



**SUBCONTRACT AGREEMENT**

**Contractor:** C.H. Garmong & Son, Inc.  
3050 Poplar Street  
Terre Haute, IN 47803

**Contractor's Authorized Representative:** «ProjectManager»  
3050 Poplar Street  
Terre Haute, IN 47803  
Telephone: 812-234-3714  
E-mail: «PMEEmail»

**Subcontractor:** «FirmName»

**Subcontractor's Authorized Representative** «ContactFName» «ContactLName»  
«POAddress»  
«POCity» «POState» «POZip»  
Telephone: «FirmPhone»  
E-mail: «EMail»

**Project:** «ProjectDescription»  
«JobAddress», «JobCity», «JobState» «JobZip»

**Owner:** «Owner»

**Subcontract Amount:** «TotalSubcontract» («Totalsubcontract») Dollars

**Subcontract Number:** «SL»

**Exhibits Incorporated In this Subcontract:**  
Exhibit A – Scope of Work  
Exhibit B – Terms and Conditions of Subcontract  
Exhibit C – Form of Affidavit in Support of Payment  
Exhibit D – Form of Partial Waiver of Lien  
Exhibit E – Form of Final Waiver of Lien  
Exhibit F – Insurance Requirements  
Exhibit G – Form of Change Order  
Exhibit H – Subcontractor Safety Responsibilities

C.H. Garmong & Son, Inc. ("Contractor") retains Subcontractor to satisfactorily and timely provide and perform the work, labor, supervision, equipment and materials required to fulfill the Scope of Work set forth in Exhibit A pursuant to the Contract Documents (as defined in the Terms and Conditions of Subcontract) in exchange for Contractor's payment of the Subcontract Amount in the method/manner provided in this Subcontract Agreement.

IN WITNESS WHEREOF, the parties have executed this Subcontract Agreement as of the date indicated.

C.H. Garmong & Son, Inc.

«FirmName»

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

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

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

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

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

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

"Contractor"

"Subcontractor"

## **Exhibit A – Scope of Work**

Pursuant to the plans and specifications prepared by «ArchitectName» (hereinafter referred to as “Architect”), project number «ArchitectProject», with a revision date for project plans and specifications of «ContractDate» and subject to the following addenda: «udAddenda» (said documents are cumulatively hereinafter referred to as “the Contract Documents”) and «SLNotes»

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## Exhibit B – Terms and Conditions of Subcontract

These Terms and Conditions of Subcontract Agreement govern the Subcontract using the terms for Project, Contractor, Subcontractor and Owner as identified on the cover sheet of the Subcontract Agreement and which retain the identity and definition of each as set forth therein.

**1. Subcontract Work.** Subcontractor shall furnish, deliver, and pay for all labor, equipment, services, supervision and materials and perform all of the work necessary or incidentally required to complete its obligations strictly pursuant to and as reasonably inferred from: this Subcontract and plans and specifications for the Project, the contract between Owner and Contractor for the Project (or series of contracts linking Owner and Contractor) (the “Prime Contract”), any General, Special, Supplementary Conditions, and all Exhibits identified and incorporated by reference into this Subcontract (the “Contract Documents”), or that part of the work covered by the Contract Documents, and the Project Schedule (as defined herein) and all governing laws, regulations and ordinances and including design where required by the Contract Documents, and the work set forth on Exhibit A to this Subcontract (the “Work” or “Subcontractor’s Work” or “Subcontract Work”).

Subcontractor assumes toward Contractor and Owner all obligation, rights, duties, and redress arising from or relating to Subcontractor’s Work that Contractor assumes toward Owner and others under the Contract Documents. The Contract Documents are applicable to this Subcontract and are, therefore, incorporated herein by reference and made a part of this Subcontract. In the event of conflicts between Contract Documents other than Exhibit A, the document that imposes the most stringent requirement will govern.

Subcontractor understands and agrees that the Contract Documents are complementary, and what is required by one shall be binding as if required by all, unless specifically stated otherwise. In the event of a conflict between Contract Documents involving quality or quantity, the highest quality and the greatest quantity shall be furnished.

Subcontractor understands and agrees that the intent of Exhibit A is to define the scope of labor, equipment, material, supervision, and services that are to be provided by Subcontractor in furtherance of the construction of the Project, and not to define other rights, responsibilities, or liabilities. Notwithstanding any terms or conditions in Exhibit A that purport to define rights, responsibilities, or liabilities related to the contract amount, payments, Subcontractor’s representations or warranties, lien rights, damages, time for prosecuting the Work, changes, Subcontractor’s on-site presence, protection of persons and property, indemnity, termination, Contractor’s responsibilities, claims and dispute resolution, assignment, choice of law, damages, or waiver, no such terms or conditions therein shall supplement, supersede or control over any conflicting, inconsistent, or relevant term of this Exhibit B or other Contract Document.

Subcontractor represents and warrants to Contractor that it and its employees are experienced and skilled in the construction of structures and improvements of the type described in the Contract Documents and it has examined the Contract Documents and the real property on which the Work will be located as indicated as the address or location of the Project identified on the cover page of the Subcontract (“Site”), and has familiarized itself with the local conditions and all other factors impacting the successful completion of the Work and Subcontractor agrees that the design for Subcontractor’s Work depicted in the Contract Documents can be constructed on Site. Subcontractor understands and agrees that the plans and specifications for the Project were prepared by independent design professionals and, as a result, Contractor does not warrant the fitness, accuracy or completeness of such plans and specifications. Subcontractor agrees to promptly report to Contractor any errors, inconsistencies, omissions, or violations of legal requirements Subcontractor discovers. Subcontractor shall be liable to Contractor for damages resulting from any such errors, inconsistencies, omissions, or violations of legal requirements which Subcontractor discovers and fails to report to Contractor.

Should the proper and accurate performance of the Work depend upon the work performed by Contractor, Owner, other subcontractors or any other persons engaged in work outside of Subcontractor’s scope of Work, Subcontractor shall inspect such work and report in writing to Contractor any defects which render it unsuitable for proper execution

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of the Work. Should Subcontractor fail to notify Contractor of any defects or non-conformities then Subcontractor shall be deemed to have accepted such defects and non-conformities.

**2. Subcontract Amount.** For Work satisfactorily and timely completed hereunder, Contractor agrees to pay to Subcontractor the sum set forth on the cover page of the Subcontract identified as “Subcontract Amount.” The duty to make and the right to receive payments are subject to the terms and conditions of this Subcontract.

**3. Payments.** Within ten (10) days of the execution of this Subcontract, Subcontractor shall submit to Contractor (a) an accurate W-9 certificate, and (b) a proposed schedule of values subdividing the Work into sub-categories for billing analysis purposes. Unless expressly permitted by Contractor in writing, no sub-category on Subcontractor’s schedule of values shall account for more than ten percent (10%) of the Subcontract Amount or \$100,000.00, whichever is less. Subcontractor shall revise the proposed schedule of values upon Contractor’s request and, once accepted by Contractor, the accepted schedule of values shall provide a basis for any applications for payment submitted.

Subcontractor may make applications for periodic progress payments, less retainage of 10% or, where applicable, such lower percentage mandated by law, for work satisfactorily performed when set forth in an application for payment submitted, on or before the 20<sup>th</sup> day of the month, on AIA G702-703 forms or suitable substitutes designated by Contractor itemizing the estimated percentage of Work performed for each line item set forth on the accepted schedule of values. Each application for payment shall be accompanied by (a) an affidavit in support of payment in the form of Exhibit C to the Subcontract, (b) verified partial lien and claim waivers for Subcontractor’s Work as well as that of its sub-subcontractors, materialmen and suppliers in an aggregate amount of the application for payment utilizing the form provided as Exhibit D, and (c) evidence reasonably adequate to demonstrate that previous periodic progress payments have been disbursed to sub-subcontractors, materialmen and suppliers in accordance with the applications therefor. Invoices or other applications for payment not presented in this form do not create a right to receive or a duty to make payment; they will not be paid.

Subcontractor may make an application for final payment, not to exceed one hundred percent (100%) of the Subcontract Amount, after Subcontractor completes its obligations hereunder to the full satisfaction of Contractor and Owner. At the time of submission of its application for final payment, Subcontractor shall provide the following information: (a) an affidavit in the form of Exhibit C with supporting documentation indicating all payments to subcontractors and suppliers proving that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner’s interests; (b) verified conditional final lien and claim waivers for its Work as well as that of its sub-subcontractors, materialmen and suppliers in an aggregate amount of the final contract amount including Change Orders, if any, and utilizing the form included as Exhibit E to the Subcontract; (c) consent of Subcontractor’s surety, if any, to final payment; and (d) all operating manuals, warranties and other deliverables required by the Contract Documents. Invoices or other applications for payment not presented in this form or missing required enclosures do not create a right to receive or a duty to make payment; they will not be paid.

