

## **ARTICLE 1A**

### **SCOPE OF WORK CONTINUATION**

- a. Subcontractor agrees that it shall coordinate its work with the work of others. Subcontractor agrees that the submission of shop drawings constitutes a representation by the Subcontractor that it has reviewed all Contract drawings and the shop drawings of other trades (where necessary for proper coordination) and its work is properly coordinated with the work of others. Subcontractor shall not cover or enclose any wall, cavity, or opening without first confirming all work to be installed or performed in such wall, cavity or opening has been installed or performed. Subcontractor shall walk the relevant portions of the project with the Contractor's superintendent to confirm that walls, cavities or openings are ready for closure. Failure to so confirm shall render Subcontractor liable for costs, including overhead and profit, associated with opening the wall, cavity or opening and re-closing the same.
- b. It is the express intent that all Work covered by or implied by this Subcontract, or called for by good practice, is to be included in this Subcontract. All Work shall be performed in strict accord with the Contract Documents and shall include that Work specifically set forth in the Subcontract, as well as any and all other Work reasonably necessary for a complete and proper installation of the Work.
- c. Subcontractor's commencement of performance of any Subcontract responsibilities, including but not limited to preparation of submittals, whether at the Project site or elsewhere, shall constitute the Subcontractor's agreement to this Subcontract, including all terms and conditions of this Subcontract without modification or limitation, and shall further constitute the Subcontractor's acceptance of all conditions at the Project site.
- d. Subcontractor shall not deviate from the plans and specifications without prior written consent of the authorized representative of Contractor. The Subcontractor shall call specific attention of the Contractor, Architect, and Owner to any and all intended deviations, including proposed "equal" substitutions, no later than the time specified in the Prime Contract or upon delivery of shop drawings, samples or other similar submittals, whichever is earliest and, in any case, within a reasonable time before installation. Approval of shop drawings, samples or similar submittals shall not constitute approval of deviations from the plans and specifications, unless the Subcontractor receives express and specific written approval of any such deviation prior to installation by a written change order executed by an authorized representative of Owner and Contractor.
- e. If the Subcontractor encounters differing site conditions (for example, rock, unsuitable soils, environmental hazard, historic artifacts, etc.), Subcontractor shall immediately notify Contractor in writing. If Contractor is entitled to and receives additional payment for such differing site condition, then the Subcontract price shall be adjusted in the amount Contractor actually receives from the Owner, minus Contractor's overhead and markup, for the costs associated with such differing site condition. If the Contractor is not entitled to any increase in the contract price, then neither shall the Subcontractor. Subcontractor has reviewed the prime contract and accepts the terms thereof.

## **Article 2**

### **THE CONTRACT DOCUMENTS PERTAINING TO SUBCONTRACTOR'S WORK**

- a. The Contract Documents for this Subcontract consist of this Agreement and any exhibits or attachments hereto, the Agreement between the Owner and Contractor for the above-referenced Project, all Conditions to the Agreement between the Owner and Contractor (General, Supplementary and any other Conditions), all Drawings, Specifications, and Contract Documents referenced in that Agreement, along with all Addenda and modifications to that Agreement. The payment provisions contained in the Agreement between the Owner and the Contractor are specifically excluded from the Contract Documents and are not incorporated by reference into this Agreement.
- b. With respect to its Work, Subcontractor agrees to be bound to the Contractor by all of the terms of the Agreement between the Contractor and the Owner (except for the payment provisions) and the Contract Documents thereto, and assumes toward the Contractor and the Owner all the obligations and responsibilities that the Contractor by those instruments assumes toward the Owner. Subcontractor further warrants and represents that prior to the entry of this Agreement it has reviewed and inspected the Contract Documents applicable to its Work a copy of which can be reviewed at Contractor's home office.

- c. The Specifications, Drawings and Addenda which are most pertinent to this Subcontract, and which are included in the Contract Documents, are listed in Attachment "A" hereto.

### **Article 3**

#### **THE TIME FOR PERFORMANCE OF THE SUBCONTRACT**

- a. Except as otherwise provided elsewhere in the Contract Documents, Subcontractor shall commence the Work covered by this Agreement in accordance with Contractor's Project Schedule or when directed by verbal or written notice from the Contractor and shall diligently and continuously prosecute such Work in an efficient fashion so as not to cause delay in the progress of Contractor's work or in any other portions of the Project carried on by other subcontractors. Subcontractor shall coordinate its Work with the work being performed on the Project by other trades so that Contractor shall not be delayed due to any act or omission of Subcontractor. Subcontractor shall take all necessary action to assure the completion of the Project within the time specified in the Contract Documents.
- b. Time is of the essence of this Subcontract. In agreeing to complete the Work within the times and sequences herein mentioned, Subcontractor hereby represents that it has taken into consideration and made allowances for all hindrances and delays incident to its Work.
- c. A Project Schedule has been or shall be developed by Contractor, which shall schedule and coordinate the times required for each area of work on the Project (the "Schedule"). Subcontractor agrees to perform its Work in accordance with the Schedule and directives of the Contractor, including all amendments thereto. The Subcontractor acknowledges Contractor's right to manage the Project, and the Subcontractor agrees to implement promptly and at no increase in the Subcontract price the Contractor's decisions and directives which the Contractor determines in good faith to be in the interests of the Project as a whole as regards the scheduling, organization, flow, coordination, and sequence of the Project work. All float in any CPM schedule shall belong entirely to the Contractor and shall be available for the Contractor's exclusive use in scheduling the overall Project. Subcontractor shall continuously monitor the Schedule and shall advise Contractor of the status of its performance on a regular basis including information on the status of Shop Drawings, Sample Submittals, Materials or Equipment, which may be in the course of preparation or manufacture. Subcontractor shall immediately notify Contractor of any circumstances which may affect the times and sequences in Subcontractor's performance of its Work and shall make all requests for time extensions in writing to Contractor sufficiently in advance to allow Contractor to forward the request as required in compliance with the Contract Documents.
- d. If Subcontractor is responsible for any delays in the time or sequence of the Schedule, Subcontractor shall at its own expense, perform any overtime work necessary to bring its Work back on Schedule. Contractor may at any time direct Subcontractor to perform additional overtime work to bring its Work back on Schedule. If Subcontractor is responsible for a delay in the time and sequence of the Schedule, Subcontractor shall pay Contractor for all costs and damages suffered by Contractor as a result of such delay including any damages assessed against the Contractor under the Contract Documents.

### **Article 4**

#### **THE SUBCONTRACT AMOUNT**

- a. As full consideration for complete performance of the Work, Subcontractor shall be paid: **(See Article 1)**
- b. The Subcontract Amount shall be the total sum paid to the Subcontractor except for changes or modifications to the Agreement by Change Order, all as more fully set forth in the General Conditions to this Subcontract Agreement.

### **Article 5**

#### **PROGRESS PAYMENTS**

- a. The Subcontract Amount shall be paid by the Contractor to the Subcontractor as follows:

1. Subject to the conditions set forth in this Article, payment shall be made in installments as the Work progresses unless Subcontractor is in default. By the 25th day of each month, the Subcontractor shall submit to the Contractor a written requisition or application for payment, on a form approved by Contractor, showing the proportionate value of Work performed and completed to date, along with all substantiating data and information as required by the Contract Documents, from which shall be deducted: (1) a retainage of 10% of such proportionate value; (2) all previous payments; (3) all charges for materials and services furnished by Contractor to the Subcontractor; and (4) any other charges and deductions as provided for in this Agreement or in the Contract Documents. The balance of the requisition, to the extent approved by the Owner and Contractor, shall be payable to Subcontractor within ten (10) business days after payment for same is received by Contractor from Owner. Contractor's receipt of payment from Owner is an express and absolute condition precedent to Contractor's payment obligation to Subcontractor. Further, if Contractor has issued a payment or performance bond related to the Project, then the Surety(s) under such bond(s) is hereby made and express intended third party beneficiary of this payment provision and shall have no obligation to make pay to any claimant under the bond(s) unless and until the Owner has made payment to Contractor. Subcontractor agrees that Contractor's surety is entitled to the benefit of the pay if paid clause contained herein and Subcontractor shall only be entitled to recover on such bond(s) such amounts as are owed by Contractor to Subcontractor under this Agreement.
2. The quantities of Work performed and materials furnished as established by the Contractor, Owner or the Owner's Representative (if any), shall constitute the basis for computation of the payment to Subcontractor. Payments made on account of materials not incorporated in the Work but delivered and suitably stored, shall be made, if at all, in accordance with the Contract Documents.
3. If Contractor has received payment from the Owner for stored materials, and Subcontractor is otherwise entitled to payment for such materials then, payment for stored materials shall be made as provided by the Contract Documents and payment procedures contained herein, and requests for payments for stored materials shall be accompanied by vendor invoices, itemizing respective quantities and unit costs of such stored material. At its option, the Contractor may make payment for stored material by joint check to the Subcontractor and vendor and/or require, as a condition precedent to payment for stored materials, that proper insurance and a waiver of lien, effective as of the date of the payment, be furnished from both Subcontractor and the material supplier.
4. Material stored on the site, and for which payment is requested, shall be in the care and custody of the Subcontractor, and shall not be removed from the site without the written consent of the Contractor. Contractor's receipt of payment from Owner for any stored materials is a condition precedent to Contractor's payment obligation, if any, to Subcontractor for such stored materials. Subcontractor is responsible for all damage to stored materials until such time as Subcontractor had completed its Scope of Work.
5. Final Payment including retention shall be made to Subcontractor upon: (i) completion of the Subcontractor's Work in accordance with the Plans and Specifications; (ii) acceptance of Subcontractor's Work by the Contractor and Owner; (iii) the occurrence of any and all conditions precedent to Subcontractor's receipt of Final Payment, as provided in the Agreement between Owner and Contractor or elsewhere in the Contract Documents; (iv) receipt by Contractor of funds from Owner so as to permit Contractor to make the Final Payment to Subcontractor; and (v) certification from Subcontractor that all labor (including customary fringe benefits and payments due under collective bargaining agreements) and all sub-subcontractors, materialmen and suppliers have been paid in full and are waiving or have previously waived their lien rights upon the making of Final Payment. Further, if Contractor has issued a payment or performance bond related to the Project, then the Surety(s) under such bond(s) is hereby made and express intended third party beneficiary of this payment provision and shall have no obligation to make pay to any claimant under the bond(s) unless and until the Owner has made payment to Contractor. Subcontractor agrees that Contractor's surety is entitled to the benefit of the pay if paid clause contained herein and Subcontractor shall only be entitled to recover on such bond(s) such amounts as are owed by Contractor to Subcontractor under this Agreement.
6. In the event that the Contractor and Owner are involved in litigation involving, in whole or in part payment of monies Contractor contends are due and owing, Subcontractor agrees that Contractor's obligation to make payment of any monies to Subcontractor, if any, shall be stayed pending the outcome of said litigation or arbitration with the Owner.

## **Article 6**

### **CONTRACT DOCUMENTS**

- a. The Contract Documents numerated in this Agreement form the contract for construction, represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or agreements, either oral or written. This Agreement may only be amended or modified in writing signed by both Subcontractor and Contractor.
- b. Execution of this Agreement by the Subcontractor is a representation by the Subcontractor that it has visited the site, is familiar with local conditions under which the Work is to be performed and has correlated its personal observations with the requirements of the Contract Documents.
- c. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Subcontractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all.
- d. The Contractor shall have the benefit of all rights, redress and remedies against the Subcontractor, which the Owner has against the Contractor under its Agreement with the Contractor. In the event a provision of the Agreement between the Owner and the Contractor is inconsistent with the provisions of this Agreement, this Agreement shall control.
- e. Except as modified by this Agreement, the Work shall be performed and completed in accordance with the Contract Documents, including all addenda thereto, all of which Subcontractor acknowledges it has read and is familiar with.
- f. The Contract Documents, including the Drawings, Plans, Specifications, Conditions, and Addenda thereto, including those items shown in Attachment "A" to this Agreement, shall be kept on file in the office of the Contractor, and shall be considered as exhibits to this Agreement. All Work shown on the drawings but not specified, or specified but not shown on the drawings, shall be performed under this Agreement. Drawings and Specifications are to be construed as supplementing each other and as being complementary. What is required by one Contract Document shall be as binding as if required by all.
- g. Should the Owner not engage an Architect on the Project, the rights of the parties hereto shall be determined without regard to any certificate, determinations, or other functions which the Contract Documents may anticipate an Architect will perform.
- h. In the event the Owner terminates the employment of the Architect initially engaged on the Project, the Owner shall be entitled to appoint a replacement Architect whose status under the Contract Documents shall be that of the former Architect.
- i. The Subcontractor shall carefully study and compare the Contract Documents with each other and shall at once report to the Contractor any error, inconsistency or omission discovered. Subcontractor shall be liable for any damage resulting from such errors, inconsistencies, or omissions if it recognizes an error, inconsistency, or omission and fails to report it to the Contractor before executing the Work. By performing any construction activity involving a recognized error, inconsistency, or omission in the Contract Documents, the Subcontractor assumes the risk of such performance and agrees to bear full responsibility for all costs of correction.

