

**THE GREAT LAKES CONSTRUCTION CO.
MASTER MATERIAL PURCHASE AGREEMENT**

This Master Material Purchase Agreement is made and entered into effect as of _____, 20__ (the “**Effective Date**”) by and between:

The Great Lakes Construction Co. (“Buyer”)
2608 Great Lakes Way
Hinckley, Ohio 44233
(330) 220-3900
(330) 220-7670 (Fax)

and _____ (“Seller”)

Telephone: _____
Fax: _____

Terms and Conditions

Article 1. Agreement; Definitions; Order and Acceptance.

- 1.1. **Master Agreement.** This master material purchase agreement (this “**Agreement**”) is intended as a master agreement between Buyer and Seller. Once signed by Seller, this Agreement shall govern each and every materials purchase order issued by Buyer to Seller (each, a “**PO**” or “**Purchase Order**”). The terms and provisions of this Agreement shall be fully incorporated in all Purchase Orders referring hereto, except to the extent expressly modified by the terms of a Purchase Order or by another written instrument executed by both parties.

- 1.2. **Definitions.** For purposes of this Agreement, “**Buyer**” means The Great Lakes Construction Co. or any affiliate or subsidiary thereof issuing the Purchase Order to which these terms apply; “**Seller**” means the person or entity named on the applicable Purchase Order who is furnishing the Materials, “**Customer**” means the person or entity with which Buyer has entered into a contract relating to the Project and, if such person or entity is not the owner of the Project, shall include the Project owner; “**Project**” means the project identified on the applicable Purchase Order, and “**Materials**” means the materials, merchandise, and/or goods and any related services that are the subject matter of the applicable Purchase Order, including all work reasonably inferable therefrom as being required to produce the intended result. For purposes of this Agreement, the term “**Customer**” means and includes any authorized representative (whether the architect or otherwise) of the Project owner.

- 1.3. **PO Documents.** The “**PO Documents**” consist of this Agreement and any attachments, exhibits, addendums, construction schedules, and/or amendments hereto; the applicable Purchase Order and any change order or modifications thereto; all Project specifications or other documents referenced in the applicable Purchase Order; the agreement between Buyer and Buyer’s Customer; and all other documents referenced or incorporated in any of the foregoing. By executing each Purchase Order, Seller represents that it (a) has carefully reviewed the PO Documents, understands the same, and agrees to comply strictly with the PO Documents, and (b) if required for proper provision of the Materials, has visited or has had the opportunity to visit the Project site and become familiar with the local conditions affecting the Project. This Agreement and the PO Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of this Agreement conflicts with a provision of the PO Documents, or if there is a conflict within this Agreement or within any of the PO Documents, the provision imposing the higher quality, greater quantity, or greater duty or obligation on Seller, or granting greater rights or remedies to Buyer or Buyer’s Customer, shall govern. Seller shall be bound by all interpretations of the PO Documents made by Buyer’s Customer and furnished to it by Buyer that are binding upon Buyer. Seller further agrees to be bound by and to assume toward Buyer all the terms, obligations, responsibilities, and conditions of the PO Documents to the same extent that Buyer, in turn, is bound thereby to Buyer’s Customer.

- 1.4. **Order and Acceptance.** Any requests for substitution or objections to any portion of a Purchase Order must be made within five (5) days of Seller’s receipt of the applicable Purchase Order and will be subject to Buyer’s approval. If Seller fails to notify Buyer in writing of any request for substitution or other objection within five (5) business days of Buyer’s delivery of the Purchase Order to Seller, then Seller shall be deemed to have conclusively and unconditionally

