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SUBCONTRACTOR TERMS AND CONDITIONS

ARTICLE 1.0 – GENERAL OBLIGATIONS

The Prime Contract, including all general conditions; appendices; special and supplemental conditions or provisions; drawings or plans; specifications; addenda; and modifications, supplements, amendments, changes, or additions thereto issued prior to this Subcontract Date, and all modifications issued subsequent to this Subcontract Date (collectively the “Prime Contract”) is made a part of this Subcontract and is incorporated herein by reference. In connection with the work, service, materials, or goods covered by this Subcontract, Subcontractor fully assumes toward Contractor all obligations and responsibilities that Contractor assumes toward Owner under the Prime Contract and Contractor shall have all rights and remedies as to Subcontractor which Owner has as to Contractor under the Prime Contract. Subcontractor acknowledges and represents to Contractor that it has carefully examined and reviewed the Prime Contract and is familiar with the provisions of the Prime Contract as it may have any effect upon Subcontractor’s rights or performance under this Subcontract. Subcontractor shall require and cause its subcontractors, agents and material suppliers to comply with the terms of this Subcontract and the Prime Contract.

1.1 EXTENT OF AGREEMENT

This Subcontract represents the entire Agreement of the parties. All of the terms and conditions set forth herein are an integral part of the Subcontract, supersede any contrary provisions, supersede Subcontractor's quotation form or proposal, and may not be varied or modified in any manner, except by a subsequent writing signed by an authorized representative of Contractor. In the event of conflicts or inconsistencies between provisions of this Subcontract and the Prime Contract documents, this Subcontract shall govern. A Subcontractor may request modifications to Contractor only by written request submitted through prequalification@wsoule.com. A written explanation is required for any modifications to be considered.

1.2 ACCEPTANCE OF TERMS

Subcontractor’s execution of this Subcontract, shipment of the material or any portion thereof, the commencement of any work, or the performance of any services hereunder shall constitute acceptance by Subcontractor of all conditions contained in this Agreement. Waiver by contractor of any provision of this subcontract shall not be deemed as a waiver of further compliance therewith, and such provisions shall remain in full force and effect.

1.3 TIME/SCHEDULE

Time is of the essence of this Subcontract. In consultation with Subcontractor, the Contractor shall prepare the schedule for performance of Contractor's work (“Progress Schedule”) where applicable, and shall revise and update such schedule, as necessary, as Contractor's work progresses. Subcontractor shall provide Contractor with any scheduling information proposed by Subcontractor for Subcontract Work and shall revise and update as the Project progresses. Contractor and Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to Subcontractor reasonably in advance of required performance. Contractor shall seek the mutual consent