Where corresponding payments by the Owner are made, Subcontractor’s properly submitted applications for payment will be paid 10 days after Contractor receives the corresponding payment from Owner. Notwithstanding any provision in this Subcontract or any other Contract Documents to the contrary, no payment (including, but not limited to, any periodic progress payment or final payment, or payment for extras, Change Orders, delays, or acceleration of the Work) will be due Subcontractor until Contractor has received payment for Subcontractor’s Work from Owner. Contractor’s receipt of payment from Owner for Subcontractor’s Work is a condition precedent to any payment by Contractor to Subcontractor. Subcontractor acknowledges that it relies on the credit of the Owner for payment, and that Subcontractor bears the risk of nonpayment by the Owner for any reason. Acceptance of final payment shall constitute a waiver of all claims by Subcontractor relating to Subcontract Work but does not relieve Subcontractor of liability for warranties or for nonconforming or defective work discovered after final payment. Neither partial nor final payment to Subcontractor shall operate as approval or acceptance of work done or materials furnished under this Subcontract.

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Contractor may withhold the whole or any part of any payment due or to become due to Subcontractor to such extent as may be necessary to protect Contractor from loss as a result of any of the following, whether arising from this Project or any other project: (a) incomplete, non-conforming or defective work; (b) claims filed or reasonable evidence indicating probable filing of claims, including lien claims, involving or arising out of Subcontractor's performance; (c) damage to Contractor's, Owner's or their respective contractors' work; (d) failure of Subcontractor to make payments when due to its subcontractors, sub-subcontractors, materialmen and suppliers; (e) reasonable insecurity regarding Subcontractor's intention or ability to continue with the proper and timely performance of the Work; (f) failure of Subcontractor to perform or comply with any of its obligations under the Contract Documents; (g) failure of Subcontractor to comply with any federal, state, or local law governing its obligations under the Contract Documents; or (h) any other breach of this Subcontract or any other agreement between Contractor and Subcontractor.

Subcontractor shall promptly pay what is owed to its service providers and vendors for the Project from payments received from Contractor so as to keep the Project free of liens and payment claims. Where Subcontractor fails to timely process payments to its providers and vendors from payments received, Subcontractor will retain the services of a duly licensed attorney experienced in the area of construction law selected by Contractor to defend Contractor from and against any liens or payment claims and Subcontractor alone shall bear the cost of defense for any liens or payment claims, or any other costs which may be assigned or adjudged to the Contractor's liability. Within ten (10) days of Contractor's demand, Subcontractor shall discharge or satisfy any lien or payment claim asserted by any individual or entity working for or supplying material to Subcontractor. Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor to Contractor; and in the event of any breach by Subcontractor of any provision or obligation of this Subcontract or in the event of the assertion by other parties of any claim or lien against the Owner, Contractor or the premises arising out of Subcontractor's Work, Contractor may retain all or part of any payments due or to become due to Subcontractor in amounts sufficient to completely protect Contractor from any and all loss, damage or expense therefrom, including actual and anticipated attorneys' fees and costs or bond premiums, until the situation has been satisfactorily remedied or adjusted by Subcontractor.

In the event Contractor has information that Subcontractor has failed to properly and fully compensate one of its sub-subcontractors or material vendors on the Project and monies are otherwise due to Subcontractor, Subcontractor agrees that Contractor may issue checks jointly payable to Subcontractor and the unpaid sub-subcontractor or material vendor.

**4. Submittals and Substitutions.** In accordance with the Contract Documents and the Project Schedule, Subcontractor shall deliver to Contractor timely submittals, including shop drawings, product data and samples to allow for an orderly and proper coordination of the Work. Subcontractor shall not make any substitutions in the Work or procedures or methods specified in the Contract Documents unless it first receives written approval from Contractor for such substitution. Subcontractor shall bear any costs and fees related to such substitution. Any variances from the Contract Documents shall be specifically identified in Subcontractor's submittals. Contractor's review and approval shall not relieve Subcontractor of its responsibilities to perform the Work in accordance with the Contract Documents unless Subcontractor and Contractor gain from Owner prior express written approvals for any such variance. Subcontractor shall make all revisions to the submittals requested by Contractor.

**5. Records.** Subcontractor shall keep a complete set of accounts and records on a cost accounting basis, conforming to generally accepted accounting principles for the construction industry, showing all receipts and expenditures under this Subcontract. Contractor shall have the right to audit and shall be afforded access upon reasonable notice to Subcontractor to all Subcontractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Subcontract for a minimum period of three years after final payment, or for the minimum period of record retention set forth in the Prime Contract,, or required by applicable law governing the Project, whichever period is longer.

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**6. Confidential Information.** All plans, drawings, specifications and the subject matter contained therein and all other information received by Subcontractor in connection with performance of this Subcontract involve valuable property rights of Contractor and shall be held confidential by Subcontractor, shall remain the property of Contractor and shall not be used by Subcontractor for any purposes other than those for which they have been supplied or prepared. Subcontractor agrees that it, its sub-subcontractors, materialmen and suppliers will keep confidential the making of this Subcontract and the terms hereof. Subcontractor agrees not to use for publicity purposes any photographs drawings and /or materials in connection with the performance of this Subcontract without obtaining the prior written consent of Contractor and upon completion of this Subcontract, Subcontractor shall return all material given Subcontractor as aforesaid. Subcontractor agrees to include a confidentiality provision substantially similar to this section 6 in its agreements with its sub-subcontractors, materialmen and suppliers.

**7. Warranty.** Subcontractor warrants to the Owner and Contractor that materials and equipment furnished under this Subcontract will be new, unless otherwise required by the Contract Documents, of good quality, free from defects of workmanship or materials and will conform to the requirements of the Contract Documents, and that the Work performed hereunder will be good and workmanlike, free from defects and will conform to the requirements of the Contract Documents, and Contractor shall have good title, free of encumbrances, to all material and equipment included in the Work. Work (workmanship or materials) not conforming to these requirements, including substitutions not properly approved or authorized, may be considered defective. Subcontractor shall defend, pay all costs incurred, and hold Contractor harmless from Subcontractor's failure to adhere to or follow this Subcontract including, but not limited to, claims concerning delays or defects in Subcontractor's Work.

**8. Correction of Defective Work.** Prior to and within one year of Substantial Completion (as defined in the Contract Documents), or within such longer period to the extent required by the Contract Documents, Subcontractor shall, within 48 hours' of receipt of written notice from Contractor that the Work is not in conformance with the Contract Documents, correct the defective Work at its own cost and time and bear the expense of the additional services required for the correction of any defective Work, including the correction, removal or replacement of the defective Work and any damage caused to other parts of the work or the Project affected by the defective Work. If Subcontractor fails to correct the defective Work within such 48-hour period, Contractor may, without further notice and in addition to any other remedies provided under the Contract Documents, commence correction of such defective Work with its own forces or a third party on Subcontractor's account. If the defective Work creates an emergency requiring an immediate response, the 48-hour period identified herein shall be deemed inapplicable. Any time period for the duty to correct work referenced herein or in the Contract Documents applies only to Subcontractor's obligation to correct such defective work upon demand and is not intended to constitute a period of limitations for any other rights or remedies Contractor may have regarding Subcontractor's obligations under the Contract Documents.

**9. Time.** Subcontractor acknowledges that it is bound by the scheduling requirements of the Contract Documents and those of Contractor (cumulatively, the "Project Schedule"), which may be amended from time to time prior to the time when the Project achieves Substantial Completion. Subcontractor agrees to promptly begin Work as soon as notified by Contractor and shall diligently and continuously prosecute and complete the Work in accordance with the requirements of the Contract Documents including but not limited to the date of Substantial Completion, the Project Schedule, and any other milestone dates set forth therein. Subcontractor agrees to cooperate with and coordinate its Work activities so as not to interfere with those parties performing work at the Site, including Owner's and Contractor's separate contractors, so that the Project can be completed pursuant to the Project Schedule in an orderly and coordinated manner without disruption.

Within ten (10) days after execution of the Subcontract, Subcontractor shall prepare and submit to Contractor a detailed schedule for the performance of the Work ("Work Schedule"). The Work Schedule must conform to all requirements of this Subcontract including, without limitation, the Project Schedule.

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Subcontractor shall maintain and update the Work Schedule throughout the performance of the Work, and at times requested by Contractor. All updates to the Work Schedule shall be in accordance with the time and sequence provided for by the Project Schedule as it may be adjusted. Any updates to the Work Schedule shall not relieve Subcontractor of its obligation to perform as required by the Project Schedule. Subcontractor warrants that its Work Schedule, as may be amended to accommodate the Project Schedule then in effect, will allow Contractor to maintain the Project Schedule. By submitting the Work Schedule and any requested updates thereto Subcontractor represents that the Work Schedule and such other schedules, updates, revisions and reports it prepares are reasonable when considering all conditions and factors bearing on the performance of the Work and accurately reflect Subcontractor's reasonable expectations as to the sequence and duration of Work items, productivity, projected and actual completion of any Work item or activity, and delays or problems expected or encountered and specified float time. Subcontractor shall maintain the personnel, material and equipment as required to assure the various stages of the Work are completed as required by the Work Schedule. Subcontractor agrees to re-sequence its work, accelerate its efforts through Saturday / weekend work, weekday overtime and/or provide multiple crews if required to maintain or facilitate the Work Schedule. Subcontractor acknowledges that Subcontractor's timely performance of the Work is an essential condition of the Subcontract and agrees that any failure to perform and complete the Work consistent with such dates shall be a material default of the Subcontract. If Subcontractor fails to adhere to the Work Schedule, misses any milestone in any such schedule, fails to accelerate or re-sequence when requested to accommodate the Project Schedule, or if Subcontractor abandons the Project, suspends its Work, or fails to have sufficient workers on site and productively employed for three (3) days or more, Contractor may, without prior notice and without waiving any other right or remedy available in law or equity, terminate this Subcontract or take steps necessary to complete or expedite the Work, including supplementing Subcontractor's efforts by completing the Work or any portion thereof by using Contractor's own resources or hiring other contractors, at the expense of Subcontractor.

