

{Logos.Logo}

{Date.Long Date}

{Company.Name}
{Addresses.DisplayAddress}

Please furnish us with the following:

1. Please print pages two (2) and eighteen (18) of the following contract, complete, execute and return two copies of each page to Congleton-Hacker Company via United States Postal Service. Congleton-Hacker Co. will countersign and return an original signature page for your files.
2. Have your insurance agent provide us with a copy of your Certificate of Liability Insurance for our files. This certificate must indicate coverages and the additional insured clause as specified on the attached subcontractors' minimum insurance requirements.
3. Request for Project Data Information (Exhibit D). The enclosed form must be completed, signed, and returned to Congleton-Hacker Co. By furnishing this information you are agreeing that we may contact the parties for the purpose of obtaining information relating to this project. The sole purpose for this request is the protection of our project from mechanics and similar type liens.
4. Information for Application for Payment (as Enclosed)
 - a. Summary of Application for Payment Form. The completion of this summary form will assist us in processing your invoices.
 - b. Payments Estimate Supplemental Information Form. This form must be completed and submitted along with your Application for Payment.
 - c. Subcontractor, Supplier or Vendor Affidavit and Waiver of Lien. Your suppliers and subcontractors (as listed on the previous Payment Estimate Supplemental Information Form) must submit this release for your previous invoice payments.
 - d. Subcontractor Affidavit and Waiver of Lien. You must submit this release for your previous invoice payments.
 - e. **Invoices and all accompanying documentation are to be emailed to invoice@congleton-hacker.com.**

We ask that Items No. 1, 2 and 3 be furnished to us within ten (10) days of the date of this letter.

We are pleased to be working with you on this project and assure you our fullest cooperation.

Sincerely,

CONGLETON-HACKER COMPANY

{Projects.ProjectManager}
Project Manager

SUBCONTRACT

No.
{Contracts.ContractNumber}

CODE NO. {Contracts.C
VENDOR ID: SICode}0/04
{Contracts.T
oCompanyID
}

This Agreement (also referred to as "the Subcontract"), made this ({Contracts.ContractDate} "Long Date"), by and between Congleton-Hacker Company, a Kentucky Corporation (hereinafter called the "Contractor"), with its principal place of business located at 872 Floyd Drive, Lexington, Kentucky, and {ToCompany.Name} (hereinafter called the "Subcontractor") a {Company.TypeOfBusiness} with its principal place of business at {Contacts.DisplayAddress}.

WHEREAS, Congleton-Hacker Company has contracted with {LegalDocInfo.Owner} (hereinafter "the Owner") to provide labor and materials for the construction of the {Projects.Name} (hereinafter "the Project") located at {Projects.Address}, and

WHEREAS, Subcontractor has proposed a price to perform a certain scope of work (hereinafter "the Work") on the Project, and

NOW THEREFORE, in consideration of the following, the parties agree:

Article 1. SCOPE. The Subcontractor shall furnish all labor, materials, supervision, tools, equipment, transportation, tests, permits, taxes and insurance necessary to expedite and complete in place all Work in connection with the {Contracts.ScopeOfWork} as described under Section(s) {Contracts.CSICode} of the specifications and/or shown on the drawings as prepared by {LegalDocInfo.ArchName} and which drawings and specifications are available on Contractor's FTP site or other location or means. The Subcontractor shall perform the Work at the direction of Contractor and in accordance with this Agreement and the Contract Documents. Subcontractor shall perform all activities necessary or incidental to complete the Work set forth in Drawings and Specifications listed in Exhibit I to this Subcontract. Such performance shall be entirely acceptable to the Contractor and to the Owner and/or its duly authorized representative and in accordance with the Contract Documents.

1.1 Scope of Subcontract.

1.2 Contract Documents. The Contract Documents for this Project are defined as, and consist of the agreement between the Owner and the Contractor, together with the conditions of the contract between the Owner and the Contractor (general, supplementary, and other conditions), all drawings, specifications, and all addenda issued prior to the execution of the agreement between the Owner and the Contractor, and all modifications and change orders issued subsequent thereto. The Subcontract Documents (also referred to as "this Agreement" or "the Subcontract") shall include this Agreement and all exhibits incorporated herein together with "the Contract Documents."

Article 2. SUBCONTRACTOR'S OBLIGATIONS. This Agreement is subject to all the provisions of the Contract Documents between the Contractor and the Owner and the Contract Documents are incorporated herein by reference and made a part hereof as if fully set out herein. It is agreed that the Subcontractor shall comply with all the requirements of the Contract Documents, perform all of the obligations and assume all the liabilities and responsibilities required of the Contractor under its contract with the Owner. In the case of an inconsistency between this Agreement and the Contract Documents, this Agreement shall govern.

2.1 Sub-subcontractors and Material Suppliers. The Subcontractor shall not sublet any part of his work without the written consent of the Contractor, and such consent does not in any way relieve the Subcontractor from any provision of this Agreement or the Contract Documents. Such sublet work must be under terms and conditions that specifically incorporate the terms and conditions of this Agreement and the Contract Documents. Subcontractor shall provide a list of proposed sub-subcontractors and material and equipment suppliers and submit this information on the Project Information Form, (Exhibit "D" to this Subcontract) within ten calendar days of the date of the Letter of Intent or the date of this Agreement, whichever is earlier.

Because time is of the essence, the Subcontractor shall submit 1 electronic copy of Shop Drawings, Catalogue Cuts, Brochures, Schedules and/or Samples as required in the Specifications on/or before (date) for materials and/or equipment it is furnishing. The Subcontractor shall be responsible for the accuracy of the submittals, as well as the conformance with the Contract Documents.

Subcontractor shall ensure that its sub-subcontractors and suppliers cooperate with Contractor and all other subcontractors whose work is dependent upon the progress of the Subcontractor's Work, and shall participate as needed in the preparation of coordination drawings and work schedules. Subcontractor and its sub-subcontractors shall follow Contractor's directives to keep the Project free from debris and unsafe conditions resulting from Subcontractor's Work, and daily cleanup of Subcontractor's Work areas.

2.2 Workmanship. Subcontractor's Work shall be performed in strict accordance with this Agreement and the Contract Documents in a workmanlike manner. The workmanship shall be the best of the kind performed by others in the same trade. All materials shall be new, conform to the Contract Drawings, and be furnished timely and in appropriate quantities.

2.3 Temporary Services. Unless otherwise provided in this Subcontract, Subcontractor shall provide all temporary services and facilities necessary to perform its work, including but not limited to heat, electrical power, telephone, water and other utilities.

2.4 Progress Reports and Meetings. Subcontractor shall provide progress reports as required, including status of schedule and materials and equipment being manufactured for incorporation into the Work. An authorized representative of Subcontractor shall also attend all progress and/or coordination meetings held by Contractor.

2.5 Authorized Representative. The Subcontractor shall designate in writing the person(s) who shall serve as the Subcontractor's authorized representative on-site and off-site. This person or these persons shall bind the Subcontractor with respect to all Project documents, including but not limited to Change Orders, and shall be the person to whom Contractor shall issue instructions and direction, except in the case of an emergency.

On-Site Representative: _____

Off-Site Representative: _____

Contractor may, in its discretion require Subcontractor to dismiss from the Work any personnel of Subcontractor or any of its subcontractors, including the Authorized Representative, for any reason, effective upon written notice from the Contractor of such dismissal request. Subcontractor agrees to ensure the continuity of personnel assigned to perform the Work. Any removal or reassignment of personnel assigned to perform the Work shall be with replacements who will have substantially equivalent or better qualifications than the persons replaced. There will be no charge to Contractor while the replacements acquire the necessary training and familiarity with the Work.

2.6 Compliance with All Laws. At all times, and at Subcontractor's own costs, Subcontractor shall comply with all federal, state and local laws, statutes, codes, rules, regulations, ordinances, executive orders and other laws relating to the Project and the Work. Subcontractor warrants and represents that it is authorized to transact business in the state and local jurisdictions where the Project is located, that it holds any and all licenses necessary to perform the Work and that it has not violated any statutes, codes, rules, regulations, ordinances, orders and/or other laws on other projects. Contractor shall have the right to request, and Subcontractor shall promptly provide, proof of Subcontractor's licensure. Subcontractor is solely responsible for all matters relating to compensation and benefits of all of Subcontractor's personnel who perform the Work. This responsibility includes but is not limited to: (1) timely payment of compensation and benefits, including overtime, medical, dental and any other benefit, and (2) all matters relating to compliance with all employer obligations to withhold employee taxes, pay employee and employer taxes and file payroll tax returns and information returns under local, state and federal income tax laws, unemployment compensation insurance and state disability insurance tax laws, social security and Medicare tax laws, and all other payroll tax laws or similar laws with respect to all Subcontractor personnel providing Work. Subcontractor shall, upon request, provide Contractor or Owner with proof of compliance. Subcontractor shall indemnify, defend and hold Owner and Contractor harmless from all liabilities, costs, expenses and claims related to Subcontractor's failure to comply with this Section.

2.7 Permits and Fees. The Subcontractor shall notify, secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary for the performance, completion or use of the Subcontractor's Work.

2.8 Use of Contractor's Equipment. The Subcontractor, its agents, employees, Subcontractors or suppliers shall provide all equipment necessary to perform the Work. Contractor is not responsible for, nor does it intend to provide equipment for Subcontractor's use.

2.8.1 If Contractor determines, in its sole discretion, that Subcontractor may make de minimus use only of Contractor's equipment, and only if Contractor's authorized representative has provided express written permission for Subcontractor to make de minimus use of Contractor's equipment, and only if Subcontractor has provided an executed Waiver, which is Exhibit F to this Subcontract, to Contractor, may Subcontractor make limited use of Contractor's equipment, solely for convenience and solely at the discretion of the Contractor. If the Subcontractor or any of its agents, employees, suppliers or lower tier Subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of Contractor, the Subcontractor shall be liable to Contractor (as provided in Article 5 herein) for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely and exclusively to the negligence of Contractor's employees operating such equipment. Subcontractor agrees that it is using the equipment at its own risk, and uses the equipment as is, without any representations or warranties from Contractor.

2.8.2 Subcontractor shall indemnify, defend and hold Contractor harmless from any loss, claim, damage, or other costs, fees and/or expense (including personal injury, property damage or death), which may arise from Subcontractor's use of Contractor's equipment, including the use of Contractor's

equipment by Subcontractor's employees, agents, sub-subcontractors or suppliers or any other party for whom Subcontractor may be liable, except where such loss or damage is determined to have been solely and exclusively the fault of Contractor.