## **Article 7**

### **SUBMITTALS**

- a. Since time is of the essence of this Agreement, Subcontractor shall proceed at once to prepare all required Shop Drawings and other required data and furnish same for approval by the Architect or Owner prior to fabrication of any item to be furnished under this Agreement. Submittal data shall be prompt and complete to ensure scheduled delivery of such equipment and/or materials, so as not to delay the progress of either the Subcontractor's Work or the total work required of the Contractor pursuant to its Agreement with the Owner. Adequate copies of such data shall be submitted, plus the number of copies desired by the Subcontractor for its use. In the instance of specifically prepared fabrication

drawings, submittals shall consist of one reproducible drawing and two prints. Subcontractor agrees to keep Contractor fully informed regarding its delivery schedule and shall immediately advise the Contractor of any delay or anticipated delay.

- b. Subcontractor shall submit Shop Drawings, Product Data Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.
- c. Subcontractor shall furnish to the Contractor periodic progress reports on the Work under this Agreement, including information on the status of materials and equipment, which may be in the course of preparation or manufacture. If requested by Contractor, a complete up-to-date procurement schedule shall be submitted on forms acceptable to the Contractor.
- d. Subcontractor shall comply with all scheduling and reporting requirements imposed upon Contractor in its Agreement with the Owner and shall furnish and supply Contractor such supplemental and additional information and reporting documentation as reasonably required by Contractor during the performance by Subcontractor of its Work.
- e. As-built documents and data shall be maintained and recorded by the Subcontractor as applicable to its Work and shall be reviewed monthly by the Contractor and in connection with Subcontractor's request for progress payments. Such review shall be a condition precedent to the issuance of progress payments under this Agreement.
- f. Contractor's review of any as-built documents, data or drawings shall not relieve the Subcontractor of any of its duties under the Contract Documents, and/or its responsibility to perform the Work in the manner necessary to produce the results required and intended by the Contract Documents.
- g. Subcontractor shall not deviate from the plans and specifications without prior written consent of the authorized representative of Contractor. The Subcontractor shall call specific attention of the Contractor, Architect, and Owner to any and all intended deviations, including proposed "equal" substitutions, no later than the time specified in the Prime Contract or upon delivery of shop drawings, samples or other similar submittals, whichever is earliest and, in any case, within a reasonable time before installation. Approval of shop drawings, samples or similar submittals shall not constitute approval of deviations from the plans and specifications, unless the Subcontractor receives express and specific written approval of any such deviation prior to installation by a written change order executed by an authorized representative of Owner and Contractor. Approval of shop drawings for fabrication by Contractor, Architect or Owner shall not constitute approval of any deviations, substitutions or errors all of which Subcontractor shall remain liable for and shall pay all costs associated with correcting the same.

## **Article 8**

### **SUPERINTENDENCE**

- a. Subcontractor shall provide adequate, competent, and experienced full-time, on-site supervision (satisfactory to the Contractor) during the performance of its Work. Such supervision shall have the authority to carry out directions from the Contractor relating to the Subcontractor's Work or responsibilities. If Subcontractor issues sub-subcontracts related to its Work, superintendents from such sub-subcontractor(s) shall not suffice to comply with this paragraph. Subcontractor acknowledges that it must have an employee of Subcontractor on site at all times its Work is being performed to supervise the same.
- b. Subcontractor shall provide technical services as required to effect the operation of equipment and/or material furnished under this Agreement, including performance of specific testing, if any, and shall instruct the Owner's personnel in the operation, maintenance and control of such equipment.
- c. If obligations are imposed upon Contractor in its Agreement with the Owner regarding superintendence or project management, these obligations are specifically incorporated herein by reference and are imposed upon Subcontractor to the extent necessary to assure Contractor's compliance with its contractual obligations to the Owner.

## **Article 9**

### **MATERIAL AND WORKMANSHIP**

- a. All Work shall be done to the final approval of the Contractor, Architect or Owner, and their decision as to the performance of the Work in accordance with the Contract Documents and the true constructive meaning of the Contract Documents shall be final, subject to the limitations stated in the Contract Documents. Any written opinion of the Contractor, Architect or Owner regarding the sufficiency of Subcontractor's work shall be considered a "final opinion" pursuant to Article 14 hereof.
- b. Subcontractor shall provide safe and sufficient facilities at all times for inspection of its Work by the Contractor, the Owner, the Architect or their authorized representatives.
- c. Should the Contractor, Architect or Owner condemn or disapprove any Work and/or materials to be furnished under the Agreement, the Subcontractor shall, within twenty-four (24) hours after receiving written notice from the Contractor of such condemnation or disapproval, proceed promptly to take down all rejected portions of the Work and remove from the Project all materials, whether worked or unworked, which are subject to that condemnation or disapproval, and shall promptly make good all such Work and all other work damaged or destroyed in removing or making good said condemned or disapproved Work. All costs associated with replacing or repairing condemned Work shall be borne by the Subcontractor without any increased in the Subcontract Amount.
- d. Subcontractor shall conform to and abide by any additional specifications, drawings, or explanations furnished by the Architect to illustrate the Work to be done, subject to the provisions of Article 11.
- e. The Owner may elect to accept Work performed by Subcontractor which is not in accordance with the Contract Documents, rather than requiring its removal and correction. In such event, the Subcontract Amount shall be adjusted as necessary to equitably compensate Owner for the consequences of Subcontractor's failure to comply with the Contract Documents.

## **Article 10**

### **PROGRESS AND COMPLETION**

- a. The Contractor shall coordinate all work, and unless otherwise expressly provided in the Agreement, the Subcontractor shall begin its Work in accordance with the Project Schedule or immediately upon verbal or written notice by the Contractor. Subcontractor shall carry on its Work efficiently and at a rate that will not cause delay in the progress of the Contractor's work or other portions of the Project carried on by other subcontractors.
- b. Subcontractor shall comply with any schedule requirements imposed upon the Contractor in its Agreement with the Owner. The Contractor shall have the right to decide the time, order and priority which the various portions of the Subcontractor's Work will be performed and other matters relative to the time and orderly conduct of the Subcontractor's Work if, in the Contractor's judgment, such actions are necessary to assure compliance with the scheduling requirements imposed upon Contractor in its Agreement with the Owner.
- c. Subcontractor shall at all times supply and promptly pay for adequate tools, appliances, equipment, a sufficient number of properly skilled workmen, and a sufficient amount of materials and supplies of specified quality to efficiently and properly prosecute the Work in accordance with the Contractor's Schedule, and any modifications thereto issued by Contractor, in order to achieve the Project completion date established by the Contractor. The Subcontractor shall at all times give due consideration to the fact that other work is dependent upon Subcontractor's proper and timely completion of its Work.
- d. Subcontractor shall only employ workmen who will work in harmony with those employed by the Contractor and other subcontractors, and should the Contractor's or other subcontractor's work for any reason be stopped, or materially delayed due, in the judgment of the Contractor, to the Subcontractor not having proper workmen, then the Contractor shall have the right, in addition to any and all other rights provided or in this Agreement, and upon forty-eight (48) hours written notice to Subcontractor, to employ such workmen as may be necessary to complete the requirements of this

Agreement, and who will work in harmony with the employees of the Contractor and other subcontractors. All costs incurred by the Contractor in completing the Work shall be charged to the Subcontractor.

- e. Subcontractor shall immediately replace any workmen objectionable to the Contractor and in the event Contractor's request for replacement is not honored, Contractor shall be entitled and authorized to terminate this Agreement for cause.
- f. It is further understood that contracts will be awarded and labor employed upon the Project without discrimination as to whether the employees of any contractor or subcontractor are members or are non-members of any labor organization. Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at the Subcontractor, the Contractor shall have the right to proceed as set forth herein, including, but not limited to, employing such workmen as Contractor deems appropriate to complete the requirements of this Agreement and the cost of so completing the Work shall be charged to the Subcontractor.
- g. If, in the opinion of the Contractor, the Subcontractor falls behind in the progress of the Work to be done under this Agreement, the Contractor may, in addition to any and all rights provided for in this Agreement, and upon forty-eight (48) hours written notice, direct the Subcontractor to take such steps as the Contractor deems necessary to improve the rate of progress, including a requirement that the Subcontractor increase the labor force, number of shifts and/or overtime operations, days of work, amount of plant or other remedies, and submit for Contractor's approval an outlined schedule demonstrating the method under which the required rate of progress will be regained, all without additional cost to the Contractor. The Contractor may, upon reasonable notice, require the Subcontractor to prosecute, in preference to other parts of the Work, such parts of the Work as the Contractor may specify. If Subcontractor fails to comply with the requirements of this subparagraph to Contractor's satisfaction, in addition to any other right or remedy Contractor may have under this Agreement, Contractor may employ such workmen and purchase and lease such materials and equipment as Contractor deems necessary in order to regain the proper rate of progress with respect to the Work. All costs incurred by Contractor in so regaining the proper rate of progress for the Work shall be charged to the Subcontractor. If Contractor incurs any attorney fees in exercising its rights hereunder, Subcontractor shall reimburse Contractor all attorneys fee expended.
- h. In performing this Agreement, the Subcontractor shall comply with Contractor's affirmative action programs and shall comply with any and all affirmative action obligations imposed by Owner under the Contractor's Agreement with the Owner. Subcontractor shall not discriminate against any employee or applicant because of race, creed, color, sex, age or national origin in the manufacture, assembly, delivery, erection and installation of materials and performance of the Work covered by this Agreement.

## **Article 11**

### **CHANGES AND EXTRA WORK**

- a. If the Owner in its Agreement with the Contractor is entitled to make changes in the Work by issuing modifications to that Agreement, upon receipt of such a modification issued subsequent to the execution of this Agreement, the Contractor shall promptly notify the Subcontractor of the modification and unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work under this Agreement which would be inconsistent with the changes made by a modification issued by the Owner.
- b. The Subcontractor may be ordered in writing by the Contractor and without invalidating this Agreement, to make changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions including those required by modifications to the Agreement between the Owner and the Contractor issued subsequent to the execution of this Agreement. In the event of such a change, the Subcontract Amount and time for performance of this Agreement shall be adjusted by way of Change Order. Prior to the commencement of such change or revised Work, the Subcontractor shall promptly submit to the Contractor in writing any claim it seeks to assert for adjustment in the Subcontract Amount or time for performance consistent with the requirements of the Contract Documents.
- c. Subcontractor shall make claims promptly to the Contractor for additional costs, in accordance with the Contract Documents and in no event later than five (5) days from the event giving rise to the additional cost. Subcontractor acknowledges that it shall not perform any work (change order or extra work) that it will seek additional compensation for without written notice to the Contractor prior to performing any change order or extra work or incurring any

additional cost. If Subcontractor fails to give prior written notice of change order or extra work or additional cost, such failure constitutes a complete release and waiver of any claim for time or money related to extra work. Any claim which will affect or become part of a claim which the Contractor is required to make under its Agreement with the Owner shall be made by the Subcontractor in sufficient time and in such manner so as to permit the Contractor to satisfy the requirements of its Agreement with the Owner. If the Subcontractor fails to timely or properly submit a claim to the Contractor and as a consequence the Contractor is unable to timely or properly file a claim against the Owner under its Agreement with the Owner, Subcontractor shall be deemed to have waived and released such claim(s).

