

SUBCONTRACTOR FORMS PACKAGE

Click here to put Project Name

Click here to enter a date.



As referenced in the Subcontract, please find attached electronic copies of required forms for your use. The information contained in these forms is per the sample forms included in the Subcontract Exhibit.

Please provide these documents to the appropriate person in Subcontractor's office for completion.

Included in this package are the following:

1. **Exhibit D – Subcontractor's Payment Application**
Includes Pay Application Instructions, Subcontractor's Application for Payment and Continuation Sheet sent via Excel document.

These documents should be submitted monthly by the date indicated in the Subcontract.
2. **Exhibit E – Interim Waiver**
Includes Subcontractor's Interim Waiver and Release Upon Payment. This document should be submitted with each application for payment up until the final application for payment.
3. **Exhibit F – Final Waiver**
Includes Subcontractor's Waiver and Release Upon Final Payment. This document should be submitted with application for final payment.
4. **Exhibit G – Subcontractor Payment Bond**
This document should be submitted at the beginning of the project if indicated as required on the cover page of the Subcontract.
5. **Exhibit H – Subcontractor Performance Bond**
This document should be submitted at the beginning of the project if indicated as required on the cover page of the Subcontract.
6. **Exhibit I - Immigration and Security Affidavit**
This document should be submitted with or prior to submission of pay application for initial payment.
7. **Exhibit K - Warranty**
This document should be submitted upon request from the project team and prior to submission of pay application for final payment.
8. **Exhibit L – Sales Tax Payment Affidavit**
This document should be submitted with or prior to submission of pay application for final payment.
9. **Exhibit O – Extra Work / Time & Material Form**
This document should be used for work performed on a time and material basis. Subcontractor shall have work verified the day it is performed.
10. **Exhibit P – Joint Check Agreement**
This document is used when Winter requires payment to sub-subcontractors or suppliers.
11. **Exhibit Q – Subcontractor Guaranty**
This document is used when a subcontractor is part of a holding company. This document should be submitted with the executed contract.

PAY APPLICATION INSTRUCTIONS

Click here to put Project Name

Click here to enter a date.



The Winter Construction Company is committed to ensuring timely payment to Subcontractors. The following procedures must be followed to facilitate processing and payment of the monthly progress and final billings.

Prior to issuance of the initial payment, the following documents must be submitted:

1. Executed Subcontract, Short Form Subcontract, or Purchase Contract
2. Approved Insurance Certificate
3. Approved Payment and Performance Bonds (if required)
4. Complete Enrollment in Subcontractor Default Insurance Program (if required)
5. Completed Exhibit I – Immigration and Security Form
6. Approved Schedule of Values

Subcontractor Progress Billing:

Applications for Payment should be submitted via email no later than the “Monthly Billing Date” indicated on the Subcontract Cover Page.

A complete “billing package” consists of the following items:

1. A completed Subcontractor Application for Payment with Continuation Sheet (Exhibit D)
2. An executed Interim Lien Waiver (Exhibit E)
3. Executed Interim Lien Waivers from Sub-Subcontractors or Sub-Suppliers from each second tier supplier and subcontractor that filed Notice to Contractor or are identified during enrollment in the Subcontractor Default Insurance Program.

Subcontractor Final Billing:

A complete “final billing package” consists of the following items:

1. A completed Subcontractor Application for Payment (Exhibit D)
2. An executed Waiver and Release Upon Final Payment (Exhibit F)
3. An executed Sales Tax Payment Affidavit (Exhibit L)
4. A completed “Warranty” Form (Exhibit K)
5. Executed Final Waiver and Release from each second tier supplier and subcontractor that files Notice to Contractor or were identified during enrollment in the Subcontractor Default Insurance Program.
6. A Consent of Surety for Final Payment from Subcontractor’s bonding company (if applicable)

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: _____

WARRANTY

Subcontractor/VENDOR:	
GENERAL CONTRACTOR:	The Winter Construction Company
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

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-subcontractor/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
5616 Peachtree Road, Suite 100
Atlanta, GA 30341

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 _____ (the "Subcontractor"), The Winter Construction Company (the "Contractor"), and 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:

By: _____

Name: _____

Its: _____