

SUBCONTRACT

Revised December 2014

LeChase Construction Services, LLC

SUBCONTRACT

205 Indigo Creek Drive
Rochester, NY 14626

Phone: (585) 254-3510
Fax: (585) 254-3871

No. «SL»

Subcontractor:

Subcontractor _____
Address _____
City, State ZIP _____

Project Owner: Owner _____
Project Name: Job Description _____
Project Location: Job City, Job State _____

This Subcontract is made as of the date Date of Subcontract between LeChase Construction Services, LLC ("Contractor") and Subcontractor ("Subcontractor"), whose address is: Subcontract Address.

Article 1. Purpose. Contractor has entered into a contract dated Date of Owner Contract ("Prime Contract") with Owner ("Owner"), pertaining to the construction of Job Description ("Project"), based on plans and specifications prepared by or at the direction of A/E Firm Name ("Architect"). Contractor and Subcontractor desire to enter into this Subcontract for Subcontractor's performance of a scope of work called for by the Prime Contract.

Article 2. Consideration. The parties enter into this Subcontract in consideration of the promises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged.

Article 3. Contract Documents. This Subcontract consists of this Subcontract form together with the attached Terms and Conditions Revised December 2014 and all other documents defined by such Terms and Conditions to be part of the Subcontract, including but not limited to the following:

List of additional documents included in this subcontract.

Article 4. Work Scope. Subcontractor shall furnish all labor, materials, fuel, equipment, tools, machinery, and supplies to perform all work and do all things necessary, as to the scope listed below, to complete all requirements of the Contract Documents (the "Work"):

Scope of work.

Article 5. Schedule. Subcontractor shall complete the Work by Contact End Date; time is of the essence.

Article 6. Subcontract Sum. Contractor shall pay Subcontractor for the proper performance of the Work, as and when defined in the Contract Documents, and subject to additions and deductions by Change Order as provided in the Contract Documents, the total sum of Subcontract Amount ("Subcontract Sum").

Article 7. Complete Agreement. Both parties have read and understand this Subcontract, and all documents incorporated by reference have been made available for Subcontractor's review. This Subcontract (including all documents incorporated by reference) constitutes the entire Subcontract, and supersedes all prior proposals and agreements. Neither party has relied on any promises, inducements, or representations of the other party or its officers, employees, agents, or other representatives unless expressly stated herein. No provisions of this Subcontract may be waived or changed except in writing signed by authorized representatives of the parties.

Article 8. Arbitration. THIS SUBCONTRACT IS SUBJECT TO ARBITRATION (as further defined in the Contract Documents).

Accepted and Agreed:

LeChase Construction Services, LLC

By: _____ Date: _____
Name of Signer

«SubName»

Phone: Subcontractor's phone
fax: Subcontractor's fax
email: Subcontractor's email

By: _____ Date: _____
Print Name: _____

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Administrative Requirements

1. Subcontractor shall not commence any Work hereunder, without first furnishing, in forms satisfactory to Contractor, the following:
 - (1) A fully executed copy of this Subcontract.
 - (2) Proof that Subcontractor has procured all required insurances, including the minimum requirements in section 29 below.
 - (3) Material safety data sheets, as required by State or Federal Law, for all hazardous substances to which any person performing the Subcontract Work may be exposed in the course of such Work and/or which Subcontractor reasonably expects to cause to be brought onto the Project site.
 - (4) For public work, proof that prevailing wage rates have been posted as required by law.
 - (5) For public work, proof that all workers at the Project site have received OSHA 10-hour course certification.
 - (6) Such other reports, forms, certifications, and other documents or records required by Owner, the Contract Documents, Contractor, or by law, with such frequency as is specified or requested by Contractor.
2. Subcontractor shall not be entitled to any payments unless and until it furnishes, and keeps current, in forms satisfactory to Contractor, the following:
 - (1) All documents or other records specified above in section 1.
 - (2) Subcontractor payment and performance bonds, if required.
 - (3) For public work, a verified statement from Subcontractor and each of its first and second tier sub-subcontractors attesting that Subcontractor and each sub-subcontractor have received and reviewed a copy of the schedule of wages and supplements specified in the Contract Documents (or any applicable schedule subsequently issued) and agreeing to pay the applicable prevailing wages and supplements specified therein.
 - (4) For public work, weekly certified payrolls.
 - (5) If requested by Contractor from a Subcontractor that employs or expects to employ union-affiliated labor, an affidavit from every associated employee benefit trust or fund verifying that payments on account of persons employed in the Subcontract Work are current.
 - (6) A safety plan and a quality control plan specific to and covering all the Work of this Subcontract.
 - (7) A list of all lower tier subcontractors and vendors to be employed in the Work, and of all benefit funds for any employees who may perform any of the Work.
 - (8) Releases or lien waivers as required by Contractor or the Contract Documents.
3. Subcontractor agrees to comply with Contractor's EEO/Affirmative Action Policy and agrees to comply therewith in connection with this Subcontract. Subcontractor agrees to comply with all non-discrimination, equal employment opportunity and affirmative action (including MBE and WBE utilization, if required) obligations imposed by law or by the Contract Documents.
4. Subcontractor shall assume toward Contractor all the obligations and responsibilities that Contractor assumes pursuant to the Prime Contract for the performance of everything subcontracted to Subcontractor, except as otherwise expressly provided in this Subcontract. Subcontractor shall perform this Subcontract so as not to violate any terms, covenants, or conditions of the Prime Contract.
5. Subcontractor shall comply strictly with the Subcontractor's Safety Responsibilities document furnished by Contractor herewith. Subcontractor's failure to comply with such Safety Responsibilities to the satisfaction of Contractor shall entitle Contractor to implement such remedies as it deems appropriate, including but not limited to requiring removal of non-complying personnel and/or termination of the Subcontract for cause.
6. Note that the Subcontractor's Safety Responsibilities document contains various requirements which are MORE STRICT than what is otherwise permitted by safety laws and regulations. Among other things, the Safety Responsibilities require MANDATORY SIX-FOOT FALL PROTECTION, WITH NO EXCEPTIONS FOR IRONWORKERS, STEEL ERECTORS, OR CONNECTORS. Subcontractor shall comply with all of the more strict requirements as defined in the Safety Responsibilities.
7. This Subcontract is effective when signed by both Contractor and Subcontractor, except that Subcontractor shall be