accepted such Purchase Order. Buyer may revoke or modify this Agreement at any time prior to acceptance by Seller. Buyer's Purchase Orders are not subject to cancellation or modification by Seller, in whole or in part, except with Buyer's express written consent. Any request or demand for, or statement purporting to make Seller's acceptance conditional on Buyer's assent to, additional or different terms shall be of no effect unless Buyer accepts the changes in writing and initials those changes. Seller's commencement of shipment, promise of shipment, or the furnishing of any part of the Materials that are the subject matter of the Purchase Order shall constitute Seller's agreement that it will furnish the Materials in accordance with the terms and conditions of this Agreement and the applicable Purchase Order. Seller agrees to follow the shipping and invoicing instructions issued by Buyer. Buyer, in its sole discretion, reserves the right to correct any stenographic, arithmetic, and clerical errors. Any provisions of Buyer's Purchase Orders that are typewritten or handwritten by Buyer shall supersede any contrary or inconsistent printed provisions.

Article 2. **Changes.** Buyer shall have the right to make changes in Buyer's Purchase Orders. Such changes may include, without limitation, modifications to drawings, designs, specifications, delivery or shipping schedules, and quantities of Materials ordered. If any such changes affect the time for delivery of the Materials or the PO Price, Seller shall notify Buyer immediately and in all cases before commencing work on or furnishing the Materials. There shall be no adjustment to the time of delivery or price to be paid for the Materials unless and until Buyer signs a change order authorizing the same. If Buyer and Seller fail to agree upon any adjustment to be made, and the changes were initiated by Buyer's Customer, the decisions of the Customer or its representative will be binding on both Buyer and Seller; and if the changes originated by Buyer, the matter shall be subject to arbitration in accordance with Article 10. Nothing provided in this Article shall excuse the Seller from complying with the change.

Article 3. **Price; Payment.**

3.1. **Pricing.** The agreed price for the Materials shall be set forth in the applicable Purchase Order (the "PO Price"). Unless otherwise specified, prices are F.O.B. jobsite as specified in the Purchase Order or otherwise directed by Buyer, and the PO Price includes the amounts of all packing and cartage charges, applicable sales, use, transfer, excise or other taxes, insurance, tariffs or custom duties that may apply.

3.2. **Payment Terms.** Terms of payment, unless otherwise expressly agreed in writing or specified in the PO Documents, as are set forth herein. All payments shall be made in United States currency. To ensure timely payment, Buyer's Project number, Purchase Order number, and reference/phase number must be referenced on all delivery tickets and invoices. Payment shall not be to the prejudice of any claims that Buyer might have against Seller on account of omissions, delays, or shortages in shipment or defects or deficiencies in the Materials. Seller shall submit, as a condition precedent to any payment, details of cost, waivers of lien, and sworn statements and any other documentation (in form and substance satisfactory to Buyer) as Buyer may request from time to time. Partial payments will be made each month in an amount equal to the value of Materials received, not to exceed the amount paid to Buyer by Customer for the Materials, less any amount of retainage indicated on the face of the PO. Provided Seller has submitted a proper invoice with all required documentation and all material terms of the Agreement have been satisfied, Buyer will pay all undisputed amounts in Seller's invoice within ten (10) days of actually receiving corresponding payment for the Materials from the Customer. Seller understands and agrees that Buyer's receipt of payment from Buyer's Customer on account of Seller's Materials is an express and absolute condition precedent to Buyer's obligation to pay Seller. Seller hereby assumes the risk of default or nonpayment by Buyer's Customer for any reason whatsoever, including the risk associated with the creditworthiness of the Customer. Seller shall not be entitled to recover interest on late or past due payments.

3.3. **Retainage; Final Payment.** Unless otherwise provided in the PO Documents, Buyer shall have the right to withhold a ten percent (10%) retainage from any payments due to Seller. Final payment, including retainage, shall be paid to Seller within ten (10) days after the last to occur of the following: (a) final completion, delivery, and furnishing of all Materials and obligations under the applicable Purchase Order; (b) delivery to Buyer of a certificate evidencing that the insurance required by the PO Documents is in force following completion of Seller's performance; (c) delivery to Buyer of such sworn statements, affidavits, certificates, and releases and waivers of lien as Buyer may require to evidence the full and final release of liens and claims by Seller and each of Seller's vendors or subcontractors, if any;