2.8.3 Subcontractor shall provide only qualified, skilled and trained operators of Contractor's equipment. Contractor shall be entitled to request proof of training and skill at any time, and Subcontractor shall discontinue use of Contractor's equipment until it has provided such proof satisfactory to Contractor.

2.8.4 Subcontractor shall provide all maintenance, fuel and other items necessary for operation of Contractor's equipment during Subcontractor's use of the equipment.

2.8.5 Subcontractor shall return the equipment in the same or better condition than the condition of the equipment upon receipt, and Subcontractor shall repair any and all damage to the equipment.

2.8.6 Subcontractor shall not permit other subcontractors or other persons to use Contractor's equipment.

2.9 Clean Up. The Subcontractor shall follow Contractor's clean-up directives and those of the Contract Documents, and at all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and broom clean each work area daily prior to discontinuing work in the same.

Should Subcontractor fail, after 24 hours notice from Contractor, to appropriately clean an area as required by this Section, Contractor shall assess the Subcontractor for the actual daily clean-up cost or a daily charge of \$200.00, whichever is greater, for each day such condition is not remedied.

Article 3. SCHEDULE, DELAY AND LIQUIDATED DAMAGES. Time is of the essence, and Subcontractor agrees to furnish all materials and perform all Work at whatever pace necessary to complete the Project in accordance with the Contractor's schedule ("the Project Schedule") at no additional cost to Contractor. The Project Schedule is a document prepared by the Contractor, (available to Subcontractor on Contractor's FTP Site or by other means), and updated from time to time by the Contractor. The Subcontract Work is critical to the timely completion of the Project. In order to ensure timely performance in accordance with Contractor's Project Schedule, as updated from time to time, Subcontractor shall commence its Work within five business days after receipt of Contractor's written notification to proceed. The Subcontractor shall provide the manpower, materials and equipment necessary to begin and continue Work to achieve completion within the time set forth in the Project Schedule.

3.1 Sequence of Work. Subcontractor acknowledges and agrees that Contractor may revise the sequence of the Work as the Project progresses, but no extension of time will be valid without Contractor's written consent. Contractor may require, without additional cost to Contractor and/or Owner, Subcontractor to prosecute the Work at a sequence and timing as the progress of the Project dictates. It is understood and agreed that the scheduling and sequencing of the Work is the exclusive right of Contractor and that Contractor may resequence Subcontractor's Work as the demands of the Project require without any additional cost or expense paid to Subcontractor. Contractor shall also have the right to decide on the time, order and priority in which portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work.

3.2 Delays by Subcontractor. If, in the sole opinion of Contractor, Subcontractor falls behind in the progress of the Work, Contractor may direct Subcontractor to take such steps as Contractor deems necessary to improve the progress of the Work. Such direction may include, without limitation, requiring

Subcontractor to increase the number of shifts, personnel overtime, days of Work, equipment, plant or other remedies. Subcontractor shall submit to Contractor for Contractor's approval a schedule demonstrating how the required rate of progress will be achieved without additional cost to Owner or Contractor.

3.3 Cooperation and Coordination. The Subcontractor shall cooperate with Contractor by scheduling and performing its Work so as to avoid conflict, delay or interference with the work of Contractor, other subcontractors or Owner's separate contractors. Subcontractor shall participate in any inspections relating to Substantial and Final Completion.

3.4 Schedule Impacts. If the progress of Subcontractor's Work is substantially delayed without the fault of or caused by Subcontractor, then the Subcontractor must provide written notice to Contractor within five (5) days of the event giving rise to the delay or the claim shall be waived. If Subcontractor provides timely written notice of the claim within five (5) days of the event, and the delay, hindrance or impact to Subcontractor's Work is not caused by the Subcontractor, then the time for Subcontractor's Work may be extended by Change Order to the extent obtained by Contractor under the Contract Documents.

Contractor shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of delay, schedule impacts, hindrances, interferences, acceleration, compression or other time related claims (hereinafter referred to as "Schedule Impacts") caused by any person not a party to this Agreement, other than the Owner, unless Contractor has first recovered the same on behalf of Subcontractor from said person, and then only to the extent of such recovery after payment to Contractor of all attorneys' fees and other expenses relating thereto.

With respect to claims by Subcontractor for delay caused by Owner, Subcontractor agrees that it may only seek additional compensation for proven delay to the critical path, and only to the extent of documented and proven actual costs, and only if timely notice has been provided in accordance with this Subcontract.

Notwithstanding anything to the contrary herein, under no circumstance shall Subcontractor be entitled to seek from Contractor additional compensation or damages for actual or alleged loss of efficiency, constructive acceleration, lost productivity, stacking of trades, home office overhead, expectant underrun, season change premium, extended overhead, impact damages, quantum meruit, profit upon damages for delay or similar damages calculated by formula or trade data or studies.

3.5 Liquidated Damages. To the extent that Subcontractor's Work results in Liquidated Damages being assessed against Contractor by Owner, Subcontractor agrees to immediately pay to Contractor the proportionate share or all of the Liquidated Damages resulting from or caused by Subcontractor's performance, and/or to permit set-off by Contractor of such sums against sums otherwise due Subcontractor.

Article 4. INSURANCE. Upon execution of the Subcontract, and before commencing work, the Subcontractor shall secure such insurance as required by Exhibit C to this Subcontract for at least those minimum specified limits, and shall furnish a certificate from its carrier to the Contractor, identifying Contractor, their Surety and the Owner, and/or others as required by the Contract Documents, as additional insureds on the policies. All policies must be issued by insurance carriers acceptable to the Contractor, and shall remain in force through Final Completion of the Project.

Article 5. INDEMNIFICATION. Subcontractor agrees to hold harmless, indemnify and defend, the Contractor, its Surety, and the Owner from all loss as a result of Subcontractor's acts or failure to act, including reasonable attorneys' fees and court costs. Additionally, Subcontractor shall indemnify, hold harmless and defend the Contractor, the Owner, and other contractors and subcontractors from and against

all claims, damages, losses and expenses, including but not limited to attorneys' and consultants' fees, arising out of or resulting from the performance of the Work, provided that:

5.1 Bodily Injury or Property Damage. Such claim, damage, loss or expense is attributable to bodily injury, personal injury, sickness, disease or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use therefrom, to the extent caused or alleged to be caused by any act or omission of the Subcontractor or any person directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable (including sub-subcontractors and material suppliers).

5.2 Liens or Claims. Such claim is asserted against or through the Contractor, Owner or Owner's property, including but not limited to liens for labor performed or materials used or furnished through Subcontractor, its sub-subcontractors, and/or suppliers.

5.3 Compliance with Laws. Such liability is imposed upon Contractor or Owner as a result of Subcontractor's failure or the failure of any of its employees or sub-subcontractors or materials suppliers to comply with laws, ordinances, rules, regulations, policies or requirements, including but not limited to any Occupational Safety and Health Administration violations, Immigration violations, Owner policies and rules violations, confidentiality violations and any penalties, including enhancements, resulting from, in whole or in part, Subcontractor's acts or omissions.

5.4 No Limitation of Liability. In any claims against the Owner, Contractor and other contractors or Subcontractor, by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation in this Article 5 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under worker's compensation acts, disability benefit acts or other employee benefits acts.

Article 6. CHANGES TO THE WORK.

6.1 Changes. Contractor may, by Contractor's written directive or Subcontract Change Order, make changes in the Work within the scope of this Subcontract, and Subcontractor shall perform such changes. A Subcontract Change Order is a written document prepared by Contractor and signed by the Subcontractor, setting forth their agreement on a change in the scope of the Work, a change in the Subcontract Price, or a change in the Subcontract Schedule. Any adjustments to the Subcontract Price or Schedule relating to the changed Work must be set forth in the Subcontract Change Order, or the claim will be waived. A Contractor's written directive is a written document prepared by the Contractor's authorized representative directing a change in the Work, and stating a proposed adjustment, if any, in the Subcontract Price or Schedule. A Contractor's written directive will be used in the absence of agreement on the terms of a Subcontract Change Order, and Subcontractor shall perform the Work set forth therein. If ordered by Contractor's authorized representative to proceed by written directive, Subcontractor shall be responsible for tracking all costs incurred in the changed Work, including but not limited to signed time sheets, actual invoices and equipment rental or other documents requested by Contractor, and shall submit these documented records to Contractor within five (5) business days of performing the work for Contractor's consideration. The signing of extra work tickets by the Contractor's representative shall be for verification of hours worked and materials used only. Approval of additional cost or a change to the Subcontract is subject to the terms and scope of this Agreement. In no event will compensation be paid to Subcontractor for additional work performed based upon estimates, unless agreed upon in a Subcontract Change Order signed by both parties. Extensions of time will be considered only upon proof that the Work affected was on the critical path. Failure to document its actual costs incurred in performing additional work may result in waiver of Subcontractor's claim for additional compensation, as determined by Contractor.

No adjustments in the Subcontract Price or Subcontract Schedule for any Work performed by Subcontractor shall be effective unless the additional work has been ordered by Contractor in writing. If Subcontractor proceeds with additional work without the requisite Subcontract Change Order or written directive by Contractor, Subcontractor proceeds at its own risk and at its own cost.

6.2 Change Orders Final. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Subcontract Price and the Project Schedule. In the event a Change Order increases the Subcontract Price, the Subcontractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents. Any Change Order shall contain a breakdown of the adjustment between labor, equipment, and materials, together with substantiating data.

6.3 Method of Adjustment: If a change in the Work requires an adjustment in the Subcontract Price, the adjustment shall be established by one of the following methods:

- a. mutual agreement on a lump sum with agreed markup of 10%, and sufficient substantiating data to permit evaluation;
- b. unit prices already established in the Subcontract Documents or if not established by the Subcontract Documents, then established by mutual agreement for this adjustment; or
- c. determined by Contractor on the basis of reasonable costs and savings attributable to the change, including itemized and substantiated accounting of the following items attributable to the change:
 - (i) labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;
 - (ii) costs of materials supplies and equipment, whether incorporated in the Work or consumed, including transportation costs;
 - (iii) costs of renting, either from Contractor or from others, of machinery and equipment other than hand tools;
 - (iv) costs of bond and insurance premiums, permit fees and taxes attributable to the change;
 - (v) costs of additional supervision and field office personnel services necessitated by the change; and
 - (vi) Markup (inclusive of overhead and profit) of sub-tier subcontractors, vendors or equipment suppliers not to exceed a rate of ten per cent.

