

This AGREEMENT is effective Sample by and between Wohlsein Construction Company ("Contractor"), a Pennsylvania Corporation whose principal office is located at 548 Steel Way, P.O. Box 7066, Lancaster, PA 17604-7066, and Sample ("Subcontractor"), whose contact address is located at Sample

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**Subcontractor Name/Mailing Address:**

Sample	Contact:	Sample
Sample	Phone No:	Sample
Sample	Fax No:	Sample

Subcontract No: Sample  
Subcontract Amt: Sample  
Subcontract Type: Sample

Project No: Sample  
Project: Sample

Owner Name/Address: Sample

Architect Name/Address: Sample

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**ARTICLE I...SCOPE OF THE WORK**

The Subcontractor shall provide all labor, equipment, materials, tools, professional design and engineering services, project management, supervision, quality control, and other services required for the complete design and construction of the Work identified in Schedule A, in accordance with all applicable Laws and with the requirements of the Contract Documents, including, without limitation, all performance requirements stated in the Contract Documents. "Laws" are all laws, statutes, regulations, ordinances, and other legal requirements imposed by any governmental entity having jurisdiction over the Project. Subject only to the express exceptions stated in Schedule A to the Agreement, the Work will include providing all temporary services and utilities, obtaining and paying for all approvals and permits required for the Work, and other than as excluded by the Contract Documents, accepting of all risks associated with the design and construction of the Work, and paying all applicable taxes associated with the Work. This Paragraph is intended solely as a summary of the Subcontractor's duties, and not as a limitation of them. Consult the Contract Documents in their entirety for a complete definition of the Work.

**ARTICLE II...CONTRACT DOCUMENTS**

2.1 This Agreement is the parties' full and final agreement on the subject matter addressed in the Contract Documents, and supersedes all prior or contemporaneous agreements, understandings, or negotiations. This Agreement between the Contractor and the Subcontractor consists solely of the following: (1) this Subcontract, all Schedules, and any other attachments and exhibits described herein and attached hereto; (2) change orders issued by the Contractor to the Subcontractor and all exercised alternates; and (3) all of the contract documents for the Project by which the Contractor is bound to the Owner ("Owner/Contractor Contract"), including, without limitation, the written agreement between the Contractor and the Owner, any general, special or supplementary conditions of that contract, and all specifications, drawings, addenda, modifications, and exercised alternates.

2.2 In entering into this Agreement, the Subcontractor assumes toward the Contractor all of the obligations that the Contractor has assumed toward the Owner. The Subcontractor agrees to be bound, not only to all of the requirements of quantity and quality of Work, but also to all conditions to or limitations of rights or remedies, all administrative and reporting requirements, and all obligations to pay costs and fees, imposed upon the Contractor by the Owner/Contractor Contract, unless expressly provided to the contrary in this Agreement.

2.3 The Subcontractor acknowledges that it has been informed that the entire Owner/Contractor Contract is available for its inspection at Contractor's offices at all reasonable times, and that the Subcontractor has inspected the Owner/Contractor Contract to the extent it feels necessary to understand all of the requirements applicable to the Work.

## **ARTICLE III...SUBCONTRACT AMOUNT**

The Subcontract Sum to be paid by the Contractor to the Subcontractor is for the satisfactory performance and completion of the Subcontractor's Work, as described in Schedule A and all the duties, obligations and responsibilities of the Subcontractor under this Agreement is identified above, subject to additions and deductions by written Change Order, and includes all applicable taxes.

## **ARTICLE IV...COMPLETION DATE**

The Subcontractor acknowledges that time is of the essence, and that it is required to perform promptly, in accordance with Article IX below. If the Owner/Contractor Contract provides for assessment against the Contractor of liquidated delay damages, or actual delay damages suffered by the Owner, the Subcontractor shall be liable to the Contractor for any portion of such damages that may be fairly attributed to the Subcontractor's delays. The Subcontractor shall also be liable for any actual damages suffered by the Contractor as a result of the delays, including, without limitation, extended site supervision costs.

## **ARTICLE V...PREVAILING WAGES**

The Subcontractor shall comply with applicable local, state, or federal prevailing wage requirements, if any. See the wage rates included in the Contract Documents. The Subcontractor further agrees that it has taken such requirements into account in entering into this Agreement. The need to do so shall not give rise to a change or entitlement to additional compensation.

## **ARTICLE VI...SUBCONTRACTOR'S INSURANCE**

6.1 Insurance Requirements. The Subcontractor shall comply with the insurance requirements as set forth in Schedule B to this Agreement. Work may not begin until the Subcontractor has delivered satisfactory evidence to the Contractor that all required insurance is in place. Any delays in the completion of the Work due to the Subcontractor's failure to obtain or maintain insurance shall be treated as delays due to the Subcontractor's breach of contract. The required evidence of insurance is described in Schedule B.

6.2 Failure to Maintain Insurance. If the Subcontractor fails to obtain the required insurance coverage, or if that coverage is permitted to lapse, or is canceled or ceases to be in effect, for any reason, at any time before the Work is completed (or such later date as is specified by the Owner/Contractor Contract or Schedule B), that event shall constitute a material breach entitling the Contractor to exercise all available remedies, including termination of this Agreement for default.

## **ARTICLE VII...REQUIREMENTS FOR PERFORMANCE OF WORK**

7.1 Owner/Contractor Contract. The Subcontractor represents that, before entering into this Agreement, it carefully examined the Owner/Contractor Contract, identified those portions affecting its Work, and fully ascertained the requirements of the Work and the conditions imposed by the Owner/Contractor Contract on performance of the Work. The Subcontractor shall not be entitled to any adjustment in its Subcontract compensation or to any extension of time to deal with Owner/Contractor Contract requirements or limitations that it failed to note before contracting, or to deal with deficiencies, discrepancies, ambiguities, inconsistencies, or errors in the drawings or specifications in the Owner/Contractor Contract that it discovered before contracting and failed to bring to the Contractor's attention as required. With respect to the Work, the Subcontractor shall assume toward the Contractor all obligations, risks and responsibilities which the Contractor has assumed towards the Owner under the Owner/Contractor Contract including, without limitation, all requirements relating to the quality, quantity and timeliness of the Work.

7.2 Site Investigation. The Subcontractor represents that, before executing this Agreement, the Subcontractor has ascertained, by its own independent investigation, the general and local conditions involved in performing the Work including, without limitation, the location of the Work, accessibility and character of the site, and all other matters which could affect the Work or its cost. The Subcontractor has verified all information furnished by the Contractor or others and is satisfied with its correctness and accuracy.

7.3 Compliance with Laws. In carrying out all of its Work, the Subcontractor shall comply with all applicable laws, regulations, ordinances, rules, codes, statutes, and other requirements of local, state or federal governmental authorities having jurisdiction over the Project ("Laws"), including, without limitation, Laws relating to employment, equal employment opportunity, licensing, and building codes. The Subcontractor represents that none of the employees used to carry out any of the Work are unauthorized aliens as defined in the Immigration Reform and Control Act of 1986.

7.4 Owner's Approvals. The Subcontractor agrees that it will meet all of the requirements imposed by the Owner, Architect, or Owner's representative with respect to approval of subcontractors, materials and performance of this Agreement. Within one month after executing this Agreement, the failure to obtain these approvals shall be a material breach of this Agreement, which shall entitle the Contractor to terminate this Agreement, without the forty-eight hours notice otherwise required by Article XIII. If

this Agreement is terminated for this reason, the Subcontractor agrees that, unless the Owner/Contractor Contract provides for an adjustment of the contract sum, it will not be entitled to receive any compensation or any reimbursement of costs in connection with this Agreement, and shall be liable for the costs of reprourement and completing the Work covered by this Agreement, and any damages the Contractor incurred due to the Subcontractor's default.

7.5 Sub-Subcontractors and Materialmen. The Subcontractor shall provide to the Contractor, by completing Schedule I within thirty (30) calendar days of executing this Agreement, the names, addresses, phone numbers and fax numbers of all material manufacturers, suppliers, and subsubcontractors the Subcontractor intends to use in completing the Work. Unless otherwise indicated by the Contractor, if the value of this Agreement is or becomes \$100,000 or more: 1) No payment will be made to the Subcontractor until the Contractor has received a valid Schedule I, and 2) Any request for a reduction in, or final payment of, retainage must be accompanied by an updated and valid Schedule I. Should any of those proposed be unacceptable to the Contractor, the Subcontractor shall use another supplier, manufacturer or subsubcontractor acceptable to the Contractor, at no additional charge to the Contractor.