- d. To the extent the Contractor's Agreement with the Owner provides for change directives to be computed on the basis of mutually agreed lump sum, unit price, force account, or otherwise, these obligations are hereby imposed upon the Subcontractor.
- e. In the event the Contractor requests the Subcontractor to review a proposed modification to the Project which may affect the Subcontractor's Work, the Subcontractor shall respond in writing within fourteen (14) calendar days after receipt of such request, or other reasonable time period as the parties may agree, stating the effect of the proposed modification upon its performance, including details of cost and time thereof. Otherwise, the Subcontractor shall accept the determination of the Contractor as to the effect of the proposed modification or change.
- f. The Contractor may at any time, and without notice to the Subcontractor's Surety, issue a written Change Order making any change in the Work within the general scope of this Agreement (See Attachment "G").
- g. Additions to, or changes in this Agreement shall be made only upon written order, approved by the Contractor (See Attachment "G"). Should the parties hereto be unable to agree as to the value of such Work to be added or omitted, the Subcontractor shall proceed under the written order of the Contractor, from which order the stated value of the Work shall be omitted. To determine the value of such Work the Contractor may refer the dispute to the Architect or Owner's Representative, whose decision shall be binding subject to the limitations, stated in the Contract Documents.
- h. In the event the Subcontractor is required by the Contractor to perform additional work for which the amount of compensation is not previously agreed upon, the Subcontractor shall prepare and submit to the Contractor a proposal describing the estimated quantities and cost involved. The Subcontractor shall submit that proposal to Contractor within the appropriate time period established in the Agreement between the Owner and the Contractor, so as to permit Contractor sufficient time to review the proposal and forward it to the Owner for consideration. If no time period is so set in the Contract Documents, then Subcontractor shall submit its proposal to Contractor within seven (7) calendar days of being required to perform the additional work. The Subcontractor shall keep accurate, detailed and itemized records of the costs of any such change and shall report such costs to the Contractor in the form and manner prescribed by the Contractor. The Subcontractor shall, if requested, furnish each day to the Contractor, certified copies of all time sheets, receiving and inspection reports, and all other basic documents required by the Contractor to evidence the expenditures of the Subcontractor as a result of such change. The Subcontractor's application to the Contractor for payment for the additional Work shall be accompanied by certified copies of all pertinent payrolls, invoices, and vouchers relating to the additional work.
- i. The Contractor's or Owner's receipt, or acknowledgment of the Subcontractor's change order claims, or any other alleged claim, or any notice or report, including reports of cost and time, daily tickets, or any payments made, shall not be construed as the Contractor's or Owner's acknowledgment, or acceptance of the accuracy or validity of any portion thereof, until such time as final change order amounts are determined and a Change Order is signed by the Contractor.
- j. Unless otherwise indicated in the Contract Documents, Subcontractor's mark-up for additional material, labor, and cost incurred in performing additional Work shall not exceed:
  - 1. 10% overhead, plus 10% profit for changes totaling \$10,000.00 or less;
  - 2. 10% overhead, plus 5% profit for changes exceeding \$10,000.00.
- k. Subcontractor acknowledges, warrants and agrees that the only employees or agents of Contractor with actual or apparent authority to direct change order work or additional work be performed by Subcontractor is an officer of Contractor (for purposes of this paragraph "officer" shall be the President or Vice President of Contractor). Further, to the extent any officer gives Subcontractor verbal direction to proceed with additional work or change order work, such



verbal direction shall be considered a construction change directive and not evidence of any agreement regarding the value of such work or whether the work is within the Subcontractor's scope of work. Contractor shall not be obligated to pay any amounts to Subcontractor except pursuant to a change order executed by Subcontractor and by an officer of Contractor.

## **Article 12**

### **DELAYS**

- a. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work for any cause whatsoever, including those for which Owner, Architect or Contractor may be responsible, in whole or in part, shall relieve Subcontractor of its duty to perform hereunder. Subcontractor shall be entitled to compensation for such interruptions, interference's, inefficiencies, suspensions or delays, not attributable to Subcontractor's fault or neglect, to the extent, but only to the extent, Contractor actually recovers compensation for same from the Owner or others. Payment by the Owner to Contractor for delay damages is an express condition precedent to Subcontractor's right, if any, to receive payment for delays, interferences, inefficiencies, disruptions and like events.
- b. The Subcontractor shall be liable to the Contractor for any and all loss or damage to the Contractor, or to the Owner for which Contractor may be liable, as a result of any delay on the part of the Subcontractor in the prosecution or completion of the Work, or for any delay to the completion of the Project attributable to Subcontractor. If the Agreement between the Contractor and Owner imposes upon the Contractor an obligation to pay the Owner liquidated damages in the event delays are encountered in completion of the Project, and to the extent such a delay is caused in whole or in part by the acts or omissions of the Subcontractor, the Subcontractor shall be obligated to pay the Contractor, in addition to any other damages sustained by the Contractor as a result of the delay, any liquidated damages the Contractor is obligated to pay the Owner.
- c. Should the Subcontractor be delayed in the prosecution of its Work by the occurrence of any act for which the Subcontractor is not responsible and which entitles the Contractor under its Agreement with the Owner to an extension of the time for performance, then the time fixed for the completion of Subcontractor's Work shall be extended for a period equivalent to the extension of time actually granted to Contractor for its performance or the time lost by reason of the delay, whichever shall be shorter.
- d. Subcontractor shall not be entitled to any time extension unless a notice of claim therefor is presented in writing to the Contractor within seventy-two (72) hours of the first occurrence of the delay and such claim is subsequently approved in writing by the Contractor. Subcontractor agrees that an extension of time for completing its Work precludes (unless otherwise agreed by the parties in writing) any and all other claims Subcontractor may have against the Contractor on account of such delay. Permitting the Subcontractor to continue after the time to complete its Work has expired, shall not be construed as a waiver by Contractor of any claims for loss or damage for breach by Subcontractor of one or more of the provisions of this Agreement.
- e. In the event Subcontractor's Work is delayed, interfered with, interrupted or caused to proceed in an inefficient manner, damaged, or its Work is rendered more expensive by the Owner or by the Architect or by others for whom the Owner may be liable, as its sole and exclusive remedy, the Subcontractor may, upon timely and proper written request to Contractor obtain time extensions and an increase in the Subcontract price but only to the extent the Contractor actually receives a time extension or payment from the Owner. Subcontractor's right to a time extension and/or payment hereunder is expressly conditioned upon Contractor's receipt of the same from the Owner. Subcontractor agrees that if it fails to make a claim under this paragraph in the time and manner called for in the contract between the Owner and Contractor then such failure shall constitute a complete waiver and release of such claim.
- f. If the Subcontractor's Work is impermissibly delayed interfered with, interrupted or caused to proceed in an inefficient manner, damaged, or its Work rendered more expensive by Contractor or by others for whom Contractor may be liable, the Subcontractor as its sole and exclusive remedy may upon written request properly made to the Contractor obtain only time extensions, but no monetary damages, for each day of proven, actual, excusable, and non-concurrent delay to the Subcontract Work. As a condition precedent to any relief, the Subcontractor must give the Contractor written notice of any event alleged to cause delay, interference, interruption, inefficiency, increased cost or damage to Subcontractor's Work within five(5) days of the day the Subcontractor first knew or should have known of such event. The

Subcontractor's failure to provide the written notice provided in this paragraph shall constitute a complete waiver and release of its claim for additional time.

### **Article 13**

#### **DEFAULT AND TERMINATION**

- a. Should the Subcontractor, in the opinion of Contractor, fail at any time to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality, or fail in any respect to prosecute its Work with promptness and diligence, or fail in the performance of any of the requirements herein, Contractor may, at its option, provide such labor, materials and equipment and deduct the cost thereof, together with all loss or damage occasioned thereby, including reasonable attorney's fees, from any money then due or thereafter to become due to Subcontractor. Except in an emergency, Contractor shall provide forty-eight (48) hours prior notice to Subcontractor of such failure and Contractor's decision to so provide such labor, materials and equipment.
- b. Should the Subcontractor, in the opinion of Contractor, refuse or neglect to supply sufficient and properly skilled workmen or materials or equipment of the proper quality and quantity, or fail in any respect to prosecute its Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the work of Contractor or other subcontractors, or fail in the performance of any of the covenants herein contained, or be unable to meet its debts as they mature, Contractor may, at its option, and at any time after forty-eight (48) hours written notice of such default to Subcontractor, terminate Subcontractor's employment by delivering written notice of termination to Subcontractor. Thereafter, Contractor may take possession of the plant and work, materials, tools, appliances and equipment of Subcontractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute Subcontractor's Work, on such terms and conditions as shall be deemed necessary by Contractor. The cost thereof, including all charges, expenses, losses, costs, damages and attorneys' fees, incurred as a result of Subcontractor's failure to perform, shall be deducted by Contractor from any money then due or thereafter to become due to Subcontractor.
- c. If Contractor so terminates the employment of Subcontractor, Subcontractor shall not be entitled to any further payments under this Agreement until Subcontractor's Work has been completed and fully accepted by Owner. In the event that the unpaid balance due exceeds Contractor's cost of completion, the difference shall be paid to Subcontractor less all costs incurred as a result of Subcontractor's failure to perform. If such costs, including attorney's fees, exceed the balance due, Subcontractor shall pay the difference to Contractor within ten (10) days of demand for payment of same.
- d. Contractor shall have the right to terminate Subcontractor, by written notice and without Subcontractor being at fault, for any cause or for its own or the Owner's convenience, and require Subcontractor to immediately stop the Work. In such event, Contractor shall pay Subcontractor for that portion of the Work actually performed an amount proportionate to the total Subcontract Amount. Contractor shall not be liable to Subcontractor for any other costs nor for prospective profits on Work not performed. If the termination or cancellation is due to any default or action by Owner, or as a result of court order or public authority, then Contractor shall not be liable to Subcontractor for any sum greater than that which Contractor receives from Owner with respect to Subcontractor's performance, less any costs incurred by Contractor in obtaining that amount from Owner. Any default termination of Subcontractor by Contractor subsequently determined to have been erroneous shall be deemed to be a termination for convenience under this subparagraph.
- e. The remedies provided the Contractor in this Article 13 and in any part of the Contract Documents shall be cumulative, and not exclusive, of all other remedies which the Contractor may have for breach of this Agreement by the Subcontractor, or as a result of the Subcontractor's failure to perform any of the covenants of this Agreement. All losses, damages, and expenses, including attorneys' fees incurred in the prosecution or defense of any action, arbitration or suit, trial or appeal, enforcement of any judgment, bankruptcy or insolvency proceeding, or any subsequent proceeding or appeal from any order or judgment entered therein, incurred by or resulting to the Contractor on the above account, shall be borne by and charged against the Subcontractor and shall be damages for breach of this Agreement. Contractor may recover same from the Surety issuing the bonds referenced in Article 16 hereof, and both the Subcontractor and its Surety agree to pay Contractor for such losses, damages, expenses and attorneys' fees. At the Contractor's sole discretion and exclusive option, proceeds that are payable, or due to become payable under this Agreement, or any other agreements between the Subcontractor and the Contractor, may be withheld by the Contractor and applied against said losses, costs or expenses.