6.4 Notification of Claims. Subcontractor shall notify Contractor in writing of all claims for which the Owner may be liable in the manner provided in the Contract Documents, and with sufficient time for Contractor to review the claim and timely assert the claim against the Owner. Subcontractor shall notify Contractor in writing of any other claims, whether relating to the Subcontract Price or the Subcontract Schedule, within five (5) business days of the beginning of the event giving rise to the claim. If the claim is

not timely made, the Subcontractor's claim is waived. All unresolved claims and disputes shall be resolved in the manner provided in Article 14.

Article 7. SUBCONTRACT PRICE AND PAYMENT.

7.1 Price. Expressly contingent upon the performance by Subcontractor of the terms and conditions of this Agreement, the sum to be paid by the Contractor to the Subcontractor as its total compensation for the furnishing of materials and performing the services required of it under this Subcontract shall be:

{{Contracts.OrigValue} "NumToText"} Dollars ({{Contracts.OrigValue}})

7.2 Schedule of Values and Time of Application. Subcontractor shall provide a proposed Schedule of Values to Contractor at least seven (7) calendar days prior to Subcontractor's first application for payment, which may be revised if necessary for approval by Contractor. For Work performed during a payment period, Subcontractor shall apply for a progress payment using the form attached to this Agreement as Exhibit E. Applications for Payment shall be submitted by the twentieth (20th) day of the month. The application shall be for Work performed including the last day of the pay period, and showing Work completed, and to the extent permitted under the Contract Documents and approved for payment by the Owner, material suitably stored and protected.

7.3 Time of Payment and Nonpayment by Owner. Receipt of payment by Contractor from Owner for Subcontractor's Work is a condition precedent to all progress payments by Contractor to Subcontractor. Progress payments to the Subcontractor for satisfactory performance of the Subcontractor's Work shall be made within seven (7) business days after the related payment is received from the Owner. Subcontractor will be paid all undisputed invoiced progress payments due Subcontractor under the terms of this Subcontract, in a sum equal to **90%** of the approved value for labor and materials incorporated in the Work and **90%** of materials suitably stored up to the billing date, if any, less the aggregate of previous payments.

.1 Nonpayment by Owner; Assumption of Risk. The Subcontractor agrees that Contractor has no obligation to pay Subcontractor for any Work performed on the Project until Contractor has been paid by the Owner, unless the Owner's express reason for withholding payment to Contractor is due to the default of Contractor, and not caused, in whole or in part, by Subcontractor. Subject to the foregoing, the Subcontractor agrees that the Contractor shall have no obligation to pay the Subcontractor for any work performed until and unless Contractor has been paid by the Owner for the work. The provisions of this Subcontract stating the time and amount of progress and final payments are subject to the condition that Contractor shall receive from the Owner progress payments, payments for change orders or final payments in at least the amounts payable to the Subcontractor on account of work done by the Subcontractor on this Project. Except as specifically provided herein, the time when such payments shall be due the Subcontractor shall be postponed until Contractor has received payment from the Owner. The Subcontractor acknowledges that it relies solely on the credit and ability to pay of the Owner for payment, and does not rely upon Contractor. Except as provided herein, the Subcontractor agrees that payment by the Owner to Contractor for work performed by the Subcontractor shall be a condition precedent to any payment obligation of Contractor to the Subcontractor. The Subcontractor agrees that the liability of the surety on Contractor's payment bond, if any, is subject to the same conditions precedent as are applicable to Contractor's liability to the Subcontractor under this Subcontract.

.2 Other Conditions Precedent to Partial Payment. Payments shall not be due until the following conditions have been satisfied:

- .a This Agreement has been signed and returned to Subcontractor, and all exhibits executed, including but not limited to Exhibit D (Project Information Form) and,
- .b Insurance Certificates have been properly completed and received,
- .c Schedule of values has been received and approved,
- .d Waivers of liens and claims from all sub-subcontractors and vendors demonstrating payment by Subcontractor for the prior months of the Project,
- .e If requested, evidence demonstrating that payroll taxes and other contributions required by law have been paid by Subcontractor,
- f. Consent of Surety, if applicable, and
- g. Any other documentation requested by Contractor.

.3 Payment Not Acceptance. No payment to Subcontractor shall imply or demonstrate acceptance by Contractor or Owner of any portion of Subcontractor's Work.

.4 Stored Materials. Unless otherwise limited or restricted by the Contract Documents, applications for payment may include suitably stored and protected materials at the Project site or some other location upon approval in advance by the Owner. Approval of a payment application including stored materials shall be conditioned upon provision by Subcontractor of bills of sale and applicable insurance and other documents specified by the Owner or Contractor. Payment to Subcontractor for stored materials shall not relieve Subcontractor of responsibility for proper storage and responsibility for the materials.

7.4 Retainage. Upon completion of **50%** of the Project as adjusted by Change Orders, when approved by the Owner and/or Architect, and upon completion of **50%** of the Work under this Subcontract, retainage upon all remaining progress payments will be based upon 5% of the Subcontract Price as adjusted by Change Orders, providing the progress of the Work continues satisfactorily and the Owner accepts and continues to make progress payments to the Contractor on the basis of reduced retainage.

7.5 Final Payment: Application and Requirements. Final Payment will be paid within seven (7) business days after receipt of final payment from the Owner and receipt by the Contractor of all required releases, lien waivers and other documents. Before issuance of Final Payment to Subcontractor, and at such times as may be requested, the Subcontractor shall submit evidence satisfactory to the Contractor and to the Owner and/or its duly authorized representative that all payrolls, material bills, and other indebtedness connected with the Project have been paid. Before Final Payment shall be due under this Subcontract, the following must be provided to Contractor as express conditions precedent:

- .1 Affidavit that all indebtedness, payrolls and invoices related to Subcontractor's Work, for which the Owner or Owner's property, or Contractor or Contractor's surety may be liable, have been paid or otherwise satisfied;
- .2 Consent of surety to Final Payment, if applicable;
- .3 Satisfaction of any required close-out procedures required by Owner or Contractor;
- .4 Provision of other data required by Owner or Contractor;

.5 Written warranties, guarantees, product data and/or operations manuals relating to Subcontractor's Work;

.6 Record drawings or as-built relating to Subcontractor's Work.

.7 Any other documentation required by Contractor.

Final payment shall constitute a full waiver and release of all claims by Subcontractor, but shall not relieve Subcontractor of liability for defective Work appearing after payment, or for continuing obligations hereunder.

7.6 Subcontractor Failure to Make Payments. Subcontractor shall use payments received from Contractor solely to make payments for labor or materials furnished in performing the Subcontractor's Work on this Project, and shall not use payments to satisfy any indebtedness on other Projects. Contractor shall have the right to contact Subcontractor's sub-subcontractors and vendors to ensure that they are being paid by the Subcontractor for labor and materials furnished on this Project.

7.6.1 If Contractor has reason to believe that Subcontractor has not paid for labor, material or other obligations, Subcontractor shall supply evidence satisfactory to Contractor within 48 hours that its sub-subcontractors and suppliers have been paid, or

7.6.2 Subcontractor shall provide a bond in a form and with a surety satisfactory to Contractor, indemnifying Owner, Contractor and the Project from liens or claims.

7.6.3 Contractor shall also have the right to:

.a Retain monies due or becoming due to Subcontractor on this Project or any Project of Contractor's, a reasonable amount to protect Contractor from and against all loss, damage or expense including attorneys' fees arising out of or relating to a claim or lien of a sub-subcontractor or vendor of Subcontractor,

.b Issue joint checks payable to the Subcontractor and a claimant from sums otherwise due Subcontractor,

.c Make direct payments to the claimant from sums otherwise due Subcontractor, and/or

.d Bond off any lien at Subcontractor's cost,

.e And Contractor may backcharge all costs, attorneys' fees and other expense arising from or relating to Subcontractor's nonpayment.

7.7 Grounds for Withholding Payment. Contractor may withhold payment from Subcontractor for the following reasons:

.1 Defective Work not cured; materials not furnished or failure to clean up;

.2 Damage to the work caused by Subcontractor;

.3 Claims, penalties, attachments, levies, liens, stop notices or court orders filed or other reasonable evidence that such claims will be filed, including claims covered by insurance until such claims are accepted and paid by the carrier;

.4 Failure by Subcontractor to make payments properly to its subcontractors for labor, including fringe benefits, materials or equipment, transportation or shipping costs, taxes, fees or other claims arising out of the Subcontractor's Work;

.5 Reasonable evidence that the Work cannot be completed for the balance of the Subcontract Price;

.6 Reasonable doubt that the Work will be completed on schedule due to Subcontractor's acts or omissions;

.7 Subcontractor's failure to timely provide any deliverables set forth in this Agreement, including but not limited to insurance certificates, record drawings, warranties or guarantees or approvals;

.8 Any other material breach of this Agreement.

7.8 Right to Issue Joint Checks. Subcontractor agrees and expressly authorizes Contractor to issue joint checks to Subcontractor and its sub-subcontractors, vendors and/or suppliers. Subcontractor understands and agrees that Contractor shall only issue payments and/or joint checks if there are sums undisputedly due and owing Subcontractor pursuant to the terms of this Subcontract Agreement. Subcontractor shall cooperate with Contractor in the administration and delivery of the joint checks to Subcontractor's sub-subcontractors, suppliers and vendors. Refusal to cooperate with Contractor in the issuance and delivery of joint checks shall be a default of this Subcontract, and Contractor shall be entitled to exercise all rights and remedies it has under this Agreement in the event of default

Article 8. SITE INSPECTION. Subcontractor represents and warrants that it has been to the Project site, has become familiar with existing conditions and correlated the existing conditions with the requirements of the Contract Documents, and that it fully understands the facilities, restrictions and challenges involved with performing the Work. Subcontractor further represents and warrants that it has examined all of the Contract Documents, including but not limited to any policies and rules of the Owner, requirements of various governmental agencies and others having jurisdiction over the Project. Finally, Subcontractor has performed its own investigation as to the nature and location of the Work, the local conditions and all matters which affect the Work, and that it is not aware of any existing conditions, circumstances or requirements that will necessitate a change in the scope of the Work, the Price or the Schedule.