7.6 Separate Agreements with Owner. The Subcontractor shall not enter into any agreements with the Owner or Architect with respect to the Project without first obtaining the Contractor's written consent.

7.7 Taxes, Permits, Fees. Except as otherwise provided in the Owner/Contractor Contract, the Subcontractor agrees to pay, comply with, and hold the Owner and the Contractor harmless against the payment of all contributions, taxes, duties, or premiums for which it may be liable under federal, state or local law arising out of the performance of this Agreement including any interest or penalties. The Subcontractor waives any and all claims for additional compensation because of any increase in the aforementioned contributions, taxes, duties or premiums, unless payment for such increases is specifically provided for in the Owner/Contractor Contract. The Subcontractor shall obtain all approvals and obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of the Work.

7.8 Hazardous Materials. The Subcontractor shall not bring, release, spill, or disburse any hazardous material onto the site. If the Subcontractor believes that the specifications or drawings, any other Subcontract requirement, or any direction by the Owner or the Contractor will require use of hazardous materials on the site, the Subcontractor shall immediately notify the Contractor and obtain a clarification before proceeding. For this purpose, hazardous materials are defined as any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, The Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and Laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material.

7.9 Bonds. If required, the Subcontractor shall provide a performance and payment bond. The bonds shall be equal to 100% of the subcontract amount, shall be in a form acceptable to the Contractor, and shall be issued by a surety acceptable to the Contractor. If performance and payment bonds are not required in the bidding process, but are made a part of contract requirements, Contractor will then pay the cost.

7.10 Subcontractor's Indemnity, General.

7.10.1 To the maximum extent permitted by applicable Laws, the Subcontractor shall defend, indemnify and hold harmless the Contractor, the Owner, and their respective directors, officers, and employees against claims, demands, causes of action, liabilities, losses, statutory or other legally-imposed penalties, other costs, and expenses, including without limitation, attorneys' fees and consultants' fees (collectively, "Losses") arising from death, personal injury, or property damage occurring in connection with the Subcontract Work. If the Losses are:

7.10.1.1 alleged to have been the caused by the Subcontractor's Work then, the Subcontractor will defend, indemnify and hold harmless the Contractor, Owner and other Indemnified Parties regardless of any allegation that the Losses are alleged to have been caused in part or solely by the negligent act or omission of the Contractor or Owner or other indemnified parties.

7.10.1.2 alleged by an employee of the Subcontractor, the Subcontractor will defend, indemnify and hold harmless the Contractor, Owner and other Indemnified Parties regardless of any allegation that the Losses are alleged to have been caused in part or solely by the negligent act or omission of the Contractor or Owner or other indemnified parties.

7.10.1.3 determined to have been the caused by the negligent act or omission by the Subcontractor, then the Subcontractor will defend, indemnify and hold harmless the Contractor, Owner and other Indemnified Parties to the extent that the Losses are determined to have been caused by the negligent act or omission of the Subcontractor.

7.10.2 To the maximum extent permitted by applicable Laws, the Subcontractor shall defend, indemnify and hold harmless the Contractor, the Owner, and their respective directors, officers, and employees against Losses caused by any infringement of patent or copyright rights of others by the Subcontractor or its sub-subcontractors at any tier in connection with the Work, except that the duty to indemnify does not apply if (1) the infringement is due the Subcontractor's complying with the Owner's or Contractor's prescriptive design requirements, and (2) the Subcontractor did not know that its compliance with the prescriptive design requirements would result in an infringement. or, if the Subcontractor did know of such a potential infringement, the Subcontractor gave written notice to the Contractor of the potential infringement before proceeding to carry out the prescriptive design requirements.

7.11 Indemnity Extends to Violation of Laws. Without limitation, the Subcontractor's obligations of defense and indemnity pursuant to Paragraph 7.10 expressly extend to citations, penalties, fines, clean-up orders, or other Losses arising from violations of any applicable Law, including, without limitation, violations of environmental laws or regulations or laws or regulations relating to the health, safety or welfare of persons on the site.

7.12 Use of The Contractor's Facilities. The Subcontractor shall not use the Contractor's material, vehicles, equipment, gas, electricity, water, appliances, facilities, or other services ("Contractor's Facilities") without the prior written consent of the Contractor's superintendent. If such written consent is obtained, the Subcontractor shall pay the Contractor's reasonable charges upon demand. The Subcontractor agrees to use any of the Contractor's Facilities "as is" and at the Subcontractor's own sole risk. The Subcontractor agrees to defend, indemnify, and hold harmless the Contractor from and against all Losses arising from or relating to the Subcontractor's use of the Contractor's Facilities.

7.13 Inspection of Work/Correction of Non-Conformities. The Subcontractor shall facilitate the Contractor's or the Owner's inspection of the Work or materials provided under this Agreement. The inspection may be at the project site or at any place where such Work or materials may be in preparation, manufacture, storage, or installation. If any portion of the Work or materials is rejected by the Contractor, the Architect, Owner or Owner's representative as defective or non-conforming, the Subcontractor shall, within twenty-four (24) hours of receiving notice of the rejection, begin to replace or correct the rejected Work or materials. If correction requires damaging or destroying other Work, the Work of other subcontractors, or other property, the Subcontractor shall be responsible for the cost to restore that other Work or property to its original condition. If the Subcontractor does not begin its cure within twenty-four (24) hours of receiving notice, or does not complete the cure within seventy-two (72) hours, or such longer time as the Contractor may allow, the Contractor shall have the right to replace the rejected Work or materials, and to charge the resulting cost to the Subcontractor, or deduct the cost from payments otherwise due or to become due to the Subcontractor. If, in the Contractor's opinion, it is not expedient to correct or replace all or any part of the rejected Work or materials, the Contractor may accept the non-conforming Work and deduct from payments due, or to become due, to the Subcontractor, such amounts as, in the Contractor's reasonable judgment, represent the cost of correction.

7.14 Wrongful Rejection by Owner. If any of the Subcontractor's Work or materials are wrongfully rejected by the Owner or the Architect, the Subcontractor's remedy for that wrongful rejection shall be limited to the Contractor's remedy under the Owner/Contractor Contract.

7.15 Submittals. The Subcontractor shall prepare and submit all shop drawings, samples, and other submittals required by this Agreement to the Contractor either (1) within thirty (30) calendar days after executing this Agreement, or (2) in accordance with the submittal schedule provided by the Contractor, or (3) in accordance with project specifications, whichever is earlier. Submittals shall be subject to review by the Contractor and approval by Owner's Architect or Engineer. Submittals must comply with all Subcontract requirements, and approval of non-conforming submittals shall not relieve the Subcontractor of the obligation to comply with this Agreement. The fact that the Contractor or Architect has approved a submittal that departs from the Subcontract requirements shall not constitute approval of the departure, or authorize such a departure, unless the Contractor and Architect have expressly acknowledged, in writing, that the submittal represents a change in the Subcontract requirements and that the change is approved. The Contractor's or Owner's Architect's review or approval of any calculations or other design documents

prepared by the Subcontractor as part of its Work will not excuse the Subcontractor from its responsibility to design the Work so that it meets the requirements of this Agreement including, without limitation, all applicable codes and other Laws and all performance requirements.

## 7.16 Supervision

7.16.1 The Subcontractor shall provide adequate supervision of the Work at all times. This supervision shall include, but shall not necessarily be limited to, provision of a full-time Supervisor on the project site at all times while Work is in progress there. The Subcontractor shall, promptly after executing this Agreement, designate a Supervisor, who must be approved by the Contractor. Once approved, the Supervisor shall not be changed without the Contractor's advance approval. The Supervisor shall be authorized to act for the Subcontractor in all matters including changes to this Agreement.

7.16.2 The Subcontractor's Supervisor shall report to the Contractor's designated project supervisor before beginning work on the project and periodically thereafter, as required by the Contractor. The Subcontractor shall maintain daily logs in a form and degree of detail acceptable to the Contractor and shall submit them to the Contractor at its site office at the end of each workday.

7.17 Progress Meetings. The Subcontractor's Supervisor shall attend all progress meetings while the Work, or any part of it, is in progress, or as requested by the Contractor, and shall be prepared to address schedules, manpower, deliveries, and relevant safety issues, and other issues affecting the Work. Representatives of subsubcontractors whose Work is critical under the current schedule may also be required to attend these meetings.

7.18 Adjoining Work. If the Subcontractor's Work depends upon or adjoins Work of others or existing conditions in any way, and the Subcontractor regards the other Work or existing conditions to be unacceptable for safe and proper completion of its Work, the Subcontractor shall notify the Contractor, in writing, before proceeding with the affected Work. If the Subcontractor proceeds without giving such notice, the Subcontractor shall be deemed to have accepted the other Work or existing conditions.

7.19 Cleanup. The Subcontractor shall at all times keep the area in which he is working broom clean, free from rubbish, debris, waste and/or surplus materials resulting from its operations and shall leave the premises in such condition as to permit the succeeding Work to be commenced without further cleaning. The Subcontractor's Work is to be clean and in a condition acceptable to the Contractor and the Owner. Should Subcontractor fail to comply, the Contractor may, upon twenty-four (24) hours notice, proceed with cleanup of the Subcontractor's area at the Subcontractor's expense.

## 7.20 Subcontractor's Warranty

7.20.1 The Subcontractor warrants that all materials used in the Work are new and previously unused, unless otherwise expressly allowed by this Agreement. The Subcontractor warrants, for a period of one year from substantial completion of the project, or such longer time as the Owner/Contractor Contract requires, that the Work is in full conformity with this Agreement, and is free from defects in workmanship and free from manufacturing defects or other defects in materials. In addition, with respect to the Subcontractor's Work, the Subcontractor hereby expressly assumes all warranty obligations and responsibilities assumed by the Contractor under the Owner/Contractor Contract.

7.20.2 If, at any time during the warranty period, the Subcontractor receives written notice of a defect or non-conformity in the Work, the Subcontractor shall promptly, and in any event within the time allowed by the Owner/Contractor Contract, repair or replace the defective or non-conforming Work. The Subcontractor shall make such repairs or replacements at its own cost, and shall also pay the cost of any restoring to its original condition any other Work or property that is disassembled or damaged as a result of the Subcontractor's repairs or replacement. In making such repairs or replacements, the Subcontractor shall schedule its Work to accommodate the convenience of the Owner, with respect to both the design and the construction of the Work.

7.21 Conduct of Employees/Subcontractors. The Subcontractor shall employ in the Work only those employees, subcontractors and suppliers who will conduct themselves in an appropriate, cooperative manner, and will work in harmony with those employed by other Subcontractors, the Contractor and the Owner. If, in the Contractor's reasonable opinion, any person or persons employed by the Subcontractor in the Work fails to behave in the required manner, the Contractor may require that he or she be removed from the Project and a suitable replacement substituted, and the Subcontractor shall promptly comply.

7.21.1 Subcontractor and its sub-subcontractors and all suppliers shall not employ anyone in whose employment may be objected to by Contractor or Owner. The Subcontractor shall not employ labor, means, materials or equipment which may cause strikes, work stoppages or any disturbances by labor employed by Subcontractor, other contractors or Subcontractors, or in connection with the Subcontractor's Work or the location thereof. If the Subcontractor fails to carry out or comply with any of the foregoing provisions, Contractor shall have the right, in addition to any other rights and remedies provided by this Agreement or by law, after three (3) working days' written notice, to terminate this Agreement or any part thereof or to terminate the employment of the Subcontractor for all or any portion of the Subcontractor's Work.

7.21.2 Immediately upon the expiration of said written notice and without further notice to Subcontractor, Contractor shall have the right to take possession of the materials, tools and equipment on the Project premises, and cause the entire remaining Work to be finished and the materials therefore to be furnished by another Subcontractor or as it deems fit; and the Subcontractor shall not be entitled to any further payment until all the Work specified in this Agreement shall be finished, at which time, if the unpaid balance of the amount to be paid under this Agreement shall exceed the expense incurred by the Contractor in finishing the Work, which shall include five-percent (5%) overhead, a ten-percent (10%) mark-up and reasonable attorneys' fees, such excess shall be paid to Subcontractor; if such expense shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

## **ARTICLE VIII...SAFETY**

8.1 Safety Requirements. The Subcontractor is being selected by the Contractor as a competent contractor with respect to the Work. Therefore, the Subcontractor is required to perform its Work in a safe manner. The Contractor is relying upon the skill and expertise of the Subcontractor to protect workers on the job site. The Subcontractor shall comply with all applicable local, state, or federal safety and health requirements, including OSHA as applicable. In accordance with state or federal requirements or both, the Subcontractor shall formulate and implement its own safety rules and regulations to promote safe and orderly prosecution of the Work. Such rules shall provide for frequent and regular inspection of the job site, materials and equipment by competent persons designated by the Subcontractor. Competent persons mean those capable of identifying existing and predictable hazards and who have the authority to take prompt corrective measures to eliminate them. The Subcontractor shall also follow any safety rules that the Owner or Owner/Contractor Contract may impose, as well as any safety directions that may be issued by the Contractor. The Subcontractor also agrees to comply with any safety directions or rules reasonably issued by the Owner or the Contractor to prevent injury or assure compliance with applicable law, whether or not the Subcontractor agrees that those directions or rules are actually required in order to comply with applicable law, and to do so without demanding further compensation from the Contractor for such compliance. If the Subcontractor fails to comply with safety directions or rules, reasonably imposed by the Contractor, the Owner, or the Owner/Contractor Contract, then Contractor may take corrective action without further notice and the Subcontractor shall be liable to the Contractor for the resulting costs.

8.2 Contractor's Policies. The Subcontractor is particularly alerted that it must comply with the Contractor's written policies as outlined in Contractor's Safety & Health Manual. Particular attention should be placed on Section 2.2-Safety Rules for Contractors Entering Into Subcontract Agreements and Section 6-Drug, Alcohol Contraband and Interdiction Policy. This document is available for inspection at any office of the Contractor. The Subcontractor is urged to review the policy before beginning Work. This policy may, in accordance with its terms, require certain searches of the Subcontractor's employees and/or drug testing, and the Subcontractor agrees that it will comply with such requirements. The Contractor will promptly identify to the Subcontractor any additional policies with which it is required to comply, and Subcontractor will likewise review those policies before beginning Work and will comply with them.

## **ARTICLE IX...SCHEDULE**

9.1 Compliance with Schedule. Time is of the essence of this Agreement. The Subcontractor shall commence work upon receiving notice to proceed from the Contractor and shall prosecute the Work in a manner that will not delay the completion of the Owner/Contractor Contract. If, within 24-hours of receiving notice, the Subcontractor fails to comply with schedule requirements, then the Contractor may elect to complete all or part of the Subcontractor's Work and charge the related costs to the Subcontractor.

The Subcontractor shall work in accordance with any schedule established by the Contractor, including any updated or modified schedules. The Subcontractor shall assist the Contractor in developing schedules and monthly updates by providing all relevant information concerning or affecting its progress, including the duration and sequence of its activities, and by cooperating in the coordination of its Work with that of other subcontractors.

9.2 Extensions of Time. The Subcontractor shall be entitled to an extension of time only in the circumstances and only to the extent that the Contractor is entitled to an extension of time from the Owner. If the Subcontractor becomes aware of any event or circumstance that it believes will entitle it to an extension of time, it shall deliver a written request for extension of time to the Contractor within five (5) calendar days of the occurrence of the event, or within such shorter time as will allow the Contractor to give notice of the delay event to the Owner in accordance with the Owner/Contractor Contract. Such notice is a condition precedent to the Subcontractor's right to any extension of time.

9.3 Notice of Delay. If the Subcontractor becomes aware of any event or circumstance that is likely to cause delays to its Work, or cause it to fall behind any established schedule for submittals or other tasks, the Subcontractor shall promptly notify the Contractor, in writing, regardless of whether the delay is one for which the Subcontractor is entitled to an extension of time.

## **ARTICLE X...PAYMENT**

10.1 Schedule of Values. Within thirty (30) calendar days of executing this Agreement and before submitting its first application for payment, the Subcontractor shall submit to the Contractor a schedule of values, prepared in a form and degree of detail acceptable to the Contractor. If approved, this schedule of values shall become the basis for determining the amount due on applications for progress payment. If the parties do not agree on a schedule of values for this purpose, the Contractor shall establish the schedule of values.

10.2 Stored Materials. Payment for stored materials will not be allowed without prior written approval by the Contractor. This includes, but is not limited to materials stored on site but not under the control of the Contractor. Upon approval by the Contractor, the Subcontractor must provide the following before payment is issued for stored material:

- 1) Completed Security Agreement and Bill of Sale on the forms furnished by the Contractor.
- 2) Acknowledgment of the filing of the appropriate UCC Form with the responsible State UCC department naming the Contractor as Secured Party as to said materials. Subcontractor will bear any and all filing costs.
- 3) Acknowledgment of possession, if the material is being stored with by a third party, on the form specified by Contractor.
- 4) Certificate of Insurance indicating the location, an itemized description, with dollar value, of the stored material and also naming the Contractor and the Owner as Loss Payee.
- 5) The Subcontractor is responsible for ensuring that the material must be securely stored.
- 6) The material must be segregated from the other material of the Subcontractor and/or any third parties.
- 7) The material must clearly be identified as the property of Contractor ("Wohlsen Construction Company").

10.3 Applications for Progress Payment. The Subcontractor shall submit to the Contractor applications for payment, on the form required by the Owner/Contractor Contract or, if no form is specified, then on AIA Document G702/703 (1992) or such other form as the Contractor directs. The applications for payment shall be submitted on the dates or at the intervals specified by the Contractor. Each Application for Payment shall describe the Work performed during the preceding payment period for which payment is requested, as specified in the form, and include such documentation as the Contractor may reasonably require. Among other things, but without limitation, the Subcontractor may be required to provide releases of liens and invoices to verify costs incurred and claimed and certified payrolls. With each application for payment, the Subcontractor must also submit a waiver of mechanic's liens in the form attached as Schedule G, constituting a conditional waiver of liens with respect to all Work for which payment was made on the preceding applications for payment. Incorrect or incomplete Applications and documentation will be rejected. Unless indicated otherwise by the Contractor, if the value of this Subcontract is or becomes \$100,000 or more, then Second Tier Releases in the form specified in Schedule J, or such other form specified by the Contractor, are required. After the Subcontractor has received payment for the first Application for Payment, Second Tier Releases are required from all subsubcontractors and suppliers listed on Schedule I before payment will be made for each succeeding Application for Payment. The Second Tier Release confirms payment of the Subcontractor's subsubcontractors and suppliers for the period for which the Subcontractor has been paid and must be received before the Subcontractor's payment for the next payment period can be released.

10.4 Progress Payments. All undisputed portions of progress payments shall be made to the Subcontractor within fourteen (14) calendar days after the Contractor has received payment from the Owner with respect to that portion of the Work. The Subcontractor agrees that such payments are subject to the express condition precedent that the Owner and the Contractor have approved the Work as being in accordance with this Agreement (including applicable Owner/Contractor Contract requirements) and that the Subcontractor has provided the Contractor with satisfactory proof it has paid all amounts it owes in connection with this Agreement. Progress payments shall be subject to retainage of ten (10%) percent.

10.5 Withholding of Payment. The Contractor may withhold payment if any of the following occur: (1) the Work is defective and such defects have not been remedied; (2) the Subcontractor has failed to pay subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to the subcontractors or suppliers are due or have been made; (3) any mechanic's lien has been filed against the Owner, the project site or any portion thereof or interest therein, or any improvements on the site, and the Subcontractor, upon notice, has failed to remove the lien, by bonding it off or otherwise; (4) the Subcontractor has failed to provide required scheduling or schedule update information; (5) the Contractor reasonably determines that the Subcontractor's progress has fallen behind any established schedule; (6) the Contractor has reason to believe that the balance of the Work cannot be completed, or that asserted or likely claims arising from the Subcontractor's acts or omissions cannot be resolved for the unpaid balance of the Subcontract compensation; (7) the Subcontractor is otherwise in substantial breach of the Contract. The Contractor will give the Subcontractor written notice of any performance deficiencies promptly upon receiving notice of them.

10.6 Payments to Sub-subcontractors and/or Suppliers. Subcontractor agrees that the Contractor may pay all materialmen, suppliers, laborers, subcontractors and any other persons who have not been paid the monies due them in connection with this Agreement, whether or not a lien has been filed. The Contractor shall give the Subcontractor seven (7) days written notice of its intention to do so and the Subcontractor shall within such period provide the Contractor with a written statement of any and all objections the Subcontractor may have to such direct payment, stating in detail any dispute as to the accuracy of the amount claimed or any defects in the labor performed or materials supplied. Failure to make a written objection in accordance with this section shall be deemed an acquiescence by the Subcontractor in such payment. Payments may be made directly to the subcontractors or suppliers, or by joint check drawn to the order of the Subcontractor and the subcontractor or supplier in question, whichever shall seem more advantageous to the Contractor in its sole discretion. Such payments may be deducted from amounts otherwise due the Subcontractor. This provision, allowing direct payment to subcontractors and other suppliers, is intended for the protection of the Contractor only, and does not confer rights upon anyone not a direct party to this Agreement, as a third-party beneficiary or otherwise. Monies retained by the Contractor as a result of the Subcontractor's failure to make payments to subcontractors or suppliers shall be regarded as trust funds that may be paid directly to the subcontractors or suppliers, and consequently, any such payments made, whether directly or by joint check, shall not constitute bankruptcy preferences. However, no amounts the Contractor pays to the Subcontractor in good faith, and which do not subsequently reach subcontractors or suppliers shall give rise to liability of the Contractor to the subcontractors or suppliers. The Subcontractor agrees that all payments made to the Subcontractor, whether by joint check or otherwise, shall be used by the Subcontractor first to pay amounts due for supplying labor or materials for the Work, and that only money remaining after such payments are made may be used for any other purpose. Monies paid by joint check shall be deemed to have been paid fully to the subcontractor or supplier named as a joint payee, unless the Contractor agrees otherwise in writing. The Contractor may require that a subcontractor or supplier who is to receive payment by joint check acknowledge in writing that it will demand payment to it of the full amount of the check, and will not remit any portion thereof to the Subcontractor.

10.7 Rights of Set-Off/Recoupment, Etc. The Contractor may set off any amount due to the Subcontractor against any obligation or debt the Subcontractor owes to the Contractor, whether arising in connection with this Agreement or from any other agreement between the parties. The Contractor also reserves all rights of recoupment and all lien or other rights against the Subcontractor with respect to money, credits, or other property within its possession or control that may be available to it under applicable law.

10.8 Final Payment. Final payment shall be made within fourteen (14) calendar days after final payment for the Subcontractor's Work is received by the Contractor from the Owner and the Subcontractor satisfies all of the following conditions:

- 1) Satisfactory completion, of the Work, including approval and acceptance of the Subcontractor's Work by the Contractor, the Owner and the Architect.
- 2) Delivery to the Contractor by the Subcontractor of all manuals, as-built drawings, guarantees and warranties for material and equipment furnished by the Subcontractor or any other specific documents required by the Contract Documents.
- 3) Submittal to the Contractor of satisfactory evidence by the Subcontractor that all labor and material accounts incurred by the Subcontractor in connection with his Work have been paid in full.
- 4) Submittal to the Contractor of a completed Affidavit, Release of Lien, and Waiver of Claim by the Subcontractor.
- 5) Consent of Surety for final payment whenever the Subcontractor has provided Performance and Payment Bonds.
- 6) If Second Tier Releases are required in accordance with Article 10.3 then, in addition to the applicable Second Tier Releases, any request for a reduction in retainage or final payment must be accompanied by an updated and valid Schedule I.



10.9 Waiver of Liens/Bond Costs. The Subcontractor agrees to execute and/or obtain from its subcontractor and suppliers, such further releases and/or waivers of lien and lien rights as may be required by the Owner/Contractor Contract or requested by the Contractor for payments made. If any of the Subcontractor's subcontractors or suppliers of any tier files a mechanics lien petition, despite the Contractors having paid the Subcontractor all amounts as required by this Agreement, the Subcontractor shall cause the lien to be discharged, by posting a bond with the appropriate authorities or otherwise, within five (5) calendar days of notice. If such liens are not so discharged, the Contractor may avail itself of any remedies allowed by law or equity, including, without limitation, itself taking appropriate measures to remove the liens, and charging the resulting costs, including attorneys fees, to the Subcontractor, withholding the amount of such costs from future payments to the Subcontractor, and/or terminating this Agreement for default. The Subcontractor shall immediately reimburse the Contractor for any amounts that are paid out under the Contractors payment bond for the Project, if any, due to the Subcontractors failure to make payments due, and/or for any costs, including attorneys fees, that are incurred as a result of such failures by the Subcontractor. If the Contractor incurs, via indemnity obligations or otherwise, any costs or expenses whatsoever as a result of the Subcontractors failure timely to pay amounts it owes to subsubcontractors, suppliers, or others in connection with the Work, the Subcontractor shall immediately reimburse the Contractor for such costs, including attorneys fees.

10.10 Payment Not Acceptance. Unless otherwise provided by the Owner/Contractor Contract, the fact that payment has been made with respect to all or any portion of the Work shall not constitute an acceptance of that Work if it is defective or otherwise not in conformity with this Agreement, and shall not constitute a waiver of any of the Contractor's or the Owner's rights or remedies against the Subcontractor with respect to any defects or other failures to conform to this Agreement, including applicable requirements of the Owner/Contractor Contract.

10.11 Penalties/Interest. If the Contractor fails to pay the Subcontractor within the time allowed by Article X, the Subcontractor shall be entitled to receive interest on amounts due, accruing from the day after the required date for payment until the date on which payment is made. The applicable rate of interest shall be the legal rate in effect when the interest penalty accrues.

#### **ARTICLE XI..CHANGE IN THE WORK**

11.1 Changes Authorized. The Contractor may, at any time, or by agreement with the Subcontractor, without notice to the Subcontractor's sureties, make changes in the Work. Any order directing a change shall be in writing signed by the Contractor's designated authorized representative, per Schedule D attached. Extra Work performed without the Contractor's written authorization will be at the Subcontractor's own risk. The Subcontractor shall perform the Work as changed without delay, whether or not there has been any resolution of any claims the Subcontractor may have made for adjustments due to the change directive, unless the Contractor specifies otherwise, in writing. Failure to proceed promptly with changed Work shall constitute a material breach of this Agreement.

11.2 Change Requests. If the Subcontractor believes it is entitled to adjustments in compensation, time, or other provisions of this Agreement as a result of a change, it shall do the following: (1) within five (5) calendar days of receiving notice of the change or proposed change (or within such shorter time as will allow the Contractor to comply with the Owner/Contractor Contract requirements), submit to the Contractor a written notice identifying the claimed change and stating that adjustments in compensation and/or time or other contract provisions (as applicable) are being requested; (2) within ten (10) calendar days of receiving the notice of the change or proposed change (or within such shorter time as will allow the Contractor to comply with the Owner/Contractor Contract requirements), submit to the Contractor a written proposal detailing the amount of any such adjustment, including a detailed breakdown of material quantities, labor hours, labor rates, unit prices (if applicable), and an explanation of any schedule changes requested.

11.3 If the Subcontractor fails to submit a written proposal within the stated time period, and the Contractor is required to submit a price quotation to the Owner which includes this Subcontract change, the Contractor shall use its best estimate of the proposed change as it affects the Subcontractor in the Contractor's quotation to the Owner, and this estimate shall be the maximum equitable adjustment due to the Subcontractor. If the Work for which the Subcontractor claims extra compensation is determined by the Owner or Architect not to entitle the Contractor to a change order or extra compensation, then the Contractor shall not be liable to the Subcontractor for any extra compensation for such Work.

11.4 The Subcontractor is entitled to an extension of time on account of a Change Order only to the extent that the Contractor has received an extension of time from the Owner for changes made to the Subcontractor's Work. The Subcontractor is entitled to an adjustment to the Subcontract Sum only to the extent that the Contractor receives an adjustment to its Contract Sum on account of

the changes made to the Subcontractor's Work (less the Contractor's mark-up for overhead and profit). In no event will the Subcontractor be entitled to an extension of time or an adjustment in the Subcontract Sum greater than the amount of time, or adjustment to the Owner/Contractor Contract Sum, that the Contractor received from the Owner.

**ARTICLE XII...CLAIMS AND DISPUTES**

12.1 Claims/Disputes based on the Actions of the Owner or the Contractor. In the event that a claim or dispute is based on the actions or omission to act by the Contractor or the Owner, the Subcontractor shall provide written notice of the claim or dispute to the Contractor within the lesser of: 1) ten (10) days of the event that gave rise to the claim or dispute or 2) within such time as will allow the Contractor to analyze the information and submit it to the Owner within the time provided for in the Owner/Contractor Contract. The written notice must include any submissions or information required by the Owner/Contractor Contract. The Subcontractor shall also comply with all other requirements of the Owner/Contractor Contract relating to such claims or disputes. The Subcontractor's failure to comply with these provisions with respect to any claim or dispute shall be deemed a waiver of the claim or dispute.

12.1.1 Notice of Intent to Claim Against Owner. If the claim or dispute is based on the acts or omissions of the Owner or, if the Contractor reasonably believes that the Owner is ultimately liable for the Subcontractor's claim and intends to assert a claim against the Owner, based in whole or in part, on the Subcontractor's claim, the Contractor shall so notify the Subcontractor, in writing, within ten (10) working days of receipt of Subcontractor's notice. If no such notice is issued, the Subcontractor shall be free to litigate the claim as provided in Paragraph 12.1.3. If such notice is issued, the Subcontractor agrees that it will not commence any suit on the claim, pending resolution of the Contractor's claim against the Owner.

12.1.2 Prosecution of Claims Against Owner. If the claim or dispute is based on the actions or omissions of the Owner, the Contractor will, at its option, (1) present such Subcontractor claims to the Owner and respond to inquiries by the Owner relating to the Subcontractor's claim, in the Contractor's name, or (2) if the Contractor is permitted to do so by the Owner/Contractor Contract, authorize the Subcontractor to present such claims to the Owner, or responses to inquiries by the Owner, in the Contractor's name. The Contractor shall not be required to submit any claim on behalf of the Subcontractor, or permit the Subcontractor to prosecute any claim in the Contractor's name if, in the Contractor's reasonable judgment, to do so will subject the Contractor to any penalties or other sanctions or cause the Contractor to violate any applicable law relating to the presentation of false or inaccurate claims. If the dispute or claim is prosecuted or defended by the Contractor, the Subcontractor agrees to furnish all certifications, documents, statements, witnesses, and other information required by the Contractor, and to pay or reimburse the Contractor for all costs, including attorneys' fees, incurred.

12.1.3 Subcontractor's Right To Litigate. If the Subcontractor has complied with all notice and documentation provisions with respect to a claim, and the Contractor has not issued a notice pursuant to Paragraph 12.1.1, or has settled the claim with the Owner without the Subcontractor's consent, the Subcontractor may pursue the claim in litigation.

12.1.4 Subcontractor Bound/Settlement. The Subcontractor agrees to be bound by all preliminary and final decisions of any board or court as to any claims or disputes, whether or not the Subcontractor is a party to the proceedings.

12.1.5 Limitation. The Subcontractor shall have no greater right or claim against the Contractor as to such claims or disputes than the Contractor has against the Owner. The Contractor shall not be liable to the Subcontractor in excess of any sum actually received from Owner by, or on behalf of, the Subcontractor with respect to such claims or disputes. The Subcontractor waives all rights to penalties that might otherwise be recoverable due to its having to resort to dispute resolution proceedings to recover sums for Subcontract Work, or from the Contractor's withholding payments to the Subcontractor, in accordance with this Agreement's terms, during the pendency of such proceedings.

12.2 Duty To Continue Work. If the Contractor has promptly paid the Subcontractor all amounts due under this Agreement, other than those subject to a good faith dispute, the Subcontractor shall proceed with the Work, including any disputed portion thereof, without interruption or delay, while any claim or dispute is being considered, arbitrated or litigated. Failure to continue to work diligently during the pendency of a dispute or claim shall constitute a material breach of this Agreement.

12.3 Jurisdiction. All claims arising from or relating to this Agreement that are not disposed of pursuant to this Agreement shall be resolved by bench trial in the Court of Common Pleas of Lancaster County, Pennsylvania. Each party agrees that it waives its right to trial by jury of any such claim.

**ARTICLE XIII...TERMINATION**

13.1 Termination for Default. The Contractor may terminate the Subcontract for default if the Subcontractor materially breaches the Subcontract. In particular, but without limitation, the Contractor may terminate the Subcontract if: (1) the Subcontractor fails to prosecute the Work diligently, in accordance with established schedules, or to make such progress in the Work as the Contractor reasonably believes is necessary to complete the Work within the time required by the Subcontract; (2) the Subcontractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Contractor; (3) the Contractor reasonably determines that the Subcontractor has abandoned the Work, or has failed to pay any subcontractors, laborers, mechanics, materialmen or suppliers when payment is due; (4) the Subcontractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code, has an involuntary petition filed against it, has a receiver appointed, or files for dissolution or otherwise is dissolved; (5) the Subcontractor fails to pay its debts in a timely manner, or (6) the Contractor has reasonably determined that the Subcontractor does not have the financial ability to carry out its obligations under the Subcontract and the Subcontractor fails to give the Contractor prompt and reasonable assurances of its ability to perform.

13.1.1 Procedure. If the Subcontractor materially breaches the Subcontract, the Contractor may terminate the Subcontract for default upon forty-eight (48) hours written notice to the Subcontractor. The termination shall take effect on the date specified in the notice of default termination, without further notice, or, if no date is specified, forty-eight (48) hours after the date of the notice, unless revoked, in writing, by the Contractor. Upon default termination, the Contractor may, at its option, enter on the premises and take possession, for the purpose of completing the Work, of all materials and equipment of the Subcontractor. The Contractor may complete the Work itself or through others, by whatever method the Contractor deems expedient.

13.1.2 Payments/Damages. In case of termination for default, the Subcontractor shall not be entitled to receive any further payment. At such time, if the unpaid balance of the Subcontract Price exceeds the damages incurred by the Contractor as a result of the breach, the excess shall be retained by the Contractor. If the unpaid balance of the Subcontract Price is less than the damages the Contractor incurred as result of the breach, the Subcontractor shall pay the difference to the Contractor. The Contractor's damages shall be calculated using the Contractor's billing rates, when applicable. The Subcontractor shall reimburse the Contractor for all costs, expenses, and attorney's fees incurred by the Contractor in connection with recovering amounts owed by the Subcontractor under this Paragraph from the Subcontractor and/or the Subcontractor's bonding company.

13.1.3 Wrongful Default. If it is determined that the Contractor's termination of the Subcontract for default was wrongful, the Subcontractor's remedies for injuries caused by the termination shall be limited to the following: (1) if the termination was prompted by wrongful actions or determinations of the Owner, the Subcontractor's sole remedy shall be payment of those damages actually paid to the Contractor on account of the wrongful actions or determinations with respect to this Subcontractor; or (2) if the termination was not prompted by the Owner's wrongful actions or determinations, then the Subcontractor's remedy shall be the same as in cases of termination for convenience under Paragraph 13.2.

**13.2 Termination for Convenience.**

13.2.1 If the Owner exercises a right under the Owner/Contractor Contract to terminate all or a portion of the Owner/Contractor Contract for its convenience, and all or a part of the Subcontract Work is thus terminated, the Contractor shall have a right to terminate the Subcontract for its convenience, to the same extent. The Subcontractor's relief for such a termination shall be limited to the relief the Contractor receives from the Owner with respect to the Subcontract Work.

13.2.2 The Contractor may, upon written notice to the Subcontractor, terminate this Subcontract for its own convenience, whether the Subcontractor has defaulted or not. Such a termination for the convenience of the Contractor will be effective immediately upon the Subcontractor's receipt of the notice of termination. The Subcontractor's sole and exclusive remedy for termination pursuant to this Subparagraph shall be payment of the following: (1) mobilization costs, but only to the extent that they represent actually incurred and documented costs paid for the transport or set-up of equipment or materials, or similar tasks necessary to the commencement of the Work; (2) for lump sum price items (other than mobilization), a percentage of the agreed lump sum price based on the reasonable value of the Work properly performed up to the time of the termination; (3) for unit price items, the agreed unit price multiplied by the number of units actually and properly completed as of the time of termination and accepted by the Owner; and (4) reasonable and documented costs the Subcontractor incurs in terminating any subsubcontracts or rental or purchase agreements in effect at the time of the termination, without any mark-up for overhead or profit.

13.2.3 A termination for convenience shall not relieve the Subcontractor of any responsibility it would otherwise have under the Subcontract to correct Work that is defective or otherwise not in conformity with the Subcontract, or to pay

any costs arising from such defective or non-conforming Work. The Contractor does not waive any right or claim to damage which it had under the Subcontract prior to termination, and may pursue or continue to pursue any cause of action arising from actions or omissions of the Subcontractor before termination.

## ARTICLE XIV... MISCELLANEOUS

14.1 Independent Contractor. The Contractor has contracted with the Subcontractor, and the Subcontractor is acting at all times pursuant to this Agreement, as an independent contractor.

14.2 Notices. All notices shall be addressed to the parties at the addresses stated in Schedule E to this Agreement, and shall be considered as delivered when postmarked, if dispatched by registered mail, or when received in all other cases.

14.3 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions.

14.4 Severability and Waiver. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of the Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver of relinquishment of such term, covenant, conditions or right as respects further performance.

14.5 Entire Agreement. This Subcontract recites the entire agreement between the parties hereto concerning the subjects addressed by the Subcontract, and, except as otherwise explicitly agreed in writing, supersedes all prior or contemporaneous negotiations, representations, or agreements, oral or written, between the parties. The Subcontract may not be modified except in a writing executed by the parties.

14.6 Schedules. Any Schedules identified below are incorporated into, and made part of, this Agreement. Additional terms set forth in the attachments shall prevail over conflicting terms set forth in the body of this Agreement.

14.7 Contract Interpretation. All of the documents comprising this Agreement are intended to be read together, so that what is called for by one is called for by all. If the Subcontractor discovers any inconsistency among the various documents, the Subcontractor shall notify the Contractor, in writing. The notice must be prompt and must be given before the affected Work is performed. Unless the Contractor directs to the contrary, inconsistencies shall be resolved as follows: (1) a provision requiring a greater quantity or higher quality of Work shall prevail over inconsistent provisions requiring a lesser quantity or lower quality; (2) in cases involving conflicts over matters other than the quantity or quality of Work, this Agreement shall prevail over provisions in other Contract Documents.

14.8 Prevailing Party Provision. In the event that a party to this Agreement institutes a legal action of any kind against the other party, based on any failure or alleged failure to perform in accordance with this Agreement, the prevailing party shall, in addition to any other relief to which it may be entitled under this Agreement or in final judgment, be entitled to collect from the other party its costs, expenses and reasonable attorney's fees in pursuing the action.

14.9 Assignment. Neither this Agreement, nor the proceeds of this Agreement, may be assigned, in whole or in part, without the Contractor's written consent.

14.10 Schedules, Attachments, and Exhibits

<b>Schedule A</b>	Scope of Work and Subcontract Prices
<b>Exhibit A</b>	Drawings, Specifications and Addenda
<b>Schedule B</b>	Insurance Requirements
<b>Schedule C</b>	Disclosure of Due Dates for Receipt of Payments from the Owner
<b>Schedule D</b>	Designation of Contractor Authorized Representative(s)
<b>Schedule E</b>	Notices
<b>Schedule F</b>	Supplemental Provisions
<b>Schedule G</b>	Form of Conditional Waiver of Claims and Liens
<b>Schedule H</b>	Final Release and Waiver of All Claims and Liens (Unconditional)
<b>Schedule I</b>	Second Tier Subcontractors and Suppliers List Sworn Statement
<b>Schedule J</b>	Release and Affidavits Second Tier Subcontractor or Supplier

**BOTH PARTIES HAVE READ AND UNDERSTAND THIS AGREEMENT. THIS AGREEMENT IS NOT BINDING UPON WOHLSEN CONSTRUCTION COMPANY, UNTIL ACCEPTED AND SIGNED BY WOHLSEN CONSTRUCTION COMPANY.**

**WOHLSEN CONSTRUCTION COMPANY**

Sample

By: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE "A"  
SCOPE OF WORK AND SUBCONTRACT PRICES**

**SCOPE OF DESIGN-BUILD SERVICES**

Provide the following, on a design-build basis, so that the completed Subcontract Work satisfies all applicable laws and codes and all of the performance specifications and prescriptive requirements relating to the following scope of Work that appear in the Owner/Contractor Contract:

Sample

Unless otherwise specified in Schedule A, all design services performed under this Agreement shall be carried out under the responsible charge of a Professional Engineer licensed in the state in which the Project is located and/or, as to architectural services, a fully qualified Architect licensed to practice in the state in which the Project is located, and shall be signed and sealed by the responsible Professional Engineer or Architect. The design professionals who will perform professional design services under this Agreement is/are:

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The identified design professionals may not be changed without the prior written consent of the Contractor.

All Design Documents shall be prepared with a reasonable degree of detail to allow obtaining of all required permits and other governmental approvals, coordination of design and design details with all other design professionals, and to facilitate proper completion of the Work.

Subcontractor will provide actual as-built documents that reflect actual changes required during the construction process.

**CONTRACTOR'S RIGHTS IN DESIGN DOCUMENTS**

Subject only to the Contractor's making payments as required by this Agreement, it has the right to use and to reproduce any and all design documents, calculations, submittals, and other design-related information created or supplied by the Subcontractor for the Work ("Design Documents") for purposes of obtaining necessary approvals relating to the Work, and for all purposes required to allow the Contractor to complete its Project Work, and also for subsequent renovation or remodeling of the Work. The Subcontractor shall deliver copies of all Design Documents to the Contractor, whether complete or incomplete, promptly upon the Contractor's request. If this Agreement is terminated for default or for convenience, the Contractor has the right to use all Design Documents to complete the Work. The Contractor will not have the right to use the Design Documents for any other project. The Subcontractor will not have the right to use the Design Documents as a whole for any other project, but may re-use such portions of the Design Documents as are standard templates or design details not specifically created for this Project.

The Subcontractor shall include a provision substantially identical to this provision in its contracts with its design professionals providing design services required by this Agreement, and shall defend, indemnify, and hold the Contractor harmless from all Losses due to infringement or similar claims by such design professionals against the Contractor, due to the Contractor's exercising its rights under this provision.

**CLARIFICATION(S) / QUALIFICATION(S)**

The following items, including any Alternates referenced on Schedule F, are included in the Subcontractor's Scope of Work:

Furnish and install the following items:

Sample

Sample

SEE ARTICLES 7.5 AND 10.3 REGARDING COMPLIANCE WITH SCHEDULE I AND SCHEDULE J REQUIREMENTS.

**EXCLUSION(S)**

Sample

**UNIT PRICE(S)**

Sample

**SCHEDULE(S)**

Subcontractor will provide a list of activities and durations with the signed subcontract.

**BILLING RATE(S)**

Sample

**ALTERNATE(S)**

The following alternates may be added to or deleted from this Agreement by written Change Order:

Sample

**DOCUMENTS**

Sample

**BREAKDOWN OF COSTS/PHASE NUMBER(S) (allowances must be identified separately)**

Sample



**EXHIBIT "A"  
DRAWINGS, SPECIFICATIONS and ADDENDA**

**Reference:**

<u>Document Type</u>	<u>Number</u>	<u>Rev</u>	<u>Date</u>	<u>Title</u>
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**See Attached Listing**

**SCHEDULE "B"**  
**INSURANCE REQUIREMENTS**  
WOHLSEN CONSTRUCTION COMPANY  
VENDOR INSURANCE REQUIREMENTS

The term "Vendor" shall mean and include all Suppliers, Subcontractors and Sub-Subcontractors of every tier.

Prior to commencement of any Work, and as a condition precedent to payment, Vendor's are required, at their sole expense, to maintain the following insurance on their own behalf, with an insurance company or companies having an A.M. Best Rating of "A-Class" or better and to furnish to Wohlsen Construction Company, Certificates of Insurance evidencing same and reflecting the effective date of such coverage as follows:

1. **Coverages:**

- 1a. Workers' Compensation and Employers-Liability: As required by the State in which the Work is to be performed and elsewhere as may be required and shall include, where applicable, U.S. Longshoremen's and Harbor Worker's Coverage, but no less than:

Bodily Injury by Accident:	\$100,000.00
Bodily Injury by Disease:	\$100,000.00
Bodily Injury by Disease (Per Occurrence Aggregate):	\$500,000.00

This policy must include a Waiver of Subrogation in favor of Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships.

- 1b. Commercial General Liability: (including Premises-Operations, Independent Contractors, Products/Completed Operations, Broad Form Property Damage, Contractual Liability and Explosion, Collapse and Underground Coverage's, and personal injury).

Occurrence Form	
General Aggregate (Per Project)	\$2,000,000.00
Products Completed Operations Aggregate	\$1,000,000.00
Each Occurrence	\$1,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Fire Damage (any one fire)	\$50,000.00
Medical Expense (any one group)	\$5,000.00

This policy must include a Waiver of Subrogation in favor of Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships.

Unless otherwise indicated, Products and Completed Operations Coverage must be maintained for a period of at least two (2) years after Substantial Completion of any Project.

- 1c. Automobile Liability
- |                                   |                |
|-----------------------------------|----------------|
| Bodily Injury and Property Damage | \$1,000,000.00 |
|-----------------------------------|----------------|
- (includes owned and hired/non-owned vehicles)

This policy must include a Waiver of Subrogation in favor of Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships.

- 1d. Commercial Umbrella Liability
- |                                   |                |
|-----------------------------------|----------------|
| Occurrence Limit                  | \$1,000,000.00 |
| Aggregate Unit (where applicable) | \$1,000,000.00 |

This policy is to apply excess of the Commercial General Liability, Commercial Automobile Liability and Employers Liability Coverages

This policy must include a Waiver of Subrogation in favor of Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships.

- 1e. Design-Builder's Professional Liability Insurance:  
Unless otherwise indicated, with minimum limits of \$1 million per claim and in the aggregate, and a deductible of no more than \$150,000. This coverage must include an extended reporting period extending for at least three (3) years after the date of Substantial Completion of the Work as a whole. The Subcontractor must provide written confirmation at least once a year that this coverage remains in effect, during the entire period for which coverage is required. The policy must be endorsed or otherwise confirmed to cover the errors and omissions of all subconsultants, subcontractors, or contract employees of the Subcontractor who carry out professional design or engineering services required by this Agreement, as well as those of the Subcontractor itself. The policy shall bear a retroactive date adequate to cover all professional services rendered for the Work, whether actually performed before or after this Agreement's date.

2. **Blanket Additional Insured**

- 2a. Each Certificate must include the following statement in the Description section:

All work performed for Wohlsen Construction Company, and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships. Additional Insured: Wohlsen Construction Company, and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships, and their officers, directors and employees. All other additional insured's, as required by written contract or agreement, are included with respect to General Liability, Automobile Liability and Excess Liability. If required by written contract or agreement, General Liability is provided on a Primary and Noncontributory basis, including products and completed operations coverage. If required by written contract or agreement, which is executed before a loss, to waive Named Insureds right of recovery from others, we agree to waive rights of recovery in relation to General Liability, Automobile Liability, Excess Liability and, if permitted by the applicable state law, Workers Compensation coverage. This waiver of rights applies only to the above mentioned contracts and shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

- 2b. One of the following endorsements, or their equivalent, must be furnished reflecting the inclusion of the interests of Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships and the respective agents consultants, principals, partners, servants, officers, stockholders, directors and employees and all other additional insured's, as required by written contract or agreement, are included with respect to General Liability, Automobile Liability and Excess Liability as ADDITIONAL INSURED for both on-going and completed operations.
1. Blanket Endorsement providing for both on-going and completed operations, or
  2. Endorsement CG-2010 (1985), or
  3. Endorsement CG 20 37 (07/04) accompanied by CG 2010 (07/04)

3. Coverage is primary for the Vendor and Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships, and (if applicable) any other additional insureds.

4. **Waiver of Subrogation**

- 4a. The Vendor waives all rights of subrogation against Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships, the Owner, and all Additional Insureds for loss or damage covered by any of the insurance maintained by the Vendor.
- 4b. If any of the policies of insurance required under this Vendor require an endorsement to provide for waivers of subrogation, then the named Insureds of such policies will cause them to be so endorsed.

5. The amount and coverage of insurance provided in the aforementioned insurance coverages shall not be construed to be a limitation of the liability on the part of the Vendor.

6. In the event of a failure of the Vendor to furnish and maintain these insurance requirements and to furnish satisfactory evidence thereof, Wohlsen Construction Company shall have the right, but not the obligation, to acquire the same for all parties on behalf of the Vendor who agrees to furnish all necessary information thereof and to pay the cost thereof to Wohlsen Construction Company immediately upon presentation of an invoice.
7. Subcontractor is responsible for any loss not covered by the applicable builder's risk policy, including but not limited to any deductible, coinsurance and/or self insured retention requirements. Contact the Contractor for additional information.
8. In no event is the Vendor to begin Work at the site until this Certificate of Insurance showing coverage in the aforementioned amounts is approved by Wohlsen Construction Company. Any Work performed without having the Certificate of Insurance received and approved by Wohlsen Construction Company is at the Vendor's own risk and expense. Payment will not be made to the Vendor until Wohlsen Construction Company has received all required certificates and endorsements.

**SCHEDULE "C"  
DISCLOSURE OF DUE DATES FOR RECEIPT OF PAYMENTS FROM THE OWNER**

Applications for Monthly Progress Payments shall be submitted to the Contractor on or before the <sup>Sample</sup> day of the month for work performed through the END OF THE MONTH. Subject to changes that may occur hereafter due to actions of the Owner, delays in the Project, or otherwise, the due date for payment from the Owner is Sample

**SCHEDULE "D"  
DESIGNATION OF CONTRACTOR AUTHORIZED REPRESENTATIVE(S)**

The following person or persons are authorized by the Contractor to issue directions to the Subcontractor that additional or extra Work be performed.

Sample

As of the time this Agreement is executed, no other persons are authorized to issue such orders to the Subcontractor, to approve change orders, or to make binding promises of payment by the Contractor for extra or additional Work. Substitute Authorized Representatives, or additional Authorized Representatives, may be hereafter designated by the Contractor, but only in a writing executed by the Contractor and expressly designating the other person(s) as Authorized Representative(s).

**SCHEDULE "E"  
NOTICES**

Notices to Contractor should be delivered to:

**Wohlsen Construction Company**  
**Attn:** Sample  
**548 Steel Way PO Box 7066**  
**Lancaster, PA 17604-7066**

Notices to the Subcontractor should be delivered to:

Sample

**SCHEDULE "F"  
SUPPLEMENTAL PROVISIONS**

Sample

**SCHEDULE "G"  
FORM OF CONDITIONAL WAIVER OF CLAIMS AND LIENS**

Upon receipt of the amount of \$ \_\_\_\_\_, Sample ("Subcontractor") hereby conditionally waives, releases and discharges Wohlsen Construction Company ("Contractor"), its sureties, and other guarantors or obligors on the Bond or other undertaking, and Sample ("Owner"), from any and all rights Subcontractor has to assert mechanics' lien rights against Sample, Sample ("Owner's Property") and from any and all causes of action, suits, debts, accounts, damages, encumbrances, judgments, liens, claims, and demands whatsoever, in law or equity, which Subcontractor and/or its successors and/or assigns ever had, now have, or ever will have against the Contractor or Owner by reason of the Subcontractor's Work performed or materials or equipment supplied for Sample ("Project"), Sample, through \_\_\_\_\_ ("Date") for Application For Payment No. \_\_\_\_\_.

This waiver covers a progress payment for such Work, materials, or equipment through the stated Date, and does not extend to retention or to Work performed or materials or equipment supplied after the stated Date. The waiver is conditioned only upon the Subcontractor's receiving payment from the Contractor in the amount identified above.

Subcontractor certifies that it has paid for all labor, equipment, material, supplies and services which have been paid to Subcontractor under previous payments issued by the Contractor.

Upon receipt of such payment, this waiver shall become effective, without further conditions, as a release pro tanto of Subcontractor's rights to assert a mechanics' lien or to claim under any payment bond. Any person who receives this Waiver should verify that payment has actually been received before relying on the Waiver.

Sample

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

The individual who has before me signed the foregoing Form of Conditional Waiver of Liens on the date shown, being first duly sworn, deposes and says that they are authorized to execute the foregoing on behalf of the Subcontractor/Supplier indicated above and that the statements contained herein are true:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SCHEDULE "H"**

**FINAL RELEASE AND WAIVER OF ALL CLAIMS AND LIENS**

WHEREAS, Sample ("Subcontractor") has performed work or furnished material under a subcontract and/or purchase order agreement (collectively a "Subcontract") with Wohlsen Construction Company ("Contractor") for the construction project known as Sample , Job Number Sample , located at Sample , Sample for Sample (hereinafter the "Owner"). Subcontractor, upon receipt of the amount indicated below, hereby certifies and represents that it has received full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with his work under said Subcontract.

In consideration of the amounts and sums previously received, and upon the receipt of \$\_\_\_\_\_ as identified on Application For Payment No.\_\_\_\_ being the full and Final Payment due, Subcontractor does hereby release and forever discharge the Owner and Contractor, their officers, directors, employees, trustees, affiliates, agents and subsidiaries from any and all claims, delay claims, mechanic's and materialman's liens and other liens and rights of liens upon the premises described above, now or in the future, and upon improvements now or hereafter thereon, and upon the monies or other considerations due or to become due from Owner and/or Contractor.

Subcontractor further represents that it has properly performed all work and furnished all materials of the specified quality per plans and specifications and in good and workmanlike manner, fully and completely; that it has paid for all the labor, materials, equipment and services that it has used or supplied, that it has no other outstanding and unpaid applications, invoices, retentions, holdbacks, expenses employed in the prosecution of work, chargebacks, or unbilled work or materials against Owner and/or Contractor as of the aforementioned last and final payment application; and that any materials which have been supplied or incorporated into the above premises were either taken from its fully-paid or open stock or were fully paid for and supplied on the last and final payment application or invoice.

Subcontractor further agrees to the fullest extent of the law to indemnify and hold harmless the Owner and/or Contractor from and against all costs, damages, claims, causes of action, and judgements, including attorney's fees, arising out of or in connection with the claims or liens against the Owner and/or Contractor which arise out of the performance of the work under the Subcontract asserted by Subcontractor or any of their respective suppliers, materialmen or subcontractors or any tier thereof or any of their representatives, officers, agents or employees, except for claims arising out of the sole negligence or willful misconduct of the party indemnified or held harmless.

The individual signing this release further represents and warrants that he/she is duly authorized and empowered to sign and execute this waiver on his/her own behalf and on behalf of the company or business for which he/she is signing. The foregoing shall not relieve Subcontractor of its obligations under the provisions of said Subcontract, as amended, which by nature survive completion of the Work including without limitation, warranties, guarantees and indemnities.

Sample

\_\_\_\_\_  
AUTHORIZED SIGNER

Title:\_\_\_\_\_

Date:\_\_\_\_\_

The individual who has before me signed the foregoing form of Final Release and Waiver of all Claims and Liens on the date shown, being first duly sworn, deposes and says that they are authorized to execute the foregoing on behalf of Subcontractor and that the statements contained herein are true:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Notary Public



**SCHEDULE "I"  
SECOND TIER SUBCONTRACTORS AND SUPPLIERS LIST**

**SWORN STATEMENT**

State of \_\_\_\_\_)

Project No: PW0014

) ss.

County of \_\_\_\_\_)

Date: \_\_\_\_\_

The affiant, (1) \_\_\_\_\_, being first duly sworn on oath deposes and says that he is (2) \_\_\_\_\_ of (3) Sample who has contracted with and for the benefit of (4) Wohlsein Construction Company for (5) Sample ("Work") on the following described premises: (6) Sample , Sample .

(1) Executor's Name; (2) Executor's Title; (3) Firm Name; (4) Owner or General Contractor; (5) Brief Work Description; (6) Site Location

**Subcontractor represents that:**

- 1) The following Subsubcontractors/Suppliers will, or are expected to furnish labor and/or materials to the Project in the approximate amounts indicated;
- 2) All lien waivers provided by Subcontractor to Contractor are true, correct and genuine and delivered unconditionally;
- 3) There are no claims, legal or equitable, to defeat the validity of said waivers;
- 4) This statement made by Subcontractor for the purposes of procuring payment from Contractor;
- 5) This is a full, true and complete statement of all such Subsubcontractors/Suppliers, and of the amounts to become due, due and paid.

Item(s)	Name / Address of Subsubcontractors/Suppliers	Phone/Fax	Amount
		Phone: Fax:	\$
		Phone: Fax:	\$
		Phone: Fax:	\$
		Phone: Fax:	\$
		Phone: Fax:	\$

\_\_\_\_\_  
Affiant

The individual who has before me signed the foregoing Sworn Statement on the date shown, being first duly sworn, deposes and says that they are authorized to execute the foregoing on behalf of the Subcontractor indicated above and that the statements contained herein are true:

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Notary Public  
SEAL

**SCHEDULE "J"  
SECOND TIER RELEASE AND AFFIDAVIT  
UNCONDITIONAL WAIVER AND RELEASE**

**Project:** Sample  
**Contractor:** Sample  
**Subcontractor:** Sample  
**Owner:** Sample  
**Owner's Property:** Sample

The undersigned Subsubcontractor/Supplier hereby confirms the Subsubcontractor/Supplier has been paid in full for all materials, equipment, labor, supplies, etc. the Subsubcontractor/Supplier has provided to the Project as of the Release Date indicated below. The Subsubcontractor/Supplier releases the Subcontractor, the Contractor, any surety, the Owner and/or the Owner's property from any claim for payment, whether asserted or not, mechanic's lien, stop notice, bond right the undersigned Subsubcontractor/Supplier has for labor, material, equipment, supplies, etc. supplied to the Project through

\_\_\_\_\_  
("Release Date")

\_\_\_\_\_  
Subsubcontractor Supplier Name  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The individual who has before me signed the foregoing SECOND TIER RELEASE AND AFFIDAVIT on the date shown, being first duly sworn, deposes and says that they are authorized to execute the foregoing on behalf of the Subsubcontractor/Supplier and that the statements contained herein are true:

Subscribed and sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
SEAL