice, all records of Subcontractor relating to the Work if: i) Subcontractor is in breach of the Subcontract; or ii) the Contract Documents provide for inspection of Contractor's records by Owner, or iii) Any portion of the Work is performed on a cost-plus basis or based upon unit pricing. This obligation shall survive the completion or termination of the Subcontract, and Subcontractor shall preserve its cost records for at least six (6) years after completion or termination of the Subcontract. Subcontractor shall require audit conditions of its lower-tier subcontractors by insertion of a similar audit clause in its lower-tier subcontracts.

12. COMPLIANCE WITH LAWS, PERMITS AND LICENSING.

- 12.1 Subcontractor Responsibility for Compliance with All Laws. Subcontractor, at its expense, shall give all notices and shall obtain all necessary permits and licenses required for the prosecution of its Work and shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public authority ("Laws") bearing on the performance of the Work, including without limitation, discrimination and equal employment opportunity, prevailing wages, immigration reform, tax, building codes, occupational health and safety, hazardous waste, workers' compensation and environmental laws. Subcontractor shall promptly correct any violations of Laws committed by Subcontractor, its employees, servants and agents; and Subcontractor shall be liable to the Contractor for all damages, fines, penalties, costs and expenses incurred by Contractor or Owner resulting from Subcontractor's failure to comply with such Laws.
- 12.2 Safety Program and Protection of Persons/Property. Subcontractor, at its own expense, shall be responsible for the prevention of accidents and shall take all reasonable precautions for the safety of its employees, others and property on or about the project site. Upon Contractor's request, Subcontractor shall submit a copy of its safety policy to Contractor for approval. Subcontractor shall comply with the most stringent safety measures required by either the Contractor's safety program, the Subcontractor's safety program, any governmental authority's regulations, or any safety requirements of the Contract Documents, including mandatory safety meetings as required. Subcontractor shall stop any part of the Work that Contractor deems unsafe until corrective measures are taken. Without assuming any responsibility to do so, Contractor may, without notice to Subcontractor, correct any safety hazard created or permitted by Subcontractor and bill Subcontractor for the costs of this work. Subcontractor shall report all incidents immediately to the Contractor. The Subcontractor shall submit a written report of the incident to the Contractor, on a form furnished by or acceptable to the Contractor, within 24 hours following the incident.
- 12.3 Drug Free Work Place. The Subcontractor agrees to provide a safe and drug-free working environment to protect the safety, health and property of the Owner, Contractor and employees of other contractors and subcontractors with whom the Subcontractor is working and the general public. The sale, distribution, consumption, use of or being under the influence of unauthorized substances is prohibited on the Project site. Any employee found using, possessing, selling, distributing, concealing or transporting any unauthorized substance shall be removed from the project site and shall be prohibited from performing work at the project site for the duration of the Project.

13. INDEMNIFICATION

- 13.1 **To the fullest extent permitted by law, the Subcontractor agrees to indemnify and hold harmless the Contractor, Owner, and all persons, entities or organizations Contractor is required to indemnify under the Contract Documents, including all their respective parents, subsidiaries, affiliates, shareholders, directors, officers, employees and agents ("Indemnified Party") from and against any and all claims, damages, losses and expenses, including, without limitation, reasonable attorneys' and other professions' fees, awards, fines and judgments ("Claim"), whether or not suit is brought, arising out of or resulting from: i) any breach or default of Subcontractor in performance of its obligations under the Subcontract, or ii) design defects (if design originated from Subcontractor), or iii) performance of the Subcontractor's Work under the Subcontract, provided that any such Claim is attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent, reckless, or intentional act or omission of the Subcontractor, the Subcontractor's subcontractors of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such Claim is caused in part by an Indemnified Party. Nothing in the foregoing shall be construed to require Subcontractor to be liable for loss or damage due to the negligent, reckless or intentional act or omission to the extent attributable to an Indemnified Party or its respective employees or agents.**

This indemnity obligation shall survive the expiration or earlier termination of the Subcontract and shall be enforceable as a separate agreement.