Article 9. WARRANTY AND CORRECTION OF WORK. Subcontractor warrants to the Owner and to Contractor that materials and equipment will be of good quality and new unless otherwise required or permitted by the Subcontract, that the Work will be performed in a good, workmanlike manner, be free from defects in materials and workmanship, and that the Work will conform with the requirements of the Subcontract and the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective in the sole judgment of Contractor. This warranty shall be in addition to and not in limitation of any other warranty or remedy provided by law or the Subcontract. Subcontractor shall warrant its work for a period of one year following the Owner's defined commencement date for warranties as set forth in the Contract Documents. If the warranty period is not specifically designated, then the parties agree that the warranty period shall extend for the period set forth in the agreement between the Owner and the Contractor. This warranty shall be in addition to any special or additional equipment and material warranties required by the Contract

Documents. Subcontractor further agrees to execute and deliver any additional guarantees or warranties specified in the Contract Documents.

9.1 Correction of Work. Subcontractor shall promptly correct Work failing to conform to the Contract Documents or Work rejected by Contractor, Owner or Architect, whether observed before or after Substantial or Final Completion, and whether or not installed or completed. Subcontractor shall be obligated to correct Work that is not in accordance with the Contract Documents after Substantial Completion to the same extent that Contractor is bound to Owner for correction of Work. Upon notification, Subcontractor shall begin corrective work immediately. This obligation survives the acceptance of the Work and/or termination of the Subcontract. This obligation is in addition to, and not in limitation of the warranty obligations herein; it being the intent of this Subcontract that Subcontractor's obligations to correct defective Work are not restricted by Subcontractor's warranty obligations.

9.2 Satisfaction of Warranty and Corrective Work Obligations. As set forth herein, Subcontractor agrees to satisfy warranty and corrective work obligations at no cost to the Owner or Contractor. If corrective action is not initiated or completed within a time reasonable under all of the circumstances, then Contractor shall commence investigation and correction at Subcontractor's expense. In the event that Subcontractor fails to satisfy these obligations timely, all costs for design, labor, management, supervision, materials, travel (including all mileage, meals, lodging), equipment and overhead (at 15% of costs) incurred by Contractor in the investigation and correction of any such issue shall be paid to Contractor by Subcontractor within seven (7) calendar days of receipt of invoice. Contractor's rights hereunder shall be in addition to all other rights and remedies of this Subcontract and at law, and in no way relieve the Subcontractor of its primary responsibility for performing and warranting the Work in accordance with the Subcontract documents.

Article 10. IMMIGRATION. Subcontractor shall comply with all requirements imposed upon employers under the Immigration Reform and Control Act of 1986 ("IRCA"), with regard to every Subcontractor employee ("Worker") who will perform services for Subcontractor related to this Subcontract. Subcontractor further agrees that Subcontractor is the "employer" as that term is defined in 8 C.F.R. Section 274a.1(g), and that Contractor is not the "employer" as so defined respecting Workers. In compliance with its duties under IRCA, Subcontractor shall:

10.1 I-9s. Have sole responsibility for completing Form I-9 for all Workers who provide services relating to this Subcontract, and it will further update such forms to the extent required by law. Subcontractor warrants that all of Subcontractors' employees who complete Form I-9 for Workers will be knowledgeable of all Form I-9 requirements, including but not limited to, knowledge of which documents do and do not satisfy the requirements of Form I-9, and that such employees will otherwise complete Form I-9 in full compliance with IRCA.

10.2 Warranty of Employment Authorization. Subcontractor warrants that no Worker will provide services relating to this Subcontract until Subcontractor has completed Form I-9 for such Worker in the manner required by IRCA. Subcontractor further warrants that it will not permit any Worker to perform services relating to this Subcontract who Subcontractor knows or has reason to believe is not authorized to work in the United States, regardless of whether such individual is able to produce documents which satisfy the requirements of Form I-9. Subcontractor understands that Contractor is acting in reliance upon Subcontractor's warranty.

10.3 Removal of Workers Not Authorized for Employment. If Subcontractor learns or has reason to believe that any Worker is not authorized to work in the United States, Subcontractor shall immediately so inform Contractor, and Subcontractor shall not assign Work to such Worker. If Contractor learns or has reason to believe that any Worker is not authorized to work in the United States, upon

notification by Contractor, Subcontractor shall immediately cease assigning Work to any such Worker. A failure of Subcontractor to take immediate action upon notice from Contractor shall be a material breach and grounds for default termination under this Subcontract.

10.4 Indemnification and Hold Harmless. In the event that a government agency, Owner or Contractor determines that any Worker hired by a Subcontractor is not authorized to work in the United States, Subcontractor shall indemnify and hold Contractor harmless, as well as any agents, employees, officers, directors, trustees or other persons acting on Contractor's behalf, from any liability incurred by Contractor as a result of such determination. Such indemnification shall include, but not be limited to, civil or criminal fines or penalties assessed, alleged and any costs incurred in responding to or participating in any government or Owner investigation, finding, recommendation, hearing, appeal or any other proceeding, including attorneys' fees and costs, as well as any costs, fees or damages assessed or incurred by Contractor or Owner.

10.5 Consequential Damages and Effect on Schedule. If Subcontractor is terminated due to noncompliance with this Article, or if Subcontractor's Work force is adversely impacted by the removal of Workers not authorized to work in the United States from the Project in compliance with this Section, Subcontractor shall be liable to Contractor for any and all damages, costs, fees, including but not limited to schedule recovery costs, reprocurement costs and all other costs recoverable under this Subcontract.

Article 11. HAZARDOUS SUBSTANCES. In order to comply with laws that require an employer to timely notify employee of the use of Hazardous Substances, Subcontractor shall timely provide a current copy of the Material Safety Data Sheet (MSDS) for any Hazardous Substance or Chemical that Subcontractor intends to bring to the Project site.

11.1 Removal of Hazardous Substances. Subcontractor shall be responsible for timely removal of any Hazardous Chemicals and/or Substances that are brought to the Project site, but are not consumed or used, as well as all waste generated from the Work. Such removal shall comply with all laws, regulations, codes, permits and ordinances.

11.2 Discharge. Subcontractor shall conduct the Work in a manner to avoid the discharge, dispersal, escape, release or saturation of any pollutant into the atmosphere or into any body of water or on, onto, upon in or into the surface or subsurface of land unless permitted by federal, state or local laws, regulations, ordinances or permits.

11.3 Existing Hazardous Conditions. If the Subcontractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl ("PCB") or other Hazardous Substances at the Project site that have not been rendered harmless, the Subcontractor shall **immediately stop** work in the area affected and immediately report the condition to Contractor in writing. The Work in the affected area shall resume in the absence of asbestos, PCB, or Hazardous Substances, or when it has been rendered harmless, or by being reduced to a safe level or concentration, or by written agreement of Contractor and Subcontractor, or by an award from the parties' dispute resolution as provided herein.

11.4 Indemnification. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend and hold harmless Contractor, Owner and other subcontractors, and each of their employees and agents, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees arising from or relating to performance of the Work in the affected area if the material is asbestos, PCB or other Hazardous Chemical or Substance that has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or damage to or destruction of tangible property (other than the Work itself), including loss of use therefrom, but only to the extent caused in whole or in part by failure to comply with Article 11 or by negligent acts or omissions of the

Subcontractor or anyone for whose acts it may be liable, regardless of whether the claim or damage is caused in part by a party indemnified hereunder.

11.5 Definitions of Hazardous Chemicals and Substances. As used herein, the term “Hazardous Chemical” shall mean any chemical defined as hazardous in the Hazardous Communication Standards, 29 C.F.R. § 1926.59 or 29 C.F.R. § 1910.1200, and “Hazardous Substance” shall mean any substance, including solid, liquid or gaseous material, which is listed or defined as a “hazardous substance” in the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, or regulations relating thereto, but does not include petroleum, including crude oil or any fraction thereof, oil and oil waste as those terms are defined in the Clean Water Act, 33 U.S.C. 1251 *et seq.* or regulations relating thereto, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 3011 *et seq.*, including regulations relating thereto, and includes any other substance defined by federal, state or local statute, regulation or ordinance as a hazardous, toxic or dangerous waste or substance where “state” means the State in which the Work is being performed and “local” means the local jurisdiction (i.e., county, parish, city, etc) in which the Work is being performed and “pollutant” shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste and shall include any Hazardous Substance.

Article 12. DEFAULT.

12.1 Commencing Work. Should the Subcontractor not begin work on the beginning date, the Contractor shall notify the Subcontractor in writing by mail, facsimile or e-mail, that its performance is jeopardizing the Project schedule and that Subcontractor must begin work within three (3) business days from the date of written notification. Should the Subcontractor fail to begin work with appropriate manpower, materials and equipment within three (3) business days of the date of notification, the Contractor may, at his sole discretion, perform the work of the Subcontractor or supplement the Subcontractor’s work force and charge the cost of said performance to the Subcontractor.

12.2 Timely Performing Work. After commencing work, Subcontractor shall perform in a timely manner and in accordance with the Contractor’s schedule as updated from time to time. If Subcontractor fails to perform in accordance with Contractor’s schedule, Contractor may notify the Subcontractor in writing (via mail, facsimile or e-mail) and the Subcontractor shall, within two (2) business days from the notification date, reestablish its work in compliance with the schedule and provide a plan for compliance with the schedule going forward. If the Subcontractor fails to reestablish its Work in compliance with the schedule and/or fails to follow the plan provided for compliance with the schedule going forward, the Contractor may, at its sole discretion, perform the work of the Subcontractor or supplement the Subcontractor’s work force and charge the cost of said performance to the Subcontractor.