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bound by all requirements if it commences Subcontract Work, including submittals, after receiving a copy of this Subcontract signed by Contractor. No attempted modifications shall be effective without written approval by Contractor's authorized representative.

Scope of Work

8. The Subcontract incorporates by reference and is defined to include: (a) any amendments or change orders to the Subcontract that are executed by the parties; (b) the Subcontract form executed by the parties including all documents referenced in Article 3 thereof; (c) these Terms and Conditions; (d) Subcontractor's Safety Responsibilities; (e) all other documents attached to and numbered in sequence with the Subcontract form and Terms and Conditions as furnished by Contractor to Subcontractor; (f) all bid conditions, drawings, specifications, general conditions, and other provisions of the Prime Contract that pertain to the Work of the Subcontract, as well as any provisions required by the Prime Contract or by law to be included herein; and (g) all documents expressly incorporated by reference in any of the above. All of the above are referred to collectively as either the "Subcontract" or the "Contract Documents." The incorporation of the above items is not limited to provisions concerning the scope, quantity, quality, character, and manner of the Work to be performed by Subcontractor, but includes without limitation all provisions relating to timeliness of work, delays, changes, unforeseen conditions, claims, termination, disputes, remedies, indemnification, administrative procedures, and liabilities and obligations of subcontractors retained by Contractor. To the extent there are conflicts between different portions of the Contract Documents, the conflict shall be resolved based on the above-listed order of precedence.
9. Subcontractor warrants that all materials and equipment furnished hereunder and incorporated by it in the Project shall be new unless otherwise provided and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All incidental work reasonably necessary to complete this Subcontract shall be performed by Subcontractor as part of this Subcontract notwithstanding the same may have been omitted from the plans and specifications.
10. Subcontractor shall perform all Work in strict compliance with the Contract Documents and applicable laws and building codes, and to the satisfaction of Architect, Owner, and Contractor. Subcontractor shall be bound to all determinations of Architect and Owner concerning the Subcontract Work to the same extent as Contractor is so bound, and shall promptly complete, repair, or replace, at its own expense, any Work found to be defective or noncompliant.
11. No substitutions shall be made except in strict compliance with the Contract Documents and only after receipt of all required approvals in writing. Requests for substitutions shall be at Subcontractor's expense and shall not delay the progress of the Work or the work of any other participant on the Project. Subcontractor shall not be entitled to additional compensation for the use of any specified product, manufacturer, quality assurance, or product grade. Subcontractor shall promptly furnish such certifications, tests, and reports as may be required to demonstrate that materials comply with the Contract Documents.

Performance

12. Subcontractor shall immediately issue all required purchase orders and shall promptly submit shop drawings, product data, samples, and similar submittals in such manner and such number as required by the Contract Documents and shall do so in such sequence as not to delay the Work or the work of any other Project participant. Contractor's approval of submittals is general only and will not excuse Subcontractor from the other requirements of the Contract Documents, including those pertaining to substitutions, or those pertaining to correction of defective, incomplete, or non-compliant Work.
13. Subcontractor shall, after notice to proceed by Contractor, commence work at such points as Contractor may designate and shall continue diligently in the performance of the Work. Subcontractor shall progress and coordinate all of its material deliveries, submittals and other Work with all other Project work so as to enable Contractor to obtain the speediest possible completion of the Project and in accordance with Contractor's most current Project schedule. Subcontractor shall employ sufficient labor and work sufficient hours and shifts so as not to hinder or delay the actual progress of Contractor or other subcontractors and, in any event, shall complete the several portions and whole of the Subcontract Work in accordance with all specified milestones and completion dates, and at such times as will enable Contractor to fully comply with the terms of the Contract Documents. Time is of the essence for Subcontractor's Work.