Subcontractor shall give timely notices to authorities pertaining to the Work and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Work.

Contractor shall not be liable to Subcontractor for any delay, disruption, or interference to the Work caused by the act, omission, neglect or default of the Owner or its respective contractors, subcontractors, sub-subcontractors, materialmen and suppliers, or by any other cause beyond Contractor's direct control; provided, however, Contractor will advance any just claim Subcontractor has pursuant to paragraphs 10 and 29 of this Subcontract. Subcontractor shall be entitled to such extensions of time as Contractor may receive from the Owner, to the extent they are applicable to Subcontractor's Work, and to no other extensions of time for delays beyond Contractor's control. Subcontractor shall not be entitled to and shall make no other claim for damages, including but not limited to direct, consequential or incidental damages, arising out of or relating to delays, disruptions, suspensions, accelerations, inefficiencies, or impacts upon the Work. Subcontractor shall be bound to Contractor by the same liquidated damages provisions under the Prime Contract, if any.

**10. Changes; Impacts.** When Contractor orders changes to the Work in a writing signed by Contractor's Authorized Representative, Subcontractor, without nullifying this Subcontract, shall make any and all changes in Subcontract Work, which are within the general scope of this Subcontract, whether additive or deductive, irrespective of the root of such change. Upon receipt of a request for change issued by the Owner or Contractor, or if Subcontractor becomes aware of any event or circumstance which Subcontractor believes necessitates a change in the Subcontract Price, Work Schedule, or any other provision of the Subcontract, Subcontractor shall, within seven (7) days of receipt of such written order or the occurrence of such event or circumstance, and in any event ten (10) days before Contractor must provide notice and documentation under the Prime Contract, submit a written request to Contractor for an adjustment to the Subcontract Price, Work Schedule or other provision of the Subcontract which Subcontractor believes is affected thereby. Subcontractor's written request shall include documentation sufficient to enable Contractor to determine the factors necessitating the adjustment(s) being requested, including without limitation a price breakdown itemized as requested by Contractor and in sufficient detail to permit an analysis of all material, labor, equipment, costs, and information in sufficient detail to permit an analysis of the proposed adjustment to the Subcontract. Subcontractor shall not claim and

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shall not be entitled to any time extension, cost reimbursement, compensation or damages for any change, delay, disruption or interference to the Subcontract Work except to the extent that Contractor is entitled to and has secured a corresponding time extension, cost reimbursement, compensation or damages from the Owner under the Contract Documents and applicable law.

Upon receipt of the documentation from Subcontractor, Contractor shall review the request and, to the extent the request for change involves the Owner, submit such request for change on behalf of Subcontractor. Contractor, provided an adjustment is warranted, will issue to Subcontractor a written change order on the form of Exhibit G to this Subcontract adjusting the Work, Subcontract Price, Work Schedule and/or other provision of the Subcontract, to become effective by the signatures of Subcontractor and Contractor's Authorized Representative ("Change Order"). The executed Change Order shall be the full and final adjustment with respect to the event or circumstance prompting or giving rise to any change in Subcontract Price, Work Schedule, or any other provision of the Subcontract including all direct, indirect or cumulative impacts howsoever arising or occurring.

All changes in the Work authorized by Change Order shall be performed under the applicable conditions of the Contract Documents. No extra work or Change Orders under this Contract or payment obligation will be due, become due, or will be recognized or paid by Contractor unless, before said additional work or material is furnished and Contractor's Authorized Representative and Subcontractor execute a written Change Order. Timesheets, work tickets, field documents or other related Subcontractor documents, irrespective of whether signed by Contractor's on-site personnel, project management, or any Contractor employee, agent, consultant or other individual other than Contractor's Authorized Representative, shall not constitute a Change Order hereunder, shall neither modify nor alter any term of this Subcontract, or its terms, nor serve as a course of dealing to modify this Subcontract, and shall serve only to acknowledge performance of work. No individual or entity has any authority to order work or changes on behalf of Contractor other than Contractor's Authorized Representative. Notwithstanding anything contained herein to the contrary, Contractor's receipt of compensation from Owner for extra work, changed work or changed circumstance from the Prime Contract shall be a condition precedent to Subcontractor's right to payment for the same. Subcontractor will be bound by the decisions of Owner regarding any extended time of performance applicable to a change, if any.

If any change reduces the quantity of the Work, Subcontractor shall not make any claim for, and shall not be entitled to, loss of anticipated profit.

Where Contractor performs work or supplies equipment or materials on Subcontractor's account, back-charges do not require and will not necessarily result in a formal written amendment or require agreement and will be billed at net costs plus a management fee of 20%. Net costs is defined as the cost of all labor, materials, tools, equipment, insurance and taxes.

**11. Subcontractor's On-Site Presence.** Before performing any Work at the Site, each employee of Subcontractor or Subcontractor's lower tier subcontractors or suppliers must report in-person to Contractor's Authorized Representative or his designee. Subcontractor shall maintain at the Project a superintendent, foreman or other such representative and such individual, by such placement, is hereby authorized to make agreements for or otherwise act on behalf of Subcontractor. Subcontractor shall attend any and all meetings for which Contractor requests Subcontractor's presence. Subcontractor shall not place signs of any kind upon the Site without Contractor's prior written approval.

**12. Contractor Furnished Materials.** All equipment, supplies, materials and other items furnished by Contractor or Owner ("Contractor Furnished Materials"), if any, as part of the Work will be installed or incorporated into the Work at the expense of Subcontractor, unless otherwise indicated herein. Subcontractor shall verify the quantity and condition of such Contractor Furnished Materials when delivered to it, acknowledge receipt thereof in writing to Contractor, and immediately report any damage or shortage to Contractor. Title to Contractor Furnished Materials shall at all times remain with Owner or Contractor, as the case may be. Subcontractor, upon delivery and acceptance of any Contractor Furnished Material, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto.



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**13. Protection of Persons and Property.** Subcontractor shall comply in all respects with any safety policies and/or obligations demanded of Contractor in the Prime Contract. Without limiting and only in addition to the foregoing, Subcontractor agrees to the remaining obligations in this section and will, at all times, alone be responsible for the safety and well-being of its employees, for its work and for complying with all applicable laws, ordinances, codes and regulations in connection with the Work to be performed hereunder, including those relating to safety of all persons and property even if Contractor or Owner have implemented any safety program or regulations at the project or jobsite.

Subcontractor shall take all reasonable precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to: (i) individuals at the Project and other persons who may be affected thereby; (ii) all Work and all materials and equipment to be incorporated therein; and (iii) other property at the Site or adjacent thereto. Subcontractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. Subcontractor shall notify Contractor immediately following any accident or illness and promptly confirm the notice in writing. Subcontractor shall be liable to Contractor for and will promptly remedy all damage or loss to any property caused in whole or in part by Subcontractor, or anyone directly or indirectly employed by Subcontractor, or by anyone for whose acts Subcontractor may be liable.

Until such time as the Work is completed and finally accepted by Contractor, Subcontractor shall bear the risk of loss for damage to, or loss or destruction of the Work, and such materials or equipment, and Subcontractor shall, at its expense, repair or replace to Contractor's satisfaction, all damage to, or loss or destruction of, the Work or such materials or equipment which results from any cause whatsoever.

Subcontractor shall implement, communicate and enforce a policy designed to ensure the safety of all workers on the Site and complies with all federal, state and local safety statutes, regulations, ordinances, rules and codes governing the Work. Subcontractor shall defend, indemnify and hold Contractor harmless from and against fines and penalties imposed upon or affecting Contractor resulting from, relating to or concerning Subcontractor's Work and/or Subcontractor's failure to comply with applicable safety laws, ordinances or regulations. Contractor may deduct the amounts of any unpaid penalties, fines or fees, along with any attorneys' fees or costs incurred by Contractor, from amounts otherwise due Subcontractor.

Subcontractor shall comply with all applicable laws, ordinances, codes and regulations related to hazardous substances, including the provision of Material Safety Data Sheets for all hazardous substances brought onto the Site by Subcontractor or any of its sub-subcontractors, materialmen, suppliers, or agents. In the event Subcontractor causes hazardous substances to be brought to the Site, through Subcontractor's own acts or omissions or those of its sub-subcontractors, materialmen, suppliers, or agents or any other person for whom Subcontractor is responsible, Subcontractor shall further provide any additional precautions needed to protect individuals that may be affected by such hazardous substances.

No materials, appliances, supplies or equipment delivered for the benefit of the Project may be removed from the job site without Contractor's prior written consent.

Subcontractor agrees to perform all patching of any character arising from Subcontractor's Work. Any failure in this regard may be performed or supplemented by Contractor at Subcontractor's expense. Prior to undertaking any cutting or drilling operations, Subcontractor shall verify that no structural or other damage will be caused by the cutting or drilling process. No structural member shall be cut or drilled without prior written approval from Contractor.