## Article 14

### CLAIMS AND DISPUTES

- a. Subcontractor shall make all claims to the Contractor for extras and extensions of time for which the Owner may be responsible, in the manner and in the time provided for in the Contract Documents, if any, for like claims by the Contractor against the Owner. Contractor's liability to the Subcontractor for such claims is limited to the amount, if any, actually recovered from the Owner for such claim or extra, less the Contractor's costs associated with the assertion of the claim or extra. Failure of Subcontractor to make claims in the time and manner required by the Contract documents shall constitute a complete release and waiver of such claim(s).
- b. Except as otherwise provided in this Agreement, all disputes arising under this Agreement shall be initially decided by the Contractor and Contractor shall reduce its decision to writing and furnish a copy thereof to the Subcontractor. Contractor's decision shall be final and conclusive unless Subcontractor, within seven (7) calendar days of its receipt of the initial decision, issues written notice to the Contractor contesting same. If Subcontractor does not contest Contractor's initial decision within the time period noted above, Contractor's decision shall be final and conclusive, and Subcontractor shall be deemed to have waived any right to contest that decision. Subcontractor agrees that seven (7) days is a reasonable amount of time to contest a Contractor decision. The Subcontractor shall carry on the Work and comply with its performance and scheduling obligations under this Agreement despite the existence of any dispute or legal proceedings.
- c. If the Subcontractor seeks to appeal decision rendered under the Contract Documents by the Architect, Owner or the Owner's Representative adversely affecting the Subcontractor's interest, Subcontractor may prosecute the appeal, provided the Contractor's interests are unaffected. Subcontractor bears all costs associated therewith, and assumes sole responsibility for the appeal.
- d. Any claim, dispute or other matter in question between the Contractor and the Subcontractor relating to this Agreement, or the Work performed hereunder, shall be governed by the laws of the State of Georgia.
- e. All disputes or claims between Contractor and Subcontractor arising out of this Agreement, or the performance of any Work hereunder, shall be decided by litigation unless the Contractor, at its sole option, elects to have the dispute or claim decided or resolved by way of arbitration. In such event, the Contractor shall provide the Subcontractor written notice of its election, the Subcontractor shall be bound by the election, and the arbitration proceeding shall be conducted pursuant to the Construction Industry Arbitration Rules as issued by the American Arbitration Association then in effect. All such arbitration proceedings shall be held in Atlanta, Georgia, and judgment upon the arbitration award may be entered by any court having jurisdiction. If the Project is located in a state other than Georgia, venue for the arbitration shall be in the largest city in such state.
- f. In connection with all such arbitration proceedings the parties agree to afford each other liberal and informal discovery consistent with the discovery provisions of the Georgia Civil Practice Act, O.C.G.A. § 9-11-1 et seq., including the production of all documents related to the dispute and the availability for deposition at reasonable times of all persons under their respective control having knowledge of facts pertaining to the matter in dispute.
- g. In the event Contractor is involved in a separate arbitration proceeding, involving the Subcontractor's Work, questions of law or fact common to the Subcontractor's Work, or if complete relief cannot be afforded without the Subcontractor's presence in a separate arbitration proceeding, Subcontractor hereby consents to its consolidation or joinder to that separate proceeding.
- h. In the event Contractor does not elect to arbitrate a claim or dispute hereunder, Contractor and Subcontractor each hereby agree that the claim or dispute shall be submitted for resolution to the United States District Court for the Northern District of Georgia or, if that court does not have subject matter jurisdiction, to the Superior Court of Gwinnett County, Georgia. Both parties hereby consent to and waive any objections to the jurisdiction and venue of these courts, and stipulate that they shall be the sole forum for litigating disputes hereunder.

## **Article 15**

### **REGULATORY COMPLIANCE**

- a. Subcontractor's attention is directed to the compliance requirements of the conditions of the Contract Documents. These conditions are incorporated herein by reference and the Subcontractor should comply therewith as applicable. Specific reference is made to, but not limited to, the following:
  1. Apprenticeship trainee requirements.
  2. Equal opportunity employment requirements.
  3. Special trade permits and connection permits or fees.
  4. Compliance with employee wage rate determinations required by governing authorities and specified within the Contract Documents.
  5. Insurance provisions.
  6. Environmental controls.
- b. Subcontractor shall comply with all Local, State and Federal laws, codes, regulations and ordinances, which apply to the Project. Subcontractor shall give notices and comply with all such laws, ordinances, rules, regulations and orders of public authorities bearing upon the performance of its Work and shall secure and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of its Work.
- c. The Subcontractor shall comply with the Williams-Steiger Occupational Safety and Health Act of 1970, and the General Safety Rules and Regulations of the Construction Industry as currently required by the governing authorities having jurisdiction thereof, and such other labor laws as may be applicable. Subcontractor shall report in writing immediately to the Contractor any injury to any employee of the Subcontractor at the site of the Project.
- d. Subcontractor shall take all reasonable safety precautions necessary with respect to the performance of its Work and shall comply with all safety measures initiated by the Contractor and with all applicable laws, ordinances, rules, regulations and orders of public authorities pertaining to the safety of persons or property, all in accordance with the requirements of Contractor's Agreement with the Owner.
- e. The Subcontractor shall comply with the requirements of all governmental authorities having jurisdiction over the Work, including all Building Departments, and shall comply with all other laws and ordinances, and defend, indemnify and hold the Contractor harmless from all fines or citations issued against the Contractor or the Owner as a consequence of Subcontractor's Work. Subcontractor shall give these authorities all requisite notices relating to its Work.
- f. Subcontractor shall comply with all Federal, State and local tax laws, Social Security Acts, Unemployment Compensation Acts and Employer's or Worker's Compensation Acts to the extent they are applicable to the performance of the Work covered by this Agreement. Subcontractor shall comply with all Federal and State immigration laws and laws relating to immigration status of all persons working for or at the request of Subcontractor.
- g. In the event of the Subcontractor's violation of any of the above, the Subcontractor shall bear all costs resulting from such violation and shall defend, indemnify and hold the Contractor harmless from any damages (including attorneys' fees), claims, and causes of action arising from such violation.

## **Article 16**

### **INSURANCE**

- a. Subcontractor shall secure, and pay for, Worker's Compensation and Public Liability and Property Damage Liability Insurance from an insurer licensed to transact business in the State of Georgia and the state wherein the Project is located. The insurance must be issued by an insurer acceptable to the Contractor, and in such amounts as required by the

Contract Documents. Subcontractor shall furnish such other insurance coverages as may be applicable to its Work and as required under this Agreement all prior to commencing its Work. The Coverage and limits of said insurance are set forth in Attachment "B" and made a part hereof. All insurance policies shall contain a provision that the coverage's afforded thereunder shall not be canceled or not renewed nor restricted modifications added unless at least thirty (30) days prior written notice has been given to Contractor. Certificates of insurance or copies of policies acceptable to the Contractor shall be filed with the Contractor prior to the commencement of Subcontractor's Work. In the event Subcontractor fails to obtain or maintain any insurance coverage required by this Agreement, or the Contract Documents, Contractor may at its option: (i) terminate the Subcontractor; or (ii) purchase such coverage and charge the expense thereof to the Subcontractor. Subcontractor acknowledges, warrants, and agrees that it shall retain records of all insurance coverages and premium paid as required by applicable law.

- b. All insurance required by this Article shall name the Contractor as an additional insured and shall be considered primary.
- c. Subcontractor assumes full liability for any and all damages, death, or injury of any kind to all person(s), whether employees or otherwise, and property arising out of or in any way connected with its Work and shall to the fullest extent permitted by law defend, indemnify and hold harmless Owner, and Contractor, their respective officers, agents, employees and indemnities, from and against any and all claims, losses, suits, damages, legal and otherwise, arising out of or in any way connected with Subcontractor's Work, without regard to whether the liability, damage, death or injury was caused in part by a party indemnified hereunder. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due, or which thereafter becomes due, to Subcontractor, shall be held by Contractor to cover such losses and expenses, including all reasonable attorneys' fees. If the Subcontractor or its insurer asserts that its obligation to indemnify is only partial because some of the claimants allegations relate to work outside of the Subcontractor's scope of work, or otherwise not performed by Subcontractor, then Subcontractor shall never-the-less defend Contractor and Owner from and against the allegations made by such claimant and the trier of fact shall determine if any damages were sustain due to the breach or negligence of Subcontractor and if any damages were the result of acts unrelated to Subcontractors involvement in the project. If the trier of fact so determines that a portion of the damages are attributable to work or acts outside of or unrelated to Subcontractor, then Contractor shall reimburse Subcontractor such defense costs associated therewith. The intention of the parties is that if a claimant asserts damages related at least in part to activities of Subcontractor, the Subcontractor and its insurer shall defend the entire case subject to the potential right of reimbursement.

## **Article 16A**

### **BONDING OR SUBCONTRACT PERFORMANCE INSURANCE**

#### **a. Subcontractor's Performance and Payment Bonds**

At the contractor's sole option, the Subcontractor shall furnish separate Performance and Payment Bonds to secure the Subcontractor's obligations under this Agreement, each with a penal amount equal to 100% of the Subcontract Amount, on forms provided by the Contractor. See Attachment "C". The premium for these bonds shall be paid by Subcontractor and the cost thereof is included in the Subcontract Amount. All bonds issued pursuant to this Article shall be issued by a Surety acceptable to Contractor and licensed to transact business in the State of Georgia and in the state where the Project is located. In the event the Subcontractor shall fail to promptly provide such bonds the Contractor may terminate this Agreement, and re-let the Work to another subcontractor, and Subcontractor shall indemnify and hold Contractor harmless from all added costs and expenses incurred by the Contractor as a result thereof.

#### **b. Subcontractor Performance Insurance**

In lieu of the option stated in Section 16A (a) above and at the Contractor's sole option, the Contractor shall secure Subcontractor Performance Insurance which shall insure the Contractor against defaults by Subcontractor in the performance of its Work under this Agreement. The Subcontractor Performance Insurance shall be for the exclusive benefit of the Contractor and shall in no manner insure to the benefit of the Subcontractor. If Contractor exercises this option, the Subcontractor shall fully cooperate with the Contractor, and comply with it standard procedures for pre-qualifying subcontractors for the Subcontractor Performance Insurance Program. Pre-qualification procedures shall include completing a Subcontractor's Statement of Qualifications Questionnaire and providing financial, technical and management information to the Contractor and/or its Performance Insurer.

- c. To the fullest extent permitted by law Subcontractor shall defend, indemnify and hold harmless Owner, Contractor, and Contractor's Subcontractor Performance Insurer, if any, their respective officers, agents, employees and indemnities, from and against any and all claims, losses, suits, damages, legal and otherwise, arising out of or in any way connected with subcontractor's Work. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due, or which thereafter becomes due, to Subcontractor, shall be held by Contractor to cover such losses and expenses, including all reasonable attorneys' fees.
- d. If Contractor elects to require bonds, Subcontractor shall not commence its Work without having said Performance and Payment Bonds and any such commencement shall not be considered a waiver, or release by the Contractor of the above requirements. Subcontractor shall be deemed to have proceeded with Work at its own risk, and shall not be entitled to payment hereunder until such bonds are delivered to the Contractor.

## **Article 17**

### **ENCUMBRANCES**

- a. Subcontractor shall turn the Work over to the Contractor in good condition and free and clear of all claims, encumbrances, or other liens and shall defend, indemnify and hold harmless the Contractor and Owner from all claims, encumbrances or liens arising out of the performance of the Work. The Subcontractor shall, at its own expense (including attorney's fees), defend all suits to establish such claims, and pay any such claims or liens so established. In the event of failure by the Subcontractor to comply with this requirement, the Contractor may, at its sole discretion, bond off any liens. All costs of such action shall be charged to the account of the Subcontractor.
- b. In the event a subcontractor or supplier to Subcontractor shall file a lien against the Project, the Subcontractor shall bond off the lien within ten (10) days of its receipt of a demand to do so by the Contractor. Subcontractor's failure to comply with such a demand shall constitute an event of default entitling the Contractor to terminate this Agreement.
- c. Subcontractor shall, as often as requested by the Owner or by the Contractor, furnish a sworn statement identifying all parties who have furnished or are furnishing labor or materials to the Subcontractor with their names and addresses and amounts due or to become due each of them. Like statements may, at Contractor's option, be required from any sub-subcontractors or suppliers of the Subcontractor.
- d. Subcontractor shall furnish the Contractor, if requested, evidence of the payment of all bills and expenses incurred by the Subcontractor for labor, services, equipment and materials used by the Subcontractor, or any other liability incurred by the Subcontractor in any way, for the purpose of using the same on or about the Project. If requested by Contractor, Subcontractor shall also furnish written releases, in form acceptable to the Contractor, from all persons, firms, or corporations that have furnished to the Subcontractor, any labor, services, equipment and materials, whether on or for the Project, and written releases of lien, in a form acceptable to Contractor, from all persons, firms and corporations that may have in any way had any dealings or agreements in connection with the Work of the Subcontractor.
- e. Any and all transportation tax, sales tax, use tax or any other tax that might accrue through the purchase of materials or amounts paid for labor by the Subcontractor or occasioned by performance of this Agreement, shall be borne and paid for by the Subcontractor, and are included in the Subcontract Amount.
- f. Subcontractor agrees that payments due from Contractor for its Work are not assignable and that no part of this Agreement or the Work hereunder can be assigned, except by and in accordance with the written consent of the Contractor.