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Subcontractor shall be liable for any liquidated or other damages assessed against Contractor by Owner as a result of or attributable to Subcontractor's failure to prosecute the Work diligently, and as herein required, and such amounts may be back-charged against the Subcontract Amount.

14. Subcontractor shall promptly pay all wages and supplements (at prevailing rates when required) and shall pay for all lienable labor, materials, and equipment when due. Subcontractor shall receive and apply all payments received hereunder in trust for those furnishing, labor, materials, or equipment in performance of this Subcontract, including sub-subcontractors who perform any portion of such work, before they are used in any other manner. Contractor may contact Subcontractor's employees (or their representatives), sub-subcontractors and vendors to insure that they are being paid promptly by Subcontractor. If Contractor has reason to believe that any obligations incurred in connection with this Subcontract are not being paid when due, Contractor may, upon notice to Subcontractor, take any steps Contractor deems necessary to assure that future payments are utilized to pay such obligations including, but not limited to, the issuance of joint checks or direct payment. If upon receipt of such notice Subcontractor does not either supply proof satisfactory to Contractor that no such obligations are owed or post acceptable security indemnifying Owner, Contractor, and Contractor's surety against claims for such obligations, then Contractor may withhold from future payments an amount sufficient to protect Owner, Contractor, and Contractor's surety from any and all loss, damage or expense including reasonable attorneys' fees occasioned by such claims. Subcontractor shall also comply with federal, state and local tax laws, social security acts, labor laws, unemployment compensation acts, and workers' compensation acts as applicable to the performance of this Subcontract, and shall to the extent permitted by law, indemnify Contractor and Owner from any claims, costs, damages, or liability incurred, including reasonable attorneys' fees, as a result of Subcontractor's failure to so comply.
15. In the event that a Notice of Lien is filed by any person for labor or materials furnished in connection with the Subcontract Work, Subcontractor shall discharge such lien within 10 days of demand by Contractor; otherwise Contractor may take such steps as it deems necessary to discharge such lien, and all Contractor's expenses, direct or indirect including reasonable attorneys' fees, shall be borne by Subcontractor and back-charged against the Subcontract Amount. All costs, liabilities or expenses, including reasonable attorneys' fees that Contractor incurs by reason of any claim of nonpayment for labor, materials or equipment furnished in connection with the Subcontract Work shall be borne by Subcontractor and back-charged against the Subcontract Amount.
16. Subcontractor shall verify all field dimensions for all materials and Work to be performed hereunder prior to fabrication, the proper fitting of its Work with that of other work to be Subcontractor's sole responsibility. Subcontractor shall also confirm that existing conditions and precedent work are sufficient for the proper installation and performance of its Work. Contractor assumes no liability for any loss or damage to Subcontractor's tools, equipment or labor, whether incorporated or not incorporated into the Work. Subcontractor shall provide at its sole expense all temporary offices, sheds, tools, telephones, equipment, temporary heat, temporary lights, temporary power, and other equipment or utility required in the performance of its Work.
17. All materials shall be adequately protected from damage during shipment, storage and installation by protective coverings and in conformance with Contract Documents. Subcontractor agrees to afford all others employed on the Project site the opportunity for the storage, introduction and installation of their work and Subcontractor shall do nothing which will interfere with the coordination of its Work with work of all others. If in Contractor's opinion conditions require accessibility to an area occupied by Subcontractor's materials, equipment or facilities, they shall be moved at once by Subcontractor at Subcontractor's expense to an area approved by Contractor.
18. In carrying out its Work, Subcontractor shall take all necessary precautions to protect properly its own Work and the work of all other trades from damage caused by its operations. In addition, Subcontractor shall sequence, coordinate and protect its Work so as to prevent weather damage and water intrusion (as well as attendant mold growth) to its own Work and materials and the work and materials of others. To the fullest extent permitted by law, Subcontractor shall be responsible for all costs, including testing, remediation, and repair, caused by any breach hereunder, and shall defend and indemnify Contractor against all claims and liabilities arising from any breach except to the extent caused by Contractor's own negligence.
19. Subcontractor shall at all times keep the Project site and adjoining premises clean of debris arising out of Subcontractor's Work, promptly remove all such debris from the Project site and leave all areas of Work neat and clean from rubbish, surplus materials, tools and equipment. Contractor may, upon reasonable notice, remedy any failure to

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perform hereunder and back-charge the cost thereof against the Subcontract Amount.