**14. Duty to Facilitate Jobsite Communications for Non-English-Speaking Individuals.** In addition to and without limiting or modifying Subcontractor's performance and safety-related obligations in this Subcontract and the Contract Documents, Subcontractor has a duty to facilitate jobsite communications involving Subcontractor, its employee and its

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agents. If Subcontractor chooses to employ and/or rely upon individuals who Contractor reasonably believes cannot adequately comprehend written and spoken English so as to promote a safe work environment, Subcontractor shall, at all times that such non-English speaking individual(s) are present on the jobsite, maintain, at Subcontractor's expense, a translator at the Site who can interpret to and from English the language spoken or understood by such non-English speaking individual(s). This requirement is a matter of job-site safety and Subcontractor is free to employ any such individual so long as the conditions herein are consistently met.

**15. Immigration Law Compliance.** Subcontractor shall employ only United States citizens and aliens who are authorized to work in the United States and shall not unlawfully discriminate on the basis of citizenship or national origin. Subcontractor acknowledges and agrees that in compliance with the Immigration Reform and Control Act of 1986, each new employee of Subcontractor, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility. Subcontractor agrees to require that all sub-subcontractors and lower tier contractors be subject to the same terms of the Contract Documents regarding immigration law compliance.

**16. Drug-Free Workplace.** Contractor and Subcontractor are committed to providing all workers a drug-free workplace. To ensure a drug-free workplace, all individuals working on-site on behalf of Subcontractor (whether directly employed by or retained by Subcontractor or one of its lower tier contractors) shall participate in a program of both annual and random drug-testing. Each employee working on-site on behalf of Subcontractor (whether directly employed by or retained by Subcontractor or one of its lower tier contractors) must be able to produce proof, upon Contractor's request, demonstrating: (a) that the employee is tested on an annual basis by a facility approved by the National Institute for Drug Abuse ("NIDA"), (b) that the employee, within the 12 month period preceding the request, was tested by a NIDA-approved facility and was determined to be free of illegal substances, (c) that the employee has agreed to submit to random drug testing by a NIDA-approved testing facility upon not more than three business days' prior notice to the employee, and (d) that the employee has not refused a request for random drug testing.

Contractor is subject to random audits for documentation proving this commitment to a drug-free workplace. If Subcontractor cannot produce adequate documentation proving all employees working on-site on its behalf have fulfilled the above testing obligation and Contractor suffers a monetary penalty or fine as a result, Subcontractor agrees to indemnify and hold Contractor harmless from any such monetary penalty or fine and further agrees that Contractor may deduct the costs of any such monetary penalty or fine from funds otherwise due Subcontractor hereunder.

**17. Clean up.** Subcontractor shall clean and continuously keep its portion of the Project and surrounding area clean and free of debris, including, but not limited to, regularly removing construction trash, waste and debris, and the removal of all dirt and mud from any and all roadway surfaces both on the Site and at the Site's ingress and egress points. Upon Substantial Completion of the Work, or any portion of the Work, Subcontractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or that portion of the Project for its intended use. If Subcontractor fails to clean up as provided herein, Contractor may withhold, back-charge or otherwise recover from Subcontractor all resulting cleanup costs incurred.

**18. Right of Occupancy.** Whenever it may be useful or necessary to do so, Contractor or Owner shall be permitted to occupy and use any portion of the Work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by the Owner, but such use or occupation shall not relieve Subcontractor of its warranty of said Work and materials nor of its obligation to make good at its own expense any defect in materials and workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner; provided, however, that Subcontractor shall not be responsible for any damage thereto that is due to or caused by the negligence of Contractor or Owner during such period of use.

## **Exhibit B – Terms and Conditions of Subcontract**

**19. Conduct.** Subcontractor's employees, agents, contractors, subcontractors, representatives, persons, and/or supervisors who are or may be involved in the performance of the Work ("Subcontractor Personnel") shall conduct themselves in a manner that is lawful, courteous, businesslike and respectful of all others. Subcontractor Personnel shall not utilize any constructed or partially constructed improvements for personal use.

**20. Assumption of Liability.** Subcontractor shall be responsible to Contractor for the consequences of Subcontractor's acts and omissions as well as that of Subcontractor's Personnel, its agents, assigns and other persons arising from or relating to the Work. Subcontractor agrees to assume entire responsibility and liability for all damages or injury to all persons, and to all property, arising out of or in any manner connected with execution of the Work under this Subcontract including suits and claims occurring both prior to and subsequent to the completion of Subcontractor's Work

In addition to other duties expressed herein or existing in law, and to the fullest extent permitted by law, Subcontractor shall retain the services of a duly licensed attorney experienced in the area of construction law acceptable to Contractor to defend (at Subcontractor's expense) and shall assume the liability of Owner, Contractor, their respective agents and employees, and any other parties which Contractor has agreed to defend or assume liability for in the Contract Documents, (collectively, "the Defended Parties") from and against and shall reimburse Contractor with respect to all claims, suits, losses, causes of action, damages, liabilities, fines, penalties and expenses, including attorneys' fees, arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense (1) is or is alleged to be attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and (2) is caused or is alleged to have caused in whole or in part by any act or omission of Subcontractor or any of Subcontractor's subcontractors, anyone directly or indirectly employed by any of them or for anyone for whose acts any of them may be liable, regardless of whether it is caused in part by any of the Defended Parties. Where one or more of the Defended Parties are alone the cause of the liability claimed, Subcontractor shall have no responsibility herein; Subcontractor shall have no responsibility for the willful misconduct of any of the Defended Parties. Where work is performed in jurisdictions governed by statutes strictly limiting Subcontractor's obligation in this section, this provision shall be severable and the Subcontractor's obligation shall be limited so as to conform to the governing statute(s) but in all other jurisdictions the Subcontractor's obligation shall be construed to the fullest extent permitted by governing law as expressed in this section. Where the damage, loss or expense is covered by insurance maintained by Contractor or Owner and Contractor is responsible for any insurance deductible, such deductible is a cost to be covered by Subcontractor's obligation.

Subcontractor's obligation in this section of the Subcontract shall not be construed to negate, abridge, or otherwise reduce any other right or obligation which would otherwise exist as to any party or person described in the Contract Documents. The obligations to defend and pay for any such costs as stated in this section shall not be restricted in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any of Subcontractor's Personnel or of any third party to whom Subcontractor sub-subcontracts all or part of the Work.

Subcontractor shall ensure that its sub-subcontractors of every tier are also obligated to defend Contractor, Owner and any other persons that Contractor is required to defend or assume liability for under the Contract Documents and reimburse Contractor to the same extent that Contractor is required to defend or assume liability for such persons.

**21. Insurance.** Subcontractor shall procure and maintain the insurance coverage required by the Contract Documents and the Subcontract. Subcontractor's required insurance must be in effect before Subcontract Work commences and must remain in effect through the longer of the warranty period expressed in the Contract Documents or the time period provided in the Subcontract. Subcontract Work on the Site may not begin, nor will any payment be due to Subcontractor until Subcontractor has secured such insurance and delivered to Contractor a certificate of insurance fulfilling the requirement(s) expressed in the Contract Documents and/or the Subcontract. Failure to secure and

## Exhibit B – Terms and Conditions of Subcontract

maintain the insurance identified in the Contract Documents and/or the Subcontract or provide contractually required notices will be a material breach of this Subcontract. Any delays or related effects associated with failure to deliver the required documentation will be borne by Subcontractor alone. In no event shall Contractor's failure to receive endorsements or certificates of insurance be construed as a waiver of the Subcontractor's obligation to obtain and provide (or cause to be obtained or provided) insurance coverages required by the terms of the Contract Documents and/or the Subcontract. Failure of Contractor to demand any endorsement, certificate of insurance, or other evidence of full compliance with the insurance requirements set forth in either the Contract Documents or the Subcontract, or failure of Contractor to identify a deficiency in any endorsement or certificate or evidence provided, shall not be construed as a waiver of the Subcontractor's obligation to maintain (or cause to be maintained) the insurance required under the Contract Documents and/or the Subcontract. Contractor's receipt or acceptance of any endorsement or certificate of insurance shall not constitute approval or agreement by Contractor that the insurance requirements under the Contract Documents and/or the Subcontract have been met or satisfied or that the insurance policies referenced in the certificates of insurance comply with any such insurance requirements.

To the fullest extent permitted by law, Subcontractor, for itself and on behalf of its insurers waives all rights of subrogation against Owner and Contractor, their agents and employees, as respects loss, damage, claims, suits or demands howsoever caused: (a) to real or personal property, vehicles, equipment and tools owned, leased or used by Subcontractor or Subcontractor's employees, agents, sub-subcontractors, materialmen and suppliers; and (b) to the extent such loss, damage, claims, suits or demands are, or should be, afforded coverage by the Subcontractor's insurance maintained as required by this Subcontract or any other insurance (except professional liability to which this requirement does not apply) maintained by Subcontractor. This waiver shall apply to all first party property, equipment, vehicle and worker's compensation claims, and to all third-party liability claims. This waiver shall apply to all deductibles, retentions or self-insured layers applicable to the required or any other insurance maintained by Subcontractor. If necessary, Subcontractor agrees to endorse the required insurance policies to permit waivers of subrogation in favor of Contractor and Owner. Subcontractor further agrees to hold harmless and indemnify Contractor and Owner for any loss or expense incurred as a result of Subcontractor's failure to obtain such waivers of subrogation.

Material suppliers and equipment suppliers contracted by Subcontractor, if delivering to jobsite, must adhere to the insurance requirements herein.