12.3 Other Defaults and Consequences. If Subcontractor fails to supply sufficient skilled workers, proper materials, fails to timely achieve Substantial or Final Completion, fails to make prompt payment to its workers and sub-subcontractors and suppliers, fails to observe laws, fails to indemnify Contractor as required under this Agreement, or is otherwise in breach of an obligation of this Subcontract, and if Subcontractor fails to cure any of these defaults within two (2) business days after the date of written notice to Subcontractor, then Contractor, without prejudice to any other rights and remedies it has, may seek any or all of the following remedies:

.1 Withhold further payments from Subcontractor pending corrective action or completion of the Subcontractor’s Work to the satisfaction of Contractor; and

.2 Set-off Contractor's damages incurred due to Subcontractor's default against any monies due Subcontractor under this Subcontract or any other contract between Contractor and Subcontractor; and

.3 Supply workers, materials and equipment and other facilities Contractor deems necessary for the completion of Subcontractor's Work, and charge or off-set the cost to Subcontractor, who shall be liable for such costs, including overhead, profit, and other damages, including attorneys' fees and dispute resolution costs; and

.4 Contract with one or more additional subcontractors to perform part or all of Subcontractor's Work; and/or

.5 Terminate the Subcontract, and contract with another subcontractor to perform the balance of the Subcontractor's Work at the sole cost of Subcontractor. In the event of an emergency, Contractor may proceed with any of the foregoing without notice to Subcontractor.

Article 13. TERMINATION BY CONTRACTOR OR OWNER.

13.1 Termination by Contractor. If Subcontractor fails to either commence or satisfactorily continue correction of a default as set forth in Article 12, then Contractor may terminate this Agreement by written notice to Subcontractor and its surety, if any, effective immediately, and use any materials, equipment and workers as Contractor deems appropriate. All of the costs incurred by Contractor from performing the Subcontractor's Work, including reasonable overhead, profit and attorneys' fees shall be deducted from any monies due or which may become due the Subcontractor. The Subcontractor shall be liable for any amount by which expenses may exceed the unpaid balance of the Subcontract.

13.2 Termination by Owner. If the Owner, for any reason, terminates Contractor's contract or any part that includes Subcontractor's Work, Contractor shall so notify Subcontractor in writing and upon receipt of the notice, this Agreement shall be terminated or assigned to the Owner, and Subcontractor shall immediately stop Work, pending further instructions. If Owner terminates Contractor for cause, Owner shall have the right to assignment of this Subcontract for completion of the Work. The assignment shall not operate as a release of any claims of Contractor against the Subcontractor. Further, in the event of Owner suspension or termination, Contractor's obligation to the Subcontractor is limited to the extent of Contractor's recovery, on Subcontractor's behalf, pursuant to the Contract Documents. Contractor will cooperate with Subcontractor in the prosecution of any claim of Subcontractor's relating to the suspension; however, any and all costs of such prosecution, including attorneys' fees, shall be borne by the Subcontractor. This provision shall not be construed to create any obligation upon Contractor to pursue any claim or litigation on behalf of Subcontractor.

13.3 Wrongful Default or Termination. If Contractor wrongfully defaults or terminates Subcontractor, Contractor shall only be liable to Subcontractor for the reasonable value of the Work performed by the Subcontractor prior to Contractor's default or termination, less prior payments made. In no event shall Subcontractor be entitled to recover any other incidental or consequential damages, which include but are not limited to profits attributable to unperformed Work, or punitive damages.

Article 14. DISPUTE RESOLUTION. All claims, disputes and matters in question arising out of, or relating to, this Agreement or the breach thereof, except for claims which have been waived by the issuance or acceptance of final payment and the claims excluded or limited by Sections 6.2 and 14.1, shall be resolved by mediation, and if not resolved by mediation, litigation in Kentucky State Court, Fayette Circuit Court, or Federal Court in the Eastern District of Kentucky. The site for mediation shall be in Lexington,

Kentucky, unless required otherwise by Contractor's agreement with Owner, and Lexington, Kentucky shall also be the venue for any related litigation.

14.1 Time Within Which Claims May Be Brought. The parties agree that claims must be identified, and the party against whom the claim is made, must be notified in writing within five (5) business days of the event giving rise to the claim. However, in no event shall a claim be asserted by the Subcontractor against Contractor either (1) after the expiration of ten (10) calendar days following submission of Subcontractor's final application for payment or alternatively, (2) in no event later than thirty (30) calendar days after Substantial Completion of Subcontractor's Work on the Project, as determined by Contractor in its sole discretion. The parties agree that any claim asserted after the expiration of these deadlines shall be untimely, null, void and expressly waived.

14.2 Negotiation And Mediation. As an express condition precedent to commencing litigation against the other, the parties shall proceed as follows:

.1 The party asserting a claim shall do so in writing and within the notice period set forth above.

.2 The parties shall then attempt in good faith to negotiate a resolution of disputed claim(s) during the next twenty (20) calendar days before pursuing any other means of dispute resolution.

If claims remain unresolved after good faith negotiation, the parties shall endeavor to resolve disputes by proceeding, at the instance of either party, to non-binding mediation conducted under such rules as the parties may agree to employ. If the parties cannot reach agreement respecting the rules under which mediation shall be conducted, the parties shall conduct mediation in accordance with the mediation rules of the American Arbitration Association. The parties shall divide the cost of the mediator evenly among them.

14.3 Resolution Of Disputes. If mediation fails to resolve the dispute, the parties shall proceed either in the United States District Court for the Eastern District of Kentucky, or in the Commonwealth of Kentucky Fayette Circuit Court in Lexington, Kentucky.

.1 Subcontractor agrees to submit to the jurisdiction and venue of the United States District Court for the Eastern District of Kentucky in Lexington, Kentucky and/or the Fayette Circuit Court.

.2 Subcontractor agrees that matters litigated in Court shall be determined by a judge and not by a jury.

14.4 Claims Involving the Owner. Subcontractor agrees that if the Agreement between the Owner and Contractor requires the Owner and Contractor to arbitrate their disputes, that Subcontractor hereby agrees to arbitrate any claims involving the Owner.

Article 15. MISCELLANEOUS.

15.1 Governing Law. This Subcontract shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. All indemnification obligations contained herein, including indemnification obligations set forth in the exhibits to this Agreement, which are incorporated by reference, shall survive the completion of Subcontractor's Work and shall survive the termination of this Subcontract.

15.2 Severability and Waiver. The partial or complete invalidity of one or more provisions of this Subcontract shall not affect the validity of any other provision. The failure of either party to insist, in one or more instances, upon the performance or enforcement of any terms of this Subcontract, or to exercise any

right herein shall not be construed as a waiver or relinquishment of any such term or condition respecting future performance.

15.3 Entire Agreement. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior or contemporaneous negotiations, representations, understandings or agreements, either written or oral. This Subcontract shall not be modified except by a written instrument signed by both parties.

15.4 Assignment And Subcontracting. The Subcontractor shall not assign this Agreement, nor its proceeds or receipts, nor subcontract the whole or any part of the Subcontractor's Work, without the prior written approval of Contractor.

15.5 Subcontract Documents. The following documents, designated by Exhibit letter below, are identified as Subcontract Documents and incorporated by reference herein:

- A. General Safety Work Requirements
- B. Congleton-Hacker Co. Policy on Sexual and Other Unlawful Harassment
- C. Minimum Insurance Requirements for Subcontractors
- D. Project Information Form
- E. Forms (Payment Application Form and Lien Waiver Forms to be used for this Project)
- F. Release, Waiver and Indemnity for Use of Contractor Owned or Rented Equipment
- G. Scope Document and Special Conditions
- H. Payment and Performance Bonds
- I. Contract Document List

In witness whereof, the parties hereto have executed this agreement the date written below, and the persons executing this agreement represent and warrant that they are authorized to act upon behalf of the respective parties:

CONTRACTOR:

WITNESS:

CONGLETON-HACKER COMPANY

By: _____
Signature

Printed Name

Title

Dated: _____

SUBCONTRACTOR:

WITNESS:

({ToCompany.Name} ">")

By: _____
Signature

Printed Name

Title

Dated: _____

CONTRACT NO. **{Contracts.ContractNumber}**
{Projects.Name}

Exhibit "A"

GENERAL SAFETY WORK REQUIREMENTS

The Subcontractor is solely responsible for a Safety Program for their employees. As a part of their Safety Program, the subcontractor represents and warrants that they require, among other things, that all such employees comply with the following rules and regulations:

1. Nothing in the following rules will relieve the subcontractor of their obligation to maintain a safe work environment in accordance with all Federal, State and Local Safety Laws.
2. Accidents or injuries, regardless of their nature, shall be reported to the appropriate parties in accordance with applicable governmental laws and insurance requirements and to the project superintendent at the time of the accident and in writing within 24 hours of same.
3. This is a 100% hard hat project. Hard hats will be worn at all times.
4. All other personal protective equipment (PPE) will be worn, at a minimum, in compliance with the Kentucky Occupational Safety and Health Regulations.
5. Shoes shall be first grade, hard soled and ankle high. Tennis shoes are not permitted.
6. Never operate machinery unless all guards and safety devices are in place and in proper operating condition.
7. Place ladders on a substantial base and do not use ladders with broken, split, or missing rungs and rails. All ladders are to extend at least three feet (3') above the landing platform and be securely fastened.
8. Gasoline must be stored and transported in authorized cans only. No smoking anywhere near flammable liquids.
9. Compressed gas cylinders must be secured in an upright position.
10. When burning or welding, a fire extinguisher must be close at hand at all times.
11. Electric tools shall either be double insulated or be properly grounded. Extension cords shall be the three-wire grounding type. Ground-fault interrupters shall be on all 120 volt power.
12. Temporary wiring will be in accordance with electric code and installed by competent personnel. All bulbs to be protected.
13. Fall protection shall be provided when working 6' or more above lower levels. This is in accordance with safety standards for fall protection, 29CFR, Part 1926, Subpart M.
14. Any overhead lifting by means of crane, lifts, hoists, etc. shall not be done when the designated OSHA high voltage clearance cannot be maintained.
15. Scaffolding shall be erected on sound footing. Loose brick, block, boards, etc. are prohibited. Scaffolding shall have handrails and toe boards.
16. Rolling scaffolds will be equipped with wheel locks which will be locked in use. Personnel will not ride scaffold when being moved.