- 13.2 In Claims against an Indemnified Party by an employee of the Subcontractor, the Subcontractor's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the foregoing indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor of the Subcontractor's subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

14. INSURANCE AND BONDS.

- 14.1 Subcontractor and each of its lower-tier subcontractors shall maintain insurance coverage throughout the period of performance of the Subcontract, the warranty period, and for any longer period and with terms and limits as required by the Contract Documents, and in no event with limits less than those set forth in **Attachment 2**. The minimum insurance coverages specified are not intended to limit the responsibility or liability of Subcontractor. Subcontractor shall furnish evidence of coverage in the form of a Certificate of insurance with applicable endorsements prior to commencement of the Work. Failure of Contractor to require evidence of such certificate or other evidence of full compliance with the insurance requirements or failure of Contractor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Subcontractor's obligations to maintain such insurance.
- 14.2 Waiver of Subrogation. If required by the terms of the Contract Documents, the Contractor and Subcontractor waive all rights that each may have against one another, the Owner or others for loss or damage caused by fire or other perils to the extent covered by the Builder's Risk or other property insurance applicable to the project, if any, which the Owner or general may be required to carry pursuant to the Contract Documents, except such rights as it may have under the Contract Documents to the proceeds of such insurance. This waiver applies only to the extent that proceeds are, in fact, realized as a result of a claim against such policy. The Subcontractor shall be responsible for payment of any applicable deductible and Subcontractor shall require similar waivers from its subcontractors of every tier.
- 14.3 Payment and Performance Bonds. If required by the Subcontract, Subcontractor shall provide payment and performance bonds for 100% of the Subcontract price to secure the faithful performance of the Work, compliance with the terms of this Agreement and to insure the Subcontractor's payment obligations related to the Work.

15. TERM AND TERMINATION

- 15.1 Term. The term of this Master Subcontract Agreement shall commence on the Effective Date and shall continue until December 31st of the year this Agreement is executed and shall automatically renew January 1st on an annual basis thereafter until terminated by either party at any time upon written notice to the other, or until abandoned which shall not require notice.
- 15.2 Termination for Cause. Should the Subcontractor at any time refuse or neglect to supply sufficient skilled workmen or material of proper quality or quantity, or refuse to follow plans and specifications, or fail to pay for labor and materials for which it has received payment from the Contractor, or becomes a debtor in voluntary or involuntary bankruptcy proceedings or a receiver is appointed on account of its insolvency, or makes a general assignment for the benefit of creditors, or fail in any respect to prosecute the Work, or otherwise breach or default in the performance of any of the provisions of the Contract Documents, the Contractor may, without prejudice to any other remedy Contractor may have, after five (5) business days written notice to Subcontractor for opportunity to correct such default, terminate the Subcontractor's right to proceed in whole or in part and finish the Work by whatever method the Contractor deems expedient whether by its own forces or others.
- 15.3 Termination for Convenience. The Contractor shall have the right at any time, by written notice to the Subcontractor to terminate the whole or part of the Subcontract.

16. DISPUTE RESOLUTION

- 16.1 Disputes between Contractor and Subcontractor. Any dispute or controversy between the parties shall be submitted by one party to the other in writing, within five (5) business days of the party's actual knowledge of the facts giving rise to the dispute and shall attempt to resolve the dispute through good faith negotiations and settlement.
- 16.2 Mediation. Any claim arising out of or related to this Subcontract shall be referred to mediation as a condition precedent to institution of legal or equitable proceedings by either party. If the parties are

unable to resolve the dispute through good faith negotiations and settlement, then the dispute shall be submitted to mediation within thirty (30) days after notice of the dispute or controversy, pursuant to paragraph 19. The mediation shall be conducted in accordance with the Construction Industry Mediation rules of the American Arbitration Association.