20. Subcontractor shall comply with all applicable federal, state, and local laws, rules, regulations, and standards including those under the Occupational Safety and Health Act (OSHA), and shall perform its Work safely, consistent with the most recent version of Contractor's Safety Manual and any applicable site-specific safety program. Before commencing its Work, and as requested by Contractor, Subcontractor shall furnish a safety plan and a quality control plan specific to the Work of this Subcontract. Subcontractor shall immediately communicate verbally to Contractor any injury to any person performing any Work of this Subcontract at the Project site and follow up within 24 hours by written report. If at any time Subcontractor's Total Recordable Incident Case Rate for the Work of this Subcontract shall exceed 2.85, or if its Lost Work Day Case Rate exceeds 1.6, this Subcontract may be terminated by Contractor for cause without further notice. Subcontractor shall, to the extent permitted by law, defend and indemnify Contractor against all claims, costs, damages, or liability arising on account of Subcontractor's actions or neglect in the performance of this Subcontract, including but not by way of limitation, OSHA fines, penalties, and reasonable attorneys' fees.
21. Subcontractor shall not use or permit others to use any scaffold, ladders, lifts or other equipment or tools owned or leased by Contractor except with Contractor's written consent. By using or permitting others to use any Contractor-owned or leased equipment or tools, Subcontractor represents that it has independently confirmed the safety and adequacy thereof, and that such use shall comply with all applicable safety requirements. To the extent permitted by law Subcontractor shall defend, indemnify, and hold harmless Contractor from and against all claims, demands, costs, losses, damages, and liability arising out of Subcontractor's or its licensee's use of such equipment or tools. The insurance required by this Subcontract shall apply to Subcontractor's or its licensee's use of any Contractor owned or leased equipment or tools.
22. Subcontractor shall secure and pay for all permits, fees and licenses necessary for the execution of the Work of this Subcontract and shall cooperate with any testing agency engaged by Contractor and/or Owner or their agents to perform services in connection with the material furnished and Work performed pursuant to the terms of this Subcontract. Subcontractor shall provide necessary samples for testing at its sole cost and expense.
23. Subcontractor agrees to employ only such labor as will not delay or interfere with the speedy and lawful progress of the Project and as will be acceptable to and work in harmony with all other workers on the Project site or engaged in the Project. Subcontractor shall continue with the prompt and diligent performance of the Work hereunder notwithstanding the occurrence of any labor dispute at the Project site. To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless Contractor from and against any and all claims, demands, costs, losses, liability and damage, including reasonable attorneys' fees, occasioned by its failure to comply with the requirements of this section, and this obligation shall not limit Contractor's other rights or remedies for breach under this Subcontract.

Payment

24. Contractor shall pay Subcontractor for satisfactory performance of Subcontractor's Work the Subcontract Amount subject to additions and deductions by written change order. Subcontractor agrees such amount is inclusive of all applicable scaffolding, hoisting, tests, inspections, permits, implements, equipment, transportation, cartage, bonding, guarantees, insurance, taxes, and future wage and price increases unless otherwise provided in this Subcontract.
25. Contractor shall pay Subcontractor progress payments to the extent and with such frequency as Contractor receives such payments for Subcontractor's Work from Owner. (Payment for materials or equipment suitably stored at the Project site or elsewhere shall be made only to the extent allowed and paid by Owner.) Such payments will be made by Contractor within such period as provided by law after being paid for the Work by Owner, not to exceed 30 days, and will equal the value of the Work done by Subcontractor according to Owner's estimate at unit prices or a percentage of total completion, whichever is applicable, less the sum of previous payments and less retainage at the maximum rate authorized by law or ten percent, whichever is less; provided that if Subcontractor is indebted to Contractor or anyone else for cash advances, labor, supplies, materials, equipment, rental or other proper charges and/or back-charges against the Work, a reasonable amount for such indebtedness may be deducted from any payment or payments to be made under this provision; and provided further that Contractor may withhold release of any progress payment to the extent that Subcontractor is in default of any provision of this Subcontract. Estimates and calculations made by Owner, or its representative, as to the amount of Work performed and materials furnished by Subcontractor shall be final and binding on the parties to this agreement and shall conclusively establish the amount of Work done by Subcontractor.

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All statements for which payment is requested by Subcontractor must be received by Contractor on or before the last day of the contract pay period for Work performed the preceding month. Receipt of progress payments from Owner shall be a condition precedent, to the extent permitted by law, to Contractor's obligation to make progress payments hereunder. The making of a progress payment shall not constitute acceptance of any Work not in accordance with this Subcontract. If Contractor deviates from its normal progress payment procedures, either at Subcontractor's request or due to Subcontractor's failure to meet its obligations under the Subcontract, any additional cost or expense thereby incurred may be back-charged against any sum due or to become due to Subcontractor, including an administrative fee equal to two percent (2%) of each affected payment.

26. Subcontractor shall, before the first progress payment, submit to Contractor a schedule of values of the various parts of the Work aggregating the total sum of this Subcontract, made out in such detail and supported by such evidence as to its correctness as Contractor may require. This schedule, when approved by Contractor, shall be used as a basis for payment applications, unless it is found to be in error. In applying for payment, Subcontractor shall submit a statement based upon this schedule in the forms of AIA G-702 and G-703 ("Application and Certification for Payment").
27. Final payment, constituting retainage and any other unpaid balance of the Subcontract Amount, shall not become due to Subcontractor unless and until Subcontractor's Work is fully performed in accordance with the requirements of the Contract Documents; Architect has issued a final certificate for payment; Contractor has received final payment from Owner; Subcontractor has submitted evidence satisfactory to Contractor and/or Owner that all payrolls, benefit obligations, bills for materials and equipment, and all known indebtedness connected with Subcontractor's Work have been satisfied; and that Subcontractor has fulfilled all administrative requirements under the Contract Documents including, but not limited to, delivery of any required warranties, guarantees, manuals, as-built drawings, insurance certificates, or the like, as well as any releases, lien waivers and payment affidavits Contractor may, in its discretion, require. If Subcontractor fails to issue a proper invoice for final payment within 60 days of Contractor's written request, then Contractor may issue final payment in such amount as it deems correct. Subcontractor's acceptance of final payment waives any claim for further compensation not included in the application for final payment.

Indemnification

28. To the extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor and Owner, and their officers, directors, employees, agents, affiliates, successors, and assigns, and any others for whom indemnification is required by the Contract Documents, from and against any and all claims, costs, liabilities, suits, judgments, losses, damages, demands, and expenses, including without limitation reasonable attorneys' fees, arising or alleged to arise from:

(a) personal injuries, including death, or damage to property of any kind by whomsoever owned, including the loss of use thereof, resulting from, arising out of, or caused by, or claimed to have been caused in connection with, the Subcontract or the Work, whether or not any action or omission of Contractor or Owner contributed thereto, including, without limitation, all liability imposed by virtue of any law designed to protect persons employed at the Project site; or

(b) direct or contributory infringement of any patent, trademark or other intellectual property right pertaining to anything supplied or performed under the Subcontract;

except that nothing herein shall obligate Subcontractor to indemnify a party against its own negligence.

Insurance

29. A. Subcontractor shall procure and maintain at its own expense and from insurers acceptable to Contractor, such insurance policies as will fully protect Subcontractor, Contractor, Owner, and any other party required by contract from all claims for injuries or damages, including reasonable attorneys' fees, by whomever caused, arising out of the performance of the Subcontract Work, whether before or after its completion. The insurance companies providing the required coverages shall be licensed to do so in the state or jurisdiction where the Project is located, and shall be rated no lower than "A-" by the most recent Best's Key Rating Guide or Best's Agent's Guide, and shall have a Best's Financial Size Category of not less than VIII, unless agreed to by Contractor. Subcontractor shall also maintain at its own expense any other insurance required by the Contract Documents. The minimum limits required by this Subcontract are either the limits actually carried by Subcontractor or the following amounts, whichever is greater.

(Note: limits may be satisfied by a combination of primary and umbrella layers provided the umbrella coverage follows form with the primary coverage and both comply with the requirements of this Subcontract.)

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<u>Coverage</u>	<u>Limits</u>
(1) Commercial General Liability, including but not limited to: Death and Bodily Injury; Broad Form Property Damage; Explosions, Collapse, and Underground; Completed Operations (3 years from Substantial Completion); and Contractual Liability	\$6,000,000 (per occurrence) and \$7,000,000 (aggregate, per Project)
(2) Automobile Liability, for all owned, hired, and non-owned vehicles	\$6,000,000 (combined single limit)
(3) Worker's Compensation and Disability	As required by law
(4) Employer's Liability	\$1,000,000 (per employee, disease & policy)
(5) Pollution. If the Work includes or requires abatement, remediation, removal, handling, storage, transportation, or disposal of asbestos, lead, mold, or other pollutants or hazardous materials, then Subcontractor shall provide liability insurance coverage for claims, damages, or losses arising out of such activities. Such insurance shall be written on an occurrence basis with no sunset clause, or on a claims-made basis with coverage being continuously renewed for a minimum of 5 years or a minimum 5 year extended reporting period (tail). Limits shall be not less than \$5,000,000 each occurrence (if written on an occurrence basis) or claim (if written on a claims-made basis). If coverage is claims-made, the retroactive date shall be prior to the commencement of any Work and shall not be changed to a date after the Work started on either the current or any renewal policies. Contractor, Owner, and any other party required by the Contract Documents must be named as additional insured. Coverage shall include liability assumed under contract. If the Work involves disposal of the pollutants or other hazardous materials at a location other than the Project site, then coverage shall apply to liability from non-owned disposal sites.	
(6) Professional Liability. All Subcontractors with design responsibility or providing professional services shall provide a Professional Liability/Errors and Omissions Liability policy with a deductible no greater than \$50,000 per claim. Any self-insured retention must be clearly identified as such on the Certificate of Insurance and is subject to Contractor's approval. This insurance shall be maintained for not less than the duration of the Project and continuously renewed for ten (10) years following completion of construction. The retroactive date of such policy must be on or before the date Subcontractor began offering professional services and shall not be moved to a later date on either the current or any renewal policies. The limit of liability shall be not less than \$1,000,000 per claim.	