Without any obligation to do so, should Contractor become aware of Subcontractor's failure to procure or maintain the insurance required by this Subcontract, Contractor may obtain such insurance on Subcontractor's behalf and deduct from payment(s) otherwise due and owing those amounts expended in obtaining the required insurance policies.

**22. Termination for Convenience.** Contractor may terminate this Subcontract at any time for its convenience and without cause by providing written notice to Subcontractor. Within three (3) days of notification of termination, this Subcontract shall be terminated, and Subcontractor shall immediately stop Subcontract Work, follow all of Contractor's instructions and mitigate all costs. In the event of a termination for convenience Contractor's liability to Subcontractor shall be limited to the extent of Subcontractor's proven costs for Work performed on-site and accepted by Owner. Subcontractor shall not be entitled to overhead or profit on Work not executed.

**23. Termination for Cause.** If at any time Subcontractor: (a) fails or refuses to supply sufficient labor, materials, tools, equipment or supervision; (b) fails or refuses to perform the Work promptly and diligently; (c) fails to meet the Work Schedule; (d) causes delay, disruption, interference or stops the work of Contractor or any other contractors; (e) fails or refuses to perform any of its obligations under this Subcontract; (f) commits an act or omission that is a breach or default of this Subcontract; or (g) becomes bankrupt, insolvent, or goes into liquidation (either voluntarily or under an order of a court of competent jurisdiction), or makes a general assignment for the benefit of creditors, or otherwise evidences financial incapacity; then in any of such events, each of which shall constitute a material default under this Subcontract, Contractor shall have the right, in addition to all other rights and remedies provided under this Subcontract or by law, after three (3) days' written notice to Subcontractor: (1) to order Subcontractor to add manpower or to work

## Exhibit B – Terms and Conditions of Subcontract

overtime or additional shifts at no additional cost to Contractor or Owner; (2) to delay payment of all or part of the Subcontract Amount until Subcontractor conforms to the Work Schedule; (3) to take over and perform through Contractor, or through third parties selected by Contractor, the Work until, in Contractor's judgment, Subcontractor's default has been cured, and deduct from the Subcontract Amount the cost thereof plus a management fee of twenty percent (20%), which is a fair reimbursement of Contractor's resources to manage Subcontractor's obligations and not a liquidated damage; (4) to augment Subcontractor's forces with additional labor, service and materials until, in Contractor's judgment, Subcontractor's default has been cured and deduct from the Subcontract Amount the cost thereof plus a management fee of twenty percent (20%); and/or (5) to terminate all or any portion of Subcontractor's right to proceed under the Subcontract and to enter upon the premises and take possession, for the purpose of completing that portion of the Work affected by such termination, of all Subcontractor's records, drawings, documents, materials, tools and equipment and all other items relating to that subject portion of the Work, including materials stored off-site for use in completing the Work. In case of such termination of Subcontractor, Subcontractor shall not be entitled to receive any further payment under this Subcontract with respect to such portion of the Work until that portion of the Work shall be wholly completed to the satisfaction of Contractor and Owner, and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the cost and expense incurred by Contractor in completing said portion of the Work, such excess shall be paid by Contractor to Subcontractor as set forth below; but if such cost and expense shall exceed such unpaid balance, then Subcontractor shall pay the difference to Contractor as set forth below. Such cost and expense shall include not only the cost of completing said portion of the subject portion of the Work to the satisfaction of Contractor and Owner, and of performing and furnishing all labor, services, materials, equipment, and other items required therefore, but also all losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements sustained, incurred or suffered by reason of or resulting from Subcontractor's default. If the unpaid balance of the Subcontract Amount exceeds the cost incurred by Contractor, plus a management fee of twenty percent (20%), and no claims arising from the Work are threatened or pending, Subcontractor will be paid the excess less any amounts Subcontractor owes Contractor for any other project, conditioned upon Contractor's receipt of such payment from Owner; but if such cost plus the 20% management fee exceeds the unpaid balance, then Subcontractor shall pay the difference to Contractor within ten (10) days of written demand by Contractor.

In addition to the costs specified in the immediately preceding paragraph, Contractor may deduct from the Subcontract Amount and/or otherwise recover from Subcontractor an amount sufficient to indemnify and hold Contractor harmless from any loss or liability arising out of the Work or other involvement in the Project, including, but not limited to, the costs of any claims by others resulting from Subcontractor's acts or omissions including any judgment or award to or settlement with the claiming party and reasonable attorneys' fees and disbursements incurred defending or resolving such claims.

In the event it is determined that Contractor wrongfully terminated Subcontractor for cause, then the termination shall be treated as a termination for convenience and Subcontractor's remedy shall be as described in paragraph 22 of this Subcontract.

**24. Labor Relations; Prevailing Wage.** Subcontractor agrees to be bound by and comply with all applicable federal, state and local laws and regulations bearing on labor or employment such as the payment of prevailing wage, including but not limited to all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act, the federal Family and Medical Leave Act, and the Affordable Care Act. Subcontractor shall indemnify, defend and hold Contractor harmless from and against, all claims, suits, losses, causes of action, damages, liabilities, taxes, fines, penalties and expenses, including attorneys' fees, arising from or related to Subcontractor's failure to comply with applicable law.

Subcontractor agrees to be bound by and comply with all the terms and conditions of the labor agreements listed in the Prime Contract or identified as an Exhibit of this Subcontract to the same degree and extent as if Subcontractor were a party to those agreements, including payments into the employee benefit trust funds required by the labor agreements, and including Subcontractor's submission to, and Subcontractor's compliance with, the arbitration and

## Exhibit B – Terms and Conditions of Subcontract

other dispute resolution requirements of the labor agreements. Subcontractor agrees to comply with the terms and provisions contained in such agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of any labor agreements listed in the Prime Contract or any Exhibit of this Subcontract may require that Subcontractor comply with additional labor agreements with unions affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) but not listed in the Prime Contract or any Exhibit. If the terms and conditions of the listed labor agreements so require, Subcontractor shall perform the Work pursuant to all terms and conditions of the labor agreement with a union affiliated with the AFL-CIO.

Subcontractor accepts the duty to maintain harmony between labor groups. In the event of a strike, stoppage or other disruption of any work at the Project resulting from a dispute involving or affecting the labor employed by Subcontractor or its sub-subcontractors, Contractor may immediately terminate this Subcontract. Where Contractor terminates Subcontractor under this provision, Contractor shall compensate Subcontractor for the value of the labor and material theretofore furnished or delivered to the Site proportioned upon the Subcontract amount, but Subcontractor will not be paid and shall not be entitled to incidental or consequential damages, compensation for prospective profits on portions of the project not performed or any costs associated with materials not furnished to the Site.

**25. Disadvantaged, Minority, Women, Disabled Veteran, Business Enterprises.** Subcontractor hereby acknowledges that it is familiar with all DBE/MBE/WBE/DVBE requirements pertaining to the Project. If Subcontractor claims status as a DBE/MBE/WBE/DVBE Subcontractor shall take all steps necessary and shall make all necessary records available to Contractor and Owner to assure that Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of Subcontractor is designated as or is required to be a DBE/MBE/WBE/DVBE, Subcontractor agrees to be responsible for insuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/MBE/WBE/DVBE and that misrepresentation of the status of Subcontractor or any of its sub-subcontractor or material suppliers is a material breach and grounds for immediate termination of this Subcontract. Subcontractor shall save, hold harmless, indemnify and defend Contractor from any and all loss, liability, claims, demands, suits at law or in equity, judgments (including attorneys' fees and court costs) and awards, arising out of or related to Subcontractor's not having or losing the DBE/MBE/WBE/DVBE status it represented it possessed.

**26. Contractor's Equipment.** In consideration of Contractor leasing or expressly or impliedly granting the use, from time to time, to Subcontractor of certain construction equipment (including, but not limited to, machinery, tools, scaffolds, ladders, planks, trench shoring, lifts, hoists or similar items, (hereinafter referred to as "Leased Equipment") to be used in connection with and on the Project (notwithstanding the fact that such equipment may or may not be so furnished to Subcontractor with an operator paid by Contractor, and further, notwithstanding the fact such Leased Equipment from time to time may or may not be owned, but rather, leased by Contractor);

(A) Subcontractor agrees to save, hold harmless, and indemnify Contractor from and against any and all loss, liability, claims, demands, suits at law or in equity, and judgments (including attorneys' fees and court costs) and awards, regardless of their respective merits, on account of any loss or damage to the person or property which may fall upon or be alleged against Contractor and which may have been caused in whole or in part or in connection with the leasing or use of the Leased Equipment on the Project by Subcontractor or its agents, notwithstanding said claim or injury occurred because of a latent or patent defect in said Leased Equipment.

(B) Contractor makes no warranties, express or implied with respect to the Leased Equipment, nor has it made an inspection of the Leased Equipment.

(C) Subcontractor hereby assumes all damage, loss, liability or injury, or the risk thereof, to the property and equipment of Contractor from all causes whatsoever in connection with operation of the Leased Equipment.

## Exhibit B – Terms and Conditions of Subcontract

(D) Subcontractor agrees to maintain and carry, at its sole cost, insurance for Contractor's Equipment as provided in Exhibit F and as necessary to provide adequate liability, physical damage, public liability, property damage and casualty insurance for the full replacement cost of the Leased Equipment and other liabilities which are Subcontractor's responsibility when using Leased Equipment.