Exhibit "A"

17. Conduct a minimum of monthly "tool box talks" with all employees and report the contents of these talks to the project superintendent in an acceptable format.
18. All trenching, excavating and shoring shall be performed in accordance with OSHA's Construction Standard for Excavations, 29 CFR, Part 1926, Subpart P.
19. Sources of ignition shall be prohibited from areas where flammable liquids are stored or issued. Appropriate warning signs shall be posted at these locations.
20. All earthmoving equipment shall have seat belts, backup alarms and rollover protective structures (ROPS).
21. Hazardous material information is on file at the Congleton-Hacker Company job site office. All subcontractors shall comply with communication of this information to their employees in respect to Congleton-Hacker Co. Hazard Communication Program and report any hazardous material brought on site to the project superintendent.
22. The use of, or being under the influence of, intoxicating beverages or illegal drugs while on the job is prohibited.
23. Horseplay causes accidents and will not be tolerated.
24. Be alert and keep out from under overhead loads.
25. Security of tools, equipment and materials will be the responsibility of each individual subcontractor.
26. Employees of subcontractors required to enter into confined or enclosed spaces shall be instructed as to the nature of the hazards involved, the necessary precautions to be taken, and the use of protective and emergency equipment required. A confined or enclosed space is a space which has limited means of egress and is subject to the accumulation of toxic or flammable contaminants or have an oxygen deficient atmosphere.
27. No person shall ride a hook, hoist or other material handling equipment. The riding of such equipment is prohibited.
28. All posted safety rules must be obeyed and must not be removed.
29. All subcontractors shall supply a competent person, as defined by OSHA, for their work and notify the project superintendent of such person.
30. All fork lift operators must be certified. Congleton-Hacker Company equipment (rented or owned) may only be operated by trained Congleton-Hacker Co. employees and use is strictly prohibited by others.
31. All subcontractors must see that all their employees receive a copy of the above safety work rules and monitor them to assure that all rules are complied with daily.

ALCOHOL AND DRUG FREE PROJECTS: Subcontractor acknowledges and agrees that it is essential to the safety of persons at the site that this be a drug and alcohol free Project. Subcontractor shall ensure that its employees shall not distribute, be under the influence of, or be in possession of any form of alcohol or unlawful drug while at the Project site or while performing Project related duties. The Subcontractor shall indemnify and hold the Owner and Contractor harmless from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or related to Subcontractor's failure to comply with this provision.

Exhibit "B"

CONGLETON-HACKER COMPANY POLICY ON SEXUAL AND OTHER UNLAWFUL HARASSMENT

Congleton-Hacker Company is committed to providing a work environment that is free of unlawful discrimination and harassment.

1. Actions, words, jokes, or comments based on an individual's sex, race, ethnicity, age, religion, or any other legally protected characteristic will not be tolerated.
2. Such harassment - whether overt or subtle - is a form of employee misconduct that is demeaning to another person, undermines the integrity of the employment relationship, and is strictly prohibited.
3. Sexual harassment, in particular, includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is made a condition of employment, that unreasonably interferes with work performance, or that creates an intimidating, hostile, or offensive work environment.

Congleton-Hacker Company shall specifically ensure that all subcontractors are aware of and carry out its policy to maintain a working environment free of harassment, intimidation and coercion, with specific attention to minority and female individuals.

We ask that you read this policy with care, abide by its provisions, and convey this information to all your employees working on Congleton-Hacker Company projects.

**CONGLETON-HACKER COMPANY
872 FLOYD DRIVE
LEXINGTON, KY 40505
PHONE 859.254.6481/ FAX 859.253.0442**

MINIMUM INSURANCE REQUIREMENTS FOR SUBCONTRACTORS

Subcontractor shall procure and keep in force and effect, insurance required by the Contract Documents, or as set forth below, whichever requires the more comprehensive and/or have higher coverage levels. Before commencing any work, Subcontractor shall furnish Congleton-Hacker Co. ("Contractor") with Certificates of Insurance attested by a duly authorized representative of the insurance carrier(s) acceptable to Contractor, and the Certificate of Insurance shall include the following statement: "In the event of modification or change or before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder and Additional Insureds". These are the minimum insurance requirements only and do not limit Subcontractor's liability, in any way, for incurred losses. Subcontractor's insurance policies shall not contain any limitation or exclusionary endorsements for operations.

A. GENERAL LIABILITY INSURANCE : Commercial General Liability Insurance, including Blanket Contractual Liability, Completed Operations, Explosion Collapse and Underground Hazard, Products Liability, Broad Form Property Damage, Premises- Operations, Independent Contractors and Personal Injury, with limits of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate for all liability arising out of injury to or death of one or more person, in any one occurrence, and for all liability arising out of damage to or destruction of property, including loss of use thereof and downtime, in any one occurrence. There shall be no endorsements or modification of the commercial general liability limiting the scope of coverage for liability arising from explosion, collapse, underground property damage, subsidence or damage to the work done on Subcontractor's behalf by a sub-subcontractor. In addition, no endorsement or exclusion will be added as respects contractual liability through the use of CG 2426 (07/04) or equivalent.

Subcontractor's coverage will be primary and non-contributory to any coverage maintained by Congleton-Hacker Co. and/or the Owner.

The Products Liability and Completed Operations Coverage required at \$1,000,000/ \$2,000,000 limit hereunder shall be effective during the term of the subcontract and for a period of at least two years following Work completion or equivalent to the state statute of repose, if any, whichever is longer.

Subcontractor's policy shall add Congleton-Hacker Company, their surety and the Owner as Additional Insureds with respect to general liability (ongoing & completed operations), automobile liability and umbrella liability on a primary & non-contributory basis as required by written contract. A waiver of subrogation in favor of the additional insureds applies to general liability, automobile liability & umbrella as required by written contract.

B. AUTOMOBILE LIABILITY INSURANCE: Automobile Liability Insurance on all motor vehicles owned, hired, or non-owned, with limits of not less than \$1,000,000 combined single limit. This policy shall add Contractor and Owner, as an insured thereunder by ISO additional insured endorsement CA 2048 (02/99) or its equivalent.

If hazardous materials are to be hauled, pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered automobiles endorsement (CA 99 410) shall be provided, and the Motor Carrier Act Endorsement (MCS-90) shall be attached.

C. EXCESS UMBRELLA LIABILITY - Subcontractor shall obtain and provide Excess or Umbrella Liability Insurance in an amount not less than \$1,000,000 laying over the underlying Commercial General Liability, Auto Liability and Employers' Liability coverage with the same coverage requirements as the underlying policies. Excess/Umbrella policy(s) must include as additional insured all entities that are required as additional insureds on the underlying policies herein required, and shall provide equivalent coverage to the underlying additional insured endorsements

D. STATUTORY WORKER'S COMPENSATION: Subcontractor shall procure Workers Compensation and Employer's Liability coverage of not less than \$1,000,000 each accident/\$1,000,000 disease each employee/\$1,000,000 disease policy limit and Broad Form All States Coverage, and Voluntary Compensation endorsement. Subcontractor shall also include coverage under the United States Longshoremen's and Harbor Worker's Compensation Act, if exposure exists, or if required by the Contract Documents.

Exhibit "C"

Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Subcontractor shall require its leasing company to provide Workers Compensation meeting the requirements of this workers compensation section for said workers and such policy shall be endorsed to provide an Alternate Employer Endorsement in favor of Subcontractor via WC 00 03 01A or its equivalent. If Subcontractor maintains any Workers Compensation policy(s) in addition to the coverage provided by the PEO, said policy(s) or its equivalent shall contain an Employee Leasing Client Exclusion Endorsement via WC 00 03 22 or its equivalent.

E. CERTIFICATE OF INSURANCE. Prior to commencement of the Work, and thereafter, upon renewal or replacement of each certificate of coverage, Subcontractor shall furnish Contractor with a certificate of insurance and policy endorsements (or certified copies of its insurance policies), which Subcontractor warrants and represents is a true and accurate representation of Subcontractor's existing insurance coverage. This certificate shall indicate and include copies of all endorsements, including Contractor and Owner as additional insured. The coverage provided to the additional insured parties shall be as broad as the coverage provided to the named insured under said policy and the limits of insurance shall be the limit specified in this Subcontract or the Subcontractor's policy, whichever is greatest.

F. BUILDER'S RISK OR ALL RISK POLICY: Contractor and Subcontractor waive all rights against each other and the Owner, separate contractors of Owner, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or other similar insurance covering improvements or materials at the Project site, except such rights as they may have to the proceeds of such insurance. The Subcontractor shall procure and maintain, at the Subcontractor's own expense, an Installation Floater to protect Subcontractor's interest. Subcontractor shall be responsible for payment of any its costs and expenses not covered by Builder's Risk, including the Builder's Risk deductible.

G. ENDORSEMENT. If the policies of insurance referred to in this Exhibit require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

H. PUNITIVE DAMAGES. Subcontractor's general liability, auto liability and umbrella/excess policies shall include punitive damage coverage (unless prohibited by applicable law).

I. ADDITIONAL INSURED LIMITATIONS. As respects any additional insured requirements contained herein, the coverage provided to the additional insured parties shall be as broad as the coverage provided to the named insured under said policy and the limits of insurance shall be limit specified in this contract or the Subcontractor's policy, whichever is greatest.

J. NO REPRESENTATION OF COVERAGE ADEQUACY. By requiring insurance herein, Contractor does not represent that coverage and limits will necessarily be adequate to protect Subcontractor and such coverage and limits shall not be deemed as a limitation on Subcontractor's liability under the indemnities granted to Contractor in this Agreement.

K. CROSS-LIABILITY COVERAGE. Subcontractor's liability policies shall contain the standard Insurance Services Organization (ISO) Separation of Insured's clause or a substantially similar clause. There shall be no endorsements or modifications limiting the scope of coverage related to the Separation of Insured's clause.

L. SELF-INSURED RETENTIONS. Subcontractor warrants it is financially capable and responsible for payment of all retentions on its policies regardless of fault.

M. SUB-SUBCONTRACTOR'S INSURANCE. Subcontractor shall cause each sub-subcontractor employed by Subcontractor to purchase and maintain insurance of the type specified in the requirements of this section, and will only vary from these requirements with the express written approval of Contractor. When requested by Contractor, Subcontractor shall furnish to Contractor copies of certificates of insurance evidencing coverage for each sub-subcontractor.

Exhibit "D"

CONGLETON-HACKER COMPANY
PROJECT INFORMATION FORM

Affidavits, Releases of Lien and Waivers, both Partial and Final, will be required from all Material Suppliers and Subcontractors furnishing materials or labor on this project.