## **Article 18**

### **WARRANTIES AND GUARANTEES**

- a. Subcontractor warrants to the Contractor and Owner that all materials and equipment furnished shall be new unless otherwise specified, and that all Work under this Agreement shall be of good quality, free from faults and defects and in conformance with the Contract Documents.

- b. Subcontractor agrees to promptly make good, without cost to Contractor or Owner, any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period(s) established in the Contract Documents, and if no such period(s) be stipulated in the Contract Documents, then such guarantee shall be for a period of one (1) year from the date of completion and acceptance of the Project by Owner. Subcontractor further agrees to execute any special guarantees as provided by the Contract Documents or required by law. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.
- c. Subcontractor shall pay for all changes to the Subcontractor's Work or the Contractor's work resulting from defects in Subcontractor's workmanship or materials, as well as all expenses necessary to replace or repair either the Subcontractor's Work or the Contractor's work, including that damaged or disturbed by making replacements or repairs. Subcontractor shall further be obligated to pay for and shall reimburse Contractor for all costs associated with the impact of its defective workmanship on other subcontractors, the Contractor's work or the work of Owner's forces. This obligation is in addition to all other guarantees, warranties and rights contained in the Contract Documents.
- d. Subcontractor shall, as a condition of final payment, deliver to Contractor all original manufacturer's warranties, or other written warranties required by the contract documents.

## **Article 19**

### **PAYMENTS**

- a. Subcontractor shall submit for approval within seven (7) calendar days of the entry of this Agreement and prior to any payment being made, a Schedule of Values with respective quantities. The referenced Schedule of Values shall allocate the Subcontract Amount among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require.
- b. Contractor's obligation to pay the Subcontract Amount is executory and conditional upon Subcontractor's compliance with this Agreement, and Subcontractor's completion of the Work. It is further expressly agreed that payment by the Owner to the Contractor is an absolute condition precedent to payment by the Contractor to the Subcontractor of all or any portion of the Subcontract Amount.
- c. If at any time there shall be evidence of a lien or claim for which, if established, Contractor or Owner might become liable, and which is chargeable to Subcontractor, or if Subcontractor shall incur any liability to Contractor, or Contractor shall have any claim or demand against Subcontractor of any kind or for any reason, whether or not reduced to judgment or award, the Contractor shall have the right to retain out of any payment due, or to become due under this Agreement or any other agreement between the Contractor and the Subcontractor, an amount sufficient to indemnify Contractor and Owner against such lien or claim, or to fully satisfy such liability, claim, or demand. Contractor shall also be entitled to charge against or deduct from any such payment all costs of defense or collection with respect thereto, including reasonable attorneys' fees. Should any claim or lien develop after all payments are made hereunder, the Subcontractor shall refund to the Contractor within ten (10) days of demand therefore all monies that the latter may be compelled to pay in discharging such claims or liens and all costs, including reasonable attorneys' fees incurred in collecting said monies from the Subcontractor.
- d. No progress payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no such payment shall be construed to be acceptance of defective Work or improper materials.
- e. Subcontractor shall pay for all materials and labor used in connection with the performance of this Agreement through the period covered by previous payments received from the Contractor, and furnish satisfactory evidence, when requested by the Contractor, to verify compliance with this requirement. Subcontractor further agrees to furnish to the Contractor, at the time of Final Payment: (1) an affidavit certifying to the Subcontractor's payment in full for all items relating to the cost of the Work hereunder (see Attachment "O"); (2) a final waiver of lien from Subcontractor and from Sub-Subcontractors/Suppliers (see Attachment "F"); (3) a complete release on the form designated by the Contractor; (4) a Consent to Final Payment from Subcontractor's Surety; and (5) proof of sales and use tax payment in a form acceptable to Contractor if ending subcontract value is \$250,000.00 or more.

- f. Final Payment is further subject to the Contractor's prior receipt from the Subcontractor of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties and bonds relating to the Work, all as required by the Contract Documents.
- g. Acceptance of Final Payment by Subcontractor shall constitute a full waiver and release by Subcontractor of all claims against Contractor or Owner arising out of or relating to this Agreement.
- h. To the extent that any provisions of this Article 19 are inconsistent with any part of the Contract Documents, the provisions of this Article 19 shall control.
- i. Subcontractor acknowledges and agrees that payment by the Owner to Hogan, including payment for change orders, extras, delay damages, inefficiencies, claims, costs, progress payments and final payment, is an express condition precedent to Hogan's obligation to make any payment to Subcontractor and is an express condition precedent to the Surety's obligation to make any payment or perform any act pursuant to any payment or performance bond related to the project or Subcontractor's Work. Subcontractor agrees that the Surety is an intended third party beneficiary of this conditional payment clause and has the right to enforce the terms hereof which are incorporated into the terms of any payment bond where Hogan is the principal thereunder.

## **Article 20**

### **INDEMNIFICATION**

- a. To the fullest extent allowed by law, Subcontractor shall indemnify and defend indemnitees of and from all liability, cost, expense, fine, or damage caused in whole or in part by the acts or omissions of the Subcontractor, including failure of performance of any obligation hereunder or liability arising from or related to the Subcontract Work or to this Subcontract.
- b. As used herein, "indemnify and defend" are to be liberally construed and require the Subcontractor, at its own expense and without cost to Contractor or other indemnitees, to indemnify, defend, hold harmless, protect, and exonerate indemnitees of and from any liability and any cost related to any liability.
- c. As used herein, "Indemnitees" include the Contractor, the Owner, and any entity which the Prime Contract or applicable law requires the Contractor to indemnify or to whom the Contractor may be liable.
- d. As used herein, "liability" includes actual, contingent, or alleged liability, exposure to liability, loss, risk of loss, cost or expense (including attorneys' fees) of whatever description, type, kind, or nature and pertains to all sources of liability including but not limited to claims, demands, offsets, backcharges, causes of action, liens, legal actions, litigation, arbitrations, administrative proceedings, fines, judicial proceedings, subpoenas, discovery requests, awards, and judgment.
- e. As used herein, "liability" further includes but is not limited to assertions of liability based upon contract, tort, equity, statutory right, bond claim, and any other basis of liability or other theory of recovery and further includes but is not limited to the following types of damages or subject matters of liability; direct and indirect damages of whatever nature; consequential, exemplary, and punitive damages of any type; economic loss or damages, attorneys' fees and legal expenses, liquidated damages, actual damages, damages for delay, impact costs, increased performance costs, labor disputes, termination of contract or employment, safety requirements, certifications, property rights of third parties, patent or trademark infringement, personal injury, bodily injury, sickness, disease, death, or damage to or destruction of real or personal property (including the loss of use thereof).
- f. TO THE FULLEST EXTENT ALLOWED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY AND DEFEND INDEMNITEES FROM THE CONSEQUENCES OF INDEMNITEES' OWN PARTIAL NEGLIGENCE. However, nothing in this Section or elsewhere in this Subcontract is intended to state any obligation which is not permitted by applicable law and all terms hereof are intended and shall be interpreted to impose on the Subcontractor valid obligations only to the fullest extent the law allows and as necessary to give this Subcontract the maximum possible effect.



- g. In any and all claims against the Contractor, Owner, or other Indemnitee, by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable, the Subcontractor's obligations to indemnify and defend Indemnities shall not be limited by any immunity or defense which the Subcontractor may have against such claimant nor limited by the amount or type of damages, liability, compensation, or benefits owed by the Subcontractor or payable on Subcontractor's behalf for any reason including but not limited to laws pertaining to worker's compensation insurance and benefits and other laws pertaining to employee health, welfare, disability, or other benefits.
- h. The Subcontractor's obligations to indemnify and defend Indemnities are supported by the consideration of this Subcontract as a whole. If separate consideration is required by applicable law, the Subcontractor represents to the Contractor that its Subcontract Price, as set forth on page one of this Subcontract, reflects and incorporates an increase of One Thousand Dollars (\$1,000) or one percent (1%) of the Subcontract Price, whichever is greater, as separate compensation for the Subcontractor's obligations to defend and indemnify Indemnities and understands that the Contractor has relied upon Subcontractor's representation as regards such separate consideration.
- i. Except as expressly provided herein, the Subcontractor's obligations to indemnify and defend Indemnitees shall be unlimited in dollar amount. If applicable law imposes a mandatory limitation or requires a limitation to be specified in order for any part or feature of the Subcontractor's obligation to indemnify and defend any of Indemnitees to be enforceable, such limitation shall be the greater of \$2 million or twice the Subcontract Price, subject to any maximum limitation imposed by law; provided, however, such limitation applies only in the event and only to the extent mandated by applicable law in order for the obligation to indemnify or defend, or any part thereof, to be enforceable.
- j. With respect to any matter to which the Subcontractor's defense obligations apply, the Contractor may elect to undertake its own defense, but at the Subcontractor's sole expense, with attorneys of the Contractor's own choosing, and such election shall be without prejudice to any rights hereunder, including Subcontractor's obligations to pay all costs of defense. The Subcontractor's obligations to defend the Contractor shall be independent of and in addition to Subcontract provisions for indemnity and shall apply to the fullest extent permitted by applicable law.
- k. If the Owner requires certification of any claim or the submission of cost or pricing data respecting any claim, proposed change, or contract modification, the Subcontractor covenants and agrees to furnish the Contractor with a certification of any and all of Subcontractor's claims and of Subcontractor's cost or pricing data. The Subcontractor's certification shall be in a form satisfactory to the Contractor. The Subcontractor shall indemnify and defend the Contractor from any offsets, losses, claims, damages, or expenses which Contractor may suffer or incur, including attorneys' fees and related costs, as a result of the Subcontractor's failure or inability to support any part of its claim or as a result of Subcontractor's failure to provide complete, current, and accurate cost or pricing data.

## **Article 21**

### **MISCELLANEOUS REQUIREMENTS AND SPECIAL PROVISIONS**

- a. The quantity and scope of the Work required herein is directed by the whole of the Contract Documents, and Subcontractor acknowledges its obligation under this Agreement to coordinate and review its Work with materials and/or equipment to be furnished by others to ensure completely compatible systems. Accordingly, the Subcontractor shall review all fabrication and shop drawings, and all product data and other Contract Documents referring to items requiring integration and compatibility with the Work required of Subcontractor.
- b. Subcontractor shall review the surfaces provided by others to which its Work is to be applied, and shall notify the Contractor of any known defect or condition detrimental to proper procedures, prior to the commencement of its Work; otherwise, it shall be deemed that the Subcontractor has accepted the conditions of such surfaces and shall be liable for all consequences resulting therefrom. Subcontractor shall cooperate with Contractor, other subcontractors and Owner's forces to the extent their work might interfere with Subcontractor's Work and Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion if requested by the Contractor. Subcontractor shall also advise Contractor of any potential conflicts between its Work and that of the Contractor, other subcontractors or Owner's forces.