**27. Patents and Royalties.** Subcontractor shall pay all royalties and patent license fees applicable to Subcontractor's Work. Subcontractor agrees to indemnify and hold harmless Owner and Contractor from and against any and all loss, liability, damages and expenses (including cost of defense, settlement, legal fees and disbursements) arising out of claims or litigation on account of infringement or alleged infringement of any letters patent or patent rights by reason of the Work or any product used by Subcontractor.

**28. Independent Contractor.** Subcontractor is an independent contractor of Contractor. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. Subcontractor has no authority to bind Contractor or create obligations on the part of Contractor. Subcontractor shall, at its sole cost and expense, and without increase in the Subcontract Amount, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work; obtain all necessary permits and licenses therefor; pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment.

**29. Claims and Dispute Resolution.** If Subcontractor becomes aware of an act or omission of Contractor which would give rise to a breach of contract action or other claim for monetary damages from Contractor or Owner, Subcontractor shall, in addition to the procedures outlined in paragraph 10, notify Contractor within three (3) days after first becoming aware of such act or omission and in any event in sufficient time to allow Contractor to give notice to the Owner under the Contract Documents. Failure to give the notice required hereunder shall be deemed a waiver of the right to recover.

In case of any dispute between Contractor and Subcontractor, in any way related to or arising from any act or omission of the Owner or involving the Contract Documents, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner, by the terms of the Contract Documents, including, if applicable, waiver of the right to pursue a claim in a Court of competent jurisdiction in favor of alternative dispute resolution up to and including binding arbitration in lieu of litigation as described, and by any and all preliminary and final decisions or determinations made thereunder by the party, board or court so authorized in the Contract Documents or by law, whether or not Subcontractor is a party to such proceedings. In case of such dispute, Subcontractor will comply with all provisions of the Contract Documents allowing Contractor a reasonable time to analyze Subcontractor's claim and forward to Owner any required communications or documentation. Contractor will, at its option (1) present to the Owner, in Contractor's name, or (2) authorize Subcontractor to present to the Owner, in Contractor's name, all of Subcontractor's claims and answer Owner's claims involving Subcontractor's Work, whenever Contractor is permitted to do so by the terms of the Contract Documents. Contractor will further invoke on behalf of Subcontractor, or allow Subcontractor to invoke, those provisions in the Contract Documents for determining disputes. Nothing herein shall require Contractor to certify a claim under a government contract when it cannot do so in good faith. If such dispute is prosecuted or defended by Contractor, Subcontractor, at its own expense, agrees to furnish all documents, statements, witnesses, and other information required by Contractor and to pay or reimburse Contractor for all costs incurred by Contractor in connection with the dispute including attorneys' fees. Subcontractor is bound by the dispute resolution provisions of the Prime Contract and Subcontractor agrees to consolidation and joinder with any dispute involving Owner.

Any other claim, dispute or other matter in question arising out of or related to this Subcontract shall be resolved as follows. Contractor shall have a period of thirty (30) days from submission of the claim documentation within which to evaluate the claim and supporting documentation. Following the conclusion of the evaluation period, Contractor shall inform Subcontractor whether the dispute will either be negotiated or mediated as a condition precedent to further dispute resolution. If neither negotiation nor mediation is a successful means to resolve the dispute, it shall be litigated in a Court, before a Judge, without a jury. The parties irrevocably waive the right to trial by jury and submit to the

## Exhibit B – Terms and Conditions of Subcontract

jurisdiction of the state and federal courts in the County and Federal Judicial District where the Project is located as jurisdiction for resolution of the disputes hereunder. In all instances of dispute, Subcontractor shall continue performance of all obligations hereunder despite any dispute that may develop, and Subcontractor shall pay Contractor's costs and legal fees incurred enforcing or defending this Subcontract.

**30. Taxes.** Subcontractor shall be responsible for all sales tax, withholding taxes upon its agents and employees, FICA, unemployment compensation and any taxes upon the labor and materials furnished pursuant to the Subcontract.

**31. Lawful employees.** Subcontractor warrants that all of its employees and the employees of its sub-subcontractors, suppliers and materialmen are, and throughout the course of the Project will be, lawfully employed under all Federal, State and Local, laws, regulations, rules, orders, codes and ordinances.

**32. Non-discrimination.** Subcontractor shall fulfill the obligations of this Subcontract in a manner free from all forms of discrimination made unlawful or otherwise prohibited by or recommended against by governmental or quasi-governmental authorities having jurisdiction at the Project.

**33. No Waiver.** The failure of Contractor to insist, in any one or more instances, on the performance of any of the obligations required or rights granted under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

**34. Headings.** The headings used in this Subcontract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**35. Assignment and Subcontracting.** Neither this Subcontract nor any right, privilege or obligation hereunder shall be assigned, sublet, subcontracted or transferred in whole or in part by Subcontractor without prior written consent of Contractor, and any attempted assignment, subletting, subcontracting or transfer thereof without the written consent of Contractor shall be void.

Subcontractor must receive written approval from Contractor prior to subcontracting the Work or any portion thereof. The subcontracting of all or any part of the Work by Subcontractor shall not relieve Subcontractor from any of the obligations or conditions of this Subcontract. The acts and omissions of each sub-subcontractor and all persons either directly or indirectly acting for each sub-subcontractor shall be deemed to be the acts and omissions of Subcontractor, and Subcontractor shall remain liable and responsible to Contractor hereunder as if no subcontract had been made. Subcontractor shall bind all sub-subcontractors, materialmen and suppliers to the provisions of the Contract Documents applicable to the subcontracted Work.

**36. Choice of Law.** This Subcontract shall be construed, enforced, and performed in accordance with the laws of the state of where the Project is located without regard to that state's principles of conflicts of laws.

**37. Jointly Drafted.** The parties expressly agree that this Subcontract was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Subcontract shall be construed neither against nor in favor of either party due to it being considered the drafter.

**38. Sub-Subcontract / Lower-Tier Compliance.** Subcontractor agrees to require Subcontractor's sub-subcontractors and lower-tier contractors adhere to all requirements as stated herein.

**39. Owner Defined.** For purposes of this Subcontract the term "Owner" shall mean the Owner of the Project and, if Contractor is a lower tier contractor, "Owner" also refers to the higher tier contractors linking Contractor to the Project.



## **Exhibit B – Terms and Conditions of Subcontract**

**40. Counterparts.** This Subcontract may be executed in one or more counterparts each of which is deemed an original and together constitute one document. Contractor and Subcontractor covenant and agree that the signatures executing this Subcontract, provided by facsimile or electronic transmission, shall stand as and for the original, and Subcontractor and Contractor agree to be bound thereby.

**41. Entire Agreement.** This Subcontract reflects the complete and full agreement between the parties and there exist no other agreements or understandings, whether verbal or written. Subcontractor's bid, proposal other exclusionary or limiting language are not part of this Subcontract.

[The rest of this page is intentionally blank.]

**Exhibit C – Form of Subcontractor’s Affidavit**

State of \_\_\_\_\_ ) SS  
County of \_\_\_\_\_ ) SS

TO WHOM IT MAY CONCERN:

The undersigned, being duly sworn, deposes and states that:

1. [He/She] is the \_\_\_\_\_ of \_\_\_\_\_ (“Subcontractor”), the subcontractor retained by C.H. Garmong & Son, Inc. (“Contractor”) for construction services more fully detailed in a subcontract executed by Contractor and Subcontractor for \_\_\_\_\_ (the “Project”).

2. The table attached hereto as Schedule A and incorporated herein by reference constitutes a complete and accurate statement of: (a) the names of all sub-subcontractors, material providers, laborers and other parties who have furnished or will furnish labor, services, material, fixtures, apparatus machinery, forms of form work on account of the Project and all parties having contracts or subcontracts for specific portions of the Project or for material entering into the construction thereof (each a “Subcontractor”); (b) the addresses of all Subcontractors; (c) the original amount due to each Subcontractor pursuant to its subcontract, (d) the revised amount due to each Subcontractor pursuant to its subcontract following any and all approved change orders, (e) the total amount paid to each Subcontractor pursuant to its subcontract through and including the date hereof, and (f) the total amount due or that may become due to each Subcontractor in connection with the Project following the date hereof.

3. There are no other contracts relating to the Project except as noted above, and there is nothing due or to become due to any person for labor, services, material, fixtures, apparatus machinery, forms of form work or other work of any kind or nature done upon, or in connection with, the Project other than stated in Schedule A.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SUBSCRIBED and SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**Exhibit C – Form of Subcontractor’s Affidavit**

Schedule A to Subcontractor Affidavit

Name of Contractor/Vendor	Address	Original Amount Subcontract/PO	Amended Amount	Total Amount Paid	Balance Due

[The rest of this page is intentionally blank.]

**Exhibit D – Form of Partial Waiver of Lien**

PARTIAL WAIVER

“Subcontractor/Vendor”

“Project:”

“Owner”

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

This Partial Waiver is made by Subcontractor/Vendor as of the date indicated below, a subcontractor or supplier to C.H. Garmong & Son, Inc. (“Contractor”), in connection with construction of improvements for and to the Project.