CHC PROJECT #{Projects.Number}

SUBCONTRACTOR: {ToCompany.Name}

PROJECT: {Projects.Name}

I. LIST YOUR MATERIAL & EQUIPMENT SUPPLY SOURCES FOR THIS PROJECT

*If additional space is needed, attach list

	STREET ADDRESS	CITY	STATE	ZIP	PHONE NO.	DESCRIPTION OF MATERIALS TO BE SUPPLIED

II. SUBCONTRACTORS YOU INTEND TO USE ON THIS PROJECT

FIRM NAME	STREET ADDRESS	CITY	STATE	ZIP	PHONE NO.	DESCRIPTION OF SUBCONTRACTED WORK

I certify that the foregoing is a complete list of all material suppliers and subcontractors from whom purchases in excess of \$1,000.00 will be made for this particular Congleton-Hacker Co. project. In addition, I agree that you may contact any of the above listed parties for the purpose of obtaining information relating to this project.

 Signature Printed Name Title Date

Congleton-Hacker Co. Use Only	
_____ Date	_____ PM Initial

CONGLETON-HACKER COMPANY
872 Floyd Drive
Lexington, KY 40505

SUMMARY OF APPLICATION FOR PAYMENT

DATE: _____ PROJECT: {Projects.Name}
FROM: {ToCompany.Name} PROJECT NO. {Contracts.ContractNumber}

DATE OF CONTRACT: {Contracts.ContractDate}

APPLICATION NO. _____
PHONE: _____ PERIOD FROM _____ TO _____

STATEMENT OF CONTRACT

Original Contract Amount \$ {Contracts.OrigValue}
Approved Change Order #1 thru _____ * \$ _____
Revised Contract Amount to Date \$ _____

* Unapproved Changes are not to be billed unless and until a Change Order is fully executed by Congleton-Hacker.

PROJECT TO DATE APPLICATION CALCULATIONS

Value of Work Completed (per attached breakdown as prescribed by Project Manager) \$ _____
Materials Stored (per attached breakdown as prescribed by Project Manager) \$ _____
Total Completed Work & Material Stored on Job Site \$ _____
Less _____ % Retainage \$ _____
Total to Date Less Retainage \$ _____
Less Previous Applications \$ _____
Amount of This Application for Payment \$ _____

IMPORTANT: The Payment Estimate Supplemental Information Data must be completed and submitted along with this form. The Progress Payment Waiver and Release of Lien form must be furnished for previous invoice payments to subcontractors and suppliers. Your Progress Payment Waiver of Lien must also be furnished for previous invoice payments.

CONGLETON-HACKER COMPANY

PAYMENT ESTIMATE SUPPLEMENTAL INFORMATION

TO: CONGLETON-HACKER COMPANY

RE: SUBCONTRACT NO. {Contracts.ContractNumber}

PROJECT: {Projects.Name}

PAYMENT ESTIMATE NO. _____ ESTIMATE DATE: _____

Listed below are all subcontractors and suppliers of materials for this project during the period covered by this Payment Estimate whose total amount due for the period exceeds \$1,000.00 OR who have had lesser amounts due over multiple periods which in aggregate exceeds \$1,000.00 and for which releases have not been furnished.

If additional space is needed attach list to this sheet. Send completed releases and waivers from all of the following along with your own with your next Payment Estimate.

NAME	ADDRESS	DESCRIPTION OF WORK OR MATERIALS

The undersigned certifies that the foregoing list, and any attached sheets, includes all subcontractors and material suppliers as described above having amounts due in excess of \$1,000.00 in aggregate for the period covered by this or previous Payment Estimates for which releases and waivers of lien have not been furnished.

COMPANY NAME: {ToCompany.Name}

AUTHORIZED SIGNATURE: _____

TITLE: _____ DATE SIGNED: _____

Congleton-Hacker Co. Use Only
Project Manager Approval: _____

For Use By Subcontractor's Material Suppliers and Subcontractor's Subcontractors

PROGRESS PAYMENT {CONTRACTS.CONTRACTNUMBER}
SUBCONTRACTOR, SUPPLIER OR VENDOR AFFIDAVIT AND WAIVER OF LIEN
ACKNOWLEDGEMENT OF PAYMENT

Project Name:{Projects.Name} ("the Project")

Subcontractor, Supplier or Vendor Name: {ToCompany.Name} ("Subcontractor")

Owner Name:{LegalDocInfo.Owner}("Owner")

Subcontractor has provided labor and/or materials, equipment, or machinery for the Project during the billing period of _____ through _____ (the Billing Period), and

Subcontractor has paid in full all bills, invoices or other obligations for labor, materials, payroll taxes, material, equipment, machinery, fuel or any other debts owed relating to this Project which are due or payable on or before the last day of the Billing Period.

Subcontractor certifies and warrants that it has complied with all federal, state and local tax and employment laws, including but not limited to Social Security, Unemployment, Immigration, and Workers Compensation laws relating to the Subcontract and Subcontractor's work through the Billing Period.

Subcontractor waives and releases all rights to lien or claim against the Owner of the Project, the Owner's Property, Congleton-Hacker Company and any surety for the performance of this Subcontract from inception of the Project through the Billing Period, except for (i) unpaid retention and (ii) work that has been performed which is not the subject of an approved change order and which is described and quantified in the attached document. The Subcontractor acknowledges and agrees that all claims that arose during this Billing Period, if any, are hereby expressly waived and released. The Subcontractor further states that no other person has any right to a lien or claim against the Owner or Owner's property due to work performed or material, equipment, machinery or other supplies furnished to the Subcontractor through the Billing Period.

Subcontractor understands and agrees that Congleton-Hacker Company and others are relying on this waiver and release to induce Congleton-Hacker Company to make payments to the Subcontractor. This waiver and release shall become effective immediately upon receipt of the amount applied for in Payment Application Number __ for this Billing Period.

Subcontractor swears, affirms and certifies that its Application for Payment Number __ for the Billing Period is accurate and correct and properly describes the work performed, materials, equipment and machinery provided to the Project for the Billing Period specified. Subcontractor shall indemnify, defend and hold harmless Congleton-Hacker and the Owner, including any attorneys' fees or costs incurred by them, from and against any claim or lien by any vendor, sub-subcontractor or other person or entity with respect to any material or labor placed upon, furnished or installed on or in the Project and/or on Owner's property by the Subcontractor or Subcontractor's vendors, sub-subcontractors or others for whom Subcontractor is directly or indirectly responsible.

{ToCompany.Name}
Subcontractor

Signature and Title

Printed name

COMMONWEALTH OF KENTUCKY)
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20____, by _____.

My commission expires: _____

NOTARY PUBLIC

[SEAL]

SUBCONTRACTOR AFFIDAVIT AND WAIVER OF LIEN –

ACKNOWLEDGMENT OF FULL AND FINAL PAYMENT {CONTRACTS.CONTRACTNUMBER}

_____, on behalf of {ToCompany.Name} (hereinafter "the Subcontractor"), being duly authorized by the company, and after first being duly sworn, states as follows:

Subcontractor, having entered into a Subcontract with Congleton-Hacker Co. ("Contractor") on the project owned by {LegalDocInfo.Owner} ("Owner") and known as {Projects.Name}, located in{Projects.Address} (hereinafter "the Project"), has performed work and/or furnished materials, equipment, and/or machinery or has fabricated materials especially for the Project. Subcontractor certifies that it has paid in full all bills or obligations for labor, sub-subcontract Work, payroll taxes, material, (whether or not specifically fabricated for this Project), equipment, and/or machinery, and Subcontractor represents to Contractor that there are no bills or obligations unpaid on the Project.

The Subcontractor further certifies that it has complied with all federal, state and local tax and employment laws, including, but not limited to, Social Security, Unemployment and worker's compensation laws, applicable to its Work for the Project.

The Subcontractor hereby fully and finally waives and releases all rights to liens and claims against the Owner, the Contractor, the Project property, the Project or any funds relating thereto for the performance of its Contract from the inception of the Project. The Subcontractor further states that no other person has any right to a lien or claim against the Owner, the Contractor, the Project property or the Project funds on account of work performed or for material, equipment, and/or machinery, or for material especially fabricated for the Project, furnished by or through the Subcontractor.

Subcontractor understands and agrees that this waiver and release is given with the understanding that the Contractor and others will rely upon it, and it is provided to induce Contractor to make the final payment to the Subcontractor. The waiver and release is effective as of the date it is signed.

In consideration for full and final payment, Subcontractor shall indemnify, defend and hold the Contractor and the Owner harmless from any claims or liens asserted against the Contractor, the Owner, Owner's property, the Project or any funds relating thereto by Contractor's subcontractors, suppliers, governmental agencies or other third parties which arise from Work performed and/or materials provided, including all costs, attorneys' fees and other expenses incurred by the Contractor or Owner as a result of such liens or claims.

Subcontractor attaches hereto final waivers and releases for liens from all sub-subcontractors, vendors and/or material suppliers.

SUBCONTRACTOR

Signature/Title

Printed Name

State of: _____

County of: _____

Subscribed and sworn before me this _____ day of _____, 2012 by _____, the _____ of _____, a _____ corporation (or partnership or sole proprietorship), on behalf of the Subcontractor.

Notary Public

My commission expires: _____

RELEASE, WAIVER AND INDEMNIFICATION

FOR USE OF CONGLETON-HACKER CO. OWNED OR RENTED EQUIPMENT

This ___ day of _____, 20 __, {ToCompany.Name} ("Subcontractor"), agrees as follows:

WHEREAS, Subcontractor is performing work on the {Projects.Name} project ("Project") under subcontract with Congleton-Hacker Company ("Contractor"); and

WHEREAS, Subcontractor desires to use equipment owned by Contractor in the performance of its work on the Project;

NOW THEREFORE, in consideration of Contractor's permission to use Contractor's equipment on the Project, Subcontractor agrees as follows:

1. Subcontractor agrees that it is using the equipment at its own risk, and uses the equipment as is, without any representations or warranties from Contractor.
2. Subcontractor shall indemnify, defend and hold Contractor harmless from any loss, claim, damage, or other costs, fees and/or expense (including personal injury, property damage or death), which may arise from Subcontractor's use of Contractor's equipment, including the use of Contractor's equipment by Subcontractor's employees, agents, sub-subcontractors or suppliers or any other party for whom Subcontractor, except where such loss or damage is determined to have been solely and exclusively the fault of Contractor.
3. Subcontractor releases Contractor from all liability relating to Subcontractor's use of Contractor's equipment.
4. Subcontractor shall provide only qualified, skilled and trained operators of Contractor's equipment.
5. Subcontractor shall provide all maintenance, fuel and other items necessary for operation of Contractor's equipment during Subcontractor's use of the equipment.
6. Subcontractor shall return the equipment in the same or better condition than the condition of the equipment upon receipt, and Subcontractor shall repair any and all damage to the equipment.
7. Subcontractor shall not permit other subcontractors or other persons to use Contractor's equipment.