B. LIST OF JOB SPECIFIC ADDITIONAL INSURED, THEIR AFFILIATES, AND ANY OTHER PARTY REQUIRED BY THE CONTRACT DOCUMENTS shall be named as additional insured on all required policies (except Worker's Compensation and Professional Liability), including the coverage for ongoing and completed operations. For General Liability, Subcontractor must provide forms CG 2010 (11/85), or CG 2010 (10/01) with CG 2037 (10/01), or their equivalent, and such endorsements must be attached to the certificate of insurance. All such policies shall provide that they will not be canceled, allowed to expire or restrictively modified without thirty (30) days' prior written notice to Contractor. All such insurance must be evidenced by certificates of insurance endorsed as required above, in form satisfactory to Contractor. Any policy deductibles shall be borne by Subcontractor. Contractor shall be entitled, upon request, to a certified copy of Subcontractor's insurance policies for any period of time applicable to Subcontractor's Work hereunder. In the event that Subcontractor fails to obtain or maintain any required insurance or to furnish required proof thereof, Contractor may purchase such insurance and back-charge the expenses thereof to the Subcontract Amount, or may terminate this Subcontract. All insurance coverage and additional insured endorsements that Subcontractor is required to provide pursuant to this section or other provisions of the Contract Documents shall be primary and non-contributory and shall be required to be exhausted through all available primary, excess, or umbrella layers before other insurance that may be carried by Contractor or Owner shall be required to respond.

30. A. Subcontractor's indemnification and insurance obligations hereunder shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or from Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. Contractor and Owner and their officers, directors, employees, agents, affiliates, successors, and assigns are intended beneficiaries of the indemnification and insurance provisions of this Subcontract.

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B. Subcontractor waives all rights against Contractor and Owner and their officers, directors, employees, agents, affiliates, successors, and assigns for recovery of losses, expenses, or damages to the extent covered by available insurance. Subcontractor and its insurers waive any rights of subrogation they may have with respect to such insurance.

Changes and Disputes

31. A. If Subcontractor should neglect to prosecute or progress the Work diligently and properly, fail to fully pay vendors or labor (including withholdings and benefits) when due, fail to promptly correct any defective or non-compliant Work, or fail to timely or properly perform any other requirements of this Subcontract, Contractor may upon two (2) days' written notice to Subcontractor and without prejudice to any other remedy, make good any such deficiency. All resulting costs and damages (including reasonable attorneys' fees) shall be borne by Subcontractor and may be back-charged against the Subcontract Amount.

B. Should Subcontractor fail to commence and diligently continue to cure any default within two (2) days after written notice to cure, or if Subcontractor shall be unable to pay its obligations as they mature, or if its property comes into the possession of a receiver, trustee, or assignee, or if Subcontractor abandons its obligations hereunder, then Contractor may give a notice of termination. If after three (3) days from such notice Subcontractor has not satisfactorily cured the condition giving rise to such notice, then Contractor may immediately terminate this Subcontract, deny Subcontractor further access to the Project site and take possession of all materials, equipment, or tools, it deems necessary to finish the Work required hereunder. If Subcontractor or its agent or employee engages in illegal, unsafe, lewd, or dishonest conduct in connection with the Subcontract, Contractor may terminate this Subcontract immediately by written notice. In case of any termination or abandonment under this section 31, Contractor may back-charge all resulting costs and damages, including reasonable attorneys' fees, against the Subcontract Amount. If the unpaid balance remaining under this Subcontract shall exceed Contractor's costs of completing Subcontractor's Work and any damages incurred, including reasonable attorneys' fees, then such excess shall be paid to Subcontractor when the Project is complete and final payment has been received from Owner. If such costs and damages exceed the unpaid balance, Subcontractor shall promptly pay the difference to Contractor on demand as the excess is incurred. If, after termination, it is determined that Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Contractor pursuant to section 34 below.