17. **NOTICE.** All notices required under the Subcontract and the other Contract Documents shall be in writing and addressed to the party's location set forth in the Subcontract. Notices may be sent by personal delivery or registered or certified mail with the United States Postal Service properly addressed with postage prepaid, by overnight courier, or by electronic transmission and shall be deemed given upon actual delivery in the case of personal delivery, upon delivery to the postal carrier in the case of use of an overnight courier, and upon transmission with confirmation in the case of electronic transmission. Either party may change its address for notice by giving the other notice of such change in accordance herewith.
18. **ASSIGNMENT**
 - 18.1 Subcontractor shall not, in whole or in part, sub-let or assign responsibility for performance of the Work or assign its interest in this Agreement or the individual Subcontract or attempt to assign any funds accrued or to be accrued under the Subcontract without the prior written consent of the Contractor.
 - 18.2 Subcontractor agrees the Subcontract is contingently assigned by Contractor to Contractor's customer or Owner if the Contractor's Contract is terminated for default or the prime contract is terminated, as applicable, and its customer or Owner elects to exercise its rights under the Contract Documents by notifying the Subcontractor in writing that it accepts such assignment. This contingent assignment is subject to the prior rights of the Contractor's surety, if any. In such event, and to the extent the Contract Documents require the Subcontractor to consent to the assignment, the Subcontractor hereby consents to such assignment, if exercised, and agrees to be bound to the assignee by the terms of the Subcontract, provided that the assignee fulfills the obligations of the Contractor under the Subcontract which accrue after the date of assignment. The Subcontractor shall at the assignee's request, execute instruments necessary to confirm such assignment. Subcontractor hereby agrees to indemnify and hold harmless Contractor from and against any and all loss, cost, expense or damages Contractor or Owner has or may sustain or incur in connection with such Assignment.
19. **ENFORCEMENT.** If either party shall be required to employ an attorney to enforce any of the provisions of the Subcontract or to protect its interest in any matter arising thereunder or to collect damages for the breach of the Subcontract or to prosecute or defend any suit resulting therefrom or to recover on any bond given by the other party on the project, such party and its surety, jointly and severally, agree to pay the prevailing party for all reasonable costs, charges, expenses, professionals' and attorneys' fees expended or incurred in connection therewith.
20. **HEADINGS.** The headings assigned to paragraphs in this Agreement are for convenience only and shall not affect the meaning or interpretation of any of the provisions of this Agreement.
21. **SEVERABILITY.** If any one or more provisions of this Agreement or any application thereof is found partially or completely invalid or unenforceable by an arbitrator or a court of competent jurisdiction, then such provision shall be deemed stricken, in whole or in part, for purpose of the dispute in question and the remainder of this Agreement shall continue in full force and effect. The Parties shall negotiate in good faith to substitute a valid, legal and enforceable provision that reflects the intent of such invalid or unenforceable provision.
22. **WAIVER.** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, or waiver of, or excuse for any other similar or different subsequent breach.
23. **ENTIRETY.** This Agreement and its referenced documents represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral and may not be modified by course of dealing, course of performance or usage of trade, but only modified in a writing signed by an authorized representative of each party. Any reference to Subcontractor's quotation, bid or proposal will not be deemed acceptance to any term, condition, or instruction contained in that document. This Agreement shall extend to and be binding upon the parties and their respective successors and permitted assigns.
24. **SURVIVAL.** The provisions of the Subcontract that impose continuing obligations and by their nature survive final acceptance of the Work or termination of the Subcontract, including without limitation, warranty, indemnity and confidentiality obligations, shall remain in full force and effect after such expiration or termination.

25. **GOVERNING LAW.** This Agreement shall be interpreted and enforced in accordance with the laws of the state of Ohio. Venue shall be in the federal, state or municipal courts serving Wyandot county.

IN WITNESS WHEREOF, the parties, authorized representatives have executed this Agreement as set forth below.

VAUGHN INDUSTRIES, LLC

Subcontractor Name

Signature

Signature

Jennifer Smalley

Print Name

Print Name

CFO

Title

Title

Date

Date