1. Subcontractor/Vendor represents that the following are true and accurate statements concerning the price of, and payments received for, the work, labor, services, materials, supplies and/or equipment performed and/or furnished by or on behalf of Subcontractor/Vendor in connection with the Project (“Work”):

Date of the current application for payment:	_____	“Application Date”
Total of All Payments Previously Received:	\$ _____	
Current application for payment:	\$ _____	“Requested Payment”
Unpaid retainage	\$ _____	“Accrued Retainage”

2. Subcontractor/Vendor represents that it has received full and final payment for all Work performed or furnished on or before the date of the most recently submitted Partial Waiver (the “Paid-Through Date”), if any, except for Accrued Retainage. Vendor hereby unconditionally waives, releases and forever discharges the Project, Owner, general contractor (if one exists), the Contractor, and their respective owners, parent companies, affiliates, successors, assigns, agents, employees, lenders and sureties (hereinafter “Releasees”) of and from all causes of action, suits, debts, accounts, bonds, contracts, promises, damages, liens, encumbrances, judgments, claims and demands whatsoever, in law or equity, known or unknown, accrued or unaccrued, which Subcontractor/Vendor ever had, now has or might hereafter have ( hereinafter “Claims”), that are in any way connected with or related to Work performed or furnished on or before the Paid-Through Date, without waiving Subcontractor’s/Vendor’s claim for payment of Accrued Retainage.

3. Subcontractor/Vendor seeks the Requested Payment as all amount due for all Work performed during the period between the Paid-Through Date and Application Date (the “Applicable Payment Period”). Conditioned only on the receipt of the Requested Payment, Vendor hereby waives, releases and forever discharges the Releasees of and from all Claims that are in any way connected with or related to Work performed or furnished before or during the Applicable Payment Period, without waiving Subcontractor’s/Vendor’s claim for payment of Accrued Retainage.

4. Vendor represents that it has fully paid all employees, sub-subcontractors, suppliers and others entitled to payment for Work performed or furnished before Paid-Through Date. To the greatest extent permitted by law, Subcontractor/Vendor agrees to defend, indemnify and hold harmless the Releasees from and against all Claims that are in any way connected with or related to Work performed or furnished by or on behalf of Subcontractor/Vendor.

**SUBCONTRACTOR/VENDOR**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

State of:

County of:

SUBSCRIBED and SWORN before me the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_, who is personally known to me.

\_\_\_\_\_  
Name:  
Notary Public

My commission expires: \_\_\_\_\_

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**Exhibit E – Form of Final Waiver of Lien**

FINAL WAIVER

“Subcontractor/Vendor:” \_\_\_\_\_  
“Project:” \_\_\_\_\_  
“Owner” \_\_\_\_\_

This Final Waiver is made by Subcontractor/Vendor as of the date indicated below, a subcontractor or supplier to C.H. Garmong & Son, Inc. (“Contractor”), in connection with construction of improvements for and to the Project.

1. Subcontractor/Vendor represents that the following are true and accurate statements concerning the price of, and payments received for, the work, labor, services, materials, supplies and/or equipment performed and/or furnished by or on behalf of Subcontractor/Vendor in connection with the Project (“Work”):

Date of the current application for payment: \_\_\_\_\_ “Application Date”  
Total of All Payments Previously Received: \$ \_\_\_\_\_  
Current application for payment: \$ \_\_\_\_\_ “Requested Payment”

2. Subcontractor/Vendor represents that it has received full and final payment for all Work performed or furnished except for Requested Payment. Vendor hereby unconditionally waives, releases and forever discharges the Project, Owner, general contractor (if one exists), the Contractor, and their respective owners, parent companies, affiliates, successors, assigns, agents, employees, lenders and sureties (hereinafter “Releasees”) of and from all causes of action, suits, debts, accounts, bonds, contracts, promises, damages, liens, encumbrances, judgments, claims and demands whatsoever, in law or equity, known or unknown, accrued or unaccrued, which Subcontractor/Vendor ever had, now has or might hereafter have (“Claims”), that are in any way connected with or related to the Project, without waiving Subcontractor’s/Vendor’s claim for the Requested Payment.

3. Subcontractor/Vendor seeks the Requested Payment as all amount due for all Work performed for the Project. Conditioned only on the receipt of the Requested Payment, Subcontractor/Vendor hereby waives, releases and forever discharges the Releasees of and from all Claims that are in any way connected with or related to the Project.

4. Subcontractor/Vendor represents that it has fully paid all employees, sub-subcontractors, suppliers and others entitled to payment for Work performed or furnished for or to the Project. To the greatest extent permitted by law, Subcontractor/Vendor agrees to defend, indemnify and hold harmless the Releasees from and against all Claims that are in any way connected with or related to Work performed or furnished by or on behalf of Subcontractor/Vendor.

**SUBCONTRACTOR/VENDOR**

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

State of:  
County of:

SUBSCRIBED and SWORN before me the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_, who is personally known to me.

\_\_\_\_\_  
Name:  
Notary Public

My commission expires: \_\_\_\_\_

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## Exhibit F – Insurance Requirements

**1. General Requirements.** Subcontractor shall, at its sole expense, maintain in effect at all times, as required under the Contract Documents, insurance coverage with limits not less than those required by the Contract Documents so as to protect the Project's owner, Contractor, and their respective employees, agents and invitees, from claims of any kind which may arise out of or result from Subcontractor's performance of the Work, whether performed individually or collectively by Subcontractor, any subcontractor or supplier of any tier, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. The stated limits of insurance required by this Exhibit are minimums only and it shall be the Subcontractor's exclusive responsibility to determine what additional limits are adequate, and the length of time the coverage shall be maintained, to fully meet its obligations under this Subcontract. The minimum limits may be basic policy limits or any combination of primary limits and umbrella limits. Subcontractor shall pay all deductibles and self-insured retention amounts associated with the required insurance. The amount of deductible and self-insured retention for the insurance coverage required by the Contracts Documents shall not exceed \$5,000 per occurrence. No form or endorsement shall be deemed equivalent to a form or endorsement specified herein unless Contractor determines that such form or endorsement is equivalent and acceptable. Subcontractor shall provide proof of coverage including, but not limited to, a current Certificate of Insurance upon request by Contractor. Subcontractor shall provide Contractor with written notice within three (3) business days of first knowing or having reason to know that any insurance required by the Contract Documents will expire, be cancelled or be modified. Subcontractor shall keep all coverages required hereunder for a period of three (3) years or for the statute of limitations or repose applicable to breach of contract and/or tort claims in the state in which the Project is located, whichever is longer.

**2. Standards.** Insurance coverage shall be procured from reputable insurers licensed to do business in the state in which the Project is located, and such insurers shall maintain a current A.M. Best rating of at least "A," a Financial Size Category of a "VII" or better, and being Treasury rated at a level satisfactory to Contractor. All insurance policies shall be of an "Occurrence" type except Professional Liability Insurance coverage. "Claims Made" type policies shall not be permitted otherwise.

**3. Certificates of Insurance.** Subcontractor shall furnish to Contractor evidence of the insurance coverage required to be maintained by the Subcontractor and its subcontractors hereunder, including Certificates of Insurance issued by the insurance carrier, prior to Subcontractor commencing performance of the Work. The Certificates of Insurance shall state that Contractor will be notified in writing thirty (30) days prior to a cancellation, material change, or non-renewal of insurance.

**4. Minimum Limits.**

a. Worker's Compensation Coverage A Statutory Benefits, in required statutory limits, and Coverage B Employers Liability limits of not less than \$1,000,000 for each occurrence, \$1,000,000 Disease for each occurrence, and \$1,000,000 Policy Limit covering: worker's compensation, disability benefit and other similar employee benefit acts applicable to the Work; the Umbrella Liability shall attach to Part Two of the Worker's Compensation Insurance; add NCCI form WC 00 003 13 or equivalent for subrogation waiver; Item 1.A. of the Information Page shall identify Project's state or Item 3.C. of the Information Page shall provide "All U.S. states and territories except North Dakota, Ohio, Washington, Wyoming, Puerto Rico, and the U.S. Virgin Islands and any state identified for Part One Coverage"; if the Project's state is not identified in Item 1.A of the Information Page, Subcontractor must cause its workers compensation carrier to notify in writing the agency charged with administration of the workers compensation program in the Project's state of Subcontractor's intentions to work in that state; endorsement for stop gap employers liability NCCI form WC 34 13 01 or its equivalent if Project is in Ohio or NCCI form WC 00 03 03C or its equivalent if Project is in North Dakota, Washington or Wyoming.

b. General Liability Insurance on an unmodified ISO form CG 00 01 10 01 or its equivalent of not less than \$1,000,000 for each occurrence, \$2,000,000 Aggregate, Premises, & Completed Operations, \$1,000,000 Personal and Advertising Liability, \$5,000 Medical Payments, \$100,000 Damage to Rented Premises covering: claims for damages because of bodily injury, sickness or disease, death of any person other than Subcontractor's employees; claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as result of an offense directly or indirectly related to employment of such person by Subcontractor, or (2) by another person; claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and claims involving contractual liability insurance application to the Subcontractor's obligation under this contract i.e., Subcontractor agrees to Indemnify and Hold Harmless leaseholder and landowner from any and all claims arising out of Subcontractor's operations under this Subcontract. The General Liability insurance shall not include a deductible or self-insured retention amount imposed on a per claim basis. The General Liability policy listed on the certificate to be supplied to Contractor, as this policy relates to the Work, shall not contain restrictive clauses which would limit the insurance based on the Work performed. Broad Form Contractual Liability Insurance, Completed Operations Liability Insurance, and Independent Contractors Coverage shall be provided under the General Liability policy for subcontractors. Subcontractors required Liability limits shall be endorsed such that any "Aggregate Limit" applies only on a "per project" basis by using CG 25 03 05 09 or its equivalent. The policy shall include the following as part of any exclusion for "your work": "This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf or by a subcontractor". The policy shall include the following unmodified ISO form endorsements or their equivalents: CG 20 01 04 13 Primary and Noncontributory

## Exhibit F – Insurance Requirements

Endorsement; CG 24 04 05 09 Waiver of Subrogation Endorsement; and CG 22 80 07 98 Contractor's Professional Liability. The policy shall not include any of the following ISO form endorsements or their equivalents: CG 22 43 Professional Liability; CG 21 39 Contractual Liability Limitation; CG 24 26 Amendment of Insured Contract Definition; CG 21 42 or CG 21 43 Explosion, Collapse and Underground Property Damage Hazard; CG 22 94 or CG 22 95 Damage to Work Performed by Subcontractors on Your Behalf; CG 21 44 Limitation of Coverage to Designated Premises or Project; any Construction Defect Completed Operations exclusion; and/or any over action or "third-party over action" exclusion.

c. Comprehensive Automobile Liability (Including coverage for liability arising out of owned, non-owned, and hired autos): Bodily Injury Liability, \$1,000,000 anyone accident/\$1,000,000 anyone occurrence; Property Damage Liability and Loss of use thereof, \$1,000,000 anyone occurrence. The policy must include Waiver of Subrogation, Additional Insured status in favor of Contractor and Owner, and Primary and Non-Contributory Liability endorsements.

d. Equipment (if lease, rent, borrow or use Contractor's equipment): Limits in an amount equal to or greater the full replacement cost of any such equipment. The policy shall include coverage for all rental expenses for replacing equipment damaged by a covered loss. The policy shall be primary and non-contributory.

e. Professional Liability: If the Work includes or requires the rendition of engineering, architectural, design or other professional services, Subcontractor shall secure and maintain Professional Liability Insurance. \$1,000,000 per claim or wrongful claim. The policy shall include an amended contractual liability exclusion so that the exclusions does not apply to liability assumed by the Insured under its standard service agreement. The policy shall also include amended bodily injury and property damage exclusion(s) so as to provide coverage for claims resulting from acts or omissions of the Insured in the performance of services where the act or omission was the proximate cause.

f. Contractor's Pollution Liability: Subcontractors performing site work, site utilities, roof, concrete, plumbing, mechanical, HVAC, drywall or EIFS Work shall secure and maintain Contractor's Pollution Liability Insurance coverage. \$1,000,000 minimum limits.

g. Umbrella Liability: \$2,000,000 combined single limit anyone occurrence in excess of and concurrent to the above policies. Aggregate limit of \$4,000,000. The policy shall include the following as part of any exclusion for "your work" under the umbrella policy: "This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf or by a subcontractor". The policy shall include an endorsement making the required limits such that any "Aggregate Limit" applies only on a "per project" basis. The policy shall include an endorsement making the umbrella liability policy primary and non-contributory after Subcontractor's General Liability Insurance policy limits or, if applicable and less, sublimits for a claim have been exhausted with Contractor's, Owners, and other parties own liability coverage remaining excess and non-contributory. The policy shall be no less broad than all coverages provided in this Exhibit and shall include a drop-down provision.

h. Subcontractor shall purchase such insurance as may be required for the protection of his own tools and construction equipment as he may desire. Contractor does not assume any liability for temporary tools and equipment of others, prior to starting work, Subcontractor shall require his insurance carrier or agent to complete and return to Contractor a Certificate of Insurance, in a form satisfactory to Contractor, evidencing the required Insurance coverages for subcontractors. However, Subcontractor's failure to provide such Certificate of Insurance prior to commencing work does not release Subcontractor from liability from any claims whatsoever and Subcontractor hereby agrees to release, defend and hold harmless Contractor for any liabilities arising from Subcontractor's Work during such time and until such date when Subcontractor provides said Certificate of Insurance, which shall be backdated to the date Subcontractor's Work commenced.

5. **Additional Insured.** Subcontractor shall provide Contractor with an additional insured endorsement on ISO form CG20 10 11 85 or on the combination of ISO Forms CG 20 10 10 01 and CG 20 37 10 01 identifying the Project and naming Contractor, Owner and any other parties Contractor is required to provide additional insured status to the contract between owner and contractor as Additional Insureds. Subcontractor shall also provide Contractor with an endorsement making the Contractor an additional insured under the Umbrella Liability policy for ongoing operations and completed operations hazard. If Subcontractor leases, rents, borrows or uses Contractor's equipment, Subcontractor shall provide Contractor with (1) an additional insured endorsement on ISO form CG 20 28 11 85 or its equivalent for the General Liability Policy and (2) an additional insured endorsement on the Contractor's Equipment policy, all naming Contractor as an Additional Insured. All additional insured endorsements required hereunder must make the Subcontractor's policies primary and non-contributory with the Contractor's, Owner's, and other parties' own liability coverage to be excess and non-contributory and further endorse or otherwise require the insurance company(ies) to give a minimum of 30 days' prior written notice to the Additional Insureds should any of Subcontractor's insurance policies be cancelled or renewal refused. Subcontractor shall provide a copy of all additional insured endorsement(s) required under this section prior to Subcontractor commencing performance of the Work.

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## Exhibit G – Form of Change Order

### Change Order

«CompanyName»  
 «CompanyAddress»  
 «CompanyCity», «CompanyState» «CompanyZip»

Distribution  «VendorName»  
 Office  
 Field  
 Other

Project: «Project»      «ProjectDescription»      Subcontract #: «SL»  
                                  «JobAddress»      Subcontract Change Order #: «SubCO»  
                                  «JobCity», «JobState», «JobZip»      «SubCODescription»  
 To (Subcontractor)      «VendorName»      Change Order Date: #: «SubCODate»  
                                  «VendorAddress»      Reference: «Reference»  
                                  «VendorCity», «VendorState»      Change Order Page: 24  
                                  «VendorZip»

**You are directed to make the following changes in this Subcontract**

Subet Item	Contract Item	Phase	Description	Units	U/M	Unit Price	Amount
«SLItem»	«Item»	«Phase»	«SLItemDescription»	«Units»	«U M»	«UnitCost»	«Amount»

- i. *Except as otherwise expressly provided herein, Subcontractor agrees to perform the work described above in accordance with all of the terms and conditions of the Subcontract.*
- ii. *Subcontractor's payment applications or invoices must show any charges for the work in this Change Order separately and identified by the Change Order number.*
- iii. *This Change Order represents the final adjustment for any and all amounts due or to become due to Subcontractor for the changes or work referred to herein. Subcontractor further releases all other claims, if any except those claims previously submitted in writing in strict accordance with the Subcontract) for additional compensation under the Subcontract, including without limitation any rights Subcontractor may have for additional compensation arising out of delays or disruption of Subcontractor's Work Schedule as may have arisen prior to the date of this Change Order.*
- iv. *All other terms of the Subcontract remain in full force and effect and are not modified or abrogated by this Change Order.*

Not valid until signed by both the Subcontractor and Contractor. Signature of the Subcontractor indicates the Subcontractor's agreement herewith, including any adjustment in the Subcontract Sum or Time.

The original Subcontract Sum was .....  
 The net change by previously authorized Change Orders was .....  
 The Subcontract Sum prior to this Change Order was .....  
 The Subcontract Sum will be increased by this Change Order .....  
 The new Subcontract Sum will be .....

**Authorized By Contractor:**  
 C. H. Garmon & Son, Inc.  
 3050 Poplar Street  
 Terre Haute, IN 47803

**Accepted By Subcontractor:**

By  
 Date

By  
 Date



## Exhibit H – Subcontractor Safety Responsibilities



### Subcontractor Safety Responsibilities

Garmong Construction Services maintains a safe and healthy work environment for our employees, subcontractors, and facility owners, we recognize OSHA and other federal safety regulations as minimum safety standards and reserve the right to raise the level of safety expectations to meet our performance goals. Many of our safety programs will demonstrate performance expectations above industry standards and we invite your participation in this increased effort. All parties involved will greatly benefit from this level of performance.

- Maintain Compliance with OSHA Safety Rules and Guidelines
- Adhere to all safety rules and procedures as outlined in the Garmong Company Safety Manual
- ***MANDATORY PPE – All jobsites require 100% hard hats, safety glasses, safety toe shoes, gloves and hi-visibility clothing***
- The safety manual is available on Garmong's Website: <http://garmong.net/about-us/job-site-safety/>

It is Garmong's top priority to ensure a safe and healthy work environment for our Owners, Employees and Subcontractors. It is our expectation that our Subcontractors will continue to closely monitor the coronavirus disease (COVID-19) situation in coordination with Federal, State and Local health officials. It is also our expectation that our Subcontractors will monitor their employees for any signs of illness, and prevent any employees who exhibit symptoms, or are ill in any form, from working on any Garmong jobsite.

If you have any questions, please do not hesitate to contact our office at 812-234-3714.

Garmong Construction Services

Brian Kooistra  
Chief Operations Officer