32. Contractor may add to or deduct from the amount of Subcontract Work by change order, or by written directive where there is no agreement concerning any change in price and/or time. Subcontractor shall be bound by any changes or alterations made by Owner to the Contract Documents or to the Subcontract Work to the same extent that Contractor is bound. Subcontractor shall give Contractor immediate written notice of any asserted change or claim as required by the Contract Documents and in no event any later than three (3) days from the event giving rise to the claim and before any changed or extra work is performed. Such timely written notice is a condition precedent to any recovery by Subcontractor of additional time or compensation, and failure to give such notice shall be deemed a waiver of any claim by Subcontractor. Subcontractor shall, within seven days of receiving a direction to perform a change, alteration or extra work, submit to Contractor a written cost or credit proposal; otherwise Subcontractor shall be bound by such cost increase or credit as Contractor shall determine or is able to obtain from Owner. Subcontractor waives any claim against Contractor for compensation or equitable adjustment for any claims, changes, or extra work for which Owner or its representatives may be responsible except to the extent the same is allowed and paid to Contractor by Owner. In no event shall Contractor be liable to Subcontractor for any damages for delays or interference with the Work. Contractor shall reasonably cooperate with Subcontractor in submitting meritorious claims to Owner for changes, unforeseen conditions, and the like, with respect to Subcontract Work, but this shall not be interpreted as an attempt to create any direct contractual relationship between Subcontractor and Owner. All costs, including reasonable attorneys' fees, incurred by Contractor in any formal or informal claim proceeding for the benefit of Subcontractor shall be borne solely by Subcontractor. No change or extra work ordered or required by either Owner or Contractor shall invalidate any or bonds furnished by Subcontractor, and all Work Subcontractor performs at Contractor's request or direction shall be subject to the provisions of this Subcontract and covered by the insurance provided hereunder.

33. Subcontractor shall diligently proceed with all Subcontract Work, including any changed or disputed work directed in writing, notwithstanding that an outstanding change order request, claim, or protest with respect to such Work is pending or unresolved or Contractor has withheld payment in good faith.

34. Contractor may, without cause, suspend all or any portion of the Subcontract Work or terminate the Subcontract in

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whole or in part, whether because of similar action by Owner or for Contractor's convenience. If Contractor makes such an election due to similar action by Owner, Subcontractor's remedies shall be limited to those available to Contractor from Owner under the Contract Documents. Otherwise, in the case of termination solely for Contractor's convenience, Subcontractor shall be entitled to the reasonable value of Work performed prior to termination as determined by reference to Subcontractor's approved schedule of values. In the case of termination in part for Contractor's convenience, Contractor shall be entitled to a credit based upon the reasonable value of the Work deleted. In no event will any whole or partial termination for convenience by Contractor entitle Subcontractor to recover overhead or profit on work not actually performed.

35. Contractor shall be entitled, upon written request, to receive promptly from Subcontractor such assurance as Contractor may require, including without limitation scheduling information and manpower commitments, that Subcontractor will duly and timely perform its obligations hereunder. Failure to furnish such assurance satisfactory to Contractor shall be a material breach of the Subcontract.

36. A. All claims, disputes and other matters in question arising out of or relating to this Subcontract or the breach thereof shall, at Contractor's sole election, which election may be made at any time prior to the commencement of a judicial proceeding by Contractor or the last day to answer or respond to a Summons and/or Complaint filed by Subcontractor, be submitted to arbitration before the American Arbitration Association in accordance with its Construction Industry Arbitration Rules then in effect. In the event of such arbitration, Subcontractor agrees that any other person or entity concerned with the Subcontract Work may be joined as a party to such arbitration proceeding, and further agrees that arbitration proceedings under this Subcontract may be consolidated with arbitration proceedings between other parties if those arbitration proceedings arise from the same transaction or relate to the same subject matter. Disputes seeking more than \$1 million shall be heard by three arbitrators. The arbitration procedures shall not include depositions or other pre-hearing discovery, except that the parties shall exchange, 45 days before the hearing, any exhibits to be introduced at the hearing and reports from any expert witnesses who are to testify at the hearing. The arbitrator(s) shall not be entitled to award punitive or exemplary damages or attorneys' fees in favor of any party. Judgment may be entered on the arbitration award by any court having jurisdiction of the matter.

B. In the event Contractor becomes involved in an arbitration proceeding with any other person which relates to the Work or the Subcontract, upon receiving notice of such proceeding and an opportunity to join therein or present evidence therein, Subcontractor will be bound by the decision of such proceeding in the same manner as Contractor shall be bound. In the event the Prime Contract provides for final and conclusive decisions by Architect and/or Owner with respect to the Project, Subcontractor agrees to be bound by any such decision which becomes binding upon Contractor. Any litigation, mediation or arbitration arising out of or pertaining to this Subcontract shall be venued in the jurisdiction where the Project is located.

37. Subcontractor shall be liable for all loss, damage or expense, direct and indirect including reasonable attorneys' fees and enforcement costs, which Contractor may suffer or incur by reason of any non-performance or breach by Subcontractor of this Subcontract, and any loss, damage, or expense so suffered or incurred may be back-charged against the Subcontract Amount.

Miscellaneous

38. If so provided by the Contract Documents or by law, this Subcontract is subject to Architect and/or Owner approval of Subcontractor, or execution of necessary funding agency certifications, or approval of any required hiring, subcontracting or purchasing plans; but this Subcontract shall be and remain effective in the absence of a specific written disapproval by such Architect, Owner, or funding agency.

39. Subcontractor shall not assign or subcontract the whole of this Subcontract without the prior written consent of Contractor, and shall not assign any amounts due or to become due under the Subcontract without advance written notice to and approval by Contractor.

40. Subcontractor shall, upon completion of all the required Work, deliver to Contractor at least three (3) copies of as-built drawings, operations and maintenance manuals, parts lists, instruction manuals, and any other information and/or data required by the Contract Documents, Architect, or Owner. In the event an instruction session and/or meeting is required or requested, Subcontractor shall arrange and conduct such session as part of the Work herein.

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41. Subcontractor warrants and guarantees that the Work, including all workmanship and materials, shall be in strict compliance with the requirements of the Subcontract and not defective. Subcontractor further agrees to comply with any warranty or guarantee obligations of the Contract Documents applicable to Subcontractor's Work. Subcontractor shall furnish a separate certificate of guaranty or warranty if requested by Owner or if required by the Contract Documents, and Contractor is hereby authorized to issue such certificate on Subcontractor's behalf should Subcontractor fail to do so promptly itself. In addition to the foregoing warranty obligations, for a period of one year from Substantial Completion of the Project or such longer period as is specified in the Contract Documents, Subcontractor shall repair at its own labor and material cost any Work that is defective or otherwise not in compliance with the Contract Documents.
42. Contractor shall have the right to set off against this Subcontract any amounts owed by Subcontractor on account of any other matter; and to set off amounts Subcontractor owes or may owe hereunder against any property, payments or credits otherwise owing by Contractor to Subcontractor on account of any other matter.
43. Notices required hereunder are to be given by either: (a) hand delivery or overnight courier to an executive officer of the party; (b) US mail to the postal address of the party set forth on the Subcontract form; or (c) for notice to Subcontractor, confirmed transmission to the fax number or email address indicated on the Subcontract form. Notice is effective upon confirmation of delivery, except that US mail notice shall be deemed effective on the second calendar day after mailing. Postal addresses, fax numbers, and email addresses may be updated by written notice.
44. The laws of the state where the Project is located shall govern as to the interpretation, validity, enforcement, and effect of this Subcontract, except that the arbitration provision shall be governed by the Federal Arbitration Act. Should any requirement or provision be declared unlawful, it shall not affect the validity of the other provisions in the Contract Documents. Subcontractor is an independent contractor hereunder and nothing herein contained shall be construed to constitute Subcontractor the agent or representative of Contractor.
45. Nothing in this Subcontract shall be construed to create any third-party beneficiary rights in any person, except as otherwise expressly stated in the Contract Documents.
46. If anything herein, including but not limited to the provisions concerning indemnification, is prohibited by the laws of the state where the Project is performed, then such provision shall be deemed modified and construed as necessary to comply with such law.
47. All communications from Contractor or any representative of Owner, and all other information that Subcontractor learns about Contractor's or Owner's business, products, processes or facilities during the performance of this Subcontract, are confidential and may not be disclosed to anyone else without Contractor's prior written consent. Additionally, Subcontractor agrees that it shall not publish any information about the Project or this Subcontract without Contractor's prior written consent.
48. An Electronic Signature is a record of approval that is created, generated, sent, communicated, received, or stored by electronic means. An Electronic Signature includes a faxed or emailed writing, the sending party's name in an e-mail message, an image of a signed document, or an image of a signature attached by that party. An Electronic Signature shall have the same force and effect as an original signature and shall be enforceable to the fullest extent permitted by applicable law. An Electronic Signature may be used to execute any document, including but not limited to the Subcontract, lien releases, requisitions for payment, and correspondence.
49. If required, Subcontractor shall furnish performance and payment bonds using forms reasonably acceptable to Contractor, each in an amount equal to one hundred percent (100%) of the Subcontract Sum, as security for the faithful performance of the Subcontract and for payment of all persons performing labor or furnishing materials or equipment in connection with the Subcontract. The surety company must be authorized in the jurisdiction where the Project is located, have a Best's Rating of A- or better, and have an approved status on the most recent Department of the Treasury Listing of Approved Sureties (Department Circular 570).