



SHORT FORM SUBCONTRACT AGREEMENT

This Subcontractor Agreement ("Agreement") is made the «udDayOfSub» day of «udMonthOfSub», «udYearOfSub», between «OurCompany», «CompanyAddress», «CompanyCity», «CompanyState» «CompanyZip» ("Contractor"), and «FirmName», «FirmAddress», «FirmCity», «FirmState» «FirmZip» ("Subcontractor"). This Agreement relates to Work to be performed by Subcontractor at the «ProjectDescription», «JobAddress», «JobCity», «JobState» «JobZip» ("Project") owned by «Owner», «OwnerAddress», «OwnerCity», «OwnerState» «OwnerZip» ("Owner"), whose architect is «ArchEngName», «ArchEngShipAddress1», «ArchEngShipCity», «ArchEngShipState» «ArchEngShipZip» ("Architect").

In consideration of the mutual covenants set forth herein, Contractor and Subcontractor agree as follows:

1. SUBCONTRACTOR'S WORK. Contractor employs Subcontractor as an independent contractor to perform the following Work at the Project: «SLDescription» ("Subcontractor's Work"). Subcontractor's Work shall be provided under the general direction of Contractor and in accordance with this Agreement and the Contract Documents for the Project, as same are defined in the contract between Contractor and Owner (the "Contract Documents"), and including, without limitation, those documents dated «udOwnerAgreeMonth» «udOwnerAgreeDay», «udOwnerAgreeYear» as issued by «ArchEngName», Architects for the Project. The Contract Documents which are binding on the Subcontractor are hereby referred to and incorporated herein and shall be binding upon Contractor and Subcontractor. Subcontractor shall be bound to Contractor in all respects as Contractor is bound to Owner under the Contract Documents. Upon the Subcontractor's request the Contractor shall furnish Subcontractor a copy of any part of these documents.

2. SUBCONTRACT PRICE. Contractor shall pay Subcontractor for the satisfactory performance of the Subcontractor's Work the sum of «TotalOrigSL», subject to the payment requirements and provisions of the Contract Documents and subject to any change orders or adjustments for untimely or improper performance of Subcontractor's Work set forth in Section 5 below.

3. CONSTRUCTION SCHEDULE. Time is of the essence for both parties, and they mutually agree to see to the performance of their respective work and the work of their subcontractors so that the entire Project may be completed in accordance with the Contract Documents and the Schedule of Work. The Contractor shall prepare the Schedule of Work and may revise such Schedule of Work as the Work progresses. If the Subcontractor fails to prosecute and complete the Subcontractor's Work as required, by the schedule of Work, the Subcontractor shall be liable to the Contractor for all damages incurred by the Contractor as provided in the Contract Documents.

Notwithstanding anything above to the contrary, Contractor and Subcontractor agree that they, along with the other subcontractors providing material portions of the Work, will meet, discuss and formulate the Schedule of Work for the Project and all changes thereto. The participants in the process establishing such Schedule and any changes thereto shall use their good faith best efforts to agree upon a Schedule that will be the most efficient and economical for the prosecution of the Work by all of the participants. It is further agreed, however, that in the event that the Contractor and all of the subcontractors at the Project shall fail to agree on the Schedule of Work or any changes thereto, the Contractor will have the authority to establish such Schedule and any changes to such Schedule and the Subcontractor will comply with such decision, subject to the right of the Subcontractor to assert a claim for any additional costs or expenses and/or any extension of time that the Subcontractor shall maintain has resulted therefrom.

4. PAYMENT. Subcontractor shall comply with all provisions of the Contract Documents and provide all documentation required by the Contract Documents (e.g., lien waivers, affidavits, evidence of payment for labor and material, insurance documentation, etc.) as a condition precedent to Subcontractor's right to receive payment as provided herein. In addition, receipt by Contractor of payment for Subcontractor's work from the Owner shall be a condition precedent to Contractor's obligation to make payment to Subcontractor for Subcontractor's work and Subcontractor's entitlement to receipt of the same. Payment to the Subcontractor is specifically agreed not to constitute or imply acceptance or approval by the Contractor or the Owner of any portion of the Subcontractor's Work. If Subcontractor requests in writing, Contractor shall provide to Subcontractor any information that Contractor has on the financial arrangements made by Owner to fund the costs of construction at the Project.

4.1 RETAINAGE/SECURITY. The rate of retainage shall not exceed the percentage retained from the Contractor's payment by the Owner for the Subcontractor's Work provided the Subcontractor furnishes a bond or other security to the satisfaction of the Contractor. If the Subcontractor has furnished such bond or security; its work is satisfactory to the Contractor, Owner and Architect and the Contract Documents provide for reduction of retainage at a specified percentage of completion, the Subcontractor's retainage shall also be reduced when the Subcontractor's Work has attained the same percentage of completion and the Contractor's retainage for the Subcontractor's Work has been so reduced by the Owner. However, if the Subcontractor does not provide such bond or security, the Contractor may terminate this Subcontract for such failure or, if the contractor does not do so, the rate of retainage shall be $\frac{\text{contract.completedWorkRetentionPercent}}{\text{contract.retention.completedWorkRetentionPercent}}$ %.

5. CHANGES, CLAIMS, AND DELAYS.

5.1 CHANGES. When the Contractor so orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Work which are within the general scope of this Agreement. Adjustments in the contract price or contract time, if any, resulting from such changes shall be set forth in a Subcontract Change Order pursuant to the Contract Documents. No such adjustment shall be made for any such changes performed by the Subcontractor that have not been so ordered by the Contractor and memorialized in a Subcontract Change Order.

5.2 CLAIMS RELATING TO OWNER. The Subcontractor agrees to make all claims for which the Owner is or may be liable in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner.

Notice of such claims shall be given by the Subcontractor to the Contractor (i) within one (1) week prior to the beginning of the Subcontractor's Work on the portion of the Subcontractor's Work affected by such alleged claim, or the event for which such claim is to be made, or (ii) immediately upon the Subcontractor's first knowledge of such event, whichever shall first occur, otherwise, such claims shall be deemed waived.

For unresolved claims of the Subcontractor based on the acts or omissions of the Owner or someone for whom the Owner is responsible, as the sole remedy of the Subcontractor the Contractor agrees to permit the Subcontractor to prosecute said claim, in the name of the Contractor, for the use and benefit of the Subcontractor in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner.

5.3 CLAIMS RELATING TO CONTRACTOR. The Subcontractor shall give the Contractor written notice of all claims not included in Article 5.2 within five (5) days of the beginning of the event for which claims are made and in any event prior to beginning work on the portion of the Subcontractor's Work affected thereby; otherwise, such claims shall be deemed waived.

Subject to the provisions of Article 5.4 below, relating to claimed delay to the Subcontractor's Work, all unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Article 5.2 shall be resolved in the manner provided in Article 11 herein.

5.4 DELAY. If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work shall be extended by Change Order to the extent obtained by the Contractor under the Contract Documents and the Schedule of Work shall be revised accordingly.

The Contractor shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of delays caused by Contractor, or by any person not a party to this Agreement unless the Contractor has first recovered the same on behalf of the Subcontractor from said person, it being understood and agreed by the Subcontractor that, apart from recovery from said person, the Subcontractor's sole and exclusive remedy for delay shall be an extension in the time for performance of the Subcontractor's Work.

5.5 COSTS INCURRED. Should Contractor incur costs or otherwise suffer losses as a result of Subcontractor's failure to fulfill its obligations under the Contract Documents, or any other contract between Contractor and Subcontractor, Contractor shall be entitled to recoup and setoff such costs (including reasonable overhead and profit and reasonable Legal Expenses) against any sums otherwise due or to become due to Subcontractor under the Contract Documents or any other contract between Contractor and Subcontractor on this or any other project. Subcontractor shall remain liable for, and shall promptly pay Contractor, any amount by which such costs exceed the sums otherwise due or to become due Subcontractor.

5.6 LIQUIDATED DAMAGES. If the Contract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Contract Documents, and are so assessed, then the Contractor may assess same against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay. However, other than for damages incurred by the Contractor associated with the Subcontractor's untimely performance, the amount of such assessment shall not exceed the amount assessed against the Contractor.

6. WARRANTY. Subcontractor warrants its work against all deficiencies and defects and materials and/or workmanship and as called for in the Contract Documents. Subcontractor shall satisfy all such warranty obligations which appear within the warranty period established in the Contract Documents without cost to the Owner or the Contractor. If the Contract Documents do not specify a warranty period, the warranty period shall be one (1) year from the date of substantial completion of the Project. Subcontractor shall execute any special guaranties or warranties that are required in the Contract Documents for Subcontractor's Work prior to final payment to Subcontractor.

7. SUBCONTRACTOR'S OBLIGATIONS.

7.1 OBLIGATIONS DERIVATIVE. Except as specifically otherwise provided herein, the Subcontractor binds itself to the Contractor under this Agreement in the same manner as the Contractor is bound to the Owner under the Contract Documents. A copy of any of the Contract Documents will be made available by Contractor to Subcontractor upon request; provided, however, that Contractor may redact such portions thereof that it deems confidential or privileged.

7.2 RESPONSIBILITIES. The Subcontractor shall furnish all labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary or appropriate for the proper performance of the Subcontractor's Work.

The Subcontractor shall provide to Contractor, prior to engaging same, a list of proposed sub-subcontractors, and suppliers. Subcontractors shall be responsible for taking field dimensions, providing tests, ordering of materials and all other actions as required to meet the Schedule of Work.

7.3 TEMPORARY SERVICES. The Subcontractor shall furnish all temporary services and/or facilities necessary or appropriate to perform its work, except as provided in Article 12. Article 12 also identifies those common temporary services (if any) which are to be furnished by Subcontractor and Subcontract shall provide same.

7.4 COORDINATION. The Subcontractor shall:

- a) cooperate with the Contractor and all others whose work may interfere with the Subcontractor's Work;
- b) specifically note and immediately advise the Contractor of any such interference with the Subcontractor's Work and
- c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

7.5 AUTHORIZED REPRESENTATIVE. The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s) a) on-site and b) off-site. Such authorized representative(s) shall be the only person(s) to whom the Contractor shall issue instructions, orders or directions.

7.6 PROVISION FOR INSPECTION. The Subcontractor shall notify the Contractor when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish the Contractor and its representatives' adequate facilities for inspecting materials at the site or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment.

The Subcontractor shall furnish to the Contractor in such detail and as often as required, full reports of the progress of the Subcontractor's Work irrespective of the location of such work.

7.7 CLEANUP. The Subcontractor shall follow the Contractor's clean-up directions, and

- a) at all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and
- b) broom clean each work area prior to discontinuing work in the same.

If the Subcontractor fails to immediately commence compliance with such duties or commence clean-up duties within 24 hours after receipt from the Contractor of notice of noncompliance, the Contractor may implement such cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor.

7.8 PROTECTION OF THE WORK. The Subcontractor shall take necessary precautions to properly protect the Subcontractor's Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may so remedy and deduct the cost thereof from any amounts due or to become due the Subcontractor.

7.9 PERMITS, FEES AND LICENSES. The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and secure and, if included in the Subcontractor's scope of work, pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Subcontractor's Work in accordance with the Contract Documents.

To the extent obtained by the Contractor under the Contract Documents, the Subcontractor shall be compensated for additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of the Agreement.

7.10 ASSIGNMENT. The Subcontractor shall not assign this Agreement, nor its proceeds, nor subcontract the whole, nor any part of the Subcontractor's Work without prior written approval of the Contractor. Prior to entering into any agreement with a sub-subcontractor(s), Subcontractor shall provide to Contractor the name, address, prior project experience (including scope and sub-subcontract contract price and any other information as to prior experience) and evidence of the capabilities of any proposed sub-subcontractor, along with the proposed scope of Work, responsibilities and manpower commitments to which the sub-subcontractor is to be contracted. Contractor shall also be entitled to request and be furnished such documentation as Contractor shall request relative to the capabilities, financial capacity and existing commitments of the sub-subcontractor(s). Contractor shall have the right to interview both the executive management and proposed project management of any proposed sub-subcontractor(s) prior to giving its approval or rejection of such sub-subcontractor. Any or all of the above due

diligence activities must be provided to Contractor and Contractor's written approval of the engagement by the Subcontractor of the proposed sub-subcontractor must be obtained prior to the Subcontractor entering into any sub-subcontract with any proposed sub-subcontractor.

7.11 NON-CONTRACTED SERVICES. The Subcontractor agrees, except as otherwise provided in this Agreement, that no claim for non-contracted construction services rendered or materials furnished shall be valid unless the Subcontractor provides the Contractor notice:

- a) prior to furnishing of the services or materials, except in an emergency affecting the safety of persons or property;
- b) in writing of such claim within three days of first furnishing such services or materials; and
- c) the written charge for such services or materials to the contractor no later than the fifteenth day (15th) of the calendar month following that in which the claim originated.

8. RECOURSE BY CONTRACTOR.

8.1 FAILURE OF PERFORMANCE.

8.1.1 NOTICE TO CURE. If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or fails to make prompt payment for its workers, sub-subcontractors or suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise fails to fulfill its obligations under this Agreement, and fails within three (3) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness until same is cured, then the Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

- a) supply such number of workers and quantity of materials, equipment and other facilities as the Contractor deems necessary or appropriate for the completion of the Subcontractor's Work, or any part thereof which the Subcontractor has failed to complete or perform in a timely manner after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorney's fees;
- b) contract with one or more additional contractors to perform such part of the Subcontractor's Work as the Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to the Subcontractor; and
- c) withhold payment of any monies due the Subcontractor pending corrective action to the extent required by and to the satisfaction of the Contractor and Architect. In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice.

8.1.2 TERMINATION BY CONTRACTOR. If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) working days after receipt by the Subcontractor of the notice issued under Article 8.1.1, then the Contractor may, in lieu of or in addition to Article 8.1.1, issue a second written notice, to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) working days after receipt by the Subcontractor of the notice, the Contractor may terminate this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to the Subcontractor to complete the Subcontractor's Work. The Contractor also may furnish those materials and equipment and/or employ such workers or Subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work.

All costs incurred by the Contractor in so performing the Subcontractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the subcontract price.

8.1.3 USE OF MATERIALS AND EQUIPMENT. If the Contractor performs work under this Article or sublets such work to be so performed, the Contractor and/or the persons to whom work has been sublet shall have the right to take and use any materials, equipment or any items intended to be incorporated into the project, furnished by, belonging or delivered to the Subcontractor and located at the Project or stored offsite.

8.2 BANKRUPTCY.

8.2.1 TERMINATION ABSENT CURE. Upon the appointment of a receiver for the Subcontractor or upon the Subcontractor making an assignment for the benefit of creditors, the Contractor may terminate this Agreement upon giving three (3) working days written notice, by certified mail, to the Subcontractor and its surety, if any. If an order for relief is entered under the bankruptcy code with respect to the Subcontractor, the Contractor may terminate this Agreement by giving three (3) working days written notice, by certified mail, to the Subcontractor, its trustee, and its surety, if any, unless the Subcontractor, the surety, or the trustee:

- a) promptly cures all defaults;
- b) provides adequate assurances of future performance;
- c) compensates the Contractor for actual pecuniary loss resulting from such defaults; and
- d) assumes the obligations of the Subcontractor within the statutory time limits.

8.2.2 INTERIM REMEDIES. If the Subcontractor is not performing in accordance with the Schedule of Work at the time of entering an order for relief, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the contract price.

8.3 SUSPENSION BY OWNER. Should the Owner suspend the Work or any part of the Work which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and upon receipt of said notice the Subcontractor shall immediately suspend the Subcontractor's Work.

In the event of such Owner suspension, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery from the Owner on the Subcontractor's behalf under the Contract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute said claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

8.4 TERMINATION BY OWNER. Should the Owner terminate the Prime Contract or any part of the Prime Contract which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and upon receipt of said notice, this Agreement shall also be terminated, and the Subcontractor shall immediately stop the Subcontractor's Work. In the event of such Owner termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents.

The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute said claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

8.5 TERMINATION FOR CONVENIENCE. The Contractor may order the Subcontractor in writing to suspend, delay, interrupt or terminate all or any part of the Subcontractor's Work for such period of time as the Contractor may determine to be appropriate for the convenience of the Contractor. The Subcontractor shall notify the Contractor in writing within ten (10) working days after receipt of the Contractor's order of the effect of such order upon the Subcontractor's Work, and the subcontract price or subcontract time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such

suspension, delay, or interruption. No claim under this Article shall be allowed for any costs incurred more than ten (10) working days prior to the Subcontractor's notice to the Contractor.

Neither the contract price nor the contract time shall be adjusted under this Article for any suspension, delay, interruption or termination to the extent that performance would have been so suspended, delayed, interrupted or terminated by the fault or negligence of the Subcontractor. In the event of termination for convenience of the Contractor, Subcontractor shall only be due payment for Work performed to the date of notice of such termination for convenience (including reasonable overhead and profit thereon) plus the reasonable cost of demobilization and less prior payments made.

8.6 WRONGFUL EXERCISE. If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit thereon, less prior payments made and such termination shall be considered Termination for Convenience.

8.7 REMEDIES; CUMULATIVE NATURE THEREOF. The remedies provided the Contractor in this Article 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 Subcontractor, or as the result of the Subcontractor's failure to perform any of the covenants of this Agreement. All losses, damages and expenses, including attorneys' fees and cost of litigation or arbitration incurred by Contractor 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 account of or associated with the acts or omissions of Subcontractor, shall be borne by and charged against Subcontractor and shall be damages for breach of this Agreement. Contractor may recover same from any Surety issuing any bonds for Subcontractor and both Subcontractor and such Surety agree to pay Contractor for such losses, damages, expenses, attorneys' fees and expenses of litigation or arbitration. At the Contractor's sole discretion and exclusive option, any sums or proceeds that are payable or due to become payable to Subcontractor under this Agreement or any other agreement between Subcontractor and Contractor may be withheld by Contractor and applied against said losses, damages, costs or expenses.

9. INDEMNIFICATION.

9.1 SUBCONTRACTOR'S INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW (BUT NOT TO ANY EXTENT IF PROHIBITED BY APPLICABLE LAW), THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, OWNER, AND THEIR RESPECTIVE PARTNERS, PARENTS, MEMBERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS AND ANY OTHER PARTIES THAT THE CONTRACTOR IS REQUIRED TO DEFEND, INDEMNIFY AND HOLD HARMLESS UNDER THE OWNER CONTRACT (COLLECTIVELY, THE "INDEMNITEES"), FROM AND AGAINST ANY CLAIMS, SUITS, FINES, PENALTIES, DAMAGES, LOSSES, COSTS, EXPENSES, ATTORNEYS' FEES, AND ANY OTHER LIABILITIES OF ANY KIND (COLLECTIVELY, A "LIABILITY" OR "LIABILITIES"), INCLUDING, WITHOUT LIMITATION, LIABILITIES ATTRIBUTABLE TO (1) PERSONAL/BODILY INJURY, SICKNESS, DISEASE OR DEATH, AND/OR (2) INJURY OR DAMAGE TO TANGIBLE PROPERTY INCLUDING, WITHOUT LIMITATION, THE WORK ITSELF AND ANY LOSS OF USE OR OTHER ECONOMIC LOSS. EXCEPT AS PROVIDED IN ARTICLE 9.2 BELOW, THE OBLIGATIONS OF SUBCONTRACTOR SHALL ONLY APPLY TO THE EXTENT ANY LIABILITIES ARE CAUSED BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE, OR THE BREACH OF CONTRACT OR WARRANTY OF, OR BY, SUBCONTRACTOR, ITS SUBCONTRACTORS OF ANY TIER, OR THEIR AGENTS. EXCEPT AS PROVIDED IN ARTICLE 9.2 BELOW, SUBCONTRACTOR IS NOT REQUIRED TO DEFEND, INDEMNIFY OR HOLD HARMLESS ANY INDEMNITEE FROM OR AGAINST ANY LIABILITIES TO THE EXTENT CAUSED BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR

RULE, OR THE BREACH OF CONTRACT OR WARRANTY OF, OR BY, ANY INDEMNITEE, ITS AGENT OR EMPLOYEE.

9.2 EMPLOYEE CLAIMS. TO THE FULLEST EXTENT PERMITTED BY CHAPTER 151 OF THE TEXAS INSURANCE CODE AND OTHER APPLICABLE LAW, IF ANY LIABILITY COVERED BY ARTICLE 9.1 ABOVE INVOLVES A CLAIM FOR BODILY INJURY OR DEATH OF AN EMPLOYEE OF SUBCONTRACTOR, ITS SUBCONTRACTORS OF ANY TIER, OR THEIR AGENTS, THEN SUBCONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST THE ENTIRE LIABILITY EVEN IF AND INCLUDING ALL OR ANY PORTION OF THE LIABILITY THAT IS CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART BY THE COMPARATIVE, JOINT, CONCURRENT OR SOLE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE, OR THE BREACH OF A CONTRACT OR WARRANTY OF, OR BY, ANY INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF ANY INDEMNITEE. SUBCONTRACTOR ACKNOWLEDGES AND UNDERSTANDS THAT IT IS REQUIRED TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST THE CONSEQUENCES OF THEIR OWN NEGLIGENCE OR FAULT OR OTHER RESPONSIBILITY AS PROVIDED IN THIS ARTICLE.

9.3 NO LIMITATION BY WORKER'S COMPENSATION ACTS. THESE INDEMNITY OBLIGATIONS SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION OF THE AMOUNTS OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. IN ADDITION, THESE INDEMNITY OBLIGATIONS HEREIN SHALL NOT BE CONSTRUED TO NEGATE, OR ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY WHICH WOULD OTHERWISE EXIST UNDER LAW.

9.4 NO LIMITATION ON OTHER INDEMNITY. Such obligations, as set forth in Articles 9.1, 9.2 and 9.3 shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

9.5 CONSIDERATIONS. The parties acknowledge that One Hundred Dollars (\$100.00) of the Contract Price set forth in Article 4 above is separate and independent consideration for the agreements of Subcontractor set out in Article 9, and such amount shall be payable to Subcontractor by Contractor irrespective of Subcontractor's performance hereunder.

9.6 TEXAS INSURANCE CODE LIMITATIONS. IT IS THE INTENT OF THE CONTRACTOR AND SUBCONTRACTOR THAT IF THE PROVISIONS OF SUBCHAPTER C OF CHAPTER 151 OF THE TEXAS INSURANCE CODE APPLY TO THIS SUBCONTRACT, NOTHING HEREIN SHALL IMPOSE ANY REQUIREMENTS ON SUBCONTRACTOR THAT ARE PROHIBITED BY SUCH SUBCHAPTER, AND THAT ANY OF THE PROVISIONS HEREOF THAT ARE NOT PROHIBITED BY SUCH SUBCHAPTER SHALL REMAIN IN FULL FORCE AND EFFECT. ACCORDINGLY, IN THE EVENT THAT IN CONSTRUING AND INTERPRETING THIS SUBCONTRACT, A COURT OF COMPETENT JURISDICTION OR, IF APPLICABLE, AN ARBITRATOR, DETERMINES THAT SUBCHAPTER C OF CHAPTER 151 OF THE TEXAS INSURANCE CODE APPLIES TO THIS SUBCONTRACT, THEN THE COURT OR ARBITRATOR SHALL REFORM THE PROVISIONS HEREOF SO AS TO COMPLY WITH SUCH SUBCHAPTER, AND SUCH REFORMATION SHALL NOT AFFECT THE VALIDITY OF ANY PROVISIONS HEREOF THAT ARE NOT PROHIBITED BY SUCH SUBCHAPTER.

9.7 COMPLIANCE WITH LAWS. The Subcontractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (herein collectively referred to as "laws") applicable to the Subcontractor's Work including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other laws with which the Contractor must comply according to the Contract Documents.

The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.

9.8 PATENTS. Except as otherwise provided by the Contract Documents, the Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the Subcontractor's Work. The Subcontractor shall defend all suits for claims for infringement of any patent rights arising out of the Subcontractor's Work, which may be brought against the Contractor or Owner, and shall be liable to the Contractor and Owner for all loss, including all costs, expenses, and attorney's fees.

10. SUBCONTRACTOR'S INSURANCE. Prior to start of the Subcontractor's Work, the Subcontractor shall procure for the Subcontractor's Work and maintain in force all insurance described on Exhibit "B" attached hereto and incorporated herein by reference. Said insurance shall be procured and maintained in strict accordance with the terms and conditions of said Exhibit "B" and Subcontractor shall furnish to Contractor all documentation required by Exhibit "B", including the certificates and endorsements referenced therein. If sample certificates and endorsements are attached as an addendum to Exhibit "B", Subcontractor shall furnish documentation that is in accordance with such samples. If said samples are not so attached, Contractor will furnish copies of such documents to Subcontractor upon request.

11. ARBITRATION.

11.1 AGREEMENT TO ARBITRATE. All claims, disputes and matters in question arising out of, or relating to, this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, and the claims described in Article 11.7, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the Contract Documents provide otherwise or the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

11.2 NOTICE OF DEMAND. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given; further, with respect to claims by Subcontractor, in no event shall the demand be made after the date of final acceptance of the Work by the Owner or when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations, whichever shall first occur.

11.3 AWARD. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

11.4 WORK CONTINUATION AND PAYMENT. Unless otherwise agreed in writing, the Subcontractor shall carry on the Work and maintain the Schedule of Work pending arbitration, and, if so, the Contractor shall continue to make payments in accordance with this Agreement.

11.5 NO LIMITATION OF RIGHTS OR REMEDIES. Nothing in this Article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds. Regardless of any other clause in the Agreement, any and all claims Subcontractor may have against Contractor under lien laws or payment bonds shall be subject to Article 11.1 of this Agreement, and accordingly must be resolved by arbitration in accordance with Article 11.1 of the Agreement.

11.6 SAME ARBITRATORS. To the extent not prohibited by their contracts with others, the claims and disputes of the Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding.

11.7 EXCEPTIONS. This agreement to arbitrate shall not apply to any claim:

- a) of contribution or indemnity asserted by one party to this Agreement against the other party and arising out of action brought in a state or federal court or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration; or
- b) asserted by the Subcontractor against the Contractor if the Contractor asserts said claim, either in whole or part, against the Owner or those for whom the Owner is responsible and the contract between the Contractor and Owner does not provide for binding arbitration, or does so provide but the two arbitration proceedings are not consolidated, or the Contractor and Owner have not subsequently agreed to arbitrate said claim, in either case of which the parties hereto shall so notify each other either before or after demand for arbitration is made.

In any dispute arising over the application of this Article 11.7, the question of arbitrability shall be decided by the appropriate court and not by arbitration.

12. SPECIAL PROVISIONS.

12.1 PRECEDENCE. It is understood the work to be performed under this Agreement, including the terms and conditions thereof, is as described in Articles 1 thru 12 herein together with the following Special Provisions, which are intended to complement same. However, in the event of any inconsistency, these Special Provisions shall govern.

12.2 SCOPE OF WORK. All work necessary or incidental to complete the {contract.description} Work for the Project in strict accordance with the Contract Documents and as more particularly, though not exclusively, specified in the Contract Documents, including those enumerated in Article 12.5, and with the additions and deletions and other Work as described in Exhibit "A" attached hereto and made a part hereof by reference.

12.3 COMMON TEMPORARY SERVICES. The following "Project" common temporary services and/or facilities are for use of all project personnel and shall be furnished as herein below noted:

By this subcontractor:

By others:

12.4 OTHER SPECIAL PROVISIONS.

12.4.1 In the event any of the Work of Subcontractor, whether pursuant to the original Scope of Work of this Subcontract or any Change Order thereto, requires performance of the Work on a time and material basis, any documentation that is to be evidence of such Work (e.g., work tickets) must be signed by the Contractor's Project Manager to form the basis for payment. Contractor will not be bound by the signature of any other of its field representatives (e.g., superintendent(s), foremen).

12.4.2 SAFETY, HEALTH AND ENVIRONMENTAL PROVISIONS.

- A. Subcontractor shall comply with all applicable local, state and federal safety, health and environmental regulations and with Contractor's safety and health policy. Notwithstanding anything to the contrary in this Agreement, Subcontractor shall be solely responsible for safety of its operations and its employees, as well as the manner and means of achieving any safety and health policy, relating to Subcontractor's Work on the Project.
- B. Subcontractor shall be responsible for payment of all fines and/or claims for damages levied against the Owner, Architect or Contractor for deficiencies relating to conduct of or otherwise associated with Subcontractor's Work.
- C. Subcontractor agrees to conform to all regulations, standards, and rules issued by the Occupational Safety and Health Administration (OSHA) and agrees to indemnify and hold harmless Contractor from and against any and all liability which Contractor may incur as the result of or in any way associated with the failure of Subcontractor, Subcontractor's employees, agents, invitees, designees, or other representatives to fully comply with all rules, regulations and standards imposed by OSHA; this indemnification shall include all direct and vicarious liability of Contractor, and shall, without limitation, include any fines or penalties imposed upon Contractor associated with a violation of OSHA regulation by Subcontractor.
- D. Subcontractor shall observe all requirements set forth in the Project Safety Plan available for review by the Subcontractor at Contractor's office. These requirements form the minimum requirements for the project and each Subcontractor is responsible to develop and submit its own safety program to Contractor. Subcontractor acknowledges that it has executed the Subcontract in full understanding and conformance with Contractor's safety plan for the project. Requirements of the Project Safety Plan include, but are not limited to, the following:
 1. Each subcontractor shall be required to submit its company safety program to Contractor for review and approval before starting any work.
 2. All work on site must be conducted under the direction of a Competent Person as defined in OSHA 29 CFR 1926.32(f), designated by the subcontractor. Subcontractor shall provide the name of the competent person before starting work.
 3. Toolbox safety meetings must be held and reported for any week in which the Subcontractor has two (2) or more personnel on site at one time. If only one (1) person is on site, his attendance at the project progress meeting shall be an acceptable substitute for the toolbox safety meeting. In either event, employee attendance documentation is required.
 4. Safe Start Meeting - Each Subcontractor shall meet with Contractor's representative prior to beginning work to review the following:
 - Safety procedures at the project and Subcontractor's Safety Program

- Accident reporting and emergency procedures
 - Identification of competent persons
 - Inspection procedures
 - Safety rule enforcement procedures
 - Specific fall protection measures to be used
 - Equipment operator certification
 - Other safety issues as needed
5. The following Personal Protective Equipment (PPE) is required to be worn by all personnel on site: hardhat, safety glasses and high visibility vests, shirts or jackets. Other PPE such as face shields, ear protection respirators, etc. must be available and used when required or appropriate.
 6. Fall protection shall be required for all workers who are exposed to a potential fall hazard of 6 feet or greater. Subcontractor shall be responsible for providing and maintaining the necessary fall protection equipment and training its workers in proper usage.
 7. All trenching and excavation activities on the jobsite shall be conducted under the direction of a competent person. Required protective methods must be used and the competent person must complete and submit daily inspections to Contractor.
 8. All scaffolding must be erected, maintained, and dismantled under the direction of a competent person. Daily documented inspections shall be completed and submitted to Contractor.
 9. All mobile cranes used on the jobsite must have a current annual certification and must have a completed Contractor's Mobile Crane Safety Inspection form submitted to or completed by the Contractor's Superintendent prior to operation.
 10. In the event of an injury to a Subcontractor's employee on the jobsite, the Subcontractor shall furnish Contractor and/or Project Safety Director a copy of an injury report within twenty-four (24) hours after the occurrence.
 11. Subcontractors shall keep at the jobsite a first aid kit supplied according to current regulations and shall have a person trained in first aid and holding a current CPR certification.
 12. Each Subcontractor shall supply the proper equipment, take the necessary precautions to maintain all its equipment according to current regulations and specifications, and accept responsibility to assure that necessary safety equipment is supplied and used when required.
 13. Each Subcontractor shall comply with all requirements of OSHA's "Hazard Communication Standard", 29 CFR 1926.59, specifically:
 - a. Provide Contractor a copy of all Material Safety Data Sheets (MSDS) for each hazardous chemical and have a copy available for employees.
 - b. Provide required training of its employees.
 - c. Submit a copy of its written Hazard Communication Program to Contractor.

- d. Properly label all containers of hazardous chemicals brought on the jobsite or used in the performance of this contract.
- 14. All Subcontractors are to provide a drug free workplace for their employees and the employees of their subcontractors in accordance with the laws of the state of Texas and shall observe all requirements set forth in the Drug-Free Workplace Policy. This policy is available for review by the Subcontractor at Contractor's corporate office.

FAILURE TO COMPLY WITH THE FOREGOING REQUIREMENTS SHALL BE CONSIDERED A BREACH OF THIS CONTRACT AND RESULT IN SUBCONTRACTOR'S IMMEDIATE REMOVAL FROM THE JOBSITE.

12.5 CONTRACT DOCUMENTS. (List applicable contract documents including specifications, drawings, addenda, modifications and exercised alternates. Identify with general description, sheet numbers and latest date including revisions.)

- A. Agreement between Contractor and Owner dated {contract.mainContract.executedDate | date:'MMMM DD, YYYY'} including all documents incorporated herein.
- B. AIA A201 General Conditions of the Contract for Construction, modified, completed and identified in the Agreement between Owner and Contractor, unless superseded by General Conditions specified in the Agreement between Contractor and Owner referenced above (and as same may have been modified in the Agreement between the Contractor and the Owner. In the event of a conflict between the provisions of said General Conditions and the provisions of this Subcontract Agreement, the provisions that are the more stringent and require more, quicker or better performance by Subcontractor shall govern.
- C. Executive Order 11246, as amended, Sec. 402 of the Vietnam Era Veterans Readjustment Act of 1972, as amended, Sec. 503 of the Rehabilitation Act of 1973, as amended, and Sec. 61-250.10 (Vets-100 Reporting) and Public law 95-507 contain required contract clauses relative to equal employment opportunity and are incorporated herein by specific reference.

{contract.properties.Exhibits}

12.6 NOTICE. Any notice required or permitted hereunder may be given in writing by certified U.S. Mail, hand delivery or recognized overnight courier addressed to the parties at the address set forth herein:

Notice given in any of the methods provided above shall be effective (i) as of the date of delivery if effected by hand delivery, the date of delivery or refusal of delivery as evidenced by the official return receipt if effected by U.S. Mail, (ii) as of the next business day following deposit of such notice with a nationally recognized overnight courier for next day delivery, and (iii) as of the day of the transmission of such notice either by electronic mail. Changes of address or contact information from that set forth above may likewise be given by notice as specified in this section.

Notwithstanding anything above or elsewhere in this Subcontract or the Contract Documents to the contrary, in order to be effective for any purpose and not otherwise waive all notices of claims by Subcontractor or any notice seeking additional time or money for Subcontractor in accordance with this Subcontract must be sent as provided in addition to above to:

Allen Westmoreland
Manager
Batson-Cook Texas LLC
2859 Paces Ferry Rd SE, Suite 200
Atlanta, GA 30339
Email: awestmoreland@bctexasllc.com

In Witness Wherefor, Contractor and Subcontractor have caused this Agreement to be executed by their respective duly authorized representatives, as of the day and date first set forth above.

SCOPE OF WORK

(Including Schedules, Drawings/Specification Logs, Waivers, if any)

{contract.scopeOfWork}

SUBCONTRACTOR'S INSURANCE REQUIREMENTS

Subcontractor shall continuously maintain the insurance required as set forth herein at all times that is performing any work whatsoever or is otherwise present at the Project jobsite and through the period for which the Subcontractor and Contractor may be held liable for their work. The insurance shall have the higher of the minimum limits and coverage set out below, and requirements of the Contract Documents, or the full policy limits carried by Subcontractor. The provision by the Subcontractor of the insurance coverage and limits required in this Exhibit "B" shall not limit the Subcontractor's liability in any way. Subcontractor shall provide the insurance required herein on behalf of Contractor and other Indemnitees and represents and warrants that this insurance will provide liability coverage to Contractor for its own negligence, whether passive or active, if this negligence is associated with, arises out of or results from Subcontractor's Work. Subcontractor shall maintain the following:

A. Commercial General Liability Insurance with the following features:

1. Occurrence Coverage under the Commercial General Liability ISO form CG 0001 (2004 edition or later).
2. Limits not less than: \$1,000,000 per occurrence
 \$1,000,000 personal injury & advertising injury
 \$2,000,000 per project/general aggregate
 \$2,000,000 products/completed operations aggregate
3. **Waiver of Subrogation** – Rights of subrogation against additional insureds are waived and Subcontractor will provide Contractor with a copy of ISO Endorsement CG 24 04 10 93 as evidence of coverage.
4. Coverage must include but shall not be limited to: premises/operations, underground explosion & collapse, products/completed operations, contractual liability, independent contractors, broad form property damage, personal injury, elevators.
5. Coverage will not be subject to any exclusion for residential construction operations, condominium and/or any other habitation construction operations.
6. Products/Completed operations coverage naming Contractor as Additional Insured must be maintained for a period of five years after the acceptance of and final payment for Subcontractor's work or through the period of the applicable statute of repose, whichever is longer.
7. The CGL policy shall apply on a **primary, non-contributory basis and coverage afforded to the Contractor (and others as required) as Additional Insured shall be at least as broad as coverage afforded to Subcontractor as Named Insured.** Without limitation, the CGL policy and Subcontractor's CGL carrier shall provide independent defense counsel for Contractor reasonably approved by Contractor at carrier's expense, and if Subcontractor's CGL carrier shall fail to do so, Subcontractor shall do so or shall pay all costs of such independent counsel representing Contractor.
8. Subcontractor shall provide the following ISO Endorsements or their functional equivalents:
 - a) **CG 20 33 10 01** (Additional Insured – Owners, Lessees or Contractors – Automatic Status when required in Construction Agreement with You)
 - b) **CG 20 10 10 01** (Additional Insured – Owners, Lessees or Contractors – Scheduled Persons or Organization) if applicable for Owner or other persons or entities
 - c) **CG 20 37 07 04** (Additional Insured – Owners, Lessees or Contractors – Completed Operations)
 - d) **CG 24 04 10 93** (Waiver of Transfer of Rights of Recovery Against Others to Us)
9. **30 Day Notice of Cancellation**

B. Commercial Automobile Liability Insurance with the following features:

1. Occurrence basis covering all owned, hired, borrowed, rented, leased, non-owned autos.
2. Minimum combined single limit of \$1,000,000 per occurrence for bodily injury, including death, and property damage.
3. **Waiver of Subrogation Endorsement CA 04 44**
4. **Additional Insured Endorsement**
5. **Primary and Noncontributory Endorsement**
6. **30 Day Notice of Cancellation**

C. Umbrella and Excess Liability Insurance with the following features:

1. Coverage that provides excess coverage for Employers Liability, Commercial General Liability, and Auto Liability, with the same features as described in sections A, B, and D herein with limits not less than \$5,000,000. Subcontractor acknowledges that it will provide Umbrella and Excess Liability Insurance on behalf of the Contractor and the Umbrella and Excess Liability Insurance will be subject to vertical exhaustion before any other Primary, Umbrella or Excess Policies or any other insurance obtained by the Contractor will be triggered. The total insurance coverage provided by Subcontractor for any claim will under no circumstances be less than the combined Primary limits as defined in Section A, plus the Umbrella and Excess limits as defined above. Subcontractor (vendor) further acknowledges that the total amount of insurance coverage provided by its insurance carriers, whether primary, excess, umbrella or other, where Contractor, and others, as specified above, are afforded additional insured coverage, shall apply as first tier/following form coverage. Any other insurance maintained by Contractor, or any other additional insured shall be excess of this first tier coverage and shall not be called upon to contribute to satisfy any loss within the limits specified and required above. Subcontractor shall furnish umbrella/excess policy language evidencing coverage to apply on a **primary and non-contributory basis to the Contractor as Additional Insured.**
2. **30 Day Notice of Cancellation**

D. Workers' Compensation/Employers Liability Insurance with the following features:

1. Workers Compensation including Occupational Disease meeting the statutory requirements of the State in which the work is to be performed.
2. Other States Endorsement providing coverage for all states.
3. Employers' Liability with minimum policy limits of \$500,000 each accident, \$500,000 disease aggregate, and \$500,000 disease per employee.
4. Employers Liability/Stop Gap Liability if work performed in monopolistic state.
5. **Waiver of rights of subrogation form WC 00 03 13 for the benefit of Contractor.**
6. Alternate Employer Endorsement (NCCI form #WC 00 03 01 A) naming Contractor as Alternate Employer if Subcontractor is or is using an employee leasing firm or will supply equipment with operator.
7. USL&H and/or Jones Act where applicable.
8. **30 Day Notice of Cancellation.**

E. Certificates of Insurance and Endorsements

Prior to commencing Work, Subcontractor shall furnish Contractor with certificate(s) of insurance executed by a duly authorized representative of each insurer, as evidence of compliance with the insurance requirements set forth above and below. **Such certificates of insurance shall be accompanied by copies of endorsements evidencing coverage afforded to Contractor and Owner as additional insured, and endorsements reflecting insurer's concurrence with Subcontractor's waiver of recovery or subrogation rights.** Renewal certificates (with endorsements) shall be provided to the Contractor prior to the expiration of the required insurance policies. The certificate(s) of insurance shall be subject to approval of Contractor, but failure of Contractor to request such certificate or other evidence of

Subcontractor compliance with insurance requirements, or failure of Contractor to identify deficiencies from evidence that is provided, shall in no way limit or relieve Subcontractor of its obligations to maintain such insurance. Coverage will not be altered, canceled, or allowed to expire without thirty (30) days' written notice by registered mail to Contractor. Certificates of Insurance and Endorsement will be signed by an Authorized Representative. Insurance companies listed on the certificate must have an A. M. Best Financial Strength Rating of A- VII or better and approved to write business in the state in which the Project is located. If any of the above coverages are subject to or are in excess of any self-insured retention, these amounts must be stated on the Certificate, and said self-retention will be the sole responsibility of Subcontractor. Self-insured retention will be allowed only if approved in writing by Contractor, which approval shall be at the sole discretion of Contractor. Authorization is hereby granted to Contractor to withhold payments to Subcontractor until a signed subcontract and properly executed certificates of insurance and endorsements as required are delivered to Contractor.

F. Sub-subcontractor Insurance Requirements

Subcontractor shall obtain insurance coverage from each of its sub-subcontractors or suppliers that is equal to or greater than that required of Subcontractor as set forth in this Exhibit "B" prior to their mobilization at the jobsite, as per Article 10 of this Subcontract and this Exhibit "B", and Subcontractor shall ensure that the insurance requirements set forth herein become and are part of any purchase order or sub-subcontract issued by Subcontractor as though fully set forth in said purchase order or sub-subcontract.

G. Equipment/Property Insurance

Contractor may furnish, erect or provide equipment, appurtenances and devices, motorized or otherwise, for its use to complete its Contract with Owner. Should Subcontractor use such items, Subcontractor shall provide:

1. Insurance on a replacement cost basis for damage to the items. Such insurance shall include a provision for a waiver of subrogation in favor of Contractor. Insurance shall be on a primary basis. Contractor's insurance shall be non-contributory.
2. Insurance against any claim of injury (including death) or damage arising out of the use of or existence of said items while in the care, custody or control of the Subcontractor. Limits of liability, and other provisions, shall not be less than as stated in Section A above.
3. Subcontractor shall carry all-risk property insurance sufficient to cover any loss or damage to equipment, tools and other property owned or leased by the Subcontractor. The insurance shall contain a waiver of subrogation against the Contractor and Owner.

H. Design Service Requirements

If Subcontractor or its sub-subcontractor performs design services, Subcontractor will purchase, furnish and maintain or require its sub-subcontractor to purchase, furnish and maintain professional liability insurance with limits of at least \$2,000,000 and with the following coverages: basic professional errors and omissions, punitive damages (where not prohibited by law), contractual liability, with a retroactive date that is no later than the date of inception of design services. Such coverage shall be maintained in effect for a period of five (5) years from the Date of Substantial Completion of the Project or the statute of repose, or through the period for which the Subcontractor and Contractor may be held liable for their work, whichever is longer. Such extended coverage may be obtained through annual renewals on the same terms as the original policy or through an extended reporting period of not less than five (5) years or the period of the applicable statute of repose, whichever is longer. A certificate of insurance evidencing such coverage shall be submitted as per the requirements of Section E above.

I. Pollution Legal Liability Insurance

If the scope of Work of Subcontractor includes plumbing, hazardous waste removal, abatement, demolition, earthwork/sitework, mold remediation, or transporting and/or disposal or remediation of any hazardous material, Subcontractor will purchase, furnish and maintain Pollution Legal Liability Insurance with limits of \$2,000,000 per occurrence and \$2,000,000 in the aggregate. Such policy or policies shall

provide coverage on an occurrence basis for damages arising out of the Work covering any loss resulting from pollution conditions including the discharge, dispersal, seepage, migration, release or escape of pollutants or contaminants including coverage for mold and other related fungi that commence during the policy period. If occurrence-based Contractors Pollution Liability coverage is commercially unavailable, then equivalent claims-made coverage shall be substituted provided (a) the retroactive date is prior to the first day of work performed on the Project, (b) coverage is maintained from that inception date until final completion/acceptance of the project by the owner, and (c) coverage be maintained with no change in the retroactive date for five years past substantial completion or the period of the applicable statute of repose, whichever is longer, if not, a “tail” or extended reporting provision shall extend the reporting period for five years post project completion/acceptance or the period of the applicable statute of repose, whichever is longer.

J. Other Insurance Requirements

All policies providing insurance required herein shall contain a separation of insureds condition whose language is not altered or subject to limitations elsewhere in the policy. All coverages shall be provided by a carrier with an A. M. Best financial strength rating of A- VII or better and must be admitted to write business in the state in which the Project resides. All required and any other insurance policies maintained by Subcontractor shall be endorsed to include waiver of insurer rights of subrogation against Contractor, Project Owner, Project Architect, other subcontractors, and their subsidiaries, affiliates, officer, employees, agents and insurers. The waiver shall apply to all deductible and/or self-insured retentions applicable to the required or any other insurance maintained by the Subcontractor. Subcontractor further agrees to hold harmless and indemnify Contractor, Project Owner, Project Architect, other subcontractors, and their subsidiaries, affiliates, officers, employees, agents and insurers for loss or expense incurred as a result of Subcontractor's failure to obtain such waivers of subrogation from the insurers.

K. Indemnity for Failure to Comply with Exhibit “B” Requirements

To the fullest extent permitted by law the Subcontractor or vendor executing the Agreement or any other agreement with Contractor, agrees to fully defend, indemnify and hold harmless Contractor and the Owner and any other additional insureds, from and against any and all claims, losses, expenses, costs, liabilities and damages of any nature whatsoever, including reasonable attorney's fees actually incurred, arising out of and or relating to any failure of the Subcontractor or vendor to obtain, furnish and maintain as required herein insurance complying with the provisions of this Exhibit “B” or any other failure of Subcontractor to comply with the provisions of this Exhibit “B”.

L. Failure to Maintain

Failure of Subcontractor to maintain the required insurance shall constitute a material breach entitling Contractor to terminate the Subcontract for default, withhold payment, and/or purchase the required insurance at Subcontractor's expense. Any delays in the completion of the Subcontract Work due to Subcontractor's failure to obtain or maintain insurance shall be treated as delay due to Subcontractor's breach of contract.

M. No Representation of Coverage Adequacy

In specifying minimum Subcontractor insurance requirements, Contractor does not represent that such insurance is adequate to protect Subcontractor from loss, damage or liability arising from its work. Subcontractor is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself.

N. Sample Forms

Attached to this Exhibit “B” are sample forms for the certificate of insurance and the endorsements that are required.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

CURRENT DATE

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 Insurance Agent's Name and Address	CONTACT NAME: Agency Contact Name		
	PHONE (A/C, No, Ext): Agency Contact Phone Number	FAX (A/C, No):	
	E-MAIL ADDRESS: Agency Contact Email Address		
	INSURER(S) AFFORDING COVERAGE		
INSURED Subcontractor's Name Subcontractor's Address	INSURER A: Insurance Carrier w/ Best Rating A- VII or Better		NAIC #
	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
	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT	Y	Y	Current Policy Number	00/00/0000	00/00/0000	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES \$100,000 MEDICAL EXPENSE \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP OPPTS AGG \$2,000,000
	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y	Y	Current Policy Number	00/00/0000	00/00/0000	COMBINED SINGLE LIMIT \$1,000,000
	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y	Y	Current Policy Number	00/00/0000	00/00/0000	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☒ N	N/A	Y	Current Policy Number	00/00/0000	☒ WC STATUTORY LIMITS EL Each Accident \$500,000 EL Disease Policy Limit \$500,000 EL Disease Each Accident \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES:

Project # and Project Description

Batson-Cook Company, Owners, and Others, if required by contract are named as additional insureds on a primary/non-contributory basis including ongoing operations and completed operations as respects to the general liability and umbrella policies. Batson-Cook Company, Owner, and Others, if required by written contract, are named as additional insureds as respects to automobile liability policy. Waiver of Subrogation, if required by contract, in favor of Batson-Cool Company, Owner, and Others, as respects to the general liability, automobile liability, umbrella liability and workers compensation policies. Contractual Liability and X,C,U are included.

CERTIFICATE HOLDER

CANCELLATION

Batson-Cook Texas, LLC
1431 Greenway Drive, Suite 740
Irving TX 75038 USA

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

ISO | Commercial General Liability Forms | 10/01/01

COMMERCIAL GENERAL
LIABILITY
CG 20 33 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed for that insured. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

2. Exclusions

This insurance does not apply to:

a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- (2) Supervisory, inspection, architectural or engineering activities.

b. "Bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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ISO | Commercial General Liability Forms | 07/01/04

POLICY NUMBER:

COMMERCIAL GENERAL
LIABILITY
CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY –
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

ISO | Commercial General Liability Forms | 05/01/09
POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of
Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the
Schedule above because of payments we make for injury or damage arising out of your ongoing
operations or "your work" done under a contract with that person or organization and included in the
"products-completed operations hazard". This waiver applies only to the person or organization
shown in the Schedule above.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
AUTO DEALERS COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

A. Who Is an Insured (SECTION II - LIABILITY COVERAGE, paragraph A.1.) is amended to include as an insured any person or organization (called additional Insured) with respect to the operation, maintenance, or use of a covered "auto" whom you are required to add as an additional Insured on this Policy under:

1. a written contract or agreement, or;
2. an oral contract or agreement where a certificate of insurance showing that person or organization as an additional Insured has been issued;

but the written or oral contract must be:

- a. currently in effect or becoming effective during the term of this Policy; and
- b. executed prior to the date of "loss."

B. If the additional Insured is a lessor of a "leased auto";

1. Coverage

- a. Any "leased auto" designated or described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire or borrow.

For a covered "auto" that is a "leased auto" Who Is An Insured is changed to include as an "Insured" the lessor.

- b. The coverages provided under this endorsement apply to any "leased auto" described in the Schedule until the expiration date shown in the Schedule, or when the lessor or his or her agent takes possession of the "leased auto," whichever occurs first.

2. Loss Payable Clause

- a. We will pay, as interest may appear, you and the lessor for "loss" to a "leased auto."
- b. The insurance covers the interest of the lessor unless the "loss" results from fraudulent acts or omissions on your part.
- c. If we make any payment to the lessor, we will obtain his or her rights against any other party.

3. Cancellation

- a. If we cancel the Policy, we will mail notice to the lessor in accordance with the Cancellation Common Policy Condition.
- b. If you cancel the Policy, we will mail notice to the lessor.
- c. Cancellation ends this agreement.

4. The lessor is not liable for payment of your premiums.

5. Additional Definition

As used in this endorsement:

"Leased auto" means an "auto" leased or rented to you including any substitute, replacement or extra "auto" needed to meet seasonal or other needs, under a leasing or rental agreement that requires you to provide direct primary insurance for the lessor.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

- B.** The following is added to the **Other Insurance** Condition in the Auto Dealers Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Contractors Access Equipment Co.

Endorsement Effective Date: 03-26-2024

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

Any person or organization that you have agreed, in a written contract or agreement, that you waive your rights of recovery against that person or organization for all or part of any payment, including supplementary payments, we make under this policy.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

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WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 00 03 13

2nd Reprint

Effective April 1, 1984

Advisory

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Notes:

1. Use this endorsement to waive the company's right of subrogation against named third parties who may be responsible for an injury.
2. The sentence in () is optional with the company. It limits the endorsement to apply only to specific jobs of the insured, and only to the extent that the insured is required to obtain this waiver.
3. The following entry must be added to the endorsement when used in Hawaii: "The premium charge for the endorsement is \$_____."
4. The endorsement does not apply to policies in Missouri where the employer is in the construction group of code classifications. According to Section 287.150(6) of the Missouri statutes, a contractual provision purporting to subrogate rights is against public policy and void where one party to the contract is an employer in the construction group of code classifications.
5. In most states, including Florida, any associated premium charge must be filed and approved prior to use.
6. No charge or fee is applicable for using this endorsement in the state of Tennessee. Refer to Tennessee State Statute Special Rule 3-A-22 of the *Basic Manual*.

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