(d) delivery to Buyer of all manuals, drawings, warranties, guaranties, and other documents required by the PO Documents; and (e) Buyer's receipt of retainage from Buyer's Customer covering Seller's Materials

- 3.4. Deductions. Buyer may set-off and deduct from any amount payable to Seller any present or future amounts owing by Seller or any of its affiliated companies to Buyer under any Purchase Orders. If Seller breaches any provision or obligation of this Agreement or any Purchase Order, or if any claim or lien is asserted against Buyer or the Project premises arising out of Seller's performance under this Agreement, Buyer shall have the right to retain out of any payments due or to become due to Seller an amount sufficient to completely protect Buyer from any and all losses, damages, or expenses resulting therefrom, until Seller has remedied the situation to the satisfaction of Buyer.
- 3.5. Lien Waivers. To the extent that Buyer has paid Seller undisputed amounts under a Purchase Order, Seller agrees not to file any mechanics' liens or attested accounts to secure payment under Buyer's Purchase Orders. Seller further agrees that any such lien shall be void and unenforceable and shall constitute a substantial and material breach of this Agreement. Buyer shall be entitled to set off against any sums due or to become due Seller under any Purchase Orders an amount equal to two times the amount of the lien claim of Seller or any of Seller's lower tier subcontractors, suppliers, vendors and/or laborers. Buyer shall be entitled to recover from Seller the attorneys' fees, bond premiums, and expenses that Buyer incurs to defend and/or discharge any such mechanics' lien or attested account claim.

Article 4. Performance.

- 4.1. Compliance with PO Documents. Seller represents that it has carefully examined and understands this Agreement and all applicable PO Documents. Seller shall notify Buyer promptly, and in any event before commencement of any work on the Materials and in time for Buyer to notify the Customer, of any ambiguities, inconsistencies, questions, or concerns with the PO Documents that may require clarification from the Customer or otherwise. The PO documents (other than provisions relating to the contract price or fee payable to Buyer) have been made available to Seller and will remain available to Seller at reasonable times at the branch office of Buyer that is managing the Project. Seller will furnish all Materials in strict accordance with the PO Documents including, if and to the extent applicable, any prevailing wage requirements contained therein.
- 4.2. Time of Performance. Time is of the essence to Buyer's Purchase Orders, and Seller's failure to meet any delivery date shall constitute a breach of the applicable Purchase Order. Seller agrees to furnish all Materials in accordance with the PO Documents and any schedules provided by Buyer. Whenever an actual or potential labor dispute or other cause will delay, or threatens to delay, Seller's timely performance, Seller shall immediately notify Buyer and provide all relevant information. Unexcused delays in furnishing the Materials may subject Seller to its commensurate share of liquidated damages, if provided in the PO Documents. Unless noted otherwise, twenty-four (24) hours' advance notice must be provided to Buyer's Project Superintendent prior to delivery of any Materials.
- 4.3. Work on Buyer's or Customer's Premises. If Seller's Materials involve operations by Seller on the premises of Buyer or Buyer's Customer, Seller shall take all necessary precautions to prevent any injury to person or property during the furnishing of such Materials. Except to the extent that any such injury is due directly to Buyer's negligence, Seller shall indemnify and defend Buyer and Buyer's Customer from and against all loss which may result in any way from any act or omission of Seller, its agents, employees, or subcontractors. Seller shall maintain such public liability, property damage, and employer's liability and compensation insurance as will protect Buyer from said risks and from any claims under any applicable Workers' Compensation and Occupational Disease Acts.
- 4.4. Licenses. Seller shall obtain and pay for any applicable licenses, permits, or inspections required by any governmental authority in connection with the manufacture, completion, or delivery of the Materials or Seller's performance of Buyer's Purchase Orders.
- 4.5. Title; Risk of Loss. Payment of freight charges shall not affect passage of title. All shipments shall be F.O.B. Project site, and until Buyer has inspected and accepted the Materials as being in conformity with the PO Documents, Seller's delivery obligation shall not be deemed complete, nor shall title or risk of loss pass to Buyer. Seller represents and warrants to Buyer that Seller shall have good title to the Materials, free and clear of all liens at the time of Seller's

delivery or furnishing of the materials. Risk of loss with respect to nonconforming Materials shall not pass to Buyer unless and until such nonconformities are cured or Buyer accepts the Materials in writing notwithstanding the nonconformities.