- c. Subcontractor shall take all necessary precautions to protect and shall be liable for any damages to adjacent surfaces caused by its Work, including damages resulting from Subcontractor's cleaning of such surfaces.
- d. In the event Subcontractor knowingly performs Work on or adjacent to defective work provided by others or knowingly provides or performs Work in violation of any Code requirements, statutes, laws or regulations, Subcontractor shall be fully responsible and shall indemnify Contractor for all damages caused thereby, including the costs to remove and replace its Work and any work of other subcontractors, the Contractor, or Owner's forces affected thereby.
- e. The Contractor shall make available within reasonable limits, temporary services for the benefit of Subcontractor, consisting of sanitary toilet facilities, potable water, 110-volt electric service and litter containers. Litter containers shall not be utilized for the deposit of scrap or waste construction materials. Subcontractor hereby agrees to constantly maintain proper housekeeping controls for construction debris and litter arising from its operations and shall clean, on a daily basis, all debris and foreign material contributory to its operations.
- f. Subcontractor shall provide, maintain and remove from the Project site upon completion of its Work, all temporary offices, structures for the use of its employees, sheds and storage facilities, complete with all related utilities, gas, telephone and water. Storage areas for the use of the Subcontractor shall be designated by the Contractor and no materials or equipment shall be stored by the Subcontractor except in areas approved by the Contractor. Such storage areas shall be maintained in an orderly condition by the Subcontractor.
- g. Subcontractor shall provide and be responsible for all layouts, including the accuracy thereof, necessary for the performance of its Work.
- h. Subcontractor shall perform all cutting, fitting, patching, sleeving, grouting, and sealing of its Work that may be required to fit it to, receive, or be received by the work of others as shown, or reasonably implied by the Contract Documents, or as required, or reasonably implied by the rules and regulations, codes, and requirements of any regulatory or governmental agency having jurisdiction over the Project; or as required or reasonably implied to achieve consistency and compatibility with the design elements being penetrated.
- i. Except as may be otherwise provided in the Contract Documents, Subcontractor shall pay the Contractor the reasonable value of any of the Contractor's equipment used by the Subcontractor in performing its Work.
- j. Subcontractor represents that it has investigated, examined, inspected, and thoroughly familiarized itself with the Contract Documents, the site and adjoining premises in connection with which its Work is to be performed, and that it has thoroughly informed itself as to any difficulties in connection therewith. Subcontractor further warrants that the Contractor has made no representation of any kind or nature with reference thereto and not contained in this Agreement. Commencement of the Work or any portion thereof by the Subcontractor shall be conclusive evidence that the jobsite or that part thereof, at which the Work is being installed, is in proper condition for the reception and installation of the Work. By entering this Agreement with Contractor, Subcontractor further warrants and represents that it has taken into account all foreseeable climatic conditions, the availability and costs of labor and materials, tools and equipment, the Owner's and Contractor's scheduling requirements, and potential Project congestion caused by the work of others preceding simultaneously with Subcontractor.
- k. The scope of Subcontractor's Work includes an obligation to completely clean all Work and remove all contributing debris from the Project site and to locations designated by the Contractor as often as necessary and as often as directed by Contractor. If Subcontractor fails, within twenty-four (24) hours of receipt of written notice to the Subcontractor's field supervisor, to correct a failure to properly clean-up and dispose of all trash and waste materials created by the Subcontractor, the Contractor shall have the right to terminate the Subcontract or at its option to perform such clean-up for Subcontractor; and the Subcontractor hereby agrees to indemnify and to pay Contractor all costs incurred by the Contractor in performing the clean-up work. Clean up of the Work, and the daily removal of debris from the areas of the Work is mandatory. Each day, all trash and debris shall be removed from the Project. Fire exits, corridors, ladderways, doorways and exit paths in general shall be clear of debris and open to pedestrian and wheelchair traffic at all times, specifically including nights and weekends.
- l. Subcontractor waives all claims and all rights of subrogation against Contractor and Owner for loss of, or damage to, Subcontractor's tools, machinery, equipment, material or supplies used to install the work.

- m. Subcontractor's special attention is called to the requirement that Subcontractor complies and adheres to the Contractor's Schedule, a copy of which shall be displayed in the Contractor's Field Office.
- n. Work hours on the Project shall be from 7:00 a.m. to 3:30 p.m., Monday through Friday, unless adjusted by the Superintendent. Holidays shall be as follows:

New Year's Day	Christmas Day
Memorial Day	Fourth of July
Thanksgiving Day	Labor Day

Any work beyond these hours must have prior approval by the Contractor's Project Manager or Superintendent.

- o. Deliveries of materials to the jobsite are to be received, unloaded and stored by the Subcontractor and are to be coordinated with the Contractor.
- p. Subcontractor's special attention is called to Attachment "D" - "SAFETY REQUIREMENTS" which is to be strictly observed and rigidly enforced by the Subcontractor during the performance of the Work under this Agreement.
- q. Subcontractor's special attention is called to Attachment "E" - "PROHIBITIVE ARTICLES POLICY" which is to be strictly observed and rigidly enforced by the Subcontractor during the performance of the Work under this Agreement.
- r. Subcontractor shall be represented by a person or by persons authorized to represent it at weekly Safety and Subcontractor Meetings, commencing two (2) weeks prior to the commencement date of the Work covered by this Agreement.
- s. If the nature of the Work to be performed under this Agreement is such as to require as-built drawings, such drawings shall be kept up to date on a daily basis as a condition precedent to Subcontractor's receipt of progress payments.
- t. Where testing agency standards are referenced in the Contract Documents, all materials shall be tested and certified by an approved, independent testing firm acceptable to Contractor.
- u. Location of employee parking, equipment parking, material storage, and temporary trailers shall be subject to approval by the Contractor. Subcontractor shall move material, and/or temporary trailers as directed by Contractor with all costs of same to be borne by Subcontractor.
- v. Subcontractor shall provide a list of vendors/suppliers prior to the submission of its first pay request.
- w. In the event Subcontractor seeks to contract with a sub-subcontractor for any portion of the Work covered by this Agreement, prior written approval of the Contractor must be obtained.
- x. A condition precedent to the Subcontractor receiving monthly payments after starting the Work is the delivery by the Subcontractor to the Contractor each month, (regardless of whether any Work was performed), waivers of lien from the Subcontractor and all sub-subcontractors and suppliers who have furnished materials for use on the project and for which payment has been received by Subcontractor. Forms for use in this connection shall be supplied by the Contractor.
- y. The headings provided in this Agreement are for ease of reference only. The headings form no part of the Agreement between these parties and shall be given no weight in the interpretation or construction of this Agreement.
- z. Should any provision of this Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity and enforceability of any other section or part hereof.
- aa. The failure of the Contractor to enforce at any time or for any period of time any one or more of the provisions of this Agreement or the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions and Contractor shall thereafter be entitled to enforce each and every such provision without any requirement

that the Contractor provide notification to the Subcontractor of its intention to thereafter enforce said provision or provisions.

bb. If this Agreement, as drawn, is not duly and properly executed by the Subcontractor within fourteen (14) calendar days of its date, it may be declared null and void by the Contractor at its option and without further notice

IN WITNESS WHEREOF, Contractor and Subcontractor hereby executed this Agreement the day and year first written above.

**WITNESS**

\_\_\_\_\_

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

**HOGAN CONSTRUCTION GROUP, LLC**

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

Name: Paul Hogan

Its: President

**WITNESS**

\_\_\_\_\_

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

**SUBCONTRACTOR**

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

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

Its: \_\_\_\_\_

# INSTRUCTIONS TO SUBCONTRACTORS

## Subcontract and Payment Procedures

### HOGAN CONSTRUCTION GROUP, LLC

(Make sure your billing department has a copy of this instruction sheet)

Please Read Carefully

The attached forms are part of your subcontract. Please review this information carefully to prevent delays in the execution of the subcontract agreement as well as your billing and payment.

#### **Subcontract Procedures:**

We have included two (2) identical subcontracts for you. Both contain your scope of work, the boilerplate and the following attachments for your information/records:

Attachment A	Contract Document List
Attachment B	Insurance Requirements
Attachment C	Payment & Performance Bond Info
Attachment D	Safety Requirements
Attachment E	Prohibited Articles Policy
Attachment G	Subcontract Change Order *Sample Only*
Attachment M	Project Schedule

After reviewing, signing & witnessing **both** subcontracts, please return **both** to our office. We will review them and return one executed copy to you. **Do not hold contracts for more than 2 weeks. Contracts must be returned signed prior to mobilization.** Also, in a timely manor, please ensure we have your current insurance certificate and W-9 on file.

\*Note\* There are also attachments F, H, I, J, K, L & O which are forms that you will need to make copies of to keep on hand. Do this once you have received your fully executed copy of the subcontract back. These forms are discussed in the next section.

#### **Payment Procedures:**

These attachments are forms to keep on hand:

Attachment F	Unconditional Waiver and Release Upon Payment (Final Waiver)
Attachment H	Affidavit of Subcontractors and/or Suppliers
Attachment I	Warranty Form
Attachment J	Interim Waiver and Release Upon Payment (Your Partial Waiver)
Attachment K	Sub-Subcontractor/Supplier Interim Waiver and Release Upon Payment (Partial Wavier for Your Subs/Suppliers to complete if required)
Attachment L	Application for Payment
Attachment N	Sales and Use Tax Affidavit
Attachment O	Final Affidavit, Waiver and Release of Suppliers and Sub-Subcontractors

As a subcontractor, you will need to use the forms attached to your contract. In order to receive payment, these forms must be submitted as follows:

**Pay Application (Attachment L)** – This needs to be submitted monthly (this is your pay request). This form needs to be completed, signed and notarized every month that you performed work and you need to apply for payment. **We must receive this signed and notarized form on or before the 25<sup>th</sup> of the month in order to be processed with that month's draw from the owner. You may fax it to our office on the 25<sup>th</sup> to make the cut off, but make sure you immediately mail us the original.**

**Affidavit (Attachment H)** – This form needs to be submitted from you with your first pay application. This form lets us know what suppliers and/or subs you will be using for the project. Please fill in all

suppliers/subs that you have used for the project so far. If there are additional subs/suppliers you use in the future, update this form and submit it with your next pay application. If you do not have any subs/suppliers that are specific for this project (example: you use stock materials from inventory or you provide your labor only), state that reason on the form and submit. Regardless of whether you will use suppliers/subs or not, this form must be submitted with all first pay applications. Make sure this form is signed and notarized.

**Your Partial Waiver (Attachment J)** – Fill out this form and submit with every progress billing/pay application (not your last retainage billing though). Make sure the project information is filled in at the top. The “upon the receipt of the sum” amount on the waiver needs to match the amount of your pay request exactly (line #11 on your pay application). Use the through date that matches the end of the period (month) of the corresponding pay request. The signature date must be either the same as the through date you have listed or after. Have this form signed, witnessed, and notarized (the witness being the notary).

**Your Sub’s/Supplier’s Partial Waiver (Attachment K)** – If this form is required (see below), this form needs to be filled out by every subcontractor and/or supplier that you list on your affidavit (attachment H). It will need to be filled out with at least a through date of the end of the month PRIOR to the pay request it goes with. For example, if you have submitted a pay request on July 25th, we will need sub/supplier waivers from those listed on your affidavit (attachment H) through at least June 30th before we can release your July payment. **Note that the “for and in consideration of the sum” amount needs to be the amount that they were paid through the corresponding date. They should only put \$0 if they were not paid anything for that period (month).** This form must be signed, witnessed, and notarized (the witness being the notary).

A current attachment K form is ALWAYS required from each sub/supplier with each pay application unless:

- The sub/supplier has already submitted a final waiver and final affidavit (attachment F & O) and they are paid in full

**Final Waiver (Attachment F)** – This form is the final waiver that you must fill out and submit with your final pay application. Also, this form will be needed from each sub/supplier listed on your affidavit (Attachment H) before your final payment can be released. Each sub/supplier you use must be paid in full on the job before we can release your final check. This form must be signed, witnessed, and notarized (the witness being the notary).

**Final Affidavit of Suppliers and Sub-Subcontractors (Attachment O)**– This form will be needed for your final billing from each sub/supplier listed on your affidavit (Attachment H) in addition to their final waiver (Attachment F) before your final payment can be released. Each sub/supplier you use must be paid in full on the job before we can release your final check. Once this form as well as their final waiver (Attachment F) is submitted from one of your sub/suppliers, we will not need any paperwork from them again. This form must be signed, witnessed, and notarized (the witness being the notary).

**Sales and Use Tax Affidavit-** This form will be needed with your final billing from you. Make sure to complete your name, and the project you are working on in line 3, sign and notorize.

**Warranty Form (Attachment I)** – The project engineer will know if this form will be required from you near the end of the project. Check with him/her when you are preparing your final pay request to see if you must submit it. He/she will also be able to tell you what dates to use on the form. This form must be signed and notarized.

*If you have further questions, feel free to contact our office at any time.*

*Office phone (770)242-8588*

*Facsimile (770)242-7741*

## **Attachment "B"**

### **Insurance Requirements**

Subcontractor shall furnish Contractor certificate of insurance indicating the following coverages and minimum limits of liability.

Workers' Compensation based on statutory requirements including employer's liability with a limit of \$100,000 bodily injury by accident for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury by disease policy limit.

Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate for public bodily injury and property damage liability and personal injury protection including claims related to employment.