SUBCONTRACTOR: {ToCompany.Name}

CONTRACTOR: CONGLETON-HACKER CO.

BY: _____

BY: _____

ITS: _____

ITS: _____

Exhibit "G"

SCOPE DOCUMENT AND SPECIAL CONDITIONS

Exhibit "H"



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
AGC DOCUMENT NO. 606
SUBCONTRACT PERFORMANCE BOND



This document is endorsed by the American Subcontractors Association, Inc.

The Contractor, _____ (the "Contractor") has entered into a Contract with the Owner _____ (the "Owner") dated _____ for _____

_____ (the "Project"); and The Contractor and the Subcontractor _____, (the "Subcontractor") have entered into a Subcontract Agreement (the "Subcontract") dated _____ for certain portions of the work in connection with the Project consisting generally of: _____ (the "Subcontract Work").

The Subcontract is incorporated by reference into this Bond.

By virtue of this Performance Bond (the "Bond"), the Subcontractor as Principal and _____ as Surety ("Surety"), are bound to the Contractor as Obligee in the maximum amount of _____ Dollars (\$ _____) (the "Bond Sum"). The Subcontractor and Surety hereby bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein.

1. **GENERAL CONDITIONS.** It is the condition of this Bond that if the Subcontractor provides all labor, materials, equipment and services necessary or incidental to complete the Subcontract Work in accordance with that which is indicated in the Subcontract, the Surety's obligations under this Bond are null and void. Otherwise the Surety's obligations shall remain in full force and effect. The Surety waives any requirement to be notified of any alteration or extension of time made by the Contractor in the Subcontract. The Contractor may not invoke the provisions of this Bond unless the Contractor has performed its obligations pursuant to the Subcontract. Upon making demand on this Bond, the Contractor shall make the Subcontract Balance (the total amount payable by the Contractor to the Subcontractor pursuant to the Subcontract less amounts properly paid by the Contractor to the Subcontractor) available to the Surety for completion of the Work.

2. **SURETY OBLIGATIONS.** If the Subcontractor is in default pursuant to the Subcontract and the Contractor has declared the Subcontractor in default in writing, the Surety promptly may remedy the default or shall:

- a. Complete the Subcontract Work, with the consent of the Contractor, through the Subcontractor or otherwise;
- b. Arrange for the completion of the Subcontract Work by a subcontractor acceptable to the Contractor and secured by performance and payment bonds equivalent to those for the Subcontract issued by a qualified surety. The Surety shall make available as the Subcontract Work progresses sufficient funds to pay the cost of completion of the Subcontract Work less the Subcontract Balance up to the Bond Sum; or
- c. Waive its right to complete the Subcontract Work and reimburse the Contractor the amount of its reasonable costs, not to exceed the Bond Sum, to complete the Subcontract Work less the Subcontract Balance.

3. **DISPUTE RESOLUTION.** Any dispute pursuant to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within two years after default of the Subcontractor or Substantial Completion of the Subcontract Work, whichever occurs first. If this provision is prohibited by law, the minimum period of limitation available to sureties in the jurisdiction shall be applicable.

This Bond is entered into as of _____

SURETY _____ (seal) SUBCONTRACTOR _____ (seal)

By: _____ By: _____

Print Name: _____ Print Name: _____

Print Title: _____ Print Title: _____

(Attach Power of Attorney)

Witness: _____ Witness: _____

(Additional signatures, if any, appear on attached page.) (Additional signatures, if any, appear on attached page.)

Exhibit "H"



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
AGC DOCUMENT NO. 607
SUBCONTRACT PAYMENT BOND



This document is endorsed by the American Subcontractors Association, Inc.

The Contractor, _____ (the "Contractor") has entered into a Contract with the Owner _____ (the "Owner") dated _____ for _____ (the "Project"); and The Contractor and the Subcontractor _____, (the "Subcontractor") have entered into a Subcontract Agreement (the "Subcontract") dated _____ for certain portions of the work in connection with the Project consisting generally of: _____

The Subcontract is incorporated by reference into this Bond.

By virtue of this Performance Bond (the "Bond"), the Subcontractor as Principal and _____ as Surety ("Surety"), are bound to the Contractor as Obligee in the maximum amount of _____ Dollars (\$ _____) (the "Bond Sum"). The Subcontractor and Surety hereby bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein.

1. **GENERAL CONDITIONS.** It is the condition of this Bond that if the Subcontractor promptly makes payment for all labor, materials, and equipment furnished for use in the performance of the work required by the Subcontract, the Surety's obligations pursuant to this Bond are null and void. Otherwise the Surety's obligations shall remain in full force and effect. The Surety waives any requirement to be notified of any alteration or extension of time made by the Contractor in the Subcontract.

2. **SURETY OBLIGATIONS.** Every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, may have a right of action on this Bond. The Surety's obligation to the Claimant(s) shall not exceed the Bond Sum.

3. **LIMITATION OF ACTION.** No suit or action shall be commenced on this Bond by any Claimant:

a. Unless Claimant, other than one having a direct contract with the Subcontractor, shall have given written notice to the Subcontractor, the Contractor and the Surety within ninety (90) days after the Claimant did or performed the last of the work or labor, or furnished the last of the materials for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by any means which provides written third party verification to the Subcontractor, the Contractor and Surety at any place within the United States where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the Project is located.

b. After the expiration of one (1) year from the date on which the Claimant last performed labor or furnished materials or equipment on the Project. If this provision is prohibited by law, the minimum period of limitation available to sureties in the jurisdiction shall be applicable.

c. Other than in any court of competent jurisdiction in the location in which the Project is located.

4. **CLAIMANT.** A Claimant is defined as an individual or entity having a direct contract with the Subcontractor or having a contract with a subsubcontractor having a direct contract with the Subcontractor to furnish labor, materials or equipment for use in the performance of the Subcontract.

This Bond is entered into as of _____

SURETY _____ (seal) SUBCONTRACTOR _____ (seal)
By: _____ By: _____
Print Name: _____ Print Name: _____
Print Title: _____ Print Title: _____
(Attach Power of Attorney)

Witness: _____ Witness: _____
(Additional signatures, if any, appear on attached page.) (Additional signatures, if any, appear on attached page.)

Exhibit "H"

GENERAL INSTRUCTIONS

Standard Form

These instructions are for the information and convenience of the users of AGC 607, 2004 Edition. They are not part of the Agreement nor a commentary on or interpretation of the contract form. It is the intent of the parties to a particular agreement that controls its meaning and not that of the writers and publishers of the standard form. As a standard form, this Agreement has been designed to establish the relationship of the parties in the standard situation. Recognizing that every situation is unique, modifications may be required. See the following recommendations for modifications.

Legal and Surety Counsel

THIS DOCUMENT HAS IMPORTANT LEGAL AND SURETY CONSEQUENCES, AND IT IS NOT INTENDED AS A SUBSTITUTE FOR COMPETENT PROFESSIONAL SERVICES AND ADVICE. CONSULTATION WITH AN ATTORNEY AND A SURETY ADVISOR IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS MAY VARY WITH RESPECT TO THE APPLICABILITY AND/OR ENFORCEABILITY OF SPECIFIC PROVISIONS IN THIS DOCUMENT. AGC SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASERS ASSUME ALL LIABILITY WITH RESPECT TO THE USE OR MODIFICATION OF THIS DOCUMENT, AND AGC SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM SUCH USE OR MODIFICATION.

COMPLETING THE AGREEMENT

Completing Blanks

Diamonds (◆) in the margins indicate provisions requiring the parties to fill in blanks with information.

Modifications

Supplemental conditions, provisions added to the printed agreement, may be adopted by reference. It is always best for supplements to be attached to the agreement. Provisions in the printed document that are not to be included in the agreement may be deleted by striking through the word, sentence or paragraph to be omitted. It is recommended that unwanted provisions not be blocked out so that the deleted materials are illegible. The parties should be clearly aware of the material deleted from the standard form. It is a good practice for both parties to sign and date all modifications and supplements.

Photocopying the Completed Document

The purchaser of this copyrighted document may make up to nine (9) photocopies of a completed document, whether signed or unsigned, for distribution to appropriate parties in connection with a specific project. Any other reproduction of this document in any form is strictly prohibited, unless the purchaser has obtained the prior written permission of the Associated General Contractors of America.

OBTAINING ADDITIONAL INFORMATION

To obtain additional information about AGC documents, contact AGC at 333 John Carlyle Street, Suite 200, Alexandria, VA 22314; phone 1-(800) 242-1767 or (703) 548-3118; fax (703) 548-3119, or visit AGC's web site at www.agc.org.

SPECIAL INSTRUCTIONS

This document may be completed in the following manner:

- Fill in the legal names of the Contractor (Obligee) and Owner.
- Fill in the date of the Contract between the Owner and Contractor and the name of the Project.
- Fill in the legal name of the Subcontractor (Principal). Fill in the date of the Subcontract and the description of the work.
- Fill in the company name of the Surety as the "SURETY." Note that the name of the Surety is not the name of the surety agent.
- Provide the amount (the "Bond Sum"), stated in both Arabic numerals and words, for which the Subcontractor and the Surety will be obligated.
- Provide the date of the bond in the space provided after Article 4 and before the signatures.
- Fill in the company name of the Surety after "SURETY." Note that the name of the Surety is not the name of the surety agent. The corporate seal should be affixed. The signature of the person representing the firm should be placed on the line entitled "By." Below the signature line, the person's name who placed their signature on the signature line should be typed or printed in along with their business title. It is most important that the Surety's Power of Attorney be attached. The signature of the witness should be placed on the line entitled "Witness."
- Fill in the company name of the Subcontractor after "SUBCONTRACTOR." The corporate seal should be affixed. The signature of the person representing the firm should be placed on the line entitled "By." Below the signature line, the person's name who placed their signature on the signature line should be typed or printed in along with their business title. The signature of the witness to the signature for the "SUBCONTRACTOR" should be placed on the line entitled "Witness."
- Additional witness signatures, if any, should be included on an attached sheet and this fact should be noted in the space below or to the side of the line. (Additional signatures, if any, appear on attached page.)

Exhibit "1"

CONTRACT DOCUMENT LIST