4.6. Compliance with Law. Seller shall comply with all applicable laws, ordinances, codes, rules, and regulations of federal, state, county, and/or municipal governmental entities (including code and fire officials) having jurisdiction over Seller, the Materials, and the Project, and any other standards, rules, and regulations that are incorporated by reference into Buyer's Purchase Orders (collectively, "**Laws**"), including but not limited to those relating to occupational health and safety, discrimination in employment, the environment, wage and hour compliance, equal employment opportunity, and applicable building codes. Without limiting the foregoing, in accepting Buyer's Purchase Orders, Seller shall be deemed to represent that the Materials were or will be produced or furnished in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. Unless otherwise agreed in writing, Seller shall insert a certificate on all invoices submitted in connection with Buyer's Purchase Orders stating that the Materials covered by the invoice were produced in compliance with applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. Further, in accepting Buyer's Purchase Orders, Seller shall be deemed to represent that the Materials were or will be produced or performed in compliance with Executive Order 11246 and regulations issued thereunder relating to non-discriminatory employment practices.

Article 5. Documents; Ownership; Confidentiality.

5.1. Buyer's Property. As between Seller and Buyer, unless otherwise agreed in writing or specified in the PO Documents, all designs, drawings, specifications, artwork, plates, patterns, tools, and dies furnished or made available to Seller by Buyer, and any materials affixed or attached thereto, shall be and remain the property of Buyer. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as property of Buyer and shall be safely stored separate and apart from other property. Such property while in Seller's custody or control shall be held at Seller's risk, shall be insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer, and shall be subject to return at Buyer's written request, in which event Seller shall package and deliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Seller shall not substitute any property for Buyer's property and shall not use such property except in fulfilling its obligations under Buyer's Purchase Orders.

5.2. Submittals. Prior to fabrication of the Materials, Seller, at its own expense, shall prepare and submit to Buyer such shop drawings, samples, models, and other submittals (collectively, "**Submittals**") for the Materials in such form and quantity as may be requested by Buyer. Such Submittals shall be approved in writing by Buyer before Seller proceeds with fabrication. Submittals shall conform to the pertinent specification section requirements. No approval of any Submittals nor the making of any payment to Seller shall constitute an acceptance of any Materials or impair Buyer's right of inspection or rejection or any other rights or remedies to which Buyer may be entitled, or relieve Seller from any of its obligations or warranties hereunder. Seller shall mark and identify Materials in accordance with their corresponding specifications. Prior to transmittal to Buyer, Seller shall review for compliance with the specification and state so in the transmittal. If any of the Materials are a substitution, "or equal," or other deviation from the specifications in the PO Documents, Seller shall clearly so state in its transmittal to Buyer. Items determined to be non-applicable shall be crossed off. All formal transmittals will be transmitted to Buyer, Attn: Project Manager, with the required numbering system. Highlighting markers are not to be used when marking any documents.

5.3. Ownership of Documents. All plans, drawings, reports, manuals, specifications, test data, or other documents or information prepared by Seller pursuant to Buyer's Purchase Orders shall be the property of Buyer, and Buyer shall have the unlimited right to publish, transfer, sell, license, and use all or any part of such documents or information without additional payment to Seller.