Subcontractor's liability insurance shall be written on a Commercial General Liability coverage form equal to, or greater than, the ISO form, No. CG0001 10-01, with all coverages indicated, coverage shall be on an "Occurrence" basis, not an "Accident" or "Claims Made" basis. The insurance specified shall be considered minimum requirements and shall include:

- Premises-Operations
- Contractual Liability
- Products-Completed Operations
- Personal and Advertising Injury
- Explosion, Collapse and Underground Property Damage
- Premises Medical Payments
- Fellow Employee Coverage
- Products and Completed Operations shall be maintained for two years after final payment.
- Commercial Automobile Liability insurance including owned, hired and non-owned vehicles with limits of (a) \$1,000,000 each person and \$1,000,000 each accident for bodily injury liability and \$100,000 each accident for property damage liability, or (b) \$1,000,000 combined single limit for bodily injury liability and property damage liability.
- Umbrella/Excess Liability insurance with a minimum of \$1,000,000 each occurrence in excess of the liability insurance required.
- Coverage shall be on a Primary and Non-Contributory Basis.

Hold Harmless Clause: The Subcontractor shall indemnify and hold harmless the Contractor and all his agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Subcontractor's work under this Subcontract providing that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Subcontractor or anyone directly or indirectly employed by him or anyone for whose acts as he may be liable, regardless of whether it is caused in part by a party indemnified hereunder.

In any and all claims against the Contractor or any of his agents or employees by any employee of the Subcontractor, anyone directly, employed by him or anyone for whose acts he may be liable, the indemnification obligations under these paragraphs shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

There shall be attached to and made a part of every certificate of insurance, cancellation clause as follows:

"The insurance company agrees that Policy No. \_\_\_\_\_ shall not be cancelled, changed or allowed to lapse until 30 days after Hogan Construction Group, 5075 Avalon Ridge Parkway, Norcross, GA 30071 has received written notice of the cancellation or change or lapse, as evidenced by return receipt of registered letter and it is agreed further that, as to lapsing, such notice will not be valid if mailed more than 45 days prior to the expiration date shown on this policy."

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER <b>Sample Agency</b>	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : <b>Sample Insurance Carrier</b>	
	NAIC # <b>1234</b>	
INSURED <b>Your Company</b>  <b>SAMPLE CERTIFICATE</b>	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	<b>X</b>		<b>XXX123</b>	<b>00/00/00</b>	<b>00/00/00</b>	EACH OCCURRENCE <b>\$1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) <b>\$50,000</b> MED EXP (Any one person) <b>\$5,000</b> PERSONAL & ADV INJURY <b>\$1,000,000</b> GENERAL AGGREGATE <b>\$2,000,000</b> PRODUCTS - COMP/OP AGG <b>\$1,000,000</b> \$
<b>A</b>	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			<b>XXX123</b>	<b>00/00/00</b>	<b>00/00/00</b>	COMBINED SINGLE LIMIT (Ea accident) <b>\$1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
<b>A</b>	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB DED <input type="checkbox"/> RETENTION \$	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE		<b>XXX123</b>	<b>00/00/00</b>	<b>00/00/00</b>	EACH OCCURRENCE <b>\$1,000,000</b> AGGREGATE <b>\$1,000,000</b> \$
<b>A</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		<b>N / A</b>	<b>XXX123</b>	<b>00/00/00</b>	<b>00/00/00</b>	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT <b>\$100,000</b> E.L. DISEASE - EA EMPLOYEE <b>\$100,000</b> E.L. DISEASE - POLICY LIMIT <b>\$500,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**Hogan Construction Group is named as Additional Insured on the General Liability/Completed Operations policy using endorsement forms CG 2010 11/85 or combination of CG 2010 10/01 and CG 2037 10/01 (or equivalent) to included ongoing and completed operations, but only with respect to liability arising out of the operations of the named insured. Coverage shall be on a primary and non-contributory basis. This certificate of insurance indicates Workers Compensation and Employer's Liability coverage for INSERT STATE WHERE PROJECT IS LOCATED.**

## CERTIFICATE HOLDER

## CANCELLATION

<b>Hogan Construction Group, LLC</b> <b>5075 Avalon Ridge Parkway</b> <b>Norcross, GA 30071</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  Agent Signature



## **Attachment “C”**

### **Payment and Performance Bond Forms**

If No Payment and Performance Bonds are attached hereto, all payment and performance bonds issued by Subcontractor shall be issued on standard AIA bond forms.

**Attachment "D"**  
**Safety Requirements**

All Subcontractors agree to do the following:

1. The Subcontractor acknowledges that construction is an extremely hazardous business and that he and his employees are vitally interested in job safety. The Subcontractor assumes full responsibility for his work being performed in a careful and safe manner in complete compliance with the minimum rules and regulations established by the Occupational Safety and Health Administration (O.S.H.A.)
2. The Subcontractor acknowledges that he will also abide by the Contractor's Safety Policy, a copy of which is located on all job sites.
3. The Subcontractor agrees that the minimum safe working apparel includes hard hat, shirt with sleeves, long pants, safety glasses and work boots. The Subcontractor further acknowledges that workmen in his employ will follow these minimum standards.
4. The Subcontractor acknowledges that he is familiar with the Contractor's weekly safety meeting and agrees that while he has workmen on the job, this meeting will be attended by his supervisory and field personnel.
5. The Subcontractor further acknowledges that Hogan job superintendents, safety director, or project manager will send a form to their home offices which outlines hazardous conditions which have been permitted to occur. Within 3 calendar days after such a citation the Subcontractor must have corrected any minor offense or the Subcontractor may be removed from the project. Any major offense must be corrected immediately.
5. No media playing devices (AM/FM radios, tape players, CD players, MP3, DVD players) are permitted on any project.
6. Clean up for all trades shall be done in the last ten minutes of the day, every day. Flammable materials may not be stored in enclosed buildings.
7. Intentionally Omitted.
8. Any citations with penalties against the Contractor caused by Subcontractor activity will be backcharged to the Subcontractor per the contract.
9. FALL PROTECTION: Hogan Construction requires 100% fall protection in all instances where employees are exposed to a fall of 6' or more, regardless of work task. Subcontractor shall develop a project specific written fall protection plan to be submitted ten days prior to subcontractor mobilization.
10. Each Subcontractor must have a representative on site trained in CPR and first aid on site at all times.
11. Each Subcontractor must have a card holding OSHA 10-HR trained supervisor on site at all times.
12. Contractors engaging in confined space, scaffolding, excavation or work requiring fall protection must have a trained competent person (in the applicable topic) on site at all times. A copy of evidence of training must be provided 10 days prior to beginning work.
13. Contractors using heavy equipment, ariel lifts and/or forklifts must provide evidence of training for employees utilizing said equipment ten days prior to beginning work.
14. Contractors utilizing cranes on the project must provide evidence of the crane operators training or use CCO certified operators.

## **Attachment "E"**

### **PROHIBITED ARTICLES/CONDUCT:**

1. Weapons, explosives, firearms and ammunition are not allowed on any Hogan Construction jobsite.  
  
Alcoholic beverages, illegal and illicit drugs, including marijuana, mood- or mind-altering substances, "look-alike" substances, designer and synthetic drugs, certain inhalants and prescription drugs for which a prescription has not been issued to the owner, are prohibited on all jobsites, including, buildings, trailers, offices, parking lots, vehicles of all types including automobiles and trucks
2. Equipment, paraphernalia, and literature related to illegal drug or substance use is prohibited.
3. Hogan Construction reserves the right to make reasonable unannounced searches of Company premises and personal searches of employees and others on the premises, including, but not limited to, personal effects, vehicles, lockers, desks, tool boxes, clothing, meal containers and baggage. Failure to submit to search procedures will result in employee removal from the jobsite.
4. Subcontractor agrees to send employees for drug and alcohol screening tests, at the request of the Company in cases of reasonable suspicion, as defined in O.C.G.A 34-9-415 (2007). Cost for drug and alcohol screening will be the responsibility of the Subcontractor.
5. Subcontractor employees involved in a job-related accident requiring medical treatment (other than minor onsite first aid) or involving damage to property, including, but not limited to automobiles, trucks and other equipment must be drug and alcohol tested by the Subcontractor employer immediately or as expeditiously as reasonable, but in no case longer than 1 hour after the incident. Employees may not return to the jobsite until the Subcontractor has notified Hogan Construction of receipt of negative results of said test. Employees not taking a drug and alcohol test within 1 hour of the incident may not return to the jobsite.
6. Subcontractors certify they comply with the state of Georgia drug-free workplace program, O.C.G.A 34-9-415, O.C.G.A. 34-9-413.
7. Any person who, as a result of drug or alcohol testing and screening, is found to have identifiable traces of a prohibited drug or substance in his/her system, regardless of when or where the drug or substance entered that person's system, will be considered in violation of this Policy and will be removed from Company premises.. Violation of this policy by Subcontractor employees may cause cancellation of the contract by Hogan Construction Group.
8. If Hogan Construction Group determines that a search or drug test of employees on a particular site is necessary, then all employees will be tested. Subcontractors must coordinate testing of their employees and any sub-sub employees at their own expense. Subcontractor must transmit verification of receipt of negative results to Hogan Construction Group. Employees will not be permitted to return to work unless negative results have been received.
9. Subcontractor should inform their current and newly hired employees that this Policy is in effect.
10. Theft, conversion, misappropriation or unauthorized removal, possession or use of property or equipment belonging to the Company, other employees or clients, including but not limited to, materials, tools, documents and proprietary information, is prohibited..

**Attachment "F"**

**WAIVER AND RELEASE  
UPON FINAL PAYMENT**

STATE OF GEORGIA  
COUNTY OF \_\_\_\_\_

THE UNDERSIGNED SUBCONTRACTOR HAS BEEN EMPLOYED BY \_\_\_\_\_  
TO FURNISH \_\_\_\_\_ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE  
CONSTRUCTION OF IMPROVEMENTS KNOWN AS \_\_\_\_\_ (TITLE  
OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, AND IS OWNED BY \_\_\_\_\_ (NAME OF  
OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER  
A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR  
STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE SUBCONTRACTOR  
WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE  
FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL  
BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED  
TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY. SUBCONTRACTOR  
EXPRESSLY WAIVES ALL CLAIMS AND RIGHTS OF PAYMENT FOR WORK PERFORMED, FOR  
EXTENSIONS OF TIME TO PERFORM WORK, AND FOR ALL CLAIMS OF INTERFERENCE,  
INEFFICIENCY, DELAYS AND DISRUPTIONS. THIS LIEN WAIVER IS GIVEN TO AND FOR THE  
BENEFIT OF HOGAN CONSTRUCTION GROUP, LLC. AND THE OWNER.

GIVEN UNDER HAND AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
(WITNESS / NOTARY SIGNATURE)

AUTHORIZED SIGNATURE: \_\_\_\_\_

POSITION/ TITLE: \_\_\_\_\_

\_\_\_\_\_  
(ADDRESS)

COMPANY NAME: \_\_\_\_\_

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY  
DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT  
ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU  
FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION  
OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF  
THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND  
RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

Attachment "G" - SUBCONTRACT CHANGE ORDER



5075 Avalon Ridge Parkway  
Norcross, GA 30071  
Phone 770-242-8588  
Fax 770-242-7741

Date: \_\_\_\_\_  
Project: \_\_\_\_\_  
Subcontract No.: \_\_\_\_\_  
Change Order No.: \_\_\_\_\_  
Cost Code No.: \_\_\_\_\_

**SUBCONTRACTOR CHANGE ORDER**

TO: Company Name  
Address  
City, State Zip  
Attn:  
Email:

**\* RETURN (2) SIGNED  
ORIGINALS FOR EXECUTION \***

The following changes are hereby made to the above-referenced Subcontract dated \_\_\_\_\_

<u>DESCRIPTION</u>	<u>ADD / DEDUCT</u>	<u>AMOUNT</u>
--------------------	---------------------	---------------

Sample

<b>TOTAL CHANGES:</b>	<b>\$0.00</b>
-----------------------	---------------

Original Subcontract Amount:	_____
Net of Previous Change Orders (0)	_____ \$0.00
Subcontract Amount before this Change Order:	_____ \$0.00
The Amount of this Change Order:	_____ \$0.00
Subcontract Amount including this Change Order:	_____ \$0.00

The net change in the Subcontract Time including this change Order is  Calendar Days.

The Date of Substantial Completion of the Work called for in the Subcontract as of this Change Order is

In accordance with the Subcontract referenced above, the undersigned Subcontractor does solemnly swear, under criminal penalty of a felony for false statements that payment of the lump sum amount of this Change Order constitutes compensation in full for all costs, claims, markup, and expenses, direct or indirect, attributable to this or any prior Change Orders, for any delays encountered by Subcontractor in the performance of the Work through the date of this Change Order, included but not limited to those related to this or any prior Change Orders, and for the performance of this and any prior Change Orders by or before the above stated Date of Substantial Completion. Subcontractor further warrants and represents that the costs shown hereinabove do not exceed the actual costs to the Subcontractor for labor and materials to perform the Work covered hereby; that the quantities shown do not exceed actual requirements to perform the Work covered hereby; and that the costs shown are reasonable considering the circumstances under which the Work was / will be performed.

Except as modified by this and any previous issued Change Orders, all other terms and conditions of the Subcontract Documents shall remain in full force and effect.

SO AGREED:

By \_\_\_\_\_  
(Subcontractor)

Date \_\_\_\_\_

By \_\_\_\_\_  
(Hogan Construction Group, LLC.)

Date \_\_\_\_\_

**Attachment "H"**  
**Affidavit of Subcontractors and/or Supplier**

On behalf of \_\_\_\_\_ ("Subcontractor"), holder of a Subcontract with  
Hogan Construction Group, LLC for labor and material for that certain project  
\_\_\_\_\_ JOB # \_\_\_\_\_ located at  
\_\_\_\_\_, the undersigned does hereby list the following  
suppliers and/or sub-subcontractors and materialmen through whom Subcontractor dealt in connection  
with the job in question, asserting that the following is the complete list of suppliers and/or materialmen  
and sub-subcontractors for the month of \_\_\_\_\_.

NAME	ADDRESS	TELEPHONE	ACCT BALANCE
------	---------	-----------	--------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

\_\_\_\_\_  
(Notary Public Signature)

**Attachment "I"**  
**Subcontract Warranty Form**

PROJECT:

LOCATION:

OWNER:

GENERAL CONTRACTOR: **Hogan Construction Group, LLC.**

We \_\_\_\_\_, Subcontractor for  
(Company Name)  
\_\_\_\_\_  
(List job name)

do hereby warrant that all labor and materials furnished and work performed in conjunction with the above-referenced project are in accord with the Contract Documents and authorized modifications thereto, and will be free from defects due to defective materials or workmanship for a period of one (1) year from the Date of Substantial Completion. This warranty commences on \_\_\_\_\_ (Date of Substantial Completion) and expires on: \_\_\_\_\_. Should any defect develop during the warranty period due to improper materials, workmanship or arrangement, including adjacent work displaced, the same shall, upon written notice by the Owner, be made good by the undersigned at no expense to the Owner.

The Owner will give Contractor written notice of such defective work. Should Subcontractor fail to correct defective work within forty five (45) days after receiving written notice, the Owner may, at his option, correct defects and charge Subcontractor costs for such correction. Subcontractor agrees to pay such charges upon demand.

Nothing in the above shall be deemed to apply to work that has been abused or neglected by the Owner. Nothing in this warranty shall limit or abridge other remedies provide Contractor and Owner by applicable law.

COMPANY: \_\_\_\_\_

SIGNED: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

Signed and Sealed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public Signature) My Commission Expires: \_\_\_\_\_

**Attachment "J"**

**INTERIM WAIVER AND RELEASE UPON PAYMENT**

**STATE OF GEORGIA**

**COUNTY OF \_\_\_\_\_**

**THE UNDERSIGNED SUBCONTRACTOR HAS BEEN EMPLOYED BY HOGAN CONSTRUCTION GROUP, LLC. TO FURNISH \_\_\_\_\_ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)**

**UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE SUBCONTRACTOR WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF \_\_\_\_\_ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE SUBCONTRACTOR MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES. SUBCONTRACTOR EXPRESSLY WAIVES ALL CLAIMS AND RIGHTS OF PAYMENT FOR WORK PERFORMED UP, FOR EXTENSIONS OF TIME TO PERFORM WORK AND FOR ALL CLAIMS OF INTERFERENCE, INEFFICIENCY, DELAYS AND DISRUPTIONS, UP TO AND THROUGH THE DATE OF THIS LIEN WAIVER. THIS LIEN WAIVER IS GIVEN TO AND FOR THE BENEFIT OF HOGAN CONSTRUCTION GROUP, LLC. AND THE OWNER.**

**GIVEN UNDER HAND AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_.**

\_\_\_\_\_  
(WITNESS / NOTARY SIGNATURE)

**AUTHORIZED SIGNATURE:** \_\_\_\_\_

**POSITION/ TITLE:** \_\_\_\_\_

\_\_\_\_\_  
(ADDRESS)

**COMPANY NAME:** \_\_\_\_\_

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**



Attachment "K"

SUB-SUBCONTRACTOR / SUPPLIER INTERIM (PARTIAL) WAIVER

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_

THE UNDERSIGNED SUB-SUBCONTRACTOR/SUPPLIER HAS BEEN EMPLOYED BY \_\_\_\_\_ (NAME OF CONTRACTOR OR PARTY WHO INSISTED THE LABOR, SERVICES, MATERIALS OR EQUIPMENT) TO FURNISH \_\_\_\_\_ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

\_\_\_\_\_  
\_\_\_\_\_  
(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

FOR AND IN CONSIDERATION OF THE SUM OF \$ \_\_\_\_\_, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE SUB-SUBCONTRACTOR/SUPPLIER WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS OR ANY RIGHT AGAINST ANY LABOR OR MATERIAL BOND IT HAS UPON THE FOREGOING DESCRIBED PROPERTY THROUGH THE DATE OF \_\_\_\_\_ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE SUB-SUBCONTRACTOR/SUPPLIER MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

THE UNDERSIGNED FURTHER WARRANTS AND REPRESENTS THAT THE VALUE OF ITS COMPLETED, UNPAID WORK TO DATE, FOR WHICH THIS INTERIM WAIVER IS BEING GIVEN, IS \$ \_\_\_\_\_. THE UNDERSIGNED'S OUTSTANDING BALANCE TO FINISH IS \$ \_\_\_\_\_. THE UNDERSIGNED ALSO FOREVER WAIVES AND RELEASES ANY CLAIM IT HAS OR MAY HAVE AGAINST ANY SURETY BOND RELEATING TO THE PROJECT INCLUDING BONDS ISSUED BY HOGAN PURSUANT TO APPLICABLE PUBLIC WORKS LAWS.

GIVEN UNDER HAND AND SEAL THIS \_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

AUTHORIZED SIGNATURE: \_\_\_\_\_

\_\_\_\_\_  
(WITNESS / NOTARY SIGNATURE)

POSITION/ TITLE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

\_\_\_\_\_  
(ADDRESS)

COMPANY NAME: \_\_\_\_\_

NOTICE: THIS DOCUMENT WAIVES YOUR LIEN RIGHTS THROUGH THE DATE LISTED IN THE SECOND PARAGRAPH AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCABLE AGAINST YOU IF YOU SIGN IT EVEN IF YOU HAVE NOT BEEN PAID.

**Attachment "L"**  
**Subcontractor Application for Payment**  
(Due by the 25<sup>th</sup> of every month)

TO: Hogan Construction Group, LLC  
5075 Avalon Ridge Pkwy  
Norcross, GA 30071  
Fax 770.242.7741

Project Name: \_\_\_\_\_  
Project No.: \_\_\_\_\_  
Application #: \_\_\_\_\_  
Period: \_\_\_\_\_

FROM/SUB: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. Original Contract Amount ..... \_\_\_\_\_
2. Total of Approved Change Orders ..... \_\_\_\_\_  
(As per attached Schedule of Values Breakdown)
3. Adjusted Contract Amount (lines 1+2) ..... \_\_\_\_\_
4. Value of Work completed to Date ..... \_\_\_\_\_  
(As per attached Schedule of Values Breakdown)
5. Value of Approved Change Orders Completed ..... \_\_\_\_\_  
(As per attached Schedule of Values Breakdown)
6. Materials Stored on Site ..... \_\_\_\_\_
7. Total Completed and Stored to Date (lines 4+5+6) ..... \_\_\_\_\_
8. Retainage @ 10% (10% of line 7) \_\_\_\_\_
9. Total earned less Retainage (line 7 less line 8) ..... \_\_\_\_\_
10. Less Previously Invoiced to Date  
(Sum of all line 11s from previous) ..... \_\_\_\_\_
- 11. Current Amount Due (line 9 less line 10)..... \_\_\_\_\_**
12. Balance To Finish, Plus Retainage (line 3 less line 9)..... \_\_\_\_\_

CERTIFICATE OF THE SUBCONTRACTOR: I hereby certify that the work performed and the materials supplied to date, as shown on the above statement, represent the actual value of accomplishment under the terms of the Contract (and all authorized changes thereto) between the undersigned and Hogan Construction Group relating to the above referenced project.

I also certify that payments, less applicable retention, have been made through the period covered by previous payment received from the contractor, to (1) all my subcontractors (sub-contractors) and (2) for all materials and labor used in connection with the performance of the Contract. I further certify I have complied with Federal, State, and Local laws, including Social Security laws and Unemployment Compensation laws insofar as applicable to the performance of this Contract.

Conditioned only upon payment of the amount of this request, and in order to induce such payment, the undersigned does hereby waive, release and relinquish all claim or right of lien which the undersigned may now have upon the premises above-described, and undersigned further promises to indemnify and hold harmless the Owner and Contractor from any lien of any and all parties for the furnishing of labor, materials or services on the project for, by or through the undersigned, or any of its subcontractors or suppliers through and including the date of this request.

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

Signed: \_\_\_\_\_

\_\_\_\_\_  
Subcontractor Company Name

Subscribed and sworn before me this \_\_\_\_ day of

\_\_\_\_\_  
(Notary Public Signature)

\_\_\_\_\_, 2 \_\_\_\_\_

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

**Attachment “M”**  
**Project Schedule**

**AFFIDAVIT OF PAYMENT OF ALL SALES AND USE TAX**

STATE OF GEORGIA  
COUNTY OF \_\_\_\_\_

The undersigned Subcontractor in order to induce Hogan Construction Group, LLC ("Hogan") to make final payment for the scope of work which includes Subcontractor's work, labor or supplies, hereby swears and affirms as follows:

1. The person signing this affidavit is over the age of 18 and competent to testify to the matters set forth in this affidavit;
2. The person signing this affidavit has authority to bind the Subcontractor;
3. \_\_\_\_\_ (Subcontractor) has paid for all sales and use tax as required by the Georgia Department of Revenue arising out of or relating to the \_\_\_\_\_ Project (the "Project");

Subcontractor

\_\_\_\_\_  
Company Name: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: Officer or Authorized Agent

Sworn to and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**FINAL AFFIDAVIT, WAIVER AND RELEASE OF  
SUPPLIERS AND SUB-SUBCONTRACTORS**

STATE OF GEORGIA  
COUNTY OF \_\_\_\_\_

The undersigned Suppliers/Sub-Subcontractor ("Subcontractor"), in order to induce Hogan Construction Group, LLC ("Hogan") to make final payment for the scope of work which includes Subcontractor's work, labor or supplies, hereby swears and affirms as follows:

1. The person signing this affidavit is over the age of 18 and competent to testify to the matters set forth in this affidavit;
2. The person signing this affidavit has authority to bind the Subcontractor;
3. Subcontractor has paid for all materials, labor, services and supplies arising out of or relating to the \_\_\_\_\_ Project (the "Project");
4. Subcontractor hereby forever waives and discharges Hogan from and against all claims it may have for payment of any sums due for any work performed on the Project including any claimed extra work, change order work, inefficiencies, disruptions, escalations, interest and like claims;
5. Subcontractor acknowledges receipt of full and final payment from the party with whom it has a contract or accepted an order relating to the Project;
6. Subcontractor discharges, waives and releases the Surety under any payment or performance bond provided by Hogan from and against any and all claims relating to the Project including but not limited to claims for indemnity and contribution;
7. Subcontractor forever discharges, waives and release Owner and Owner's agents, including design professionals, from and against any and all claims relating to the Project including claims for indemnity and contribution;
8. Subcontractor waives all rights of subrogation against Hogan and Owner.

Supplier/Sub-Subcontractor ("Subcontractor")

\_\_\_\_\_  
Company Name: \_\_\_\_\_

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

Its: Officer or Authorized Agent \_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: