

# SUBCONTRACT



DATE PROJECT *Date* *Project Name* ("Project")  
*Project Address 1*  
*Project Address 2*

SUBCONTRACTOR *Company Name* ("Subcontractor")  
*Address 1*  
*Address 2*  
*Address 3 - if needed*  
*Phone*  
*Contact Name*

WORK *Scope of work* ("Subcontractor's Work" or "Work")

CONTRACTOR *The Winter Construction Company* ("WINTER")

OWNER *Company Name* ("Owner")

ARCHITECT-ENGINEER *Company Name* ("Architect")

PRIME CONTRACT (dated) *Date* ("Prime Contract")

SUBCONTRACT PRICE \$ \_\_\_\_\_ *dollars* ("Subcontract Price")

MONTHLY BILLING DATE *20th of each month* ("Monthly Billing Date")

RETAINED PERCENTAGE \_\_\_% ("Retained Percentage")

OVERHEAD AND PROFIT FOR CHANGES IN THE WORK \_\_\_% ("Overhead and Profit Percentage")

WORK PERFORMED BY SUBCONTRACTOR \_\_\_%

WORK PERFORMED BY SUB-SUBCONTRACTOR \_\_\_%

PAYMENT AND PERFORMANCE BONDS **REQUIRED**   
**NOT REQUIRED**

ENROLLMENT IN SUBCONTRACTOR **REQUIRED**   
 DEFAULT INSURANCE **NOT REQUIRED**

*(The above terms are incorporated by reference and more fully explained below.)*

Winter Project #		Vendor #		Subcontract #		Cost Code	
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Revised 3/6/2019



As of the date first stated above (hereinafter the “Effective Date”), WINTER and Subcontractor agree for themselves, their successors and assigns, as follows:

**1. CONTRACT DOCUMENTS**

1.1 “Contract Documents” Defined. The term “Contract Documents” as used in this Agreement means the following: (1) this Subcontract between WINTER and Subcontractor, all of its Exhibits, and all documents referenced in any of them, all of which form and are a part of this Subcontract; as well as all subsequently issued written change orders, written amendments, or written modifications to this Subcontract signed by an authorized representative of WINTER (the “Subcontract Documents”); and (2) the Prime Contract between WINTER and the Owner and all other documents incorporated by reference into the Prime Contract, including, but not limited to, all drawings, specifications, general conditions and supplemental conditions, as well as all subsequently issued change orders, amendments or modifications to the Prime Contract.

1.2 Exhibits. The following exhibits are incorporated into, and form part of, this Subcontract:

- Exhibit A Supplementary Conditions
- Exhibit B Scope of Work
- Exhibit C Drawings and Specifications
- Exhibit D Subcontractor’s Application for Payment
- Exhibit E Interim Lien Waiver
- Exhibit F Waiver and Release Upon Final Payment
- Exhibit G Subcontractor Payment Bond
- Exhibit H Subcontractor Performance Bond
- Exhibit I Immigration and Security Affidavit
- Exhibit J Insurance Requirements and Certificate of Insurance
- Exhibit K Subcontractor Warranty
- Exhibit L Sales Tax Payment Affidavit
- Exhibit M Additional Provisions for Projects Requiring LEED Certification
- Exhibit N Additional Provisions for Subcontracts Requiring Design/Engineering
- Exhibit O Extra Work / Time & Material Form
- Exhibit P Joint Check Agreement
- Exhibit Q Subcontractor Guaranty (if required)

1.3 Subcontractor Bound by Prime Contract. Subcontractor assumes toward WINTER all the duties and obligations that WINTER has by the Contract Documents assumed toward Owner. Subcontractor shall be bound by the interpretations and decisions of the

Architect and the Owner to the same extent as WINTER may be bound by them under the Contract Documents.

1.4 Review of Prime Contract. WINTER shall furnish Subcontractor a copy of the Prime Contract upon written request, although certain confidential business terms and conditions may be redacted.

1.5 Conflicts in Contract Documents. If there is a conflict within or between the Contract Documents involving an obligation, a duty, or the quality or quantity of Work required, then the Contract Document imposing the most stringent obligation or duty and the highest quality or greatest quantity shall control. In the event of a conflict between this Agreement and any other documents that comprise the Subcontract Documents, then the Document imposing the most stringent obligation or duty and the highest quality or greatest quantity shall control.

1.6 Methods of Notice. All written notices shall be deemed given if delivered in any one of the following ways: (a) certified or registered mail, with return receipt requested; (b) overnight delivery via the United States Postal Service, Federal Express, UPS or equivalent, with written confirmation of delivery; or (c) via electronic mail. Notice given under this Subcontract shall be made as follows stating in the subject line “WRITTEN NOTICE”:

To WINTER:

*[Enter name, address and contact info including email MUST BE PX OR HIGHER]*

To Subcontractor:

*[Enter name, address and contact info including email]*

If either party wishes to change its person or place for notice, then such information shall be communicated immediately in writing to the other party.

**2. WORK**

2.1 Subcontractor’s Work. WINTER employs Subcontractor as an independent contractor, to perform and furnish all labor, supervision, services, materials, equipment, tools, scaffolds, transportation, storage, incidentals, taxes, insurance and all other things necessary to perform the work identified and described in **EXHIBIT B** hereto (the “Subcontractor’s Work”), which is a portion of the entire work required of WINTER by the Prime Contract (the “Prime Contract Work”).

2.2 Completeness of Drawings and Specifications. Subcontractor agrees to furnish and install all items reasonably inferable from the Contract Documents for the proper completion of Subcontractor’s Work without adjustment to the Subcontract Price.

2.3 Local Conditions. Subcontractor acknowledges that it has (a) become familiar with the Contract Documents; (b) adequately investigated the general nature and conditions of the Project site and locality; (c) familiarized



itself with labor and material availability and local market conditions affecting the Subcontractor's Work. Subcontractor enters into this Subcontract based on its own investigation and evaluation of said conditions and Contract Documents.

2.4 Compliance with Laws, Regulations and Codes. Subcontractor acknowledges that it is familiar with all Applicable Laws, including those in force on the Effective Date that relate to the Subcontractor's Work. If Subcontractor's Work fails to comply with Applicable Laws, including, but not limited to, applicable building codes and local ordinances, Subcontractor shall bring such Work into compliance at no additional cost to WINTER or the Owner.

2.4.1. If applicable, Subcontractor shall comply with NPDES permit requirements and will adhere to the Erosion, Sedimentation & Pollution Control Plan for the Project.

2.4.2. Subcontractor shall be responsible for compliance with all applicable federal, state, and local natural resource and environmental protection requirements, codes and regulations. In addition, Subcontractor shall: (1) not provide nor allow any of its lower-tier subcontractors or suppliers to provide to the Project hazardous wastes as that term is defined by applicable federal, state, and local agencies, rules or regulations. Upon notice from Owner, Architect or WINTER, Subcontractor shall remove any such products or materials provided in violation of this paragraph, at its sole responsibility and expense.

2.5 Assignment and Subcontracting. This Agreement shall not be subcontracted or assigned, nor shall any of the payments hereunder be assigned, without the prior written consent of WINTER. Any assignment without such prior written consent shall vest no rights in the assignee against WINTER. Subcontractor shall incorporate all provisions of this Agreement which affect the rights of WINTER into any subcontracts and purchase order agreements it proposes to execute with any other party. Subcontractor shall remain liable to WINTER for all acts and omissions of its subcontractors, suppliers and assigns.

### 3. SUBCONTRACT PRICE

3.1 Subcontract Price. WINTER agrees to pay Subcontractor for the satisfactory performance of Subcontractor's Work the amount set forth above as the Subcontract Price, subject to additions and deductions as herein provided.

3.2 Unit Prices. If the Work (or a portion of the Work) is performed on a unit price basis, the Subcontract Price shall be computed in accordance with the unit prices set forth in **EXHIBIT B**.

3.3 Costs Included. The Subcontract Price includes all costs of Subcontractor's performance of the Work, including, by way of example and not limitation, the costs of labor, supervision, services, materials, equipment, tools, scaffolds, transportation, storage, incidentals,

insurance, taxes, jobsite overhead, home office overhead and profit.

### 4. SUBCONTRACT PAYMENT

4.1 Schedule of Values. No later than seven (7) days prior to the first application for progress payment hereunder but, in any event no later than seven (7) days from the Effective Date, whichever is earlier, Subcontractor shall submit to WINTER in such detail and with sufficient supporting information as WINTER may require, a detailed Schedule of Values. The cost breakdown shall include line items for overhead and profit, As-Built Drawings, Operation & Maintenance data, Owner training, and Punch list work. The Schedule of Values is subject to WINTER's review and approval, but Subcontractor shall remain fully responsible for the reasonableness and accuracy of the costs contained in the agreed upon Schedule of Values, which will be used as a basis of checking Subcontractor's applications for payment or supporting WINTER's applications for payment under the Prime Contract. Subcontractor's submission of a Schedule of Values in a form reasonably acceptable to WINTER shall be a condition precedent to any payment to Subcontractor.

4.2 Payment Applications. On or before each Monthly Billing Date, Subcontractor shall submit to WINTER a progress payment application showing the value of the Work installed to date ("Completed Work"). The payment application shall be in the form attached hereto as **EXHIBIT D**, and shall be supported by such data as WINTER, the Owner or the Architect may reasonably require. Applications for payment received after the Monthly Billing Date will be considered as applications for the following month.

4.2.1 Stored Materials. If permitted by the Prime Contract or otherwise approved in advance by the Owner, progress payment applications may include requisitions for materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at some other location agreed upon in writing ("Stored Work"). Unless otherwise agreed in writing between WINTER and Subcontractor, Subcontractor shall pay all costs associated with offsite storage, including insurance and costs incurred by WINTER and Owner in making reasonable inspections.

4.3 Progress Payments. Subject to Subsections 4.3.1 thru 4.3.9 below, WINTER shall, within seven (7) days after receiving a progress payment from the Owner, make payment to Subcontractor in an amount equal to the value of the approved Completed Work and Stored Work as of the corresponding Monthly Billing Date, after deducting (a) all previous payments, (b) current retainage, (c) all charges or backcharges for services, materials, equipment and other items furnished or otherwise chargeable to Subcontractor, and (d) costs associated with liens filed against the Project.

4.3.1 Proof of Insurance Condition of Payment. As a condition precedent to payment, Subcontractor shall



furnish evidence that insurance as required by the insurance requirements contained in **EXHIBIT J** is currently in effect.

4.3.2 Receipt of Bond. As a condition precedent to payment, Subcontractor shall furnish performance and payment bonds as required by this Subcontract.

4.3.3 Subcontractor Default Insurance. If performance and payment bonds are not required by this Subcontract, as a condition precedent to payment, Subcontractor shall furnish all information required for enrollment in WINTER's Subcontractor Default Insurance program, and Subcontractor shall furnish all documents relating to same as required by WINTER.

4.3.4 Immigration and Security Affidavit. As a condition precedent to payment, Subcontractor shall provide WINTER with a completed and signed Immigration and Security Affidavit in the form attached hereto as **EXHIBIT I**.

4.3.5 Lien Waivers. As a condition precedent for each progress payment, Subcontractor shall submit to WINTER statutory lien waivers in the form attached hereto as **EXHIBIT E**, waivers of bond claims, and/or affidavits executed by Subcontractor, its subcontractors, suppliers, and any other person used by Subcontractor in the performance of the Work, swearing that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items furnished or incurred in connection with the completed Work.

4.3.6 Record Documents. As a condition precedent to each progress payment, WINTER may require that Subcontractor make available to WINTER its current set of Record Documents.

4.3.7 Retainage. Unless prohibited by law, Subcontractor and WINTER agree that the Retained Percentage shall be deducted from Subcontractor's progress payment.

4.3.8 Prompt Pay Acts. To the extent the provisions of any prompt payment act(s) at the federal, state or local level, including without limitation O.C.G.A. § 13-11-1, et seq., entitled the "Georgia Prompt Pay Act," would otherwise apply to this Subcontract, the specific terms of this Subcontract supersede such statutory provisions.

4.3.9 Payment by Owner. Subcontractor acknowledges that Subcontractor's Work is a portion of the work for the Project, and that payment for Subcontractor's Work by WINTER is conditioned upon payment for Subcontractor's Work by Owner. Subcontractor warrants and represents that it relies for payment of Subcontractor's Work on the credit and ability to pay of Owner, and not of WINTER, and that Subcontractor undertakes the risk that it shall not be paid for Subcontractor's Work in the event WINTER is not paid by Owner for such Work. Except for confidential information, Subcontractor may

review any information provided by Owner to WINTER relative to Owner's financial ability to pay for the Work. Payment by the Owner to WINTER shall be an absolute condition precedent to WINTER's (or its surety's) obligation to make any progress payments, final payment or release of retainage to Subcontractor. This subparagraph shall not void any right of Subcontractor to file and take necessary legal action to preserve a claim of lien or claim against a bond.

4.4 Final Payment. Final Payment, consisting of the final progress payment and any unpaid balance of the Subcontract Price, shall be made within forty-five (45) days after the last of the following conditions precedent has occurred: (a) completion of the Work by Subcontractor; (b) acceptance of the Work by the Owner, WINTER and any other person or entity whose acceptance is required under the Contract Documents; (c) delivery of all warranties, manuals, record documents, as-built drawings, spares, attic stock and other similar closeout items required of Subcontractor or its privies by the Contract Documents; (d) delivery of lien waivers, waivers of bond claims and/or affidavits as required by the Contract Documents; (e) WINTER's receipt of final payment from the Owner; (f) WINTER's receipt of the required form of final waiver and affidavit attached hereto as **EXHIBIT F**; and (g) WINTER's receipt of the required form of sales tax payment affidavit attached hereto as **EXHIBIT L**.

4.4.1 Subcontractor's Waiver of Unidentified Claims. Subcontractor's acceptance of final payment shall constitute a waiver by Subcontractor of all of its Claims relating to the Work or arising out of the Subcontract Documents which were not asserted in writing by Subcontractor pursuant to Article 14 prior to Subcontractor delivering its final payment application to WINTER.

4.5 Sub-Subcontractors, Laborers and Suppliers. WINTER shall have the right, but not the obligation, to contact Subcontractor's subcontractors, laborers and suppliers directly in order to verify that they are being paid by Subcontractor for labor, services or materials furnished to the Project. Subcontractor will, if requested by WINTER, promptly provide contact information for its subcontractors, laborers and suppliers.

4.5.1 No payment received by Subcontractor pursuant to this Agreement shall be used to satisfy or secure any other indebtedness owed by Subcontractor. Subcontractor shall not assign any monies due under this Agreement without the written consent of WINTER. All payments made by WINTER to Subcontractor under this Subcontract for labor, materials, or equipment furnished to the Project by any lower-tier Subcontractor, supplier, or other person ("payees") at the request of or pursuant to an agreement with Subcontractor shall, to the extent of the sums owing to any payees on account of such labor or materials, be held in trust by Subcontractor for the sole and exclusive benefit of such payees





pending payment by Subcontractor to such payees, and shall not be commingled with any other funds of Subcontractor, and shall be paid over to such payees timely in accordance with this Agreement.

4.5.2 Subcontractor Payment Failure. If WINTER believes that payment obligations incurred by Subcontractor for the Work are not being satisfied, WINTER may give Subcontractor notice thereof. If Subcontractor contends that such payment obligations are invalid, Subcontractor shall notify WINTER in writing within five (5) business days of WINTER's notice; otherwise, such payment obligation will be deemed valid. WINTER may thereafter take any steps deemed necessary to assure that payments made under this Agreement are used to satisfy such obligations, including but not limited to paying such obligations directly, bonding off or otherwise discharging claims of liens arising therefrom, and retaining out of any payments due or to become due to Subcontractor (under this Agreement or otherwise) a reasonable amount to protect WINTER and Owner from any resulting loss, damage or expense.

4.5.3 Should WINTER in its discretion determine that Joint Check payments are to be made, Subcontractor agrees to execute WINTER's Joint Check Agreement (Exhibit P) as a condition precedent to any payment being released.

4.6 Right to Withhold Payment. WINTER reserves the right to withhold, without limiting other rights and remedies, an amount reasonably sufficient: (a) to defend and discharge any asserted claim that Subcontractor or its privies have failed to make payment for labor, services, materials, equipment, taxes, or other items furnished or prepared in connection with the Work; (b) to defend and discharge any asserted claim that Subcontractor or its privies have caused damage to any other work on the Project; (c) to remedy any defective work, lack of performance, delays or any other default by Subcontractor or its privies under this Subcontract; or (d) to remedy a default by Subcontractor under any other Subcontract, Purchase Contract, or Purchase Order between WINTER (or any joint venture of which WINTER is a party) and Subcontractor on this or any other project, including other projects where WINTER is part of a joint venture.

4.7 WINTER's payment to Subcontractor shall not waive any Claim at any time by WINTER that the Work performed by Subcontractor is defective or fails to comply with the requirements of the Contract Documents.

## 5. TIME

5.1 Time of the Essence. Time is of the essence of this Subcontract.

5.2 Commencement of Work. The date of commencement of the Subcontractor's Work shall be the date of this Subcontract unless provision is made for the date to be fixed in a written notice to proceed by WINTER.

5.3 Subcontract Schedule. Subcontractor shall perform the Work at such times and in such manner as necessary to maintain the schedule requirements of the Contract Documents, including the Subcontract Schedule attached hereto (or as later incorporated herein by Change Order) as **EXHIBIT B**.

5.3.1 WINTER shall have the right to determine the time, order and priority in which the various parts of the Work shall be performed. Subcontractor shall prosecute Subcontractor's Work expeditiously and at such times and in such order as WINTER shall direct to keep it sufficiently in advance of the other parts of the Work and to avoid any delay or disruption to the overall progress or completion of the Work.

5.3.2 Subcontractor acknowledges and agrees that the Subcontract Schedule set forth in **EXHIBIT B** is subject to change, including re-sequencing, as may be reasonably necessary to avoid or minimize overall project delays and comply with the overall Project schedule.

5.3.3 WINTER shall control the use of any float time in the Subcontract Schedule as well as in the overall Project schedule.

5.4 Work Progress and Coordination. It is Subcontractor's responsibility to be aware of and perform its Work in accordance with the most current Subcontract Schedule as well as the overall Project Schedule.

5.5 Project Delays Generally. If progress of the overall Project or the Work is delayed, Subcontractor agrees that WINTER may order the Subcontractor to take steps reasonably necessary to maintain the then current overall Project Schedule and/or Subcontract Schedule, including, but not limited to, supplying additional labor and working overtime.

5.5.1 Overtime shall be ordered in writing by WINTER.

5.5.2 When overtime is ordered, Subcontractor shall itemize overtime labor on Exhibit O Extra Work / Time & Material Form. Subcontractor shall have overtime labor verified the day it is performed and obtain signature of Winter Superintendent and Winter Project Manager.

5.5.3 Subject to Section 5.7 below, if Subcontractor is ordered to work overtime, the Subcontract Price shall be increased by (a) the actual direct costs incurred by Subcontractor over and above the straight time rates and (b) the taxes and insurance applicable to such additional wages. Subcontractor shall not be entitled to overhead and profit on the additional wages.

5.5.4 WINTER may procure or supplement additional labor without terminating this Subcontract if the Subcontractor fails within twenty-four (24) hours to comply with a written order to supply additional labor or to work overtime.

5.6 Delays and Damages Caused by Subcontractor. It is the responsibility of Subcontractor to perform and



coordinate its Work with all other contractors, subcontractors and suppliers so as to maintain the Subcontract Schedule and not to delay, interfere or damage the work of other contractors, subcontractors and suppliers. If Subcontractor should fail to fulfill this obligation, Subcontractor shall be liable for all damages incurred by WINTER, the Owner or such other contractors, subcontractors or suppliers as a direct consequence of such failure, including, but not limited to, extended general conditions costs, unabsorbed home office overhead expenses, added costs for overtime work, and attorneys' fees and expenses incurred, plus an allowance for administrative burden equal to fifteen percent (15%) of such costs which the parties agree is a reasonable estimate of the administrative burden which WINTER will incur and is not assessed as a penalty.

5.6.1 Subcontractor agrees WINTER may, in addition to the remedies set forth elsewhere in this Subcontract, pay for materials ready for delivery to the Subcontractor, insuring the same for the benefit of all parties concerned, and charging all costs in connection with such payment and insurance against the amount to be paid Subcontractor under this Subcontract.

5.6.2 If the Prime Contract provides for liquidated or other damages for delay, Subcontractor shall be liable to WINTER for all liquidated or other damages assessed by Owner against WINTER in proportion to Subcontractor's share of responsibility for such delay damages.

5.7 Delays Beyond Subcontractor's Control. If Subcontractor is delayed in the prosecution of the Work due to events beyond Subcontractor's control, Subcontractor shall be entitled only to such additional compensation and extensions of time to which WINTER is entitled under the Prime Contract; provided, however, that if Subcontractor's delay in the performance of Subcontractor's Work is caused by WINTER, WINTER shall be liable to Subcontractor for reasonable costs and damages incurred by Subcontractor in proportion to WINTER's share of responsibility for the delay.

5.8 Notwithstanding anything to the contrary in the Contract Documents, including this Article, Subcontractor shall not be entitled to an extension of time or additional compensation for any delay by whomever caused unless a written notice of delay is delivered by Subcontractor to WINTER within seventy-two (72) hours after commencement of the event giving rise to the delay or within such shorter period of time as will permit WINTER to comply with applicable notice provisions contained in the Prime Contract. Any such notice shall contain: (a) a description of the event of delay; (b) the date on which the delay commenced; (c) a description of the cause of the delay; (d) a description of any critical activities likely to be impacted by the delay; (e) an estimate of the anticipated duration of the delay; and (f) any other information required by applicable notice provisions in the Prime Contract.

5.9 Nothing herein shall be construed to prohibit WINTER's right to procure or supplement additional labor without terminating this Subcontract if Subcontractor fails within twenty-four (24) hours of a written order to correct a breach of this Subcontract.

## 6. GENERAL PROVISIONS GOVERNING THE WORK

6.1 Quality of Materials. Unless specifically permitted by the Contract Documents or authorized in advance by WINTER in writing, all materials used in the Subcontractor's Work shall be new and of good quality.

6.2 Subcontractor shall be responsible for any and all loss or damage resulting from Subcontractor's failure to notify WINTER, prior to installation, of any shortage, damage or defect in materials and equipment furnished by others.

6.3 Supervision. Subcontractor is responsible for providing full-time, competent supervision on site at all times while Subcontractor is performing Work. The Subcontractor's designated supervisor shall have the authority to make decisions on Subcontractor's behalf. If requested by WINTER, Subcontractor will replace its supervisor within twenty-four (24) hours.

6.4 Permits, Fees, Licenses and Taxes. Subcontractor shall give required notices to any governmental authorities and shall secure and pay for all applicable permits, fees, tests, licenses, assessments, inspections, and taxes related to Subcontractor's Work.

6.5 Duty to Review Contract Documents and Field Conditions. Before commencing each portion of the Work, Subcontractor shall carefully study and compare the various drawings, Contract Documents and existing and field conditions pertaining to that portion of the Work. If Subcontractor discovers or should have discovered any errors, omissions, or inconsistencies or non-compliant work, Subcontractor must promptly report such errors, omissions, or inconsistencies to WINTER in writing or waive its right to assert Claims or defenses relating to same.

6.6 Temporary Site Facilities and Equipment. Except for those listed in **EXHIBIT B** hereto, all temporary site facilities and equipment (e.g., storage sheds, water, heat, light, task lighting, power, extension cords, toilets, cranes, hoists, elevators, scaffolding, cold weather protection, ventilating pumps, watchman service, barricades, traffic control, flagmen, signage, street closure permits and traffic protection) required in performing the Work shall be furnished by Subcontractor.

6.7 Subcontractor shall not use WINTER's labor, and shall not use or operate WINTER's machinery, equipment, tools, scaffolding, hoists, lifts or similar items ("equipment") owned, leased, or under the control of WINTER without the express permission of WINTER. If such use is permitted by WINTER, Subcontractor shall assume all risks in connection therewith, including the risk of defects in said equipment.



6.8 Protection of Work and Materials. Subcontractor shall be responsible for protecting and insuring the Work, until the Work has been installed and accepted by Owner. Except to the extent of any proceeds received for the benefit of Subcontractor under a policy of builders' risk or fire insurance, Subcontractor shall be solely responsible for any loss or damage to the Work, and for the correction or restoration of any such loss or damage to the Work or to the work of other subcontractors, resulting from the operations of Subcontractor or its privies.

6.9 Coordination with Others. Subcontractor shall coordinate the installation of Subcontractor's Work with all other contractors and subcontractors performing Work on the Project.

## **7. PROTECTION OF PERSONS AND PROPERTY**

7.1 Safety Measures. Subcontractor shall implement safety and health measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction as well as those established and implemented by WINTER and the Owner. Subcontractor shall strictly adhere to all applicable OSHA requirements and any other safety requirements imposed by the Contract Documents. Subcontractor shall stop any part of the Work which is deemed unsafe by WINTER, the Owner or governmental authorities until corrective measures have been taken. The failure of the Owner or WINTER to stop Subcontractor's unsafe practices shall not relieve Subcontractor of its responsibility therefore. Subcontractor shall be responsible for any costs, fines or penalties assessed against Owner or WINTER for the Subcontractor's failure to comply with Applicable Laws and regulations concerning safety and health.

7.1.1 Safety Plan. Subcontractor shall furnish to WINTER prior to commencing work, a written, detailed, project and scope specific Safety Plan. The Safety Plan shall address all aspects of Subcontractor's Work and include methods of protection of the workforce from hazards related to Subcontractor's Work. The failure of WINTER to verify the Subcontractor's safety plan shall not relieve Subcontractor of its responsibility and liability therefor.

7.1.2 Fall Protection. 100% fall protection for any worker over six (6) feet above any floor or grade condition, including personnel utilizing scaffold or lifts is required. Monitoring is not an acceptable means of fall protection and will not be allowed.

7.1.3 Safety Partner. Subcontractor will participate fully in WINTER's "Safety Partner" program. Subcontractor shall have required documentation completed prior to commencing work. Subcontractor understands that no worker will be permitted to work on the Project without a Safety Partner hardhat decal.

7.2 Hazardous Materials. Subcontractor warrants and agrees that it will comply with any and all Applicable Laws, regulations and standards governing the handling and

use of hazardous materials, including, but not limited to, all federal and state hazardous communications standards, and that it shall at all times during the Work comply with said laws and standards.

7.2.1 Subcontractor specifically agrees that it will comply with the OSHA Hazard Communication Standard by, among other things, providing WINTER with Safety Data Sheets(SDS) for any materials requiring Safety Data Sheets prior to using said materials on the Project site.

7.2.2 Subcontractor further agrees that it will immediately notify WINTER in writing should it encounter materials suspected of containing asbestos, lead or other hazardous materials.

7.3 Reports of Accident and Personal Injury. Subcontractor shall notify WINTER, in writing, of the facts and details of every accident and personal injury including the name of any injured worker(s) and the nature of the injury or injuries, and provide WINTER copies of accident reports furnished to Subcontractor's insurance carrier. In cases involving death of any worker or the in-patient hospitalization of any worker, from or as a result of a work-related incident, Subcontractor shall orally report such incidents to WINTER as soon as possible, but in no circumstances later than eight (8) hours after such incident.

7.4 WINTER shall not be liable or responsible for loss or damage to the equipment, tools, facilities or other personal property owned, rented or used by Subcontractor, or anyone employed by Subcontractor, in the performance of the Work; and Subcontractor shall maintain such insurance and take such protective action as it deems desirable with respect to such property.

## **8. UNCOVERING AND CORRECTION OF WORK**

8.1 Subcontractor shall provide WINTER, the Architect, and the Owner reasonable opportunity to inspect the Work throughout the course of the Project.

8.2 Subcontractor shall, within forty-eight (48) hours after receiving written notice from WINTER or any governmental entity, remove all portions of the Work which any entity deems unsafe, defective, or in any way failing to conform to the Contract Documents or applicable building codes, and shall replace the same with proper and conforming Work, making good all other work damaged thereby.

8.3. Failure of WINTER or the Owner to discover and notify Subcontractor of defective or nonconforming Work at the time the Work, or any portion thereof, is installed shall not relieve Subcontractor of responsibility for replacement of the defective or nonconforming Work or any resulting damages.

8.4 At their sole option, Owner or WINTER may elect to accept defective or nonconforming Work instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the





Subcontract Price that is commensurate with the diminished value of the Work.

## 9. CHANGES IN THE WORK

9.1 Changes in the Subcontract Documents may be accomplished in writing by Change Order, Change Directive, or a Field Order. A Change Order shall be based upon agreement between WINTER and Subcontractor. A Change Directive or Field Order does not require agreement by Subcontractor.

9.1.1 In the event of a change in the Work, the Subcontract Price shall be adjusted by the net amount of any direct savings and direct costs attributable to the change, if any, plus the Overhead and Profit Percentage, and the time for performance of the Work shall be adjusted as provided in the Contract Documents. As used in this Subcontract, Subcontractor's direct savings and direct costs shall be limited to the actual amount of the following: cost of materials (including sales tax and cost of delivery); cost of labor, taxes, insurance; bond premiums; and actual rent of equipment and machinery. Where the Work affected by the change is the subject of unit prices, the adjustment to the Subcontract Price shall be limited to the unit prices specified in **EXHIBIT B**.

9.2 Change Proposals. A change in the Work may be identified by WINTER in a document entitled "Item of Change" (IOC). Subcontractor must respond to any IOC from WINTER with a written proposal as soon as is practicable, but in no event later than five (5) working days after receipt of the IOC. Subcontractor's proposal must be fully itemized and substantiated, including (1) all materials by quantity and price, (2) all labor by unit prices, (3) insurance, (4) permits, (5) payroll taxes and insurance, (6) labor fringe benefits and equipment by quantity and rate, and (7) justification for any time extensions requested. If the parties reach agreement regarding price and time adjustments, a Change Order will be issued pursuant to Section 9.3 below. Otherwise, WINTER may issue a change directive pursuant to Section 9.4 below.

9.3 Change Order. A Change Order is a written instrument signed by WINTER and Subcontractor stating their agreement upon: (a) the change in the Work; (b) the amount of the adjustment, if any, in the Subcontract Price; and (c) the extent of the adjustment, if any, to the Subcontract Schedule.

9.3.1 The Subcontractor's Overhead and Profit Percentage applied to the direct costs of the changes in the Work shall be Subcontractor's sole and complete compensation for all indirect costs, including by way of illustration and not limitation, home office overhead, profit, supervision, extended performance costs, administrative expenses, and field overhead.

9.4 Change Directive. A Change Directive is a written order from WINTER directing a change in Subcontractor's Work and, as applicable, stating an adjustment in the Subcontract Price and/or Subcontractor Schedule.

9.4.1 If a Change Directive provides for an adjustment of the Subcontract Price, the adjustment shall be as provided in Subsection 9.1.1 above.

9.4.2 Upon receipt of a Change Directive, Subcontractor shall proceed promptly with the changed Work and advise WINTER of Subcontractor's agreement or disagreement with the price or time adjustments contained therein.

9.4.3 If Subcontractor disagrees with the price and/or time adjustments set forth in the Change Directive, Subcontractor may assert a Claim pursuant to Article 14 below. Amounts not in dispute for such changes in the Work shall be incorporated into a Change Order.

9.4.4 WINTER may issue a Change Directive for Subcontractor to proceed with changed Work on a unit price or "time and material" basis if expressly stated in the Directive. Unit prices, material costs and labor rates shall be established by the parties prior to performance of the changed Work.

9.5 Field Order. WINTER may order minor changes not involving adjustment in the Subcontract Price or extension of the Subcontractor Schedule and not inconsistent with the intent of the Contract Documents. Subcontractor shall carry out such written orders promptly, subject to its right to assert a Claim in accordance with Article 14 below.

9.6 Written Order Required. In no event, shall Subcontractor proceed with changed or extra work without a fully executed Change Order or a written Change Directive from WINTER. WINTER shall not be liable for any additional costs incurred or delays encountered in the performance of such work without such prior written order.

9.7 For work performed on a time and material basis, Subcontractor shall itemize work on Exhibit O Extra Work / Time & Material Form. Subcontractor shall have work verified the day it is performed and obtain signature of Winter Superintendent and Winter Project Manager.

## 10. BONDS OR SUBCONTRACTOR DEFAULT INSURANCE

10.1 Performance and Payment Bonds. If so indicated on the first page of this Subcontract, Subcontractor shall, within seven (7) days after executing this Subcontract and prior to commencing the Work, furnish, at its expense, a performance bond and a payment bond, with WINTER named as obligee, on separate bond forms, per the forms attached hereto in **EXHIBITS G & H**, each in an amount equal to the Subcontract Price, from a surety or sureties reasonably acceptable to WINTER.

10.1.1 Receipt and approval by WINTER of a performance bond and payment bond as required by this Subcontract shall be an express and absolute condition precedent to any payment by WINTER to Subcontractor.

10.1.2 If Subcontractor fails to furnish WINTER with payment and performance bonds meeting the





requirements of this Article within seven (7) days after this Subcontract is fully executed by Subcontractor and delivered to WINTER, WINTER may terminate this Subcontract at no cost to WINTER and re-let the Work to another Subcontractor.

10.2 Subcontractor Default Insurance. WINTER shall have the option of securing Subcontractor Default Insurance. The Subcontract Default Insurance shall be for the exclusive benefit of WINTER.

10.2.1 The Subcontractor shall fully cooperate with WINTER's standard procedures for pre-qualifying subcontractors for its Subcontractor Default Insurance.

10.2.2 In the event that Subcontractor fails to promptly cooperate with WINTER's standard pre-qualification procedures or shall fail to meet the minimum qualifications of WINTER's Subcontract Default Insurance, WINTER may: (a) terminate this Subcontract at no cost to WINTER and re-let the Work to another Subcontractor; or (b) exercise its option to require Subcontractor to furnish payment and performance bonds pursuant to this Article, or (c) withhold payment from Subcontractor until the pre-qualification procedures have been met or payment and performance bonds have been furnished.

10.2.3 WINTER shall have the right to subrogate its rights under this Subcontract to WINTER's Subcontract Default Insurance underwriter.

## 11. INSURANCE

11.1 Before commencing the Work, Subcontractor shall obtain, at its expense, at least the insurance coverage specified in **EXHIBIT J** attached hereto, all in form and substance reasonably acceptable to WINTER, from insurers that are duly authorized to transact business in the state in which the Project is located, and that are otherwise reasonably acceptable to WINTER. Subcontractor shall provide proof of acceptable insurance prior to commencement of work. **(NOTE: CGL Additional Insured endorsements must state that completed operations are covered.)**

11.2 Subcontractor shall maintain all insurance required by the Subcontract Documents, without interruption, until the warranty period under Article 20 below has lapsed, except for products and completed operations coverage, which Subcontractor shall maintain for a minimum of three (3) years following final completion of Subcontractor's Work.

11.3 Policies shall be endorsed to provide that the carrier waives its right of subrogation for General Liability, Automobile Liability, Workers Compensation and Umbrella/Excess Liability (if applicable) against WINTER. A copy of the endorsements shall be attached to Subcontractors certificate of insurance.

11.4 All policies except the worker's compensation insurance policy are to name WINTER, the Owner and

Architect as additional insured. The Commercial General Liability (CGL) policy endorsements shall be either CG2010 (11/85) or CG2010 (04/13) and CG2037 (04/13) or carrier's equivalent specifically including Products/Completed Operations coverage for the Additional Insureds. The Umbrella/Excess Liability shall "follow form" over the coverage afforded in the Auto Liability and CGL policy in this regard. The Additional Insured coverage extended to WINTER shall apply on a "primary" and non-contributory basis. The CGL policy General Aggregate limit shall apply on a "Per Project" basis.

11.5 Subcontractor shall be exclusively responsible for any and all deductibles as it may pertain to insurance coverage on the Project, for claims related to or in any way connected with Subcontractor's Work. This responsibility includes but is not limited to: all deductible and/or self-insured retention (SIR) expenses incurred by WINTER as an Additional Insured under any and all Liability insurance provided by Subcontractor, or assessed against WINTER by the owner as a result of negligent acts or willful omissions of Subcontractor, its sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable; and all deductible expenses for builder's risk or other property insurance claims covering Subcontractor's Work.

11.6 The CGL policy may not contain exclusions pertaining to any form of residential or habitable construction. If any such exclusionary wording is present, an endorsement must be issued to the policy and provided to WINTER within thirty (30) days of the Work commencing, which confirms the exclusion(s) are deleted or do not apply specifically to the coverage afforded for this specific project. Any such endorsement will include project name, location and contract number. Prior to the Work commencing Subcontractor must present written confirmation from insurer or agent/broker that any exclusions related to residential or habitational projects have been modified so as not to apply to coverage for this project and the required endorsements will be effected prior to work commencing and endorsed to said policy as required. This requirement pertains to Commercial General Liability and Umbrella policies only.

11.7 All insurance required by this Subcontract shall (1) be primary and not in addition to, or contributing with, any other insurance carried by, or for the benefit of Additional Insureds (except Workers Compensation & Employers Liability); (2) waive any and all right of subrogation against WINTER and other Additional Insureds; and (3) contain a cross liability/severability of interest endorsement (except Workers Compensation & Employers Liability)

11.8 All endorsements documenting compliance with these insurance requirements will be attached to Subcontractors certificate of insurance.

11.9 Subcontractor shall not use any leased labor or obtain any labor or employees through any form of labor leasing or Professional Employer Organization without



WINTER's prior written approval. Subcontractor shall not allow any employee or worker (whether Subcontractor's employee or leased employee) to work at the Project site who is not covered by Workers Compensation insurance.

## **12. INDEMNITY AND DEFENSE**

12.1 Generally. To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless, Owner, Architect, WINTER and all of their respective affiliates, parents, subsidiaries, officers, directors, employees, successors and assigns (all of which are hereinafter collectively referred to as "Indemnitees" and singularly referred to as "Indemnitee"), from and against all claims, damages, losses, costs and expenses, including, but not limited to, attorneys' and expert consultant fees, arising out of or resulting from the performance of Subcontractor's Work, provided that any such claim, damage, loss, cost or expense, including attorneys' and expert consultant fees: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than direct damage to Subcontractor's Work itself), including the loss of use resulting therefrom, and is caused or alleged to be caused in whole or in any part by any act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, regardless of whether it is also caused in part by a party indemnified hereunder; or (2) arises out of or related to Subcontractor's performance under this Subcontract, or results from any claimed failure of Subcontractor to properly fulfill its obligations under this Subcontract. This indemnity obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist under law except to the extent that it is caused by the sole negligence of any Indemnitee, in which case this obligation shall not apply relative to such Indemnitee.

12.2 Lien and Bond Claims. Subcontractor shall defend, indemnify and hold harmless WINTER, WINTER's sureties and the Owner from any lien or claim of lien or any claim on any payment or performance bond filed or maintained by any laborer, materialman or other person or entity directly or indirectly acting for, through, or under Subcontractor, against the Project or any part thereof or any interest therein or against any monies due or to become due from Owner to WINTER or from WINTER to Subcontractor.

12.2.1 Without limiting the foregoing, Subcontractor shall cause any such lien or claim to be satisfied, removed or discharged by bond, payment or otherwise within ten (10) days from the date of filing or receipt of notice of the lien or claim, whichever is earlier.

12.2.2 If Subcontractor does not discharge a lien or claim on a payment or performance bond within the required time, WINTER may, at its sole option, discharge such lien or bond claim without legal determination of its validity, and deduct the cost of

discharging the lien or claim, including all reasonable attorneys' fees and expenses incurred from any money then due or thereafter to become due to Subcontractor under this Subcontract, plus an allowance for administrative burden equal to fifteen percent (15%) of such costs which the parties agree is a reasonable estimate of the administrative burden which WINTER will incur and is not assessed as a penalty.

12.3 Patents. Subcontractor shall defend, indemnify and hold harmless WINTER, the Owner, the Architect and their respective privies, from and against any claim, cost, expense or liability (including attorneys' fees and expenses) arising out of or resulting from infringement or alleged infringement by Subcontractor of any patent rights, copyrights, or other similar rights attributable to the Work, except to the extent that the Owner may have expressly assumed responsibility therefore under the Contract Documents.

12.4 Legal Proceedings. Should Owner or any other person assert a claim or institute a suit, action, dispute or proceeding against WINTER involving the manner or sufficiency of Subcontractor's performance of the Work, Subcontractor and/or its sureties shall, upon written request of WINTER, promptly assume the defense of such claim, suit, action, dispute or proceeding at Subcontractor's and/or its sureties' expense, and Subcontractor and/or its sureties shall indemnify and hold harmless WINTER and its agents, servants, and employees from and against any liability, loss, damage, or expense arising out of or related to such claim, suit, action, dispute or proceeding.

12.6 No Limitations. Subcontractor's duty to defend, hold harmless, and indemnify shall not be limited in any way by insurance limits, any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or its privies under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

12.7 Enforceability. The parties hereto acknowledge and agree that, to the extent that any portion of the indemnification provisions contained in this Article are deemed unenforceable, then such portion is considered severable and will not affect the remaining portions of such provisions.

12.8 Consideration. Included in the Subcontract Price is the sum of ten dollars (\$10.00) as specific consideration of the indemnity obligations provided under this Article.

12.9 Survival. The requirements of this Article shall survive termination of this Subcontract.

## **13. INDIRECT AND CONSEQUENTIAL DAMAGES**

13.1 Notwithstanding any provision of this Subcontract to the contrary, neither WINTER nor Subcontractor shall be liable to the other for indirect or consequential damages incurred by the other which arise from or relate to this Subcontract, the Work or the Project. Nothing herein shall be construed to limit Subcontractor's liability to WINTER



for liquidated damages assessed by the Owner for which Subcontractor is responsible.

## 14. CLAIMS

14.1 A Claim is a demand or assertion made in writing by WINTER or Subcontractor regarding any matter in dispute between WINTER and Subcontractor.

14.2 Claims relating to the Owner. Subcontractor agrees to make all Claims against WINTER for which Owner is or may be liable in the same manner and within the time limits provided in the Contract Documents for like claims by WINTER against Owner. Notice of such Claims shall be given by Subcontractor to WINTER at the earlier of: (1) within such time as to enable WINTER to give Owner any Claim related notices required by the Contract Documents; (2) within seventy-two (72) hours of the occurrence of the event for which such Claim is made; or (3) prior to performance of the affected portion of Subcontractor's Work (unless such Work relates to an emergency endangering life or property, in which case Subcontractor shall provide notice as soon as practicable under the circumstances); otherwise, the Claim shall be deemed waived. Subcontractor shall only be entitled to an adjustment to the Subcontract Price or Subcontract Schedule for performing and completing that portion of the Work associated with any Claim for which Owner is or may be liable, subject to Paragraph 4.3.9, and only to the extent actually granted to WINTER by Owner. Any decision of the Owner or Architect with respect to such Claims which, under the terms of the Contract Documents, is binding on WINTER, and any decision in arbitration or litigation between Owner and WINTER which becomes final and binding on WINTER shall likewise be final and binding on Subcontractor.

14.3 Claims relating to WINTER. Notice of any Claim not covered by Section 14.2, shall be given by Subcontractor to WINTER at the earlier of: (1) within seventy-two (72) hours after the occurrence of the event for which such Claim is made; or (2) prior to performance of the affected portion of Subcontractor's Work (unless such Work relates to an emergency endangering life or property, in which case Subcontractor shall provide notice as soon as practicable under the circumstances); otherwise, such Claim shall be deemed waived.

14.4 Notice of Claim. Notice of Claim shall be deemed given if delivered in any one of the following ways: (a) certified or registered mail, with return receipt requested; or (b) overnight delivery via the United States Postal Service, Federal Express, UPS or equivalent, with written confirmation of delivery.

## 15. DISPUTE RESOLUTION

15.1 Condition Precedent to Legal Action or Arbitration Proceeding. Compliance with the dispute resolution procedures contained in this Article and in the Prime Contract shall be a condition precedent to the right of Subcontractor to commence or continue any legal action or arbitration proceeding against WINTER.

15.2 WINTER-Subcontractor Disputes. All claims, disputes and other matters in question between the Subcontractor and WINTER arising out of or related to the Work or the Subcontract or any breach thereof, except those involving the correlative rights or duties of the Owner which are governed by Section 15.3 below, shall be decided, at the sole option of WINTER, by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect.

15.2.1 In the event that WINTER elects to arbitrate the dispute, the arbitration shall, at WINTER's sole election, and to the extent allowed by law, take place in (a) Atlanta, Fulton County, Georgia; or (b) the state where the Project is located.

15.2.2 In the event that WINTER elects not to arbitrate, to the extent allowed by law, any lawsuit shall be brought in a court of competent jurisdiction in Atlanta, Fulton County, Georgia, where both parties shall agree to submit to jurisdiction and venue.

15.2.3 Subcontractor warrants and represents that it has included in the Subcontract Price a sum of not less than ten dollars (\$10.00) as compensation and consideration for irrevocably offering the foregoing option and arbitration rights to WINTER.

15.2.4 If Subcontractor fails to comply with WINTER's notice of election within seven (7) days after receipt of written notice of said election, Subcontractor shall be liable to WINTER for all expenses incurred as a result of such failure, including, but not limited to, attorneys' fees incurred preparing and filing a responsive pleading, responding to discovery, and obtaining an order compelling compliance with WINTER's election.

15.3 Owner Disputes. Any controversy or claim between WINTER and Subcontractor arising out of or related to the Subcontractor's Work or the Contract Documents or any breach thereof which involves the correlative rights or duties of the Owner shall be settled according to the disputes resolution procedures in the Prime Contract. Subcontractor must furnish all notices and information within the time required under the Prime Contract to enable WINTER to timely assert a claim or a defense of Subcontractor or such claim or defense shall be waived.

15.3.1 For a dispute which involves Subcontractor's Work, Subcontractor shall have the obligation to participate in the assertion or defense of claims related to such Work and shall be bound by the outcome of the dispute resolution procedure regardless of whether it complies with its obligation to participate.

15.3.2 Payment by the Owner to WINTER is a condition precedent to the obligation of WINTER to pay Subcontractor for any Work, claim or damage involving the correlative rights and responsibilities of the Owner.





15.3.3 Unless otherwise determined by a court or arbitrator, WINTER shall pay Subcontractor the amount of the proportionate share of any recovery due Subcontractor on the basis of the ratio of the Subcontractor's claims to other claims asserted by WINTER less the litigation expenses and attorneys' fees incurred by WINTER pursuing Subcontractor's claims as calculated by WINTER.

15.3.4 Subcontractor shall indemnify WINTER for any and all costs, including attorneys' fees and expert consultant fees, for defending a claim by a third party that relates to or arises from the Subcontractor's Work.

15.4 Consolidation or Joinder. WINTER may join or consolidate a lawsuit or arbitration initiated hereunder with a lawsuit or arbitration between WINTER and the Owner, Architect, another Subcontractor, or any other party where said lawsuit or arbitration involves a common question of fact or law arising from or related to the Project. To the extent that Subcontractor is or may be liable for any Claims asserted by other subcontractors, suppliers, or third parties against WINTER in an arbitration proceeding or litigation, then, at the election of WINTER, Subcontractor hereby consents to joinder in such arbitration proceeding or litigation, and to the direct assertion of claims by such Subcontractor, supplier or third party against Subcontractor.

15.5 Obligation to Continue Performance. Unless otherwise agreed in writing by WINTER, Subcontractor shall continue to perform Subcontractor's Work and maintain the Subcontract Schedule during or pending any arbitration or litigation.

15.6 Arbitrability. The agreement to arbitrate set forth in this Article shall be specifically enforceable under Applicable Law in any court having jurisdiction thereof. Any dispute concerning questions of arbitrability, consolidation or joinder of proceedings shall be decided by the appropriate court and not by the arbitrator(s).

15.7 Arbitration Binding and Final. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with the Applicable Law in any court having jurisdiction thereof.

## **16. TERMINATION OF WORK BY OWNER**

16.1 Should Owner suspend or terminate the Prime Contract, or any portion of said contract which includes all or part of Subcontractor's Work, WINTER shall so notify Subcontractor in writing. Upon receipt of said notice, Subcontractor's performance under this Subcontract, or affected portion thereof, shall also be suspended or terminated and Subcontractor shall immediately stop work on any affected portion of Subcontractor's Work. In the event of Owner suspension or termination, WINTER's liability to Subcontractor is limited to the extent of recovery by WINTER from Owner, on Subcontractor's behalf, for such suspension or termination. Subcontractor shall incorporate provisions similar to this Article within agreements with its subcontractors and suppliers.

## **17. TERMINATION FOR CONVENIENCE**

17.1 Notwithstanding any other provision in the Subcontract Documents to the contrary, WINTER may, without cause, terminate the Subcontract at any time upon written notice to Subcontractor.

17.1.1 In the event WINTER gives Subcontractor written notice that the Subcontract is terminated for convenience, Subcontractor shall withdraw its employees and equipment from the worksite on the effective date of termination as specified in said notice.

17.1.2 Subcontractor shall receive, as its entire and sole compensation, its actual and reasonable necessary costs of performing the Work to the date of termination, as determined by an audit of Subcontractor's records, plus ten percent (10%), or other percentage as allowed by the Prime Contract in the event of Termination for Convenience by the Owner, as an agreed upon reasonable markup for overhead and profit, less prior payments made, but in no event shall such amounts paid and payable hereunder exceed the total Subcontract Price. In this regard, the Subcontractor shall make its records available at reasonable times and places for WINTER's audit.

17.1.3 Upon such termination for convenience, the parties hereto shall have no further obligation to each other except for Subcontractor's obligations to perform corrective and/or warranty work relating to Work actually performed by Subcontractor prior to termination, and to indemnify WINTER as provided for in this Subcontract.

17.2 Subcontractor shall incorporate provisions similar to this Article within agreements with its subcontractors and suppliers.

## **18. TERMINATION FOR DEFAULT**

18.1 The following circumstances shall constitute events of default by Subcontractor:

- (a) Subcontractor is adjudged bankrupt or makes a general assignment for the benefit of creditors;
- (b) a receiver is appointed on account of Subcontractor's insolvency;
- (c) Subcontractor refuses or neglects to supply a sufficient number of properly skilled workers or sufficient materials of the proper quality;
- (d) Subcontractor fails to prosecute the Work with the promptness and diligence necessary to prosecute the Work in accordance with the then existing Subcontract Schedule;
- (e) Subcontractor fails to promptly or properly correct defective work as required by the Contract Documents;
- (f) Subcontractor fails to comply with Applicable Laws;





- (g) Subcontractor interferes with the work of WINTER or other subcontractors on the Project;
- (h) Subcontractor fails to remove a claim of lien or claim on any payment or performance bond filed against the Project by its subcontractors or suppliers;
- (i) Subcontractor fails to comply with its defense and indemnity obligations under this Subcontract;
- (j) Subcontractor fails to furnish WINTER with payment or performance bonds as required by the Subcontract;
- (k) Subcontractor fails to furnish or maintain insurance coverage in the form and amounts required by the Subcontract; or
- (l) Subcontractor breaches a material obligation of the Subcontract Documents.

18.2 If Subcontractor fails to cure an event of default within seventy-two (72) hours after receipt of written notice of default from WINTER, WINTER may, without prejudice to any other rights or remedies, terminate the Subcontract and, subject to any prior rights of Subcontractor's surety: (a) exercise all rights and benefits of Subcontractor under any sub-subcontracts or material purchase orders, or both, issued by Subcontractor in connection with the Work; (b) supply such number of workers and quantity of materials, equipment and other facilities as WINTER deems reasonably necessary for the completion of the Work; (c) contract with one or more additional contractors to perform the Work as reasonably necessary to provide the most expeditious completion of the Work. WINTER shall be entitled to charge all reasonable costs incurred in this regard (including attorneys' fees), plus an amount equal to fifteen percent (15%) of all costs incurred in the completion of the Work for WINTER's administrative burden, which the parties agree is a reasonable estimate of the administrative burden which WINTER will incur and is not assessed as a penalty.

18.2.1 When WINTER terminates the Contract due to Subcontractor's default, Subcontractor shall not be entitled to receive further payment until the Work is finished.

18.2.2 If the unpaid balance of the Subcontract Price exceeds the expenses incurred by WINTER completing the Work plus any direct damages incurred by WINTER or Owner by virtue of the default, such excess shall be paid to Subcontractor within forty-five (45) days after WINTER's receipt of final payment from the Owner. If such expenses and damages exceed the unpaid balance of the Subcontract Price, Subcontractor shall pay the difference to WINTER within ten (10) days after receipt of a written demand by WINTER accompanied by reasonable supporting documentation.

18.2.3 If WINTER performs any of Subcontractor's Work or sublets such Work to be performed, WINTER

or the persons to whom Work has been sublet shall have the right to take and use all of the materials, implements, equipment, appliances or tools furnished by or delivered to Subcontractor and located on the Project, or other designated storage locations, all of which Subcontractor assigns and transfers to WINTER.

18.3 In the event Subcontractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or takes any other action to afford itself protection under the bankruptcy laws of the United States, and should WINTER not otherwise have the right to terminate this Subcontract, then the Subcontractor, as a debtor-in-possession in a voluntary or involuntary bankruptcy case under Chapter 11 of Title 11 of the United States Code, shall immediately, but no later than fifteen (15) days from the date the bankruptcy is commenced, file with the Bankruptcy Court a motion and order pursuant to 11 U.S.C. § 365 assuming this Subcontract as written. Subcontractor shall expeditiously effect the entry of such an order approving the assumption of this Subcontract. Further, on or before the fifteenth (15th) day, Subcontractor shall cure all defaults that exist under this Subcontract pursuant to 11 U.S.C. § 365. Should Subcontractor fail to assume this Subcontract as specified above, then this Subcontract shall be deemed rejected as of the date the bankruptcy commenced. In the event this Subcontract is rejected or deemed rejected, Subcontractor consents to relief from the automatic stay pursuant to 11 U.S.C. § 362(d) without notice or hearing so that WINTER may exercise its rights and remedies under this Subcontract and against this Subcontractor.

18.4 In the event any termination for default of the Subcontractor under the Subcontract is determined improper, the termination shall be automatically converted to a termination for convenience.

18.5 Subcontractor shall incorporate provisions similar to this Article within agreements with its Subcontractors and suppliers.

## **19. SUSPENSION OF WORK BY SUBCONTRACTOR**

19.1 Subcontractor shall not be entitled to suspend or stop work except for a substantial and material breach by WINTER and WINTER's failure to cure such breach within fourteen (14) days after WINTER's receipt of a written notice of default from Subcontractor stating its intention to stop work and enumerating and substantiating each and every alleged breach by WINTER.

## **20. WARRANTY**

20.1 Subcontractor and its sureties, if any, warrant that Subcontractor's Work shall be free from deficiencies and defects in materials and/or workmanship. The Subcontractor and its sureties further warrant that the Subcontractor's Work will conform to the requirements of the Contract Documents. Work, materials, or equipment not conforming to these requirements shall be considered defective.



20.2 In addition to the Subcontractor's obligations under Section 20.1, if, within one year after the date of Substantial Completion of the Work or such other time as specified in the Prime Contract (the "Correction Period"), any of Subcontractor's Work is found to be not in accordance with the requirements of the Contract Documents, the Subcontractor shall correct it promptly, or within such other times as specified in the Prime Contract, after receipt of written notice from WINTER to do so unless WINTER has previously given Subcontractor a written acceptance of such condition.

20.3 The Correction Period established by 20.2 relates only to the specific obligation of Subcontractor to correct the Work within the one year period following Substantial Completion or such other time as specified in the Prime Contract, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Subcontractor's liability with respect to the Subcontractor's obligations other than specifically to correct the Work.

## **21. IMMIGRATION AND SECURITY COMPLIANCE**

21.1. Subcontractor and any and all of its subcontractors, laborers, and suppliers shall comply with all state and federal immigration laws, rules and regulations, and Subcontractor and its subcontractors, laborers, and suppliers shall provide WINTER with a completed and signed Immigration and Security Affidavit in the form attached hereto as **EXHIBIT I**.

21.2. To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless WINTER and all of its affiliates, parents, subsidiaries, officers, directors, employees, successors and assigns (all of which are hereinafter collectively referred to as "Indemnities"), from and against all claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, public relations costs, and work stoppages, arising out of or resulting from the failure of Subcontractor or its employees, agents, subcontractors or suppliers, to properly verify workers or otherwise to fully comply with applicable state and federal immigration laws, ordinance, rules, and regulations, including but not limited to any fines or penalties incurred by WINTER or Owner in connection therewith.

## **22. DAVIS-BACON ACT COMPLIANCE**

22.1. Davis-Bacon Act. If this Project is performed pursuant to the Davis-Bacon Act, or any other law dealing with prevailing wages, Subcontractor agrees to comply with all provisions and regulations of such laws. Subcontractor further agrees to defend, indemnify and hold WINTER harmless from all damages and loss resulting from Subcontractor's failure to comply with such laws.

## **23. EMPLOYMENT LAW COMPLIANCE**

23.1 Employment Law Compliance. The parties acknowledge and agree that Contractor and

Subcontractor are not joint employers. Contractor will not be responsible for Subcontractor's non-compliance with wage and hour or any other federal or other Applicable Laws regarding the employment of Subcontractor's employees. Subcontractor shall indemnify and defend Contractor against all claims against Contractor arising out of Subcontractor's failure to comply with any employment laws.

## **24. MISCELLANEOUS PROVISIONS**

24.1 Special Withholding for Georgia Projects. The State of Georgia requires general contractors to withhold up to two percent (2%) of the contract amount from the final payment to a **non-resident** Subcontractor unless WINTER receives written notification from the State of Georgia that (a) the Subcontractor is current with its sales taxes, (b) the Subcontractor has posted a bond with the Georgia Sales and Use Tax Division, or (c) the Subcontractor is not subject to sales and use tax. Subcontractor's delivery of such written notice to WINTER shall be a condition precedent to payment of any amounts withheld by WINTER pursuant to this statutory requirement.

24.2 Substance Abuse Policy. Subcontractor agrees that it will maintain and enforce a substance abuse policy with respect to its own employees which meets or exceeds WINTER's requirements.

24.2.1 If requested by WINTER, Subcontractor shall promptly: certify in writing that said policy is in force and that each of its employees has signed a urine drug screening/testing consent form; and provide a copy of said policy and copies of the urine drug screening/testing consent forms executed by Subcontractor's employees.

24.2.2 Subcontractor's employees found to be in violation of said policy will be subject to immediate removal from the Project.

24.3 Drug-Free Workplace Act of 1988. Subcontractor shall observe the requirements of the Drug-Free Workplace Act of 1988.

24.3.1 Subcontractor shall notify WINTER in writing within ten (10) days after receiving notice from an employee of a workplace criminal conviction, or otherwise receiving actual or constructive notice of same.

24.4 Equal Opportunity Clause. Subcontractor shall comply with all applicable affirmative action and equal opportunity laws and regulations, including any Owner's affirmative action program. In connection with performance of Work under this Subcontract, the Subcontractor further agrees as follows:

24.4.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, age, disability, marital status, sexual orientation, veteran status, or gender, except where gender is a bona fide occupational qualification.



24.4.2 If requested by WINTER, Subcontractor shall promptly deliver to WINTER written certification of its compliance with the obligations of this Equal Opportunity Clause

24.4.3 In the event of Subcontractor's noncompliance with this Equal Opportunity Clause or with any of the said rules, regulations or orders, this Subcontract may be canceled, terminated or suspended in whole or in part.

24.4.4 Subcontractor will include the requirement of this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor.

24.5 Exclusive Relationship. Until final completion of the Project, Subcontractor agrees not to: (1) perform any work directly for Owner, its tenants or any other contractors or subcontractors on the Project; and (2) communicate directly with Owner's representatives, including but not limited to the Architect, in connection with the Project, unless authorized in advance in writing by WINTER. All of Subcontractor's communications with the Owner or Architect in relation thereto, shall be through WINTER. In the event Subcontractor performs any work in violation of this provision, it agrees to make no claims against WINTER in connection therewith.

24.6 Governing Law. All matters relating to the validity, performance, or interpretation of this Subcontract shall be governed by the laws of the state where the Project is located.

24.7 No Waiver. No requirements of this Subcontract may be waived except in writing signed by a duly authorized officer of the waiving party. No action or failure to act by the Owner, the Architect or WINTER shall

constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing by a duly authorized officer of the waiving party.

24.8 "Days" Defined. Unless indicated otherwise, the term "days" shall mean calendar days.

24.9 "Applicable Laws" Defined. Applicable Laws are any federal, state, or local law, rule, code, regulation, ordinance, standard, permit or requirements that applies to the Project, or any order ruling, or decision of any governmental or quasi-governmental body having jurisdiction over the Project.

24.10 Entire Agreement. This Subcontract constitutes the entire agreement between the parties to perform their respective duties and obligations. This Subcontract supersedes all prior negotiations, representations, and agreements, whether oral or written, between WINTER and Subcontractor, and may only be modified or amended in accordance with the terms herein. WINTER and Subcontractor agree that this Agreement is deemed to have been negotiated, drafted and agreed to by the parties in an arms' length transaction and no inference or presumption should be drawn against either of them with respect to the drafting of this Agreement, including but not limited to any ambiguities which may exist herein.

24.11 Changes in Writing Only. This Subcontract may not be changed in any way except as herein provided or by a writing, signed by a duly authorized officer or agent of each party.

24.12 Severability. If any part or portion of the Contract Documents is held invalid or is otherwise unenforceable, the remaining parts or portions thereof shall be given full force and effect.

IN WITNESS WHEREOF, the parties, through their respective authorized representatives, execute this Subcontract so as to be effective on the date first stated above.

"Subcontractor"

"WINTER"

*Company Name*

**THE WINTER CONSTRUCTION COMPANY**

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Printed Name*

Its: \_\_\_\_\_  
*Title*

Its: \_\_\_\_\_  
*Title*

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

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



**SUPPLEMENTARY CONDITIONS**

1. Subcontractor is required to obtain its own set of Contract Documents. WINTER will use PlanGrid, or similar software, for document control. Subcontractor will be required to provide / obtain subscription for its onsite supervision.
2. Subcontractor shall have in attendance at all meetings a qualified representative with full authority to bind Subcontractor. Meetings requiring attendance by Subcontractor may include Scheduling, Coordination, Pre-Installation, Pre-Construction, Owner/Architect/Contractor meetings and others as required for coordination and performance of the Work.
3. WINTER will conduct weekly Safety meetings. All on-site personnel are required to attend weekly jobsite safety meetings. Subcontractors may opt out of WINTER's safety meetings provided: 1) Subcontractor's Foreman and/or Safety representative attends WINTER's Safety Meetings and 2) Subcontractor's Foreman furnishes WINTER a copy of the minutes and attendance records from Subcontractor's safety meetings each week in which Subcontractor performs Work on site.
4. Coordination Drawings. Subcontractor shall cooperate with WINTER and other subcontractors in the preparation of coordination drawings, especially with respect to areas where work of different trades is congested.
  - 4.1 If required, Subcontractor shall submit a set of CAD coordination and/or shop drawings.
  - 4.2 If applicable, Subcontractor agrees to provide a complete, 3d digital model to represent its coordination drawings, shop drawings and/or record documents. 3d modeling software must be compatible with Navisworks 2015 or later. Subcontractor's model may be integrated with an overall Federated Model and used for coordination for the Project.
    - 4.2.1 Subcontractor shall (i) provide information; (ii) collaborate with WINTER, its subcontractors and other Project participants and (iii) participate in developing, maintaining and updating the 3d digital model for use by the various Project participants as required by WINTER.
    - 4.2.2 Subcontractor shall provide adequate labor to update models to support the Project Schedule, attend coordination meetings, resolve conflicts with other trades between meetings, and maintain "as-built" record of models as required. Subcontractor shall have in attendance at coordination meeting, a representative authorized to make decisions on the Subcontractor's behalf.
    - 4.2.3 Subcontractor shall include all items to be installed in the field in its model. Subcontractor shall be responsible for costs to correct items resulting from work that is not coordinated within the modeling process due to insufficient information from Subcontractor.
    - 4.2.4 Materials, equipment, accessories and supporting systems to be installed shall be modeled to a level of detail which meets or exceeds LOD 350 of the BIMForum Level of Development Specification, 2015 unless other approved by WINTER.
    - 4.2.5 Pipes and conduit greater than 1" shall be modeled. All pipes and conduit in runs of two or more shall be modeled regardless of size.
    - 4.2.6 Clearance zones, access zones and maintenance zones shall be modeled as "space constraints" on a separate layer.
    - 4.2.7 Hangers, mounting equipment, additional bracing, equipment pads or related ancillary installation requirements for Subcontractor's Work shall be modeled.
    - 4.2.8 Subcontractor may provide modeling services in house or through a sub-subcontractor with appropriate experience and qualifications.
    - 4.2.9 Subcontractor shall maintain "as-built" condition of its model, including updating models to reflect discrepancies resulting from field adjustments during installation.
  - 4.3 Subcontractor assumes toward WINTER all the same obligations, rights, duties and redress that WINTER assumes toward the Owner and architect/engineer with respect to the 3d digital model as it relates to the Subcontractor's Work.
5. Submittals, Shop Drawings and Samples. All submittals required by the Contract Documents or as otherwise necessary to describe the details of the Subcontractor's Work must be submitted in a timely manner so as not to delay prosecution of the Work. Unless otherwise agreed in writing, all submittals are due within fourteen (14) days of Subcontractor's

execution and delivery of this Subcontract to WINTER or Subcontractor's receipt of a Notice to Proceed from WINTER, whichever is sooner.

- 5.1 Within five (5) days of the Effective Date award, Subcontractor has brought to the attention of WINTER all long lead items that will impact Subcontractor's schedule so that WINTER can release & procure these items in a timely manner.
  - 5.2 Subcontractor should allow at least six (6) weeks for review of submittals by WINTER, the Owner and the Architect.
  - 5.3 If any submittal is rejected by WINTER, the Owner or the Architect, Subcontractor agrees to correct and resubmit the submittal as soon as practicable, but not more than seven (7) days after receipt, to avoid or minimize Project delays.
  - 5.4 Approval of shop drawings or other submittals by the Owner, the Architect or WINTER shall not relieve Subcontractor of its obligation to perform the Work in accordance with the Contract Documents.
  - 5.5 Subcontractor agrees to submittals in hard copy or electronic format as required. Required quantity for hard copy submittals shall be as required by the Contract Documents or as determined by WINTER. Submittals for each specification section should be compiled and provided as one complete submittal package. WINTER may elect not to review partial submittal packages.
6. Requests for Information. All requests for information concerning the Subcontractor's Work must be made through WINTER.
  7. Layout of Work. Subcontractor is responsible for layout of its Work. Prior to commencing any portion of Subcontractor's Work, Subcontractor shall verify drawing dimensions and actual field conditions which affect its Work and immediately notify WINTER of any errors, inconsistencies or omissions it may discover. WINTER will establish only principal control lines and benchmarks for the Work. Subcontractor shall be responsible to accurately layout Subcontractor's Work. Subcontractor shall be responsible for any loss or damage to WINTER or others due to Subcontractor's failure to notify WINTER of any error, inconsistency or omission it may discover, or to accurately layout or properly perform Subcontractor's Work. Should Subcontractor disturb or destroy any controls, survey lines, or layout performed by WINTER or others, Subcontractor shall reimburse the affected party for the costs of restoring same.
  8. Mobilization and Deliveries. Subcontractor shall obtain WINTER's approval before (1) arrival of its work forces to the jobsite, (2) delivery of materials and equipment to the jobsite, (3) before any substantial change in its work force, and (4) before demobilizing from the jobsite for any reason.
    - 8.1 Subcontractor understands that multiple mobilizations may be required to complete the Work covered in this contract and has included all costs related to multiple mobilizations.
    - 8.2 Shipping, loading, unloading, distribution, staging and storage of all materials and equipment and security of all Subcontractor's material stored at the site are the sole and exclusive responsibility of Subcontractor. Any hoisting required for the Work of this Subcontract is the responsibility of the Subcontractor. Subcontractor shall coordinate in advance all storage or staging of materials with WINTER. Subcontractor understands that storage and staging areas may not be available on site. Costs for off-site storage or handling are the responsibility of the Subcontractor.
    - 8.3 WINTER may elect to refuse delivery of materials by Subcontractor due to non-coordinated deliveries, space and work limitations.
  9. Acceptance of Surface or Substrate. Prior to commencing each portion of the Work, Subcontractor shall inspect the surface or substrate upon which that portion of the Work will be placed. Subcontractor shall immediately notify WINTER of any unacceptable conditions, defects or irregularities observed. By commencing its Work, Subcontractor accepts the surface or substrate upon which its Work will be placed, waiving any claims arising from any defect or irregularity in the surface or substrate that proper inspection would have revealed. Should Subcontractor's Work require that testing be performed to verify acceptability of surface or substrate, Subcontractor shall be solely responsible for ensuring such tests, as required by the Contract Documents or manufacturer's instructions, are performed and test results provided to WINTER.
  10. Cutting, Patching and Repairing. Unless otherwise provided in the Contract Documents, it is the responsibility of Subcontractor to cut, patch or repair any Work which must be cut or removed for the performance of the Work.
  11. Temporary Shoring and Bracing. Unless otherwise provided in the Contract Documents, Subcontractor is responsible for any temporary shoring, bracing, guying, or supports necessary for the prosecution of the Work.
  12. Jobsite Regulations and Work Hours.
    - 12.1 Subcontractor agrees to comply with the Owner's and WINTER's reasonable jobsite regulations concerning the conduct of personnel at the Project site.

- 12.2 WINTER will establish jobsite hours during which Work shall be performed by all Subcontractors, and Subcontractor shall perform work within the jobsite hours established. Subcontractor may not perform work outside of established jobsite hours without written approval from WINTER. Subcontractor shall make up lost days due to inclement weather by working extended hours or working on Saturdays or Sundays as allowed by the specific jobsite work hours.
  - 12.3 Subcontractor understands that, if sufficient parking for all construction personnel is not available, Subcontractor will be responsible for all costs required for off-site parking and transportation for its labor. Illegal parking on side roads or in residential areas shall not be permitted.
  - 12.4 Street Cleaning. Subcontractor shall clean all trucks & equipment prior to leaving the jobsite. Subcontractor shall be responsible for cleaning streets of mud, dirt and debris caused by its Work. Subcontractor shall be responsible for all fines assessed for failure to prevent mud, dirt and debris from areas outside of the jobsite.
  - 12.5 Tobacco and smoking are not allowed in the building at any time. Eating or drinking will not be allowed in the building after the start of finishes.
  - 12.6 Cleaning Up. Subcontractor shall keep the premises at all times free from waste materials and debris accumulated in connection with the Work. Subcontractor shall perform clean up daily. Should Subcontractor fail to perform clean-up work within twenty-four (24) hours of receiving a written request from WINTER, WINTER may perform the clean-up work and deduct the costs incurred (including costs for supervision and reasonable markup for overhead and profit) from any payment due or to become due to Subcontractor.
13. Protection of Work/ Ongoing Operations
- 13.1 Underground Utilities. Whenever applicable to Subcontractor's Work Subcontractor shall not begin to perform Work until all underground utilities have been properly located and protected. Subcontractor shall be responsible for arranging for utility locate services. Subcontractor shall be responsible for costs required to repair damage to utilities resulting from failure to ensure proper location and protection and for damage to utilities that were properly marked.
  - 13.2 Subcontractor understands that it must take precautions so as not to affect or disrupt adjacent operations and/or properties.
  - 13.3 Subcontractor shall protect existing finishes, the work of other trades, and any stored materials from damage, including the use of tarps, plastic, and/or other protection, while working. Subcontractor shall be responsible for all costs associated with repairs or replacement due to damage.
  - 13.4 Any modifications or shutdowns of building systems will be coordinated with WINTER superintendent prior to work commencing. Any expense/loss arising from an unscheduled shutdown performed by Subcontractor will be borne by Subcontractor.
  - 13.5 Subcontractor shall submit data for any equipment to be used on any elevated structure (lifts, skid steers, etc.) to WINTER for approval prior to placing or operating equipment on elevated structure.
14. Any costs of re-testing due to failure of this Subcontractor's Work will be completed at this Subcontractor's expense.
15. Provide fire sealing and safing as required for penetrations through fire rated walls created through Work under this scope. All floor and wall penetrations must be properly collared, filled, and/or sealed to meet all applicable codes. All penetrations through fire-rated partitions are to be sealed using approved fire sealing products.
16. Project Close Out.
- 16.1 Subcontractor shall provide all required close out items as required by the Contract Documents, including but not limited to: warranties, extended warranties, manufacturer data, attic stock, as-built documents, training and operation and maintenance data. Attic stock and Operation & Maintenance information shall be provided sixty days (60) prior to substantial completion, unless another date has been agreed to by WINTER.
  - 16.2 Subcontractor is responsible to perform maintenance and service programs, warranty/guarantee follow-ups, factory startups and seasonal adjustments or inspections as specified in the Project Manual.
  - 16.3 Subcontractor shall be responsible for videotaping all required owner training. Subcontractor shall provide CDs of training with close out documents as required.
  - 16.4 Provide attic stock in quantities as specified in the contract documents. Coordinate turnover of attic stock with WINTER prior to delivery at the job site. Subcontractor must turn over attic stock to a designated WINTER representative, with a transmittal outlining material and quantities for signature prior to handover.

- 16.5 Record Documents: Subcontractor is required to maintain a set of record drawings, noting all changes, modifications or differing conditions affecting the Work, both existing and as constructed. Record drawings shall be maintained at the jobsite and shall be updated on a weekly basis.
- 16.6 Punch-list: Subcontractor shall provide written notice to WINTER that an area is ready for inspection. Notice must be accompanied with the written punch list produced by the Subcontractor indicating Subcontractor has inspected Subcontractor's Work and remedied noted deficiencies.



**WORK AND PROJECT REQUIREMENTS**

Subcontractor shall prosecute and complete the \_\_\_\_\_ Scope of Work.

The following items are included as part of this Subcontract and are listed for clarification only. They are not intended to limit the scope of Work nor do they diminish the Subcontractor's obligation to provide a complete and fully functional installation. The scope of Work includes, but is not limited to, the following:

**A. General Requirements**

- 1.
- 2.

**B. Trade Specific Requirements**

- 1.
- 2.

**C. Unit Prices:** In accordance with Article 3.2, the following unit prices shall be used in connection with the following items of Work. Unit Prices includes all costs of Subcontractor's performance of this Work, including, by way of example and not limitation, the costs of labor, supervision, materials, equipment, insurance, taxes, jobsite overhead, home office overhead, profit and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply. Additional work performed by Unit Price must be reconciled by Change Order. Subcontract shall provide a record of work performed on a Unit Price basis in accordance with 9.7.

Unit Price: \$

Unit Price: \$

**D. Allowances:** The Subcontract Price specified in the Subcontract includes the following allowances, if any, to be furnished by Subcontractor in accordance with the Contract Documents. Each allowance and costs associated with each allowance must be reconciled by change order. If work associated with an allowance is performed on a unit price basis, Subcontractor shall provide a record of time and material no later than the following business day. Subcontractor shall not perform work associated with an allowance without prior written approval from WINTER. Subcontractor shall not exceed the amount of the allowance without prior written approval from WINTER. Such Allowances are considered complete and include all materials, taxes, equipment, labor, delivery, installation, overhead, and profit and any other costs or expenses in connection with or incidental to, the performance of that portion of the Work to which such Allowances apply.

Allowance: \$

Allowance: \$

**E. Temporary Site Facilities**

Pursuant to the terms of the Subcontract, WINTER will furnish Subcontractor with the following temporary site facilities and equipment:

Item	By WINTER	By Subcontractor
Dumpsters		
Temporary Power		
Temporary Toilets		
Temporary Water		
Drinking Water		

As soon as the Work progresses so that temporary power can be established on site, WINTER will provide 120-volt temporary power system within 100 feet of work areas. Special power connections for welders, saws or other

specialty equipment will not be provided. Intermittent interruption of the temporary power will occur from time to time. Subcontractor will use generators or other sources of power prior to establishment of temporary power and during times of intermittent disruption.

**F. Schedule**

Without limiting any provisions contained in the Subcontract, Subcontractor shall perform the Work and its several parts according to the following schedule, as the same may be revised from time to time by WINTER pursuant to the terms of the Subcontract.

See attached Schedule, dated \_\_\_\_\_.

**DRAWINGS, SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS**

The Contract Documents shall include the following drawings, specifications and other documents:

See attached Drawing Log – Appendix A dated

See attached Specifications Log – Appendix B dated

**EXHIBIT D - Subcontractor's Application for Payment**  
 Click here to put Project Name



**SUBCONTRACTOR:**

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

Pay Applicaton No. \_\_\_\_\_ Period: \_\_\_\_\_ Date: \_\_\_\_\_

1. Original Contract Amount	\$	_____
2. Approved Change Orders thru No. _____	\$	_____
3. Current Contract Amount	\$	_____ 0.00
4. Value of Work Completed & Stored to Date (Column G)	\$	_____ 0.00
Materials Stored On Site (Column F)	\$	_____ 0.00
Work Completed (Column G-F)	\$	_____ 0.00
5. Less Amount Retained _____ 10%	(\$)	_____ 0.00
6. Total Less Retainage	\$	_____ 0.00
7. Less Previously Certified	(\$)	_____
8. AMOUNT DUE THIS REQUEST	\$	_____ 0.00

WINTER USE ONLY	
\$	_____
\$	_____
\$	_____
\$	_____
(\$)	_____
\$	_____
(\$)	_____
\$	_____
<b>REVISED AMT DUE</b>	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid to sub-subcontractors and sub-suppliers by the Contractor for Work for which previous Certificates of Payment were issued and paid from THE WINTER CONSTRUCTION COMPANY, and that the amount requested is now due. Contractor acknowledges that any payment by Winter is made in reliance upon this certification.

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

APPLICATION CHECKLIST				
1.	<input type="checkbox"/>	Continuation Sheet (Schedule of Values) is attached to pay application		
2.	<input type="checkbox"/>	Interim Waiver and Release Upon Payment is attached to pay application		
3.	<input type="checkbox"/>	Contract Documents have been submitted: Subcontract, Insurance, Bonds or Subcontractor Default Program Forms (if req'd)		
4.	<input type="checkbox"/>	Sub-Subcontractor/Supplier Lien Waivers are attached to pay application (as required by Default Program)		
FOR WINTER USE ONLY				
	<i>Winter Project</i>	<i>Vendor #</i>	<i>Subcontract #</i>	<i>Cost Code</i>
	<b>PM APPROVAL</b>	<b>SUPERINTENDENT APPROVAL</b>	<b>DATE</b>	
COMMENTS				





INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF GEORGIA  
COUNTY OF \_\_\_\_\_ (COUNTY WHERE SIGNED)

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY THE WINTER CONSTRUCTION COMPANY (NAME OF OWNER/SUBCONTRACTOR/CONSULTANT) TO FURNISH \_\_\_\_\_ (DESCRIBE LABOR MATERIALS AND/OR SERVICE) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS \_\_\_\_\_ (NAME PROJECT OR BUILDING) PROJECT 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 MECHANIC AND/OR MATERIALMAN 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 \_\_\_\_\_ (BILL DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR MATERIALMAN 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.

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

\_\_\_\_\_  
(SEAL)  
BUSINESS NAME  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
MY COMMISSION EXPIRES:

\_\_\_\_\_  
(NOTARIAL SEAL)

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.

WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF GEORGIA  
COUNTY OF \_\_\_\_\_(COUNTY WHERE SIGNED)

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY THE WINTER CONSTRUCTION COMPANY (NAME OF OWNER/SUBCONTRACTOR/CONSULTANT) TO FURNISH \_\_\_\_\_ (DESCRIBE LABOR MATERIALS AND/OR SERVICE) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS \_\_\_\_\_ (NAME PROJECT OR BUILDING) PROJECT 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 MECHANIC AND/OR MATERIALMAN 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. GIVEN UNDER HAND AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_(SEAL)  
BUSINESS NAME  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_, AND NOTARIZED BY ME ON SAID DAY.

\_\_\_\_\_  
NOTARY PUBLIC  
MY COMMISSION EXPIRES:

\_\_\_\_\_  
(NOTARIAL SEAL)

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.

**SUBCONTRACTOR PAYMENT BOND**

KNOW ALL PEOPLE BY THESE PRESENTS, THAT \_\_\_\_\_  
(include business address)

hereinafter called the "Principal"), as Principal and \_\_\_\_\_  
(include business address)

a corporation organized and existing under the laws of the State of \_\_\_\_\_ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto The Winter Construction Company (hereinafter called the "Obligee"), in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), plus any increase in the amount of the Subcontract Price, for the payment of which sum will and truly be made, the said Principal and Surety bind themselves and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee has been awarded a contract (hereinafter called the "Prime Contract"), by \_\_\_\_\_ for \_\_\_\_\_ and;

WHEREAS, the Principal has entered into a written Subcontract with Obligee, dated \_\_\_\_\_ to perform, as Subcontractor, certain portions of the work in connection with said Prime Contract, consisting of \_\_\_\_\_

\_\_\_\_\_ which Subcontract is hereby referred to and made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said Subcontract and any and all modifications of said Subcontract that may hereafter be made, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the said Subcontract or the said Prime Contract, or both, or in the said Work to be performed, or in the specifications, or in the plans, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications.

The said Principal and the said Surety agree that this Bond shall inure to the benefit of all persons supplying labor and material in the prosecution of the Work provided for in said Subcontract, as well as to the Obligee, and that such persons may maintain independent actions upon this Bond in their own names.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this day \_\_\_\_ of \_\_\_\_\_, 20\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

\_\_\_\_\_  
(Principal)  
Witness: By: \_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
Or Secretary's Attest Signature \_\_\_\_\_  
(Seal)  
(Surety)

Witness: By: \_\_\_\_\_  
(Name and Title)  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Or Secretary's Attest  
Note: Attach Power of Attorney and Surety Financial Statement

**SUBCONTRACTOR PERFORMANCE BOND**

KNOW ALL PEOPLE BY THESE PRESENTS, THAT \_\_\_\_\_  
(include business address)

hereinafter called the "Principal"), as Principal and \_\_\_\_\_  
(include business address)

a corporation organized and existing under the laws of the State of \_\_\_\_\_ (herein after called the "Surety"), as Surety, are held and firmly bound unto The Winter Construction Company (hereinafter called the "Obligee"), in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), plus any increase in the amount of the Subcontract Price, for the payment of which sum will and truly be made, the said Principal and Surety bind themselves and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee has been awarded a contract (herein after called the "Prime Contract"), by for \_\_\_\_\_  
\_\_\_\_\_  
and;

WHEREAS, the Principal has entered into a written Subcontract with Obligee, dated \_\_\_\_\_ to perform, as Subcontractor, certain portions of the Work in connection with said Prime Contract, consisting of \_\_\_\_\_  
\_\_\_\_\_

which Subcontract is hereby referred to and made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the bounden Principal shall well and truly perform all the undertakings, covenant, terms, conditions, and agreements of said Subcontract within the time provided therein and any extensions thereof that may be granted by the Obligee, and during the life of any guaranty required under said Subcontract, and shall also well and truly perform all the undertakings, covenants, terms conditions and agreements of any and all duly authorized modifications of said Subcontract that may hereafter be made, and shall indemnify and save harmless said Obligee of and from any and all loss, damage, and expense, including costs and attorney's fees, which the said Obligee may sustain by reason of failure so to do, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the said Subcontract or the said Prime Contract, or both, or in the said Work to be performed, or in the specifications, or in the plans, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

\_\_\_\_\_  
(Principal)  
Witness: By: \_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
Or Secretary's Attest Signature \_\_\_\_\_  
(Seal)  
(Surety)

Witness: By: \_\_\_\_\_  
(Name and Title)  
\_\_\_\_\_  
(Signature)

Or Secretary's Attest  
Note: Attach Power of Attorney and Surety Financial Statement

**IMMIGRATION AND SECURITY AFFIDAVIT**

The undersigned, being duly sworn, do hereby make oath and state that the facts stated herein are true and correct to the best of my knowledge, information and belief.

The undersigned Subcontractor is in full compliance with the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. 99-603 and the Georgia Security and Immigration Compliance Act O.C.G.A. § 13-10-91 et. seq., stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with The Winter Construction Company has registered with and is participating in a federal work authorization program, including but not limited to E-Verify or any other verification of work authorization program required by federal, state or local law.

The undersigned further affirmatively states that all employees working on the \_\_\_\_\_ project (the "Project") have been or will be verified using such programs, and that it has secured a similar affidavit from all subcontractors, laborers and suppliers working on the Project.

\_\_\_\_\_  
E-Verify User Identification Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Subcontractor

Subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

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



## INSURANCE REQUIREMENTS CLARIFICATIONS

The following narrative is aimed at clarifying The Winter Construction Company's insurance requirements to assure that you are in compliance. If possible share the insurance requirements and this narrative with your agent or broker.

1. **Insurance Certificate Criteria:** The required certificate form is ACORD 25 (03/2016 or later edition) prepared for the specific project. If faxed COI'S will be accepted only from your insurance agent. You may provide COI via email.
2. **Named Insured on Certificate:** It is important that the entity name depicted on the certificate match the business name on your contract documents. If your company has multiple operating names, all should be included on the Certificate.
3. **Name Specific Project on the Certificate:** Certificate should show the specific project name in the description of operations space of the ACORD certificate. This makes it clear that the certificate is for a specific project, in the event you are working on several Winter Construction projects, simultaneously.
4. **Winter Construction, Owner & Architect to be Named as Additional Insured:** Generally, your contract with Winter will require only these three entities be named as "Additional Insured", although occasionally the Owner Contract will require other entities be named as well. The requirement is imposed so that a claim arising from your work will be responded to by your policy, on your behalf and on behalf of Winter Construction, the Owner and Architect.

**Commercial General Liability:** Winter requires that in addition to listing Winter, Owner and Architect as Additional Insureds on your certificate, endorsement form numbers CG 2010 (11/85) OR CG 2010 and CG 2037 (07/04 or 4/13) must be attached to your Certificate. These endorsements must state that Completed Operations coverage is extended to the Additional Insureds. Carriers' endorsement forms equivalent to CG 2010 and CG 2037 may be submitted provided that they state additional insured with Products/Completed Operations.

**Automobile Liability:** Winter requires that in addition to listing Winter, Owner, and Architect as Additional Insureds on your certificate, an Insurance Services Office (ISO) standard Additional Insured blanket endorsement or carrier's equivalent should be attached to your certificate.

5. **Waiver of Subrogation:** Typically, an insurance company will attempt to recover claim payments it has made from other parties that might have shared in some of the responsibility for the accident. This recovery process is called "subrogation". By requiring subs or suppliers and their insurers to waive that right of subrogation, we prevent Winter from being claimed against due to an incident stemming from the work or activity of a sub or supplier. Just like the "additional insured" requirement, we are working to protect Winter Construction from having to respond to a claim arising out of the work of another party.

The Waiver of Subrogation is required with respect to subs CGL, Auto, Umbrella, and Workers Compensation policies, and the endorsement or policy language granting it should be specifically attached.

6. **Umbrella/Excess Liability Requirement:** The umbrella/excess policy provides an extra layer of protection above the Auto Liability, General Liability and Employer's Liability coverage. In some cases these primary policies may have limits of liability less than \$1 million, but you may buy an Umbrella/Excess to give your firm limits greater than \$1 million.

Winter's standard requirements require a \$1,000,000 umbrella/excess liability limit excess of your primary CGL, Auto, and Work Comp/Employer's Liability on a "Following Form" basis. If you do not maintain this level of coverage presently, please have your agent or broker provide you with an umbrella/excess liability policy to comply with the requirements of this project.

7. **Commercial General Liability Requirement:** The most common Commercial General Liability (CGL) policy limits are \$1,000,000 per occurrence, a \$1,000,000 personal and advertising injury limit, a \$2,000,000 General Aggregate and \$2,000,000 Products/Completed operations aggregate limit. Limits that are lower than this will not be accepted UNLESS an umbrella/excess liability policy with a \$1,000,000, or higher, limit is depicted on the certificate of insurance.
8. **Automobile Liability Requirement:** The minimum level of Auto Liability combined single limit (CSL) that you should have is \$1,000,000 unless an Umbrella/Excess policy is shown on the certificate with a limit of \$1,000,000 or more. This limit is the norm for Business Auto policies and should not generate resistance from your insurer.

**9. Auto Liability: Split Limits Versus Combined Single Limits:** Most business auto policies are structured with a combined single limit; however, you might have a policy with “split limits” or separate limits for bodily injury or property damage. If the policy is structured in this manner, the limits should not be less than \$500,000 bodily injury per person/\$1,000,000 bodily injury for all persons/\$250,000 property damage per accident. If you have split limits, an Umbrella policy with limits of \$1,000,000 can be used to achieve Winter’s minimum required Auto liability limit of \$1,000,000 per accident for bodily injury and property damage.

**10. Employers Liability:** Employers Liability is a “stop gap” coverage that addresses a few scenarios that would not fall within the scope of workers compensation coverage. It is written as a component of the workers compensation policy. While workers compensation statutes dictate limits, Employers Liability (EL) limits are specifically stated on the policy and would appear on the certificate. We require your Employers Liability limits to be at least \$500,000 for Bodily Injury by accident – each accident/\$500,000 for Bodily Injury by disease – policy limit/\$500,000 Bodily Injury by disease – each employee.”.

**11. Form of Commercial General Liability Coverage & Deductible :** “Occurrence vs. Claims Made”: Unless expressly authorized by Winter in advance of project commencement, your Commercial General Liability policy must be written on an “occurrence basis” (as opposed to a “claims-made” basis) using Insurance Services Office (ISO) occurrence form CG 00 01 (or equivalent form). This means that the policy will respond to any injury or damage that OCCURS during the policy period regardless of when the claim might be made. Under the General Liability section of the Certificate, the box beside “Occurrence” should be checked. If the project includes any EIFS or is residential in nature, your CGL policy may not exclude EIFS or residential construction and any exclusions or restrictions on the policy having to do with EIFS or residential construction must be attached to your certificate. If your CGL policy has any form of deductible, we require it to be a deductible and not a self-insured retention (SIR), unless otherwise approved in writing. The deductible must apply on a “per occurrence” basis, not a “per claim” or other basis and must either be noted on the Acord certificate of insurance or a copy of the deductible endorsement attached to the certificate.

**12. CGL General Aggregate Limits - Per Project:** We require that your CGL policy’s General Aggregate limit applies separately to this project. By doing so we eliminate concerns that the limit could be eroded due to claims from other projects that you are working on. The “Project” box in the CGL section of the Certificate should be checked and the endorsement providing per project General Aggregate limits must be attached to your certificate.

**13. Additional Insured Protection for Winter to be “Primary and Non-Contributory”:** We require subcontractors to have the additional insured language structured so that it is “primary and noncontributory” as respect insurance Winter maintains. This means that your policy must respond in defense of Winter first and with no contribution of coverage from Winter’s policies.

**14. Automobile Liability Coverage – Covered Vehicles:** The Automobile requirements are in place to make sure an accident involving your vehicle would be covered whether it is owned by you, “Hired” (rented/leased) or “non-owned”, meaning your employee’s use of his/her own car on your company business. On the certificate, we are looking for the “any auto” box to be checked, but if not, at least the “all owned autos”, “hired” and “non-owned” boxes on the certificate should be checked.

**15. Professional Liability Coverage:** We require subcontractors whose scope of work contains design or engineering components to provide Professional Liability coverage for acts, errors, or omissions related to these professional services. Design, Engineering and Consulting services are excluded by Commercial General Liability policies. Professional Liability coverage is required with limits not less than \$1 million per loss/\$2 million aggregate. The policy deductible may not exceed \$25,000 without Winter’s express authorization. The Policy shall have a retroactive date prior to the start of any design or engineering work, and the retroactive date shall not be advanced for the latter of a period of three (3) years or the statute of repose in the state where the project is located. Subcontractor must maintain such Professional Liability coverage for a period of the greater of three (3) years following project completion or the statute of repose in the state where the project is located, and shall provide Winter with a certificate of insurance at each policy renewal to document compliance with this requirement.

**16. Stored Materials Coverage:** To be paid for offsite stored materials proof of Property Insurance required. Required value and sample COI to be provided on a per project basis.

**17. Leased Employees/Labor Leasing/Professional Employer Organization Arrangements:** If Subcontractor uses any leased labor, obtains any labor or employees through any form of labor leasing or Professional Employer

Organization, all employees who perform any activities in relation to the project must be covered by the labor leasing or Professional Employer Organization's Workers Compensation & Employer Liability policy. The labor leasing or Professional Employer Organization's Employers Liability policy limits must be \$1,000,000 for Bodily Injury by accident – each accident/\$1,000,000 for Bodily Injury by disease – policy limit/\$1,000,000 Bodily Injury by disease – each employee. A certificate of insurance (COI) is required from the labor leasing company or Professional Employer Organization, evidencing the required Workers Compensation & Employers Liability coverage must a) lists Winter Construction as certificate holder, b) provides a Waiver of Subrogation in favor of Winter Construction, and c) provides an Alternate Employer Endorsement naming Winter Construction as the Alternate Employer. A copy of the Waiver of Subrogation and Alternate Employer endorsements must be attached to the COI. Subcontractor must also provide evidence of Workers Compensation & Employers Liability insurance in accordance with the requirements of the Subcontract Agreement and EXHIBIT J for any/all employees who will perform any work on the Project who are not provided through a labor leasing or Professional Employer Organization and, as such, are not covered under the labor leasing or Professional Employer Organization's Workers Compensation & Employers Liability policy.

**WARRANTY**

Subcontractor/VENDOR:	
GENERAL CONTRACTOR:	<b>The Winter Construction Company</b>
OWNER:	
PROJECT:	
CONTRACT NO.:	
SCOPE	
SPECIFICATION SECTION:	

We, the Subcontractor/VENDOR for the above stated scope of Work as described in the above stated specification section, do hereby warrant that all materials furnished in conjunction with the above referenced project are in accordance with the Contract Documents and authorized modifications thereto, and will be free from defects due to defective materials or workmanship.

If, within one year after the date of Substantial Completion of the Work or such other time as specified in the Prime Contract (the "Correction Period"), any of Subcontractor's Work is found to be not in accordance with the requirements of the Contract Documents, the Subcontractor shall repair, correct or replace it, at no cost to WINTER, promptly after receipt of written notice from WINTER unless WINTER has previously given Subcontractor a written acceptance of such condition.

This warranty is in addition to, and not in limitation of, any and all other rights and remedies to which WINTER may be entitled, at law or in equity.

Nothing in the above shall be deemed to apply to Work which has been abused or neglected by the OWNER.

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

For: \_\_\_\_\_  
(Subcontractor/Vendor)

Notary Public  
My commission expires:

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

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

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

**SALES TAX PAYMENT AFFIDAVIT**

I, \_\_\_\_\_ of \_\_\_\_\_ (Subcontractor),  
\_\_\_\_\_ (Street), \_\_\_\_\_ (City) \_\_\_\_\_ (State),

(hereinafter called "Subcontractor") and is duly authorized to make this Affidavit for and on behalf of Subcontractor, do hereby acknowledge that all Georgia sales tax has been paid on all materials at the time of purchase.

Project \_\_\_\_\_

Project No. \_\_\_\_\_

For: \_\_\_\_\_  
(Subcontractor)

By: \_\_\_\_\_  
(Name)

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

Notary Public

My Commission Expires

**ADDITIONAL PROVISIONS FOR PROJECTS REQUIRING LEED CERTIFICATION**

If LEED Certification is a requirement for this Project then the following provisions apply.

1. Subcontractor understands and acknowledges that this project is seeking LEED Certification. As such, Subcontractor agrees to cooperate in all requirements of the LEED certification process and to provide all required information and documentation Subcontractor hereby assumes toward WINTER all the same obligations, rights, duties and redress that WINTER assumes toward the Owner and architect/engineer under the Prime Contract, LEED project requirements, and/or LEED responsibility matrix as they relate to the Subcontractor's Work.
2. It is the Subcontractor's responsibility to familiarize itself with the LEED rating system and its requirements by reviewing current manuals and data available through the United States Green Building Council and Green Building Certification Institute. Subcontractor shall further understand the level of LEED rating (e.g., silver, gold, platinum) that Owner wishes to achieve for the Project.
3. Subcontractor shall attend any training required by WINTER or the Owner relating to LEED Certification.
4. Should any actions on the part of Subcontractor contribute toward the failure to meet the requirements for a LEED point, the Subcontractor will be solely responsible for researching, recommending and providing an alternative LEED credit as a replacement. If an alternative credit cannot be achieved by this Subcontractor, Subcontractor will execute a deductive change order in the amount necessary to achieve an alternative credit.
5. Subcontractor is required to provide all supporting documentation required for LEED certification as outlined in the Contract Documents. All LEED documentation shall be turned in with project submittals within 90 days of the date of the Subcontract Agreement. LEED close out submittals shall be submitted no later than 30 days prior to substantial completion of Subcontractor's Work. If data for LEED close out submittals is not available 30 days prior to substantial completion of Subcontractor's Work, Subcontractor shall notify WINTER and shall provide information within 5 days of it becoming available.
6. Subcontractor will be responsible for separating its trash and recyclables for LEED Construction Waste Management requirements. Costs associated with separating commingled trash will be the responsibility of this Subcontractor.
7. All sealants, fire sealing, and fire safing materials shall be LOW VOC and meet the VOC limits required by the LEED ratings system.
8. Subcontractor shall comply with the requirements of the Indoor Air Quality (IAQ) plan during construction.
9. Subcontractor shall cooperate with all activities required to perform commissioning activities.
10. Subcontractor shall provide specified materials to meet the LEED requirements for recycled content, regional requirements, VOC limits, rapidly renewable content, and certified wood products, Material substitutions that do not meet LEED criteria will not be allowed.
11. Subcontractor shall perform a reasonable evaluation of the potential impact of any proposed change on the LEED requirements including the impact on specific Prerequisites and Credits. Such evaluation shall be performed from a construction standpoint and will address issues such as the potential impact of the proposed change on Prerequisites and Credits that are based on materials types, costs and quantities.
12. Final Payment shall not be due until Subcontractor has provided the information needed to complete the LEED submittal and certification process.



**ADDITIONAL PROVISIONS FOR SUBCONTRACTS REQUIRING DESIGN/ENGINEERING**

For any scope of Work for which design, engineering or calculations are required by the Contract Documents, the following provisions shall apply.

1. The Subcontractor shall be responsible for furnishing all design and engineering services, or other professional services, (the "Services") in addition to the performance of all construction necessary to fully complete Subcontractor's Work as set forth in the Contract Documents.
2. All Services to be furnished by Subcontractor under the Contract Documents shall be performed by professional Architects and/or Engineers properly licensed and registered under the laws of the state or other jurisdiction where the Project is located (hereinafter called "the Subcontractor's Architect(s)/Engineer(s)"). The Subcontractor's Architect(s)/Engineer(s) shall remain duly qualified to practice such profession(s) throughout the life of the Subcontract Agreement and shall be regularly engaged in the practice of architecture or engineering applicable to the Work to be furnished and performed by Subcontractor under the Subcontract Agreement.
3. Subcontractor, as an independent contractor, will perform the Services in a professional manner with the highest degree of skill and attention and in accordance with the practices, procedures, and standards prevailing among nationally recognized first-class firms in their respective field (including, without limitation, in accordance with current American Society for Testing and Materials Standards, if applicable). Subcontractor shall correct and re-design as necessary, at no additional charge to WINTER, any defects in the Services, or any failure to meet standards.
4. Subcontractor acknowledges and agrees that WINTER's construction schedule is dependent upon timely provision of the Services and that time is of the essence of the Contract Documents. Subcontractor shall perform the Services as expeditiously as is consistent with the professional skill and care required and the orderly progress of the Project.
5. Subcontractor, in performing the Services, shall comply, and shall require compliance by any of its subcontractors or subconsultants (if applicable), with all Applicable Laws (including licensing laws), including but not limited to, the following: building codes, ordinances, rules, statutes, regulations and orders of any public or governmental authority or agency applicable to the design or construction of the Work and Services to be performed by Subcontractor.
6. At the request of WINTER, Subcontractor shall issue to any third party, including but not limited to the Project Owner and/or the entity that has hired WINTER, a reliance letter entitling such third party or parties to rely upon the work and reports issued by Subcontractor.
7. All drawings, specifications and other design or construction documents prepared by the Subcontractor's Architect(s)/Engineer(s) shall be signed by such professional(s) and stamped with his seal.
8. All drawings, specifications and other design and construction documents prepared by the Subcontractor's Architect(s)/Engineer(s), along with any documents, models, renderings, and other materials to be furnished by Subcontractor to WINTER, the Owner, or anyone in connection with this Subcontract Agreement, and all modifications made by Subcontractor to any such documents, and all written information, reports, studies, objects or source codes, flow charts, diagrams and other tangible material which have been created by Subcontractor in order to provide the Services pursuant to this Subcontract Agreement, and all digital forms thereof, (collectively, the "Work Product"), shall be considered "work made for hire," commissioned by WINTER, and any and all legal rights to such Work Product, including all copyrights, shall be deemed permanently vested in WINTER, or the Owner as WINTER may designate, regardless of whether the Project for which it is prepared is executed or not, and Subcontractor hereby unconditionally and irrevocably transfers to WINTER, or the Owner as WINTER may designate, any and all rights Subcontractor may be deemed to have to such Work Product.
9. Subcontractor shall provide the Services in accordance with the plans, specifications and other requirements governing the Project. All Work performed by Subcontractor shall be performed in strict accordance with the Contract Documents and the working drawings and specifications and other construction documents submitted by Subcontractor and released for construction. Subcontractor shall be responsible for coordinating the design and construction of its Work with the Work of all other trades.
10. The review, approval or release of any design or construction documents submitted by Subcontractor to WINTER, the Owner, the Owner's Architect, or the Owner's Engineers and/or such other person(s) as may be required by the Contract Documents or the taking of other appropriate action upon such submissions shall be only for the limited purpose of checking for general conformance with the design concept of the Work and any design or performance criteria or other information provided in the Contract Documents. Such review, approval, release or other action taken with respect to such documents shall not relieve the Subcontractor from any of its obligations under the Subcontract Agreement or requirements of the Contract Documents. Nothing herein shall relieve Subcontractor of its obligation to perform its Work in accordance with the Subcontract Agreement and the Contract Documents.

11. Subcontractor shall notify WINTER in writing of all changes which may be required to any design or Construction Documents previously submitted by Subcontractor. All such changes shall be subject to the same review, approval, release or other action required for original submissions prior to such change. Any additional costs incurred by WINTER or others as a result of Subcontractor's failure to give such notice in a timely manner or by Subcontractor's failure to meet WINTER's schedule requirements shall be charged to Subcontractor.
12. In addition to Article 12 of this Subcontract, and not in limitation thereof, Subcontractor agrees to defend, indemnify and hold harmless WINTER and Owner and their respective successors and assigns, officers, directors, members, agents, servants and employees from and against any and all liability, claims, loss, cost, expense, damage or injury of any kind or nature, including legal fees and disbursements, that WINTER and/or Owner may directly or indirectly sustain, suffer, or incur as a result of, arising out of or relating to the performance of the Services in connection with the Subcontract Agreement or the Work. Subcontractor agrees to and does hereby assume on behalf of WINTER and/or Owner the defense of any action at law or in equity which may be brought against WINTER and/or Owner upon or by reason of such claims and shall pay on behalf of WINTER and/or Owner, upon demand, the amount of any judgment that may be entered against it in any such action.
13. Subcontractor shall procure and maintain or cause the Subcontractor's Architect(s)/Engineer(s) to procure and maintain professional liability insurance (E&O) in accordance with Exhibit J-1 for protection from claims arising out of the performance of any Services performed or furnished in connection with the Subcontract Work caused by any negligent act, error or omission for which Subcontractor and/or the Subcontractor's Architect(s)/Engineer(s) may become legally liable. Subcontractor shall require any of its subcontractors or subconsultants performing work for the Services to procure and maintain insurance in accordance with this Section 13. Such professional liability insurance shall provide for coverage as follows:
- a. Limit of Liability \$2,000,000.00
  - b. Deductible Amount not to exceed \$25,000.00

Such professional liability insurance shall be in a form acceptable to WINTER and shall be issued prior to commencement of the Work. WINTER and the Owner shall be named as additional insureds on any such policy. If the policy requires deductibles, the deductible amount shall be the responsibility of Subcontractor and Subcontractor shall pay costs not covered because of such deductibles. The policy retroactive date shall be prior to Subcontractor's commencement of the Services by Subcontractor. Subcontractor shall maintain such professional liability for a period of three (3) years following completion of construction, and shall not allow the retroactive date on its professional liability policy to be modified to a later date than the commencement of any design, engineering, or professional services rendered, or that should have been rendered, by Subcontractor.

Subcontractor and its professional liability insurer shall waive all rights of subrogation against WINTER, and a waiver of subrogation endorsement in favor of WINTER shall be evidenced on Subcontractor's certificate of professional liability insurance, and a copy of the endorsement attached to the certificate of insurance provided by Subcontractor. Such certificate of insurance shall state the project name, location, and a description of Subcontractor's professional Services. Such professional liability insurance shall not contain any exclusion as respects the following:

- Residential work (single-family, apartments, condominiums, etc.)
- Failure to perform professional services or complete a Project on time
- Losses to which project-specific insurance applies.

**EXTRA WORK / TIME & MATERIAL FORM**

Project name: \_\_\_\_\_

Project number: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

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

Work performed: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

LABOR			
Name / Classification	Description	Hours	
		ST	OT

EQUIPMENT		
Description	Quantity	Unit

MATERIAL		
Description	Quantity	Unit

The undersigned Subcontractor certifies that the above description of the Work is an accurate representation of the Work performed, that the Work was performed on the Date indicated above and that the labor, material and equipment described above is an accurate representation of labor, materials and equipment furnished in the performance of the Work.

Subcontractor:

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

\_\_\_\_\_  
 Printed Name / Title

By signing below, the undersigned is verifying only that the Work described above was performed. This is not an agreement that the Subcontractor is entitled to additional compensation for the Work. The determination of whether Subcontractor is entitled to additional compensation or time, and the amount thereof, if any, for performing this Work will be made in accordance with the terms of the Subcontract Agreement.

WINTER

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

\_\_\_\_\_  
 Printed Name / Title

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

\_\_\_\_\_  
 Printed Name / Title

*This form must be signed by Winter Superintendent and Winter Project Manager.  
 Refer to Subcontract Agreement Article 9 Changes in the Work.*

IOC # \_\_\_\_\_  
 (for Winter use for tracking purposes only)

JOINT CHECK AGREEMENT

WHEREAS, The WINTER Construction Company ("WINTER") is the general contractor for the construction of \_\_\_\_\_ (the Project); and

WHEREAS, \_\_\_\_\_ ("Subcontractor") and WINTER have entered into a Subcontract to perform certain work in connection with the Project (the "Subcontract"); and

WHEREAS, Subcontractor has made an agreement to purchase from \_\_\_\_\_ ("Sub-contractor/Supplier") certain materials and/or labor to be used by Subcontractor and Sub-subcontractor/Supplier;

NOW, THEREFORE, in consideration of the payments, promises, covenants and undertakings made by the parties herein and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties agree as follows:

1.

This Agreement is subject to and conditioned upon the undertakings and obligations contained in the Subcontract. Further, each party hereby expressly acknowledges and agrees that any payment obligation hereunder is subject to the condition precedent that payment must first be due to Subcontractor in accordance with the terms of the Subcontract. Except only for the agreement respecting the making of payments which may become due to Subcontractor by joint check, nothing herein contained shall modify or alter the respective duties and obligations under the Subcontract. Nothing herein contained shall give Sub-subcontractor/Supplier or any other third party any rights under the Subcontract.

2.

This Agreement is not a guarantee of payment or intended to create a direct contract between Sub-subcontractor/Supplier and WINTER. Sub-subcontractor/Supplier hereby acknowledges and agrees that WINTER may exercise each of its rights and remedies under the subcontract. Subcontractor and Sub-subcontractor/Supplier understand and agree that in the event of a default by Subcontractor that no payment may become due the Subcontractor and therefore joint checks will not be issued by WINTER. Sub-subcontractor/Supplier acknowledges that it will look solely to the Subcontractor for payment of all sums which may become due to it for supplying materials and/or labor to the Project.

3.

Subcontractor agrees that any payment which may become due under the Subcontract may be paid by joint check to Subcontractor and Sub-subcontractor/Supplier. Subcontractor and Sub-subcontractor/Supplier agree to defend, indemnify and hold WINTER harmless from any claims, expenses, charges, or costs of any nature whatsoever, including without limitation attorneys' fees and expenses, which may arise or relate to this Agreement.

4.

As a condition of receiving any payments hereunder, Sub-subcontractor/Supplier acknowledges that it has submitted to Subcontractor and Subcontractor in turn acknowledges that it has submitted to WINTER any statements, which may have been requested, including without limitation such statements concerning any item pertinent to the total cost of materials and/or labor to be provided by Sub-subcontractor/Supplier to the Project, or releases of claim of liens. Sub-subcontractor/Supplier understands that Subcontractor, WINTER, and the owner of the Project will rely upon such statements as being true and accurate. Sub-subcontractor/Supplier agrees that a condition precedent of payment hereunder shall be Sub-subcontractor's/Supplier's obligation to submit to Subcontractor and Subcontractor, in turn, to WINTER, such progress or final statements as may be required by the Project contracts or custom of the trade regarding the Project so that WINTER shall receive same before the \_\_\_ of each month.

5.

Sub-subcontractor/Supplier agrees that so long as this Agreement is in effect, that any joint check issued hereunder shall be delivered to Subcontractor. Sub-subcontractor/Supplier is responsible for securing payment pursuant to this Agreement. It is acknowledged by Sub-subcontractor/Supplier that WINTER has no obligation to insure the accuracy or timeliness of Subcontractor's endorsement on any such joint check, such obligation and risk being solely that of Sub-subcontractor/Supplier.

6.

This Agreement shall terminate automatically in the event of final payment under, or termination of, the Subcontract. WINTER may also terminate this Agreement at any time and for any reason in its sole discretion, upon giving each party notice.

7.

All notices hereunder shall be in writing and sent by certified mail, return receipt requested, at the addresses set forth below. Any such notice shall also be deemed to have been given when delivered in person to the persons set forth below:

To: The Winter Construction Company
191 Peachtree Street, Suite 2100
Atlanta, Georgia 30303

To: Subcontractor

To: Sub-subcontractor/Supplier

8.

This Agreement shall not be modified by any oral or implied agreement, conduct or custom.

9.

The undersigned parties represent and warrant that they have the authority to enter into this Agreement and bind their respective principals. WINTER specifically states that this Agreement shall not be valid unless signed by a corporate officer of WINTER and shall not be effective until received by WINTER's accounting office in Atlanta, Georgia and subsequently delivered to Subcontractor and Sub-subcontractor/Supplier at the addresses noted above.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this \_\_\_ day of \_\_\_\_\_, 20\_\_.

SUBCONTRACTOR

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

By: \_\_\_\_\_
Name: \_\_\_\_\_
Its: \_\_\_\_\_

SUB-SUBCONTRACTOR/SUPPLIER

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

By: \_\_\_\_\_
Name: \_\_\_\_\_
Its: \_\_\_\_\_

THE WINTER CONSTRUCTION COMPANY

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

By: \_\_\_\_\_
Name: \_\_\_\_\_
Its: \_\_\_\_\_

## SUBCONTRACT GUARANTY

This Subcontract Guaranty (the "Guaranty") is executed by and between [INSERT NAME OF SUBCONTRACTOR] (the "Subcontractor"), The Winter Construction Company (the "Contractor"), and Guarantor [INSERT NAME OF GUARANTOR] (the "Guarantor") and is entered into this \_\_\_\_\_ (\_\_\_\_) day of \_\_\_\_\_, 20\_\_.

### RECITALS:

A. The Contractor desires security for the performance by the Subcontractor, and the financial obligations of Subcontractor, of the Subcontract Agreement between Subcontractor and Contractor, dated \_\_\_\_\_, 20\_\_.

B. The Subcontractor has requested the Guarantor, and the Guarantor desires, to provide a guaranty of the payment and performance of all of the obligations, liabilities, agreements, and duties of the Subcontractor arising out of or resulting from the Subcontract Agreement, including but not limited to, the obligations owed to Contractor and to third parties.

C. The Subcontractor, Contractor and Guarantor desire to amend the Subcontract Agreement by adding an Article 25, as set forth below, and agree that all references in this Guaranty to the Subcontract Agreement shall be deemed to include Article 25 set forth in this Guaranty.

D. The Parties acknowledge and agree that the execution of this Guaranty by Guarantor is required in order for Contractor to allow Subcontractor to perform work for Contractor and that without this Guaranty, Subcontractor would not be permitted to perform work for Contractor.

Now, therefore, in consideration of the promises and covenants set forth in this Guaranty, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subcontractor, Contractor and Guarantor agree as follows:

### ARTICLE 25 PERFORMANCE GUARANTY

A. The undersigned guarantor (the "Guarantor") hereby irrevocably and unconditionally guarantees to Contractor and its successors and assignees the complete and timely payment and performance of all obligations, liabilities, covenants, agreements and duties of the Subcontractor arising out of or resulting from the Subcontract Agreement (collectively the "Obligations"). The guaranty of the Obligations provided under this Article 25 (the "Performance Guaranty") is an absolute, immediate, continuing and primary liability of the Guarantor, and the Contractor may enforce this Performance Guaranty at any time, in its sole and exclusive discretion, without seeking or exhausting any prior recovery, redress or remedy from the Subcontractor.

B. The Subcontractor and the Guarantor are jointly and severally liable for the payment and performance of all of the Obligations, and any election by the Contractor to demand payment or performance of the Obligations from either the Subcontractor or Guarantor shall not be deemed a release or waiver of rights against the other. This Performance Guaranty is binding upon the successors of the Guarantor and may not be assigned by the Guarantor without the prior written consent of the Contractor, which consent may be withheld or conditioned in the sole and exclusive discretion of the Contractor.

C. The Guarantor waives any and all notice of the creation, renewal, extension, or accrual of any Obligation or the reliance by Contractor upon this Performance Guaranty. The Guarantor agrees that the Subcontract Agreement may be altered, extended, modified, released, or terminated, in whole or in part, without any further notice to, or consent or approval by, the Guarantor, and that this Performance Guaranty and the liability of Guarantor under this Performance Guaranty shall be in no way affected, diminished, or released by such alteration, extension, modification, release or termination.

D. Until all of the Obligations arising out of or resulting from Subcontract Agreement have been performed in full, the Guarantor shall have no right of subrogation, reimbursement, or indemnity whatsoever arising out of or resulting from this Performance Guaranty and no right of recourse to or with respect to any asset of the Subcontractor. Nothing shall discharge or satisfy the liability of the Guarantor under this Performance Guaranty except the full payment and performance of all of the Obligations

E. The Guarantor provides this Performance Guaranty to induce the Contractor to enter into, or maintain, the Subcontract Agreement, which provide financial and other benefit to the Guarantor and Subcontractor.

F. Upon request of the Contractor, in its sole and exclusive discretion, the Guarantor shall execute and deliver to the Contractor a separate reaffirmation of this Performance Guaranty with respect to the Subcontract Agreement, which reaffirmation shall be in form and substance satisfactory to the Contractor in its sole and exclusive discretion. The failure, or election not, to request a reaffirmation with respect to any Subcontract Agreement by the Contractor, shall not be construed, or create an inference, to limit or diminish any liability of the Guarantor.

The Parties hereto agree to the above terms by affixing their signatures to this Guaranty below:

[INSERT NAME OF SUBCONTRACTOR] THE WINTER CONSTRUCTION COMPANY

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

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

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

For purposes of this Guaranty and Article 25 of the Subcontract Agreement, Agreed and Consented to this \_\_\_\_\_ (\_\_\_\_) day of \_\_\_\_\_, 20\_\_

Guarantor:

[INSERT NAME OF GUARANTOR]

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

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

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