5.4. Confidentiality. Any specifications, drawings, notes, instructions, engineering notices, technical data, or other information furnished by Buyer to Seller or prepared by Seller pursuant to Buyer's Purchase Orders, including without limitation this Agreement and any and all Purchase Orders, shall be treated as secret and confidential by Seller. Seller

shall not, without Buyer's prior written consent, disclose any such document or information to any party other than those employees or subcontractors of Seller who require the same for the performance of their duties in connection with Buyer's Purchase Orders, and any such disclosure shall be subject to the foregoing restrictions. Seller shall be liable for the breach of this Section 5.4 by any of its employees, agents, or subcontractors.

Article 6. **Inspection; Warranty.**

- 6.1. **Inspection.** The Materials shall be subject to all applicable testing and related documentation requirements as set forth in the PO Documents. Seller shall provide a quality control plan, if required by the PO Documents. Buyer may inspect and test the Materials during manufacture, construction, or preparation and shall have the right to inspect the Materials at the time of delivery and/or completion. Multiple inspections shall not be grounds for objection by Seller. Notwithstanding previous inspections by Buyer, if defects or nonconformities for which Seller is responsible under the PO Documents are revealed by subsequent inspection, analysis, use, or otherwise, Buyer may reject or revoke its acceptance of the Materials or any part thereof at any time after such defects or nonconformities are discovered or pursue its rights or remedies under Section 6.3 hereof or otherwise.
- 6.2. **Warranty.** Seller warrants that all Materials furnished under this Agreement and any Purchase Order, together with all related packaging and labeling and other material or work furnished by Seller, will (a) conform to the PO Documents and any related specifications, samples, special warranties, and instructions, (b) be of first class quality and free from defects in design, workmanship, and materials, (c) conform in all respects with all applicable federal, state, and local laws, regulations, codes, and orders, including without limitation those regarding occupational safety and health and wage and hour laws; (d) not infringe or encroach upon Buyer's or any third party's personal, contractual, or proprietary rights, including patents, trademarks, copyrights, rights of privacy or trade secrets; (e) be merchantable at the time of delivery to Buyer and at the time of use by Buyer's Customers, and (f) be fit and safe for sale and use by Buyer or and Customers for which use such items are ordinarily intended and for any particular intended use of which Seller or its agents have actual or constructive knowledge. Any Materials not conforming to the foregoing warranties shall be deemed defective. All warranties set forth in this Article 5 or in any other part of the applicable PO Documents (including warranties incorporated herein or therein by reference), or which law implies, shall survive any inspection, delivery, acceptance, or payment by Buyer. Such warranties shall be in addition to Buyer's other rights and remedies and shall not be construed as a limitation on Buyer's claims or rights, including the right to enforce any Purchase Order against Seller for the applicable statutes of limitation. Subject to the foregoing, Seller warrants all Materials for a period of eighteen (18) months from the date of delivery or one (1) year from completion of Seller's performance under the applicable Purchase Order, whichever is greater.
- 6.3. **Defective Materials.** Notwithstanding any prior payment, Buyer reserves the right, at Seller's sole risk and expense (including but not limited to cost of packing and transportation to and from source), (a) to require Seller to remove and repair or replace, at Buyer's option, defective or non-conforming Materials, or (b) to return, for full credit, all or any part of the Materials furnished hereunder that are defective in material or workmanship or which do not conform to the warranties contained in the PO Documents or implied by law. Seller also shall be responsible for the cost of correcting the goods, work, and property of Buyer or others damaged by Seller's defective Materials, including goods and work of Buyer and others that are damaged by Seller in connection with any breach of Seller's warranties hereunder. Buyer reserves the right, but shall not be obligated, to repair any defects and charge to Seller any expenses involved when in Buyer's sole judgment the cost of making such repairs would be less than the cost of repair or replacement by Seller or cancellation of the applicable Purchase Orders. If Buyer returns defective Materials or rejects non-conforming Materials as set forth herein, Buyer may additionally cancel any remaining portion of Buyer's Purchase Orders in accordance with the terms hereof.

Article 7. **Cancellation; Suspension; Termination.**

- 7.1. **Suspension without Cause.** Upon written notice to Seller, Buyer may, at any time and without cause, delay or suspend the delivery or completion of all or any part of the Materials to be furnished by Seller under any Purchase Order. Such delay or suspension shall be without cost or liability to Buyer. In the event of such a delay or suspension, Seller only shall have the right to compensation for reasonable handling and storage charges or other expenses unavoidably

incurred by Seller as a direct result of the delay or suspension. Under no circumstances shall Seller be entitled to payment for any Materials not furnished, for anticipated profits or lost profits, or for any incidental or consequential damages or termination costs.

7.2. Cancellation or Termination without Cause. Buyer may, at any time and without cause, cancel or terminate this Agreement and any or all Purchase Orders in whole or in part. Such termination shall be without cost or liability to Buyer. Upon receiving Buyer's written notice of such termination, Seller shall follow Buyer's directions as to the disposition of the Materials and take such action as may be necessary to minimize its losses resulting from such termination. Upon such termination, Seller may recover, as its sole remedy, payment for Materials properly furnished prior to the notice of termination and for Materials properly and timely fabricated off the Project site and delivered and stored in accordance with Buyer's instructions; provided, however, that in no event shall such amount, together with all previous payments made to Seller, exceed the price(s) set forth in Buyer's Purchase Orders. Seller hereby waives all other claims for payment and damages in connection with such termination for convenience, including, without limitation, anticipated profits and overhead and any incidental or consequential damages. Buyer shall be credited for payments previously made to Seller for the terminated portion of the Purchase Order and for any claims Buyer has against Seller under this Agreement and any terminated Purchase Orders. If termination under this Section 7.2 is the result of the Customer's termination for convenience, Buyer's obligation to pay Seller is expressly conditioned on Buyer's receipt of actual payment from the Customer on account thereof. If the Customer is liable to Buyer with respect to the termination, Buyer, subject to its approval of Seller's statement, shall include Seller's claim in its claim against the Customer by reason of such termination.

7.3. Termination for Cause, Insolvency. Seller shall be in default if (a) it fails to furnish the Materials in strict compliance with the PO Documents and any related delivery schedules, or (b) it is in default of any provision of this Agreement or any Purchase Order, or (c) Seller becomes insolvent or proceedings are instituted by or against Seller under any provisions of any federal or state bankruptcy or insolvency laws, or (d) Seller ceases its operations, or (e) Seller makes an assignment for the benefit of creditors, or (f) a receiver or trustee is appointed for any substantial part of Seller's assets, or (g) Buyer requests adequate assurance of due performance and Seller fails to provide such assurance in writing within three (3) days after the date of Buyer's request therefor. If Seller's default is curable, and if Seller fails to cure its default within three (3) days of receiving notice thereof from Buyer, Buyer may, without prejudice to any other right or remedy Buyer may have, (a) remedy Seller's default and procure the Materials from another vendor, and deduct the cost thereof from any amounts then or thereafter due Seller under this Agreement or any Purchase Order, or, at Buyer's option, (b) terminate this Agreement and any or all Purchase Orders. Materials furnished after Buyer terminates any Purchase Order may be returned at Seller's expense plus Buyer's administration expenses. If the costs incurred by Buyer in exercising the foregoing rights exceed the unpaid balance otherwise due Seller under any Purchase Orders, then Seller shall pay the difference to Buyer. Buyer may offset against expenses incurred in finishing or correcting Seller's Materials any monies that are due and owing to Seller under this Agreement and/or any Purchase Orders hereunder. In addition, Buyer shall be entitled to recover any actual damages, costs, expenses, or loss, including but not limited to loss of profits and reasonable attorneys' fees, suffered or incurred by Buyer due to Seller's default, and Seller shall promptly reimburse Buyer in cash upon demand therefor. In the event that a termination under this Section 7.3 is determined to be unjustified or wrongful, then the termination or cancellation shall be treated as a termination without cause under Section 7.2, and Seller's remedies and damages are limited as provided for therein.

Article 8. Insurance and Bonds.

8.1. Insurance. Seller shall, at its sole cost and expense, secure and maintain any insurance coverages required by the P.O. Documents. If any on-site work is required of Seller, then prior to commencing any work on the Materials, Seller must deliver to Buyer an insurance certificate evidencing appropriate insurance, including workers' compensation insurance, and naming Buyer as an additional insured. Without limiting the scope of Article 9, Seller agrees to maintain product liability insurance providing Broad Form Vendor's Coverage in an amount not less than that customarily maintained by comparable suppliers, and at Buyer's request Seller will provide Buyer with a Certificate of Insurance evidencing such coverage, which Certificate of Insurance shall identify Buyer as a named insured.

8.2. **Bonds.** If requested by Buyer or required by the PO Documents, Seller, at its expense, shall keep in effect until final acceptance of the Materials and thereafter until the expiration of Seller's warranties provided in this Agreement, performance, payment, and/or maintenance bonds in the principal amount of the PO Price or such greater amount as may be required by the PO Documents, with a corporate surety approved by Buyer, which bonds shall be on the standard forms furnished by Buyer. If the PO Price is increased, Seller shall cause the amount of such bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to Buyer. The bonds shall provide that no change or alterations to the applicable Purchase Order (including, without limitation, an increase in the PO Price, extensions of time, premature payment, or overpayment to Seller) will release the surety. The surety for any such required bonds must have an assigned A.M. Best rating of "A-" or higher. If at any time the A.M. Best rating of the surety drops below "A-", Seller shall, within ten (10) days from receipt of a request from Buyer and at its sole expense, deliver replacement performance and payment bonds executed by a surety in full compliance with this Article. The failure of Seller to provide an acceptable replacement surety within the referenced time frame shall be a material breach of this Agreement.

Article 9. Indemnification. To the fullest extent permitted by applicable law, Seller will indemnify, hold harmless, and defend Buyer, Buyer's Customer, and their respective officers, employees, partners, agents, and representatives, and any other parties required by the PO Documents (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, liability, causes of action, fines, liens, attested accounts, penalties, losses, damage of whatever kind (including any special, incidental, or consequential damages), costs and expenses (including reasonable legal fees and related costs and expenses, whether incurred in defending claims or in seeking indemnity from Seller or otherwise) (collectively, "**Losses**") arising out of Seller's performance under any and all Purchase Orders, Seller's negligence or other wrongful acts, any Materials furnished hereunder, and any breach by Seller of this Agreement or any Purchase Order. The scope of this indemnity agreement includes, without limitation, any and all Losses that may result from Seller's breach of any representation or warranty or from any products liability claims relating to the Materials. The scope of this indemnity obligation applies to the acts or omissions of Seller, its agents, employees, any lower tier subcontractors or suppliers, and anyone for whom Seller is legally responsible. The scope of Seller's duty to defend and indemnify Buyer hereunder shall not be limited in any manner whatsoever by any immunity or limitations of liability afforded to Seller under the workers' compensation laws, constitutions, or any other employee benefit acts under laws in any state applicable to the Materials. For purposes of this indemnity under Ohio law and for Projects in the State of Ohio, Seller specifically waives any immunity afforded it by Ohio Constitution Article 2, Section 35 and Ohio Revised Code Section 4123.74.

Article 10. Claims and Disputes.

10.1. **Claims.** Seller shall present to Buyer any permitted claim for extension of time, extra work, delay or disruption, or breach of contract, together with full documentation supporting such claim, within three (3) days of becoming aware of the basis for such claim or such shorter period as may be required for Buyer to evaluate and determine whether to assert such claim against the Customer within the time limits in the PO Documents. Seller agrees that, except for damages arising directly out of the negligence or fault of Buyer, it shall not be entitled to recover any damages from Buyer on account of claims for additional compensation, changes, delays, hindrances, interferences, lost productivity, or other damages of whatever kind or description unless and until Buyer recovers and collects such damages from Buyer's Customer. Such recovery and collection from Buyer's Customer is an absolute condition precedent to Seller's right of recovery from Buyer. Buyer shall act as a conduit for Seller's claims, and Seller shall be obligated to compensate Buyer for all costs and expenses, including legal and consulting fees and administrative expenses, that Buyer incurs to present Seller's claims to the Buyer's customer for consideration or payment or to arbitrate, mediate, or litigate such claims. Seller shall furnish all required testimony and documentation to support its claims. Buyer assumes no fiduciary responsibility for prosecution and recovery on Seller's behalf. In the event that Buyer recovers and collects damages from Buyer's Customer on account of Seller's claims through negotiation, litigation, mediation, or arbitration, then Buyer shall tender to Seller the amount actually recovered and collected less the cost of prosecution and administration, and Seller shall accept that amount as payment in full for its claims and damages releasing Buyer from any additional liability or damages on the claims. If the claim is denied or the amount claimed or recovered is not collected, Seller shall release Buyer from any and all liability for the claims and damages.

10.2. Disputes. At the option of Buyer, any and all claims, disputes, controversies, demands, and causes of action of whatever nature, kind, or description arising from or relating to this Agreement or any Purchase Order, shall be submitted to mandatory and binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The parties agree that the exclusive venue for any arbitration or court proceeding for any controversy or claim arising out of or relating to this Agreement, or interpretation or breach thereof, shall be in Cleveland, Ohio. Buyer shall have the right, at its sole option, to join its consultants, contractors, subcontractors, suppliers, vendors, or other third parties supplying services or materials in furtherance of the Project, with whom Buyer has an agreement to arbitrate, as a party to any arbitration commenced pursuant to this Agreement. Buyer also shall have the right, at its sole option, to join Seller in any arbitration proceeding between the Buyer and Buyer's Customer. The decision and award of the arbitrator(s) shall be final and binding on Buyer and Seller, and the decision and award may be reduced to judgment and enforced in any court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act and the Federal Arbitration Act. The arbitrator(s) shall decide any issues relating to waiver of rights or timeliness of claims. No unresolved dispute shall interfere with the progress of or be a basis to suspend Seller's performance under any Purchase Order.

Article 11. Miscellaneous.

11.1. Governing Law. This Agreement and all Purchase Orders issued hereunder shall be governed, construed, and enforced in accordance with the laws of the State of Ohio, without regard to its choice of law principles.

11.2. Assignment. Seller may not assign any rights or delegate or subcontract any duties that Seller may have under Buyer's Purchase Orders, in whole or in part, without Buyer's express prior written consent. Any assignment or delegation in violation of the foregoing is void and not binding on Buyer. No such assignment or delegation shall bar Buyer from asserting against Seller, the transferee, or both any claim or rights that Buyer may have against Seller, including rights of recoupment or set-off.

11.3. Reservation of Rights; No Waiver. All rights granted to Buyer hereunder shall be in addition to and not in lieu of any other rights of Buyer under this Agreement or arising by operation of law. The failure of Contractor to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of Contractor at any time to enforce each and every such provision.

11.4. Entire Agreement. This Agreement and Buyer's Purchase Orders, together with any information or documents incorporated herein by reference, shall be deemed to contain the entire agreement between Buyer and Seller with respect to the subject matter of such Purchase Orders and to constitute the complete and exclusive expression of the terms of the parties' agreement. No modification of Buyer's Purchase Orders shall be valid unless in writing and signed by Buyer. Should any provision of this Agreement or any Purchase Order be declared by a court of competent jurisdiction or arbitrator to be invalid, such decision shall not affect the validity of any remaining provisions.

ACCEPTED AND AGREED TO BY:

Buyer: The Great Lakes Construction Co.

Seller: _____

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date