



## SUBCONTRACT AGREEMENT

Date: 8/25/2020  
Subcontract #: «SL»  
KNA Project #: «Project»

### CONTRACTOR:

Kraemer / IHC Joint Venture  
900 West Castleton Road  
Suite 220  
Castle Rock, CO 80109  
Phone: 303.688.7500  
Fax: 303.688.8811

### and SUBCONTRACTOR:

«FirmName»  
«FirmAddress»  
«FirmCity», «FirmState», «FirmZip»  
Phone: «FirmPhone»  
Fax: «FirmFax»

### OWNER: Colorado Department of Transportation

**PROJECT:** North I-25 Express Lanes Design/ Build Segment 2A

Project #: IM 0253-255 (21506)

Federal #: 18-HA4-ZG-00082

Project address: North I-25 Express Lanes, Johnstown to Fort Collins

**WHEREAS**, Contractor has entered into a contract dated the 8<sup>th</sup> day of March, 2018 With Colorado Department of Transportation for the above referenced project (hereinafter referred to as the “General Contract” or “Project”) which provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project.

**WHEREAS**, Subcontractor has agreed, for and in the stead of Contractor, to fulfill and perform the part of the General Contract that is hereinafter described;

### SCHEDULE OF VALUES:

Item	Description	Quantity	UM	Unit Price	Extended Price
«ContractItem»	«Description»	«Quantity»	«UM» »	«UnitPrice»	«ExtendedPrice»

Total: «TotalSubcontract»

### Subcontractor’s Notes:

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby agree as follows:

## 1. CONTRACT DOCUMENTS

1.1 Contract Documents: Subcontractor agrees to be bound by the **Contract Documents**. The Contract Documents consist of:

- a) this Subcontract Agreement ("**Agreement**");
- b) Documents noted in Attachment "A" including but not limited to safety documents, wage rates, equal opportunity policy, FHWA legal notices and others referenced herein;
- c) Documents noted in Attachment "B" Insurance Requirements accompanying this Agreement and any related documents referenced herein;
- d) any written change orders, written amendments, or other written modifications to the Contract Documents issued after the execution of the Contract Documents;

1.2 Prime Contract: The term "**Prime Contract**" as used herein refers to the agreement between Contractor and Owner, including all the RFP documents, Owner project criteria or specifications, scoping documents, the general, supplementary, and special conditions, drawings, specifications, written change orders, written amendments and other written modifications to the Prime Contract, and all other documents enumerated in the Prime Contract attached thereto or by reference made a part thereof, or which otherwise describe the scope of work which Contractor is to perform for Owner.

1.3 Incorporation of Prime Contract: Subcontractor is bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner and others under the Prime Contract insofar as applicable to the Work. If any provision of this Agreement conflicts with a provision of the Prime Contract, the provision imposing the greater duty or obligation on the Subcontractor shall control. If Contractor is acting as a subcontractor to a different Prime Contractor under the Prime Contract, the term **Owner** in these Contract Documents shall be deemed to be replaced with **General Contractor** to reflect Contractor's role as a subcontractor.

1.4 Work: The term "**Work**" as used herein refers to the activities which Subcontractor is obligated to perform under this Agreement as identified in the Schedule of Values above and any written amendments, written change orders, or any other written modifications to the Work identified outside of the Schedule of Values. The amount agreed to be paid to Subcontractor outlined in the Schedule of Values noted above shall be referred to as the "**Subcontract Amount**."

1.5 Instruments of Service: The term "**Instruments of Service**" as used herein refers to any design submissions, drawings, specifications, and all other documents, electronic data, or representations of the tangible and intangible creative work related to the Work Subcontractor provides to Contractor or Owner under this Agreement, whether or not deemed entitled to copyright, patent, trade secret, or other intellectual property protection.

1.6 Independent Contractor: Subcontractor is an independent contractor and is not an employee, partner, or joint-venturer of Contractor.

1.7 Subcontractor's Representations: Subcontractor makes the following representations and warranties to induce Contractor to enter into this Agreement with Subcontractor:

- a) Subcontractor has independently assured itself that all Contract Documents have been made available, Subcontractor has had the opportunity to examine all Contract Documents, and Subcontractor has made all of its employees, subordinate contractors and material suppliers aware of relevant Contract Document terms.
- b) Subcontractor has alerted Contractor to all of its requested special terms that deviate from or otherwise conflict with the terms of the Contract Documents and all of the special terms accepted by Contractor are set forth on Schedule A on the Cover Sheet.
- c) Subcontractor has investigated and satisfied itself as to the Work site conditions and adjacent areas, job requirements, availability of labor and materials, and all other conditions and requirements which could affect performance of the Work. Subcontractor represents and warrants that it has had sufficient time to examine the Work site to determine the character of the subsurface materials and conditions.
- d) Subcontractor further warrants that it has compared the actual site conditions with those reflected in the Contract Documents. Subcontractor has carefully studied all provided reports, including technical data and drawings related to:
  - i. Surface and/or subsurface conditions at or adjacent to the Work site; and
  - ii. Hazardous environmental conditions, if any, at or adjacent to the Work site that have been identified in the Contract Documents.
- e) Subcontractor's acceptance of the Contract Documents is based solely on its knowledge and judgment and not on any representation by Contractor not expressly included herein.
- f) Subcontractor has given Contractor written notice of all errors or ambiguities contained in the Contract Documents and those errors or ambiguities have been addressed in writing by Contractor in a manner acceptable to Subcontractor. Subcontractor shall promptly report to Contractor any errors, inconsistencies, omissions, or violations of applicable law or Contract Documents that Subcontractor discovers.
- g) If trade union labor is used by Subcontractor, Subcontractor represents that it intends to comply with written collective bargaining agreements with the applicable trade unions for the Work.

## **2. DESIGN AND PRE-CONSTRUCTION SERVICES**

2.1 Applicability: This Article applies only if design services are indicated on the Cover Sheet.

2.2 Cooperation: Contractor and Subcontractor acknowledge that the design services performed by Subcontractor will be integrated into the overall design of the Project. The parties shall cooperate to facilitate the coordination and integration of Subcontractor's design services and Instruments of Service with the overall design concept and Contract Documents. Contractor and Subcontractor shall perform their respective obligations and services in a timely manner to facilitate the timely and efficient completion of the Project.

2.3 Communication: Contractor and Subcontractor shall meet periodically to discuss issues affecting the design, administration, and schedule of the design and pre-construction services as well as the Work itself. Contractor and Subcontractor shall mutually agree to and implement necessary procedures to ensure timely completion of, among other things, design submissions, schedule updates, submittals, and payment.

2.4 Advice and Assistance: Subcontractor shall provide advice and assistance to Contractor related to the selection of building systems, materials, equipment, costs, schedule, and construction feasibility of the Work. Subcontractor's advice and assistance shall include providing advice relative to, among other things, labor and material availability, construction costs, procurement strategies, and other issues Contractor identifies related to the Work.

2.5 Design Work: Subcontractor shall provide the architectural, engineering, or other design professional services required to perform the Work. Subcontractor agrees that design services shall be provided by qualified, licensed design professionals.

- a) Subcontractor shall not engage the services of a third-party design professional without first obtaining Contractor's written approval.
- b) Subcontractor shall coordinate the activities of all subordinate design professionals. Subcontractor shall be fully responsible to Contractor for all acts, errors, and omissions of its subordinate design professionals.
- c) Subcontractor's agreement with its subordinate design professional shall state that the subordinate design professional shall be fully bound to Subcontractor in the same manner and to the same extent as Subcontractor is bound to Contractor and Owner under the Prime Contract insofar as applicable to the Work.
- d) Contractor shall have no obligations as to Subcontractor's subordinate design professionals and there shall be no contractual relationship between Contractor or Subcontractor's subordinate design professionals.

2.6 Design Submittals: As agreed by the Parties, or as set forth in the Contract Documents, Subcontractor shall submit to Contractor all interim and final design submittals and revisions, drawings, plans, and specifications for the Work.

- a) Such design submissions shall be in the form and quantity called for in the Contract Documents. The Submissions shall also show the relationship of the Work to the overall Project design.
- b) If requested by Contractor, Subcontractor shall prepare pricing information for the Work that may be necessary for budgetary purposes.
- c) Subcontractor will, at its own expense, revise any interim or final design submittal or other drawing, plan, or specification to correct any errors, mistakes or omissions. These revisions shall be performed timely so as to comply with the Project schedule.
- d) Contractor and Owner's review and/or approval of design submittals shall not be deemed to transfer any liability for design errors or omissions to Contractor or Owner.

2.7 Design Meetings: Subcontractor shall attend and participate in design meetings between Contractor, Owner, and others designing the Project to discuss design submittals and the Contract Documents for the Work. Contractor shall maintain written meeting minutes for these design meetings, documenting all significant design modifications, and shall provide copies of the same to Subcontractor. Subcontractor shall review and provide written notice of any objections to the meeting minutes with five (5) calendar days of receipt. If Contractor receives no objection to the written meeting minutes, the minutes shall be deemed to be accurate.

2.8 Patents and Copyrights: Subcontractor shall pay all license fees and royalties due for items, materials, methods, systems, or processes applicable to the Work which are subject to copyrights or patent rights and which are selected by Subcontractor.

2.9 Instruments of Service Ownership: Upon payment from Contractor for design work actually performed, Subcontractor irrevocably transfers to and assigns to Contractor all ownership and rights associated with its Instruments of Service. Subcontractor agrees and acknowledges that Contractor and Owner will use and incorporate the Instruments of Service into the Project.

### 3. CONSTRUCTION SERVICES

3.1 Performance: Subcontractor will perform the Work in all respects in accordance with the Contract Documents, the plans and specifications relating thereto, and all of Contractor's directions. Subcontractor shall furnish all necessary supervision, labor, materials, supplies, services, tools, equipment, facilities, environmental controls and quality control to do and perform all things necessary to complete the Work. Subcontractor shall coordinate its Work with the other work performed so as not to interfere with or impede the Work progress. Subcontractor shall provide Contractor with all information, inspection opportunities, and tests results Contractor deems necessary to verify the quality and quantity of the materials and equipment Subcontractor furnishes.

3.2 Quality Management Plan (QMP). The Subcontractor shall comply with, monitor and enforce compliance with, and shall ensure that their Sub-subcontractors comply with, monitor and enforce compliance by each of their respective Sub-subcontractors with the Project Quality Management Plan. Contractor will audit compliance by the Subcontractor and its Sub-subcontractors with the Project Quality Management Plan. Subcontractor agrees to adhere to the Project QMP as outlined in the RFP and acknowledges the following:

- The Contractor/Quality Manager will certify that the Work produced conforms to the requirements of the Project QMP and the Contractor/Quality Manager may delay or withhold progress payment per CDOT Standard Specifications, section 109.06 (g) 'Good Cause Exemption'. Adequate justification includes but is not limited to:
  - Failure to make timely submission of required paperwork
  - Failure to remedy outstanding NCRs
- Subcontractor's failure to remedy within a reasonable period of time, as not to impact Contractor's Project Schedule for items such as failure to remedy any outstanding NCR's or failure to comply with the provisions of the Project QMP document and/or CDOT Specifications, may, at the sole option of the Contractor, consider the Subcontractor in default and allow Contractor to exercise its rights under Article 6.1 "Default" of this agreement to remedy the Subcontractor's noncompliance.

3.3 Submittals: In accordance with Contractor's submittal schedule, Subcontractor shall submit for Contractor's review and approval all submittals, including shop drawings, lists of materials, product data and samples, job-hazard analyses, and all other items required by Contractor or Owner to be submitted related to the Work. Contractor or Owner's approval of a submittal that changes the Contract Documents shall not constitute approval of the change, or authorize such a change, unless Contractor and Owner have agreed in writing to approve the change. Contractor or Owner's review or approval of any submittal, calculation, or other design document prepared by Subcontractor as part of its Work does not excuse Subcontractor from its responsibility to perform its work according to its applicable standards of care.

3.4 Communication With Owner: All communication required between Subcontractor and Owner or Owner's Representative in regards to the Work must be transmitted through Contractor unless otherwise specified in this Agreement. If requested by Contractor, Subcontractor shall attend meetings with Contractor, Owner, and/or other design professionals or subcontractors, to discuss design and/or construction issues that may arise.

3.5 Commencement: Subcontractor will commence the Work as is agreed upon herein at any time within three (3) calendar days of written notice by Contractor or as required by Owner and will proceed to completion with all due diligence and speed.

3.6 Schedule: Time is of the essence for both Contractor and Subcontractor. The Parties agree to cooperate to develop and to perform their respective obligations so that the Work can be completed in accordance with the project schedule and/or Contract Documents. Contractor reserves the right to modify any project schedule or sequence as it deems necessary for compliance with the Prime Contract or at Owner's direction. Subcontractor will keep itself apprised of Work status and schedule changes. Contractor may suspend the Work, in whole or in part, for cause, for convenience, or if the Prime Contract is suspended, in whole or in part. Subcontractor shall immediately stop the Work and resume the Work as directed by Contractor.

3.7 Verification of Site Conditions: Subcontractor shall immediately notify Contractor in writing of any site condition that differs materially from any Contract Document or technical data made available to Subcontractor. Subcontractor agrees that no additional compensation will be paid as a result of unforeseen site conditions unless otherwise provided for in the Prime Contract and unless Owner pays Contractor for costs incurred as a result of unforeseen site conditions, in which case Subcontractor shall be paid its proportionate share of those costs.

3.8 Changes/Change Orders: Contractor may at any time by written change order, and without notice to Subcontractor's sureties, make changes in, additions to and/or omissions from the Work, without invalidating this Agreement, and Subcontractor shall promptly proceed with the change, addition, and/or omission in accordance with the change order and the Contract Documents.

- a) Subcontractor shall not make any substitutions in or changes to the Work or procedures or methods for performing the Work unless it receives written approval for such change from Contractor.
- b) Subcontractor is not entitled to any additional compensation for changes unless the Work was done in accordance with a written change order signed by Contractor prior to the commencement of the changed Work. Change order requests submitted without prior written approval from Contractor after a change has been performed will constitute a waiver of such claim by Subcontractor and, therefore, will not be paid and will not constitute unjust enrichment.
- c) For changes directed by Contractor for extra Work, a written change order must be signed by both Parties, clearly stating all phases of the agreement as to the extra Work, including an equitable adjustment in the Subcontract Amount. Contractor shall pay for accepted extra Work through normal progress payments. For changes hereunder that reduce the scope of work or otherwise omit certain portions thereof, the Subcontract Amount shall decrease accordingly.
- d) Contractor shall notify Subcontractor as soon as possible of any changes in the Prime Contract initiated by Owner or Owner's Representative, or which arise from acts or omissions of Owner or Owner's Representative, or which arise from defects in the Contract Documents, and shall give a directive on how to proceed with the Work. Subcontractor shall submit any

claims it may have, including any request for an adjustment in the Subcontract Amount, project schedule, or other provisions in the Contract Documents, as soon as possible but no later than seven (7) days of Subcontractor receiving the directive from Contractor. Subcontractor must give Contractor notice of impending claims in writing in sufficient time and form to allow Contractor to process such claims within the time and in the manner provided for in the Prime Contract. Adjustments to the Contract Documents shall be made only to the extent and in the manner that Contractor is entitled to relief from, or must grant relief to, Owner.

- e) Changes in quantities less than the threshold amount under the Prime Contract shall not require a change order, and Contractor's quantity computations shall be final for purposes of payment.

3.9 Delays: In the case of delay of Subcontractor's performance of its Work:

- a) Subcontractor is only entitled to an adjustment of the time provided under the Contract Documents if Subcontractor notified Contractor in writing of the event giving rise to the delay within forty-eight (48) hours after such event occurred and Contractor obtains an extension of time from Owner under the Prime Contract. In no event shall the extension of time be longer than the time extension granted to Contractor under the Prime Contract.
- b) Subcontractor shall not be entitled to any increase in the Subcontract Amount, or cost reimbursement, or for damages resulting from any delays or suspension of work, regardless of the cause of such delay or suspension, unless the increase, reimbursement or damages is/are agreed to and paid for by Owner.
- c) The unavailability of materials, equipment, or labor will not be reason for delay of the Work.
- d) The pendency of any claim for payment or dispute shall not suspend or stay Subcontractor's obligations under this Agreement and Subcontractor shall continue the Work without interruption.

3.10 Failure to Perform: In the event that Subcontractor fails to commence the Work within three (3) calendar days of notification to proceed, or if Subcontractor does not prosecute the Work vigorously, as reasonably determined by Contractor, Contractor may take over the Work and complete it, either by performing the Work itself or re-letting all or any part of the Work. Should the cost of completing the Work be in excess of the original Subcontract Amount, Subcontractor and its surety, if any, will be held responsible for all reasonable excess costs required to complete the Work, including legal fees and costs.

3.11 Correction of Work:

- a) In the event that any part of the Work or any material is determined by Contractor, Owner or Owner's Representative to be improper, defective or not in conformance with the Contract Documents during the actual performance of the Work, Subcontractor shall, at its expense, remove, repair and/or replace, at Contractor's reasonable option.
- b) Subcontractor shall begin to remove, repair and/or replace improper, defective or non-compliant Work or materials within forty-eight (48) hours after Contractor's written demand to correct.
- c) Subcontractor shall fully remedy, to Contractor's reasonable acceptance, the rejected Work and all other work which may be damaged by the correction of the rejected Work.

- d) If Contractor or Owner decide it would be uneconomic or inexpedient to correct or remedy all or any part of the rejected Work, then Subcontractor agrees that the Contractor may deduct from earnings otherwise due to Subcontractor such amounts that:
  - i. Owner determines represents the difference between the fair value of the Work and materials rejected and the value if the same had been performed in full compliance with the Contract Documents; or
  - ii. Such reductions in price as are provided for in the Prime Contract.
- e) If Owner deducts amounts from Subcontractor's earnings under this Section, Contractor shall also deduct such amounts as necessary for Contractor to recover its lost margin due to Subcontractor's rejected Work. Contractor's deduction for rejected Work, however, shall never exceed fifteen percent (15%) of the Subcontractor's original total price for the Work item affected.
- f) If Subcontractor fails to begin correcting any Work that is improper, defective, or not in conformance with the Contract Documents within forty-eight (48) hours, then Contractor may, without prejudice to any other right or remedy it may have, either terminate this Agreement for cause and take over and complete the Work at the expense of Subcontractor, or without terminating this Agreement, take over the Work or any portion thereof and cure such default. If the balance of the Subcontract Amount is not sufficient to reimburse Contractor for the reasonable cost to cure the default and, in case of termination, complete the Work, plus any other damages caused by Subcontractor's breach, then Subcontractor shall pay the difference to Contractor.

3.12 Subcontractor's Subordinate Contractors: Subcontractor may retain subordinate contractors or material suppliers to assist it in its Work.

- a) Contractor reserves the right to reject subordinate contractors and/or material suppliers.
- b) Subcontractor shall be fully responsible to Contractor for all acts and omissions of its subordinate contractors or material suppliers. Contractor shall have no obligations as to Subcontractor's subordinate contractors or material suppliers and there shall be no contractual relationship between Contractor or Subcontractor's subordinate contractors or suppliers.
- c) Subcontractor shall immediately notify Contractor of any inability of the subordinate contractors and material suppliers to meet the requirements of the project schedule. Subcontractor shall furnish to Contractor all necessary information required for expediting and monitoring such activity, and shall provide Contractor access to its subordinate subcontractors and material suppliers for the purpose of verifying or expediting their performance, and if the Work is or will likely be, delayed by their nonperformance or delay. Subcontractor shall reimburse Contractor for any expenses required to secure or remedy their performance.
- d) Subcontractor shall include a provision in all agreements with subordinate contractors and material suppliers requiring payment within seven (7) calendar days, and shall require that such prompt payment provision be included in all subcontracts at every tier.

3.13 Project Clean-Up: Subcontractor shall clean-up after itself and remove all trash and construction waste on a daily basis. Subcontractor may stockpile construction waste in a segregated area, but only with Contractor's approval and for the period allowed by Contractor. Upon notice from  
*Equal Opportunity/Affirmative Action Employer*



Owner or Contractor, Subcontractor shall restore the Work site to a condition that is reasonably satisfactory to Contractor and Owner. Should Subcontractor fail to do so, Contractor may accomplish the clean-up and deduct the costs of same from moneys payable to Subcontractor.

3.14 Utilities: Subcontractor is solely responsible for the location and identification of all underground utilities for the Work. Subcontractor shall contact Digger's Hotline and any non-participating utilities for the location and marking of underground utilities prior to performing any Work that could be impacted by utilities.

3.15 Protection of Work: Subcontractor is responsible for protection of the Work and materials until final completion and acceptance thereof by Owner and Contractor, unless otherwise agreed to by the Parties in writing. Subcontractor at its sole cost and expense shall repair or replace, at Contractor's option, any damage to the Work, and any other damages caused thereby, that occurs prior to final completion and acceptance by Owner and Contractor. Subcontractor is responsible for adequately and properly protecting the Work by any means necessary so as to avoid injury to persons and property. Subject to any contrary provision in these Contract Documents, Subcontractor maintains its rights to recover damages for property damage from the responsible party or parties.

3.16 Daily Reports: Upon Contractor's request, Subcontractor shall provide Daily Reports to Contractor for each day of work performed on the project, including, but not limited to work activities completed, manpower and equipment used and materials installed. The reports shall be presented to the Contractor within twenty four (24) hours of the work performed.

#### 4. SAFETY REQUIREMENTS

4.1 Compliance with Contractor's Safety Rules: Subcontractor has primary responsibility for the safety of its Work and the safety of its employees, subordinate contractors, material suppliers, and all others coming in contact with its Work. Subcontractor shall observe all safety rules adopted by Contractor on the Work including, but not limited to, the wearing of personal protective equipment (safety glasses, hardhats, etc.), fall protection equipment, and Contractor's site specific safety plan, if one is adopted. All employees of Subcontractor and of subordinate contractors and material suppliers are required to comply with site safety requirements and it is Subcontractor's obligation to diligently ensure compliance.

4.2 Pre-Work Safety Planning: Prior to beginning its Work, Subcontractor shall:

- a) Acknowledge receipt of and compliance with Contractor's Site Specific Safety Plan;
- b) Submit job hazard analyses as necessary or as requested by Contractor;
- c) Attend Contractor's Site Specific Orientation; and
- d) If applicable, attend e-RAILSAFE and/or On Track Safety Training to comply with the governing Railroad's safety requirements when working within a railroad right-of-way.

4.3 Injury and Accident Reporting: Subcontractor shall immediately report all accidents, incidents or injuries to Contractor and submit copies of all accident or injury reports to Contractor within twenty-four (24) hours of the event. Subcontractor is required to provide accident or incident updates at Contractor's request.

4.4 Unsafe Conditions: If Contractor deems part of Subcontractor's Work to be unsafe, Contractor may order Subcontractor, its employee(s), or subordinate contractors, to stop Work until Subcontractor takes corrective actions satisfactory to Contractor. If Subcontractor fails to take such corrective action, Contractor may do so and deduct the cost of such corrective actions from payments due the Subcontractor.

4.5 Safety Meetings: If requested by Contractor, Subcontractor shall attend Contractor's weekly scheduling meetings for the purpose of planning the safe execution of the Work. Subcontractor is required to hold regular safety meetings with its employees and provide documentation of said meetings to the Contractor's Project Office on a regular basis. Failure to submit the required documentation or to hold the required meetings will result in the suspension or partial suspension of progress payments due for Work completed until deficiencies have been remedied.

4.6 Compliance With All Safety Laws: Subcontractor has primary responsibility with respect to its Work to comply with all federal, state, county and municipal laws, ordinances, rules, regulations, and directives in any manner relating to or connected with occupational health and safety. Subcontractor warrants that all equipment, accessories, parts, goods and/or materials used by the Subcontractor on the Work are designed, manufactured or constructed, and are capable of being operated in compliance with all rules, regulations and directives relating to the Occupational Safety and Health Act of 1970, as amended.

4.7 Drug and Alcohol Testing: Subcontractor shall establish, implement and enforce, at its own cost, a drug and alcohol testing program ensuring that the Subcontractor's employees do not possess, distribute, use or have a measured concentration of alcohol, marijuana, illegally obtained drugs, narcotics, controlled substances (as defined in Section 102(6) of the Controlled Substances Act), or drug paraphernalia, (collectively referred to herein as "drugs and/or alcohol"), when reporting to duty, on duty or on Contractor's project site.

- a) The drug and alcohol testing program shall include post-accident testing, random testing, reasonable suspicion testing and return to duty testing and utilize collection, testing, analysis and reporting specifications which meet or exceed the provisions contained in 40 CFR Part 40 and 49 CFR Part 382 or adopt the Contractor's or Owner's drug testing policy, if required.
- b) If applicable, all subcontractors with Maintenance of Way employees (as defined as "Roadway Worker" in Part 214.7) working on regulated railroad projects will be subject to the Federal drug and alcohol program requirements of 49 CFR Part 219.
- c) Subcontractor agrees to require all subordinate contractors to comply with the requirements of this Paragraph and to include in such subcontracts a clause requiring the inclusion of these provisions.
- d) In the event an employee of Contractor has reasonable suspicion to believe that any employee of Subcontractor or Subcontractor's subordinate contractors has violated the provisions of this Section or is involved in certain acts or omissions leading up to an accident or incident, Contractor shall escort Subcontractor's employee to a safe place, and notify Subcontractor of the incident. Upon notification, Subcontractor shall test the employee for drugs and/or alcohol, and if the test result is positive, take appropriate action pursuant to Subcontractor's policy.

4.8 Compliance with United States Department of Transportation Regulations § 382.101(a) and § 382.101(b). Subcontractor certifies that each of its Commercial Driver's License ("CDL") holders are in approved substance abuse programs pursuant to § 382.101 et seq. of the Department of Transportation's ("DOT") Federal Motor Carrier Safety Regulations (49 C.F.R. § 382.101 et seq.).

Upon the execution of this Subcontract, Subcontractor shall provide Contractor with Subcontractor's CDL Drug & Alcohol Testing Policy and a letter from Subcontractor's drug and alcohol testing facilitator stating that Subcontractor is participating in a DOT-approved substance abuse program.

## 5. ENVIRONMENTAL REQUIREMENTS

5.1 Compliance with Environmental Requirements: Subcontractor shall observe all environmental rules adopted by Contractor on the Project including, but not limited to, Contractor's written procedures to address environmental conditions, to address storing and handling hazardous materials, to address existing vegetation and sensitive area protection, and how to report incidents and spills. Subcontractor shall ensure that its Work complies with applicable storm water management plans and all applicable permit obligations.

5.2 Pre-Work Environmental Planning: Prior to beginning its Work, Subcontractor shall:

- a) Review applicable plans and specifications, such as storm water management plans, habitat conservation plans, environmental mitigation requirements, and any other Project-related environmental requirement;
- b) Provide advice and assistance to Contractor related to the environmental impacts of its Work and strategies for addressing or mitigating those impacts;
- c) Conduct a walk-through with Contractor to identify Work area limits, access or hauling restrictions, potential impacts to water quality, and other potential environmental impacts.

5.3 Hazardous Environmental Conditions: Subcontractor shall immediately notify Contractor in writing if it discovers or creates a hazardous environmental condition at the Work site, such as asbestos, petroleum, PCBs or other hazardous materials. Subcontractor shall stop all Work in the area of the Hazardous Environmental Condition, shall secure or otherwise isolate the condition if possible, and shall document the condition as soon as possible after discovery or creation.

5.4 Incident and Inspection Reporting: Subcontractor shall immediately report to Contractor any environmental incidents, such as spills (regardless of quantity), discharge of pollutants, damage to environmental control measures, significant materials tracked-out onto roadways, or significant dust events. Subcontractor shall immediately report to Contractor the presence of any local, state, or federal compliance inspectors at the Work site.

5.5 Environmental Conditions: If Contractor, in its sole discretion, deems any part of Subcontractor's Work to create an unacceptable risk of harm to the environment or to humans, Contractor may order Subcontractor, its employee(s), or subordinate contractors, to stop Work in the affected area until Subcontractor takes corrective actions satisfactory to Contractor. Subcontractor shall submit a corrective action plan with procedures to mitigate environmental incidents at Contractor's written request and within the timeframe set by Contractor. If Subcontractor fails to take such corrective action, Contractor may do so and deduct the cost from payments due the Subcontractor.

5.6 Compliance With All Environmental Laws: Subcontractor shall have primary responsibility with respect to its Work to comply with all federal, state, and local statutes, ordinances, rules, and regulations relating to the environment.

## 6. AGREEMENT TERMINATION

6.1 Default: Subcontractor shall be in "**Default**" of this Agreement if Contractor determines that it:

- a) Fails to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of sufficient quality to perform the Work with the skill, conformity, promptness and diligence required;
- b) Causes stoppage or delay of or interference with the Work;
- c) Becomes financially unstable; or
- d) Fails in the performance or observance of any of the covenants, conditions, or other terms of this Agreement.

6.2 Remedies in Case of Default: Contractor shall, after giving Subcontractor forty-eight (48) hours' written notice of Default, have the right to exercise any one or more of the following remedies:

- a) Require that Subcontractor utilize, at its own expense, overtime labor, including Saturday and Sunday work, and additional shifts as necessary to overcome the consequence of any delay attributable to Subcontractor's Default;
- b) Remedy the Default by whatever means Contractor may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing or otherwise completing the Work, or any part thereof, by itself or through others and deducting the cost thereof, plus an allowance for administrative burden equal to fifteen percent (15%) of such costs, from any payments due or to become due to Subcontractor;
- c) Terminate Subcontractor's performance under this Agreement, without waiving or releasing any rights or remedies against Subcontractor or its sureties. In case of termination, Contractor may by itself or through others, take possession of the Work and all Subcontractor's materials relating to the Work to complete the Work.
- d) Recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential, and all actual attorneys' fees suffered or incurred by Contractor by reason of or as a result of Subcontractor's Default.
- e) After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work by Owner and payment thereof by Owner, Contractor shall promptly pay Subcontractor any remaining balance of the Subcontract Amount. In the event a termination of Subcontractor's performance under this Agreement for Default is subsequently determined by a court or arbitration panel of competent jurisdiction to be unjustified, then such termination shall be deemed to have been a termination for convenience by Contractor and the compensation due Subcontractor, if any shall be determined accordingly.

6.3 Termination for Convenience: Contractor shall have the right to terminate this Agreement for its own convenience for any reason by giving notice of termination effective upon receipt by Subcontractor. Termination for Default if wrongfully made shall be treated as a termination for convenience. Subcontractor shall not be entitled to anticipated profits on unperformed portions of the Work or any other consequential, indirect, or direct damages of any kind. Instead, upon termination for convenience, Subcontractor shall be paid, as determined solely by Contractor, the lesser of:

- a) The actual cost for work and labor in place, plus ten percent (10%) of the Subcontract Amount;  
or
- b) A pro rata percentage of the Subcontract Amount equal to the percentage of completion of the Work.

6.4 Termination by Owner: Should the Owner terminate the Prime Contract or any part of the Prime Contract that includes the Work, the Contractor shall so notify the Subcontractor in writing and upon receipt of said notice, this Agreement also shall be terminated and the Subcontractor shall immediately stop the Subcontractor's Work. In the event of such Owner termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery from Owner on the Subcontractor's behalf under the Contract Documents for Work and material furnished on the date of subcontract termination, and receipt of payment from Owner for Subcontractor's portion of termination costs is a condition precedent to Contractor's obligation to pay Subcontractor. Subcontractor bears the risk of Owner's non-payment for any or all of its Work, including any costs of termination.

## 7. PAYMENT TO SUBCONTRACTOR

7.1 Subcontract Amount: Subcontractor represents and warrants that the Subcontract Amount agreed to on Schedule A includes all labor, supervision, materials, equipment, rent, supplies, taxes, insurances, bond premiums, environmental controls, and all of the items of cost necessary to complete the Work. Subcontractor's unit price for each individual item shall remain the same through completion of the Work. Subcontractor shall submit a schedule of values for all of the Work in accordance with Contractor's submittal schedule. The schedule of values will:

- a) Allocate the entire Subcontract Amount among the various portions of the Work;
- b) Include unit values for all items relating to the Work;
- c) If approved by Contractor, will serve as the basis for progress payments to Subcontractor; and
- d) Be updated as necessary to incorporate Contractor-approved changes.

7.2 Pay If Paid: Contractor's receipt of payment from Owner for Subcontractor's Work is a condition precedent to payment to Subcontractor for that Work. Subcontractor bears the risk of Owner's non-payment for any or all of its Work. This Section shall not apply for Work performed in Wisconsin.

7.3 Progress Payment to Subcontractor. Within seven (7) calendar days of receipt by Contractor of a progress payment from Owner for the Work performed, materials furnished, or materials stockpiled by Subcontractor, Contractor shall pay Subcontractor for all Work Satisfactorily Completed and for all materials furnished or stockpiled.

- a) "Satisfactorily Completed," as used herein, includes completion of all punch list items, submission of all required documentation, submission of executed lien waivers, determination of quantities, and receipt of payment from Owner.
- b) Contractor shall pay Subcontractor within the time frames described above unless Contractor complies with both of the following conditions within seven (7) calendar days of receiving Owner's progress payment:
  - i. Contractor notifies Subcontractor in writing that the Work is not Satisfactorily Completed; and

- ii. Contractor requests approval from Owner to delay payment because Subcontractor has not Satisfactorily Completed the Work. Contractor's request for approval to Owner to delay payment to Subcontractor shall include the written notification to Subcontractor and shall provide sufficient documentation of good cause to assist the Owner or the Owner's Representative in making a timely decision. If the Owner does not grant approval to delay payment, Contractor shall pay Subcontractor within 10 calendar days of Owner's decision.

7.4 Retainage: Contractor will retain 3%, or the higher amount withheld by Owner, of the amount paid to Subcontractor for both progress and final payments until Owner reduces its retainage for Contractor. Retainage withheld by Contractor shall be payable upon the occurrence of all of the following events:

- a) Owner's payment of retainage to Contractor; and
- b) Owner provides final approval and acceptance of Subcontractor's Work; and
- c) Owner provides payment to Contractor for the Subcontractor's Work; and
- d) Subcontractor provides all final paperwork required by Contractor from Subcontractor.

7.5 Final Payment: Contractor shall make final payment to Subcontractor, for the unpaid balance of the Subcontract Amount, including retainage, within seven (7) calendar days after Owner provides final approval and acceptance of Subcontractor's Work and provides final payment to Contractor.

- a) Final payment is subject, at all times, to Subcontractor furnishing all lien waivers, its required Subordinate Contractor or Material Supplier Certification of Payment, and other necessary proof that all labor, materials and other obligations incurred by the Subcontractor in connection with performance of the Work have been paid in full or otherwise resolved.
- b) Final payment shall constitute a waiver of all claims by Subcontractor relating to the Work, but shall in no way relieve the Subcontractor of liability for the warranty obligations assumed in Sections 10.1 and 10.2 for repair of defective work appearing after final payment.
- c) Final payment does not constitute or imply acceptance by Contractor or Owner of any portion of the Subcontractor's Work.

7.6 Extra-work Contractor Allowance: For items of Work not listed in Schedule A for which Subcontractor prices are negotiated with Owner with participation of Contractor, Subcontractor agrees that Contractor may apply a contractor allowance in addition to Subcontractor's costs submitted to Owner for such extra Work as the compensation for such items.

7.7 Direct Negotiation Deduction: For items of Work not listed in Schedule A for which Subcontractor prices are negotiated with Owner without participation by Contractor, Contractor shall retain 15% of the gross payment or allowance for such work or materials to cover Contractor's contingent expense and margin.

7.8 Final/Conclusive: Contractor's measurements, estimates, and computations as to quantities and amount of Work done, will in all cases be accepted by the Parties as final and conclusive. Subcontractor accepts Contractor's computations and waives all claims related to the same upon submission of lien waivers to Contractor for payment. Should Subcontractor dispute Contractor's

computation it must submit a claim for payment under Article 11 of this Agreement. In any event, Contractor's liability to Subcontractor shall not exceed amounts received by Contractor from Owner for Subcontractor's Work. In the event that the final quantities as determined by Contractor are less than those already paid to Subcontractor, Subcontractor must return any overpayment within 5 days of notice from Contractor.

7.9 Lien Waivers: In connection with any payment requested by Subcontractor, Subcontractor will be required to supply any and all documents requested by Owner or Contractor with respect to such payment, including, but not limited to, lien waivers and/or releases, from Subcontractor and any other person/entity performing any portion of the Work on behalf of Subcontractor, and any other documentation necessary to support the amount of payment sought.

7.10 Back Charges and Setoffs: In the event Contractor pays any charges incurred by or damages or losses caused by Subcontractor, Subcontractor must reimburse Contractor in full within ten (10) calendar days after such payments are made. Contractor may deduct any amounts it pays or losses it incurs caused by Subcontractor's performance under the Contract Documents from amounts owed to Subcontractor. Contractor may deduct or offset amounts it pays or losses it incurs from any amounts owed to Subcontractor under these Contract Documents or any other contract or subcontract with Subcontractor or any of Subcontractor's affiliates, divisions, or joint ventures. All back-charges or deductions assessed by Contractor against Subcontractor shall be deemed accepted unless Subcontractor rejects the same in writing within seven (7) days. Contractor shall add a fifteen percent (15%) administrative fee to the total amount of any back-charges or deductions.

7.11 Withholding Payments: In addition to all other rights and remedies available at law or equity, Contractor has the right to withhold or retain from payments due or to become due to Subcontractor amounts sufficient to fully protect Contractor from any and all liability, loss, damage or expenses resulting from:

- a) Any Default by Subcontractor;
- b) Any breach of any term, representation or certification by Subcontractor contained in this Agreement or any other Contract Document;
- c) The assertion by other parties of any claim against Contractor or Contractor's surety bond, arising out of Subcontractor's performance or non-performance of this Agreement;
- d) Any defective Work or incomplete Work;
- e) The Owner's withholding of payments to Contractor due to the Work or other Subcontractor act or omission; and
- f) Any third-party claim, including but not limited to lien or bond claims.

Contractor may withhold or retain payments due to Subcontractor until the situation has been satisfactorily remedied by Subcontractor.

7.12 Owner Insolvency: If Owner becomes insolvent, institutes bankruptcy proceedings or has bankruptcy proceedings instituted against it, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, and Contractor does not receive the full Prime Contract Amount then Subcontractor is only entitled to receive, and Contractor is only responsible for, that percentage of the

Subcontract Price which is equal to the percentage of the Prime Contract Amount that Contractor receives from Owner for Subcontractor's Work actually performed.

7.13 Joint Checks and Direct Payments: With respect to any portion of the Subcontractor's payment, Contractor has the right, but no obligation, to issue joint checks to Subcontractor and any supplier or subcontractor of Subcontractor or to a holder of a perfected security interest, or make payment directly to a supplier or subcontractor of Subcontractor or to a holder of a perfected security interest. Any such amounts shall be deducted from Subcontractor's payments.

7.14 Certified Payroll Reports: Subcontractor shall provide certified payroll reports in accordance with the Prime Contract requirements. Subcontractor's failure to provide certified payroll reports may result in administrative deductions and suspension of the progress payments, which will remain in effect until Subcontractor provides the required reports.

## 8. INSURANCE, BONDING AND SURETY

8.1 Performance and/or Payment Bond: If required in the Prime Contract or by Contractor, Subcontractor shall furnish performance and/or payment bonds in amounts at least equal to 100% of the Subcontract Amount. The bond(s) shall be issued by a surety that is listed in the current US Department of Treasury Circular 570 and premiums for such bonds shall be paid by Subcontractor, unless otherwise agreed upon in writing by the Parties. Contractor shall reimburse Subcontractor for the invoiced amount of the bond if Subcontractor is required to furnish a bond after execution of this Agreement.

8.2 Subcontractor Financial Capacity: Contractor may require Subcontractor to provide it a current and certified financial statement in order to assess Subcontractor's financial capacity at any time and at Contractor's expense.

8.3 Minimum Insurance Requirements: Subcontractor shall comply with the minimum insurance requirements as set forth in the Insurance Requirements document referenced on the Cover Sheet and incorporated therein. Subcontractor shall provide proof of insurance in compliance with these requirements prior to commencement of Work.

8.4 Prime Contract Bond: If the Work is performed for the Wisconsin Department of Transportation, Contractor shall retain 1% of the total compensation due to Subcontractor under the Contract Documents as Subcontractor's proportionate share of payment of Contractor's bond costs required under the Prime Contract.

## 9. INDEMNIFICATION

9.1 Definition: The term "**Indemnified Parties**" shall mean Contractor, Joint Venturers, Owner, and all others indemnified parties as required by the Prime Contract, as well as the owners, officers, directors, employees, agents, joint venturers, insurers, successors and assigns of each.

9.2 Subcontractor Indemnity Provision: To the fullest extent permitted by law, Subcontractor shall hold harmless and defend (with counsel reasonably satisfactory to Contractor), the Indemnified Parties, from and against all claims, demands, causes of actions, suits, administrative proceedings, forfeiture proceedings, and any other action to recover damages, penalties, forfeitures, or fines, including but not limited to property damage, bodily injury, sickness, disease, or death (hereinafter a "**Claim**") and pay for all attorney fees, expenses, and costs of defending a Claim, arising out of, relating to, or connected in any way to the Work, provided such Claim is caused in whole or in part by the Subcontractor, a subordinate contractor or material supplier of Subcontractor, or anyone directly



or indirectly employed by it or anyone for whose acts it may be liable. Subcontractor shall indemnify the Indemnified Parties for any judgment, liability, settlement, fine or penalty payment made on a Claim to the extent the payment was caused by Subcontractor or its subordinate contractor or material supplier's negligence, error, omission, or intentional act.

9.3 Indemnity Not Limited: Subcontractor's obligation to hold harmless, defend, and indemnify the Indemnified Parties shall not be limited by the provisions of any workman's compensation or similar employee benefit act, or by the provisions, exclusions, or extent of any insurance requirements or coverage.

9.4 Contractor's Right to Defend: Contractor reserves the right to elect to defend, in its sole discretion and at Subcontractor's cost and expense, any of the Indemnified Parties against any Claim. Contractor's reservation of such election to defend, with counsel of its own choice, shall not in any way limit Subcontractor's responsibility to indemnify and defend in accordance with Section 9.2.

9.5 Subcontractor's Use of Equipment: In the event that Subcontractor by rental, loan or otherwise, makes use of any of Owner's or Contractor's equipment, scaffolding or other appliances, Subcontractor represents that the person(s) using such items is/are properly trained and, if necessary, licensed, to use such items and agrees to:

- a) Accept such items in their "AS IS" condition;
- b) Use such items at the sole risk of Subcontractor; and
- c) Defend, hold harmless and indemnify Contractor and its officers, directors, employees, insurers, agents, successors and assigns against all claims, fines, penalties, damages, losses and expenses, including attorney fees, of every nature of every kind arising from Subcontractor's use thereof.

## 10. WARRANTY

10.1 Work and Materials Warranty: Subcontractor warrants and guarantees that the Work shall be of good quality, free from faults and defects, in conformance with the Contract Documents, and shall be satisfactory to Contractor and Owner for a period of one (1) year from Subcontractor's receipt of final payment or for as long as the warranty set forth in the Prime Contract requires, whichever is longer. Subcontractor warrants and guarantees that all materials shall be new and of the best quality of their respective kinds, unless otherwise specified in writing.

10.2 Warranty Claim: In the event that any part of the Work or any material is determined by Contractor or Owner to be improper or defective during the applicable warranty period, Subcontractor shall, upon being notified in writing by Contractor of the defect, immediately proceed to correct the same as its own cost and expense. If Subcontractor fails to do so promptly and completely, Contractor, at its option, may correct the same or cause the same to be corrected. Subcontractor shall promptly pay to Contractor the entire cost and expenses associated therewith and/or the same will be deducted from Subcontractor's payment, if any amount remains to be paid on this or any other project.

10.3 Warranty Claim Survives Agreement: The obligations under Section 10.1 and 10.2 survive completion of the Agreement and the Work and, when the Prime Contract is complete and ready for final payment by Owner, Contractor may assign its rights under Section 10.1 and 10.2 to Owner with notice to Subcontractor.

## 11. DISPUTES AND CLAIMS

11.1 Claims for Payment: Subcontractor shall provide written notice to Contractor of any claim for payment no later than seven (7) days prior to the time in which Contractor must provide notice of a claim for payment to Owner. This written notice shall contain a description of the claim in sufficient detail to explain the nature of the claim and shall provide a description of the evidence that the Subcontractor knows of or possesses, including expert reports, that substantiates the nature and cause of the claim. Contractor shall issue a written decision within thirty (30) days of the written notice from Subcontractor, or seven (7) days after the period defined in the Prime Contract, whichever is longer.

11.2 Claims Against Owner: Subcontractor shall not make any claim against Owner for payment. Instead, Subcontractor shall cooperate and assist Contractor in pursuing any claim for payment against Owner.

- a) Contractor shall make good faith efforts to settle any disputes with Owner, but retains sole discretion to settle disputes with Owner and to tender to Subcontractor the amount due to Subcontractor according to that settlement. This tender shall operate to release and discharge Contractor and Owner from all further liability to Subcontractor on the settled issue.
- b) Subcontractor agrees that Contractor shall have the right to join Subcontractor as a party in any dispute resolution process between Contractor and Owner where, in Contractor's sole discretion, the dispute is related to Subcontractor's performance of the Work. Subcontractor consents to the jurisdiction of any arbitration proceeding to which it is joined under this provision.
- c) If Contractor pursues a claim against Owner to recover payments owed to Subcontractor, Subcontractor shall pay a proportionate share of attorney fees and costs incurred by Contractor. Contractor may, in its sole discretion, permit Subcontractor to pursue a claim against Owner without Contractor's participation, in which case Subcontractor's pursuit of payment shall be at its own cost and expense.
- d) Contractor is not obligated or required to pursue a claim on behalf of Subcontractor if Contractor determines in its sole discretion that Subcontractor's claim is meritless.
- e) Contractor's receipt of payment from Owner for any Subcontractor claim is a condition precedent to payment to Subcontractor under this Section.

11.3 Proportionate Recovery: Subcontractor's recovery of additional cost, time, or both cost and time for any claim attributable to Owner shall be limited to the proportionate recovery by Contractor against Owner based on the amount claimed by Subcontractor as compared to the total amount claimed by Contractor.

11.4 Dispute Resolution Process: Either Contractor or Subcontractor may initiate this Dispute Resolution Process under this Section if a dispute arises between them in any way related to the Contract Documents or the Work.

- a) Mediation: Either Contractor or Subcontractor may request mediation of any dispute between the parties through a written request for mediation. The mediation process shall be completed

within 60 days of submitting the request for mediation. Contractor and Subcontractor shall participate in the mediation process in good faith.

- b) Arbitration or Litigation: If the dispute is not resolved by mediation, only then may either party elect to commence a legal action against the other in a court of competent jurisdiction. Alternatively, Contractor may, in its sole discretion, elect to initiate formal arbitration of the dispute in accordance with the Construction Industry Rules of the American Arbitration Association in effect on the date of the Agreement. If the parties cannot agree on an arbitrator, they shall seek appointment of an arbitrator by a district court in the state and county where the Work was performed.
- c) Attorney Fees and Costs: The prevailing party in any litigation or arbitration under this Section shall be entitled to its reasonable attorney fees and its litigation or arbitration costs from the non-prevailing party.
- d) Jury Wavier: DUE TO THE SPECIALIZED NATURE OF CONSTRUCTION LITIGATION, BOTH CONTRACTOR AND SUBCONTRACTOR WAIVES ITS RIGHT TO A JURY TRIAL.
- e) No Claim Against Bond: Subcontractor agrees that any cause of action it may have against Contractor and its surety on a payment bond shall be stayed after any such payment bond action is filed in court, pending exhaustion of the dispute resolution process set forth herein. This provision shall not be considered a waiver of Subcontractor's payment bond rights, but an agreement that those rights will be enforced in a court only after the dispute resolution procedures identified herein are exhausted.

11.5 Attorney Fees and Costs: Subcontractor shall reimburse Contractor for all its expenses or damages incurred, including actual attorney's fees and costs, which Contractor may incur in:

- a) Enforcing any term or condition of this Agreement, including the Indemnity provisions set forth above;
- b) In connection with any lien, demand, or action, including garnishment, commenced by or involving any creditor of Subcontractor or any subordinate contractor or material supplier that contributed labor or materials for the Work;
- c) In connection with Subcontractor's failure to comply with the terms of the Contract Documents;
- d) In connection with any claims, damages, liabilities, losses, or expenses related to Subcontractor's Instruments of Service and/or Contractor or Owner's use of the same;
- e) In connection with Subcontractor's failure to comply with any federal, state and local law, ordinance, or regulation, including its failure to comply with applicable safety or environmental regulations; or
- f) In connection with Subcontractor's failure to comply with any applicable labor agreement.

11.6 Delay Damages: Subcontractor shall pay any delay damages and costs incurred by Contractor and/or Owner that Contractor, in its sole discretion, determines are attributable to Subcontractor. Damages and costs under this Section means any and all damages incurred by Contractor or Owner, whether general damages, special damages, or liquidated damages, reasonable attorney fees, litigation and/or arbitration costs, Contractor's costs for extended general conditions

and overhead and all other damages or costs which Contractor, in its sole discretion, determines are attributable to delay.

## 12. COMPLIANCE WITH ALL LAWS

12.1 Licensure: Subcontractor and, if applicable, its employees, represent that they are and will remain properly licensed and will procure at their own expense all permits and licenses required for the performance of their Work and that its subordinate contractors and material suppliers are and will remain properly licensed to perform the Work.

12.2 Compliance with Applicable Law: Subcontractor agrees to comply fully with, and require all subordinate contractors and material suppliers to comply with, all federal, state, county and municipal statutes, ordinances, rules, regulations, orders and directives applicable to the Work. Subcontractor shall execute and file such documents, statements, and affidavits required under any applicable federal or state law or regulation affecting the Work.

12.3 Subcontractor's Certifications: Subcontractor certifies that it has not engaged in coercive, collusive, fraudulent or corrupt practices to procure or to execute the Contract Documents.

## 13. MISCELLANEOUS

13.1 Waiver: Waiver by Contractor of any breach hereof by the Subcontractor shall not constitute a waiver of any subsequent breach of the same or any other provisions hereof.

13.2 Waiver of Consequential Damages: Subcontractor waives and releases all claims for consequential damages arising out of or relating to the Work. This waiver includes damages incurred by Subcontractor for office expenses, losses of financing or business, damage to reputation, and for lost profits except anticipated profit arising directly from the Work.

13.3 Assignments: Contractor at its option may assign this Agreement and/or any or all of the Contractor's rights and obligations to the Subcontractor or to any other person or entity. Subcontractor may not assign its rights or obligations under this Agreement or any payments due under this Agreement without permission in writing from the Contractor.

13.4 Entire Agreement: There are no other representations, agreements, undertakings, terms or provisions between the parties with respect to the Work other than as set forth in the Contract Documents. All modifications or amendments to this Agreement must be in writing and agreed to by Contractor and Subcontractor.

13.5 Successors and Assigns: Contractor and Subcontractor each binds itself, its successors, assigns, and heirs in all obligations and agreements contained in this Agreement.

13.6 Severability: Any provision or part of the Contract Documents held to be legally void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be binding and valid on Contractor and Subcontractor.

11.6 Electronic Signatures and Documents: This agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and by electronic (PDF) or facsimile delivery thereof. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT MAY BE EXECUTED BY ANY OR ALL PARTY(IES) HERETO VIA ELECTRONIC SIGNATURE OR AN ELECTRONIC COPY OF A SIGNED DOCUMENT, AND THAT ANY SUCH SIGNATURE OR COPY

SHALL HAVE THE SAME FORCE AND EFFECT AS IF IT WAS AN ORIGINAL SIGNATURE OR SIGNED DOCUMENT AND SHALL BE BINDING TO THE FULLEST EXTENT PERMITTED UNDER THE LAW. The parties agree that either party may provide a reproduction of this agreement from its electronic copy in the event of any dispute regarding the rights and obligations of the parties under this agreement. The parties agree that any document in electronic format or any document reproduced from an electronic format shall not be denied legal effect, validity, or enforceability and shall meet any requirement to provide an original or hard copy.

**IN WITNESS WHEREOF**, the parties have executed this Subcontract Agreement on the date(s) indicated below.

**IN WITNESS WHEREOF**, the parties have executed this Subcontract Agreement on the date(s) indicated below.

**Kraemer / IHC Joint Venture**

**«FirmName»**

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

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

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

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

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

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

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

## ATTACHMENT A – ADDITIONAL SUBCONTRACT DOCUMENTS

The following documents are attached to this Subcontract and are included within the Subcontract:

1. CDOT Owner Controlled Insurance Program (OCIP) Project Information Manual (PIM) with Forms:
  - OCIP Enrollment Checklist
  - Contractor/Subcontractor Application
  - Insurance Calculation Worksheet OCIP-S(1)
  - Assignment and Transfer Form
  - CDOT Affidavit
  - Notice of Completion
  - Subcontractor Notification
2. CDOT Exhibit F
3. FHWA 1273 pages
4. Wage Rates with an instruction sheet.
5. Equal Employment Opportunity (EEO)
6. On-The-Job Training
7. Safety Documents:
  - a. Cover Memo for Project
  - b. Subcontractor Accident Prevention Plan Cover Sheet

## ATTACHMENT “B” - INSURANCE REQUIREMENTS

**These Insurance Requirements are attached to and incorporated into the Contract Documents and shall be applicable for off-site exposures and lines of coverage not covered in CDOT’s Owner Controlled Insurance Program (OCIP), please see the Project Information Manual (PIM) for additional information.** Subcontractor shall purchase and maintain prior to the commencement of any Work the following insurance coverages and minimum limits to protect Subcontractor,

*Equal Opportunity/Affirmative Action Employer*

Contractor, Owner and all other Indemnified Parties subject to the terms set forth below. However, the lines of coverage and limits provided by the Subcontractor shall never be less than as required of the Contractor by the Prime Contract.

Insurer(s): Subcontractor shall purchase and maintain insurance from a company(ies) that has an A VII or better rating and is authorized to do business in the state where the Work will take place.

Term of Insurance: All insurance policies required herein shall be maintained from the date of commencement of the Work until the date of final payment by the Contractor to Subcontractor for the Work, with the exception of Products and Completed Operations coverage which shall be maintained for not less than two (2) years after the date of final payment to Subcontractor or in accordance with the statute of repose for the applicable state, whichever is longer.

Additional Insured Status: Subcontractor shall name Owner, Contractor, Joint Venturers, and all other Indemnified Parties as additional insureds on all policies, including Completed Operations, except Professional Liability and Workers' Compensation insurance policies.

If Subcontractor should subcontract or assign any of the Work to a third-party, Subcontractor shall ensure that such third-party complies with these Insurance Requirements and name Owner, Contractor, affiliates and all other Indemnified Parties as additional insureds on all policies, including Completed Operations, except Professional Liability, Workers' Compensation, Motor Truck Cargo and Contractor's equipment insurance policies, and shall furnish evidence thereof.

Primary Insurance: With respect to Subcontractor's Work, this insurance shall apply as primary and non-contributory insurance with no right of contribution from any other insurance available to any Additional Insured.

Insurance Limits: The exhaustion of insurance and policy limits shall not release Subcontractor from its responsibility for the Work or from its liability and indemnity obligations under the Contract Documents.

Limitations on Deductibles or Self-Insured Retentions: All deductibles or self-insured retentions, on the insurance policies referenced herein, including Property and Marine, shall be borne by Subcontractor. Under no circumstances may Subcontractor maintain an insurance policy with a deductible or self-insured retention greater than \$25,000, without written consent of the Contractor.

Certificate of Insurance: A certificate of insurance shall be furnished to Contractor executed by a duly authorized representative of the insurer(s), indicating compliance with the insurance requirements stated herein. Certificates of insurance shall be provided to Contractor prior to the start of Subcontractor's Work and Contractor may withhold payment from Subcontractor until Subcontractor complies with this requirement.

Notice of Cancellation: Subcontractor shall provide Contractor thirty (30) day notice of cancellation in accordance with state law before a policy of insurance be non-renewed or canceled.

Waiver of Subrogation: All insurance policies required herein shall provide a waiver of subrogation in favor of the Contractor, the Subcontractor, and all subordinate contractors or any others that are performing Work.

### **Minimum Required Policies**

#### **I. Commercial General Liability Insurance**

*Equal Opportunity/Affirmative Action Employer*

(Coverage shall be on ISO CG 00 01 Occurrence Form or Equivalent)

(a)	Each Occurrence Limit	\$ 1,000,000
(b)	General Aggregate	\$ 2,000,000
(c)	Products/Completed Operations Aggregate	\$ 2,000,000
(d)	Personal and Advertising Injury Limit	\$ 1,000,000
(e)	Fire Damage Limit	\$ 50,000
(f)	Medical Expense Limit	\$ 10,000

Subcontractor's Commercial General Liability Policy shall include the following coverages and must not contain language more restrictive than the current ISO Occurrence Form or equivalent:

(1) Cross Suits or severability of Interest; (2) Extended Completed Operations with a duration of two years or the statute of repose for the applicable state, whichever is longer; (3) Personal Injury Liability with contractual exclusions deleted; (4) Premises and Operations; (5) Products and Completed Operations; (6) No exclusions for Explosion, Collapse and Underground Hazards; (7) Punitive Damages where insurable; and (8) Subcontractor shall, if Work is within fifty (50) feet of a railroad, remove any exclusion from its general liability policy that limits or excludes coverage for Work within fifty (50) feet of a railroad and specifically add such coverage by endorsement CG 24 17 to the general liability policy; evidence of this endorsement must be provided.

## II. Comprehensive Auto Liability Insurance

Combined Single Limit Bodily Injury and Property Damage  
(including owned, hired, and non-owned vehicles)

\$ 1,000,000 (Each Accident)

Subcontractor's Automobile Liability Insurance Policy shall cover owned, non-owned and hired automobiles, as well as Cross Suits or Severability of Interest and Punitive Damages where insurable.

## III. Workers' Compensation Insurance and/or Employers Liability Insurance

(a)	Bodily Injury by Accident	\$ Statutory
(b)	Bodily Injury by Disease	\$ Statutory
(c)	USL&H (if applicable)	\$ Statutory
(d)	Stop Gap Coverage	\$ 1,000,000 (Policy Limit)
(e)	Employers Liability	\$ 1,000,000 (Each Accident)
		\$ 1,000,000 (Each Employee by Disease)
		\$ 1,000,000 (Policy Aggregate for Disease)



Subcontractor's Workers' Compensation coverage shall be in the form and with limits in accordance with the laws of the state of jurisdiction, including without limitation Occupational Disease Insurance, Voluntary Compensation Insurance and United States Longshoreman's and Harbor Workers Act Coverage.

**IV. Commercial Umbrella or Excess**

- (a) \$ 5,000,000 (Each Occurrence)
- (b) \$ 5,000,000 (Aggregate)

Subcontractor's Umbrella Excess Liability Insurance Policy shall be at least as broad as the underlying Commercial General Liability, Automobile Liability and Employers Liability policies.

**V. Professional Liability**

If services are provided which are insurable under a professional liability policy, the minimum limits shall be \$1,000,000/\$2,000,000 (Per Claim/Aggregate). If Project Specific Insurance, the minimum extended reporting period shall meet the requirements of the Prime Contract, but shall not be less than three (3) years after completion of Subcontractor's Work or the statute of repose for the applicable state, whichever is longer. Subcontractor must advise of a material impairment of limit as a result of claims on work other than the stated project. A material impairment shall be considered any reduction in policy limits greater than twenty (20) percent.

If any (a) engineering or design, (b) construction inspection, (c) survey work, or (d) any other miscellaneous professional services are included within the Subcontractor's scope of services, Subcontractor shall purchase and maintain professional liability insurance with minimum limits of \$1,000,000 each occurrence and a \$2,000,000 aggregate. If the policy is written on a Claims Made form and coverage expires or terminates at any time before three (3) years after acceptance or termination of Subcontractor's Work, Subcontractor shall obtain extended reporting period coverage ("tail cover"), for a period of not less than three (3) years from Subcontractor's last services or provide a project specific policy with a three (3) year extended reporting provision.

**VI. Rigger Liability**

\$ 1,000,000 or Replacement Value of property being lifted, hoisted, rigged, whichever is greater (any one loss).

**VII. Watercraft Liability**

\$ 5,000,000 in Hull/Protection & Indemnity, including Jones Act Coverage, if applicable

If any Work is to be performed that requires the use of any watercraft or barge(s), subcontractor shall purchase and maintain Hull/Protection & Indemnity Insurance Coverage.

Hull insurance including collision liability, in the American Institute of Hull Clauses for or its equivalent, shall be equal to or in excess of the full value of any watercraft, with geographical and navigation extensions of coverage to the areas and waters in which such watercraft or barge may operate or work under the scope of services in the contract.

Protection and Indemnity Insurance shall include cargo legal liability insurance with geographical and navigation extensions of coverage to areas and waters in which the vessel may operate or work under the scope of services in the contract, and including without limitation, insurance coverage for Jones Act, Death on the High Seas Act, General Maritime Law, Maintenance and Cure, Wages and Transportation. Such coverage shall include In Rem protection such that a claim "In Rem" against the watercraft or barge(s) shall be treated as a claim In Personam against Kraemer / IHC Joint Venture and any others as required in the agreement, and providing that Hull coverage is provided under the Protection and Indemnity form so as not to limit underwriters' liability to the value of the watercraft or barge(s).

### **VIII. Contractor Pollution Liability**

\$ 1,000,000 Per Occurrence and in the Aggregate

Subcontractor's Contractor Pollution Liability coverage must be provided covering bodily injury, property damage, and other losses caused by pollution conditions that arise from the Subcontractor's performance of the contract scope of services with limits of not less than \$1,000,000 per occurrence. If applicable, Pollution Liability protection and insurance coverage for and against liability for property damage caused by or occurring on or on account of the **watercraft or barge(s)** with a minimum limit of \$1,000,000 applicable to any one accident or occurrence. When policies are renewed or replaced, the policy retroactive date, if any, must coincide with or precede, start of work on the contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of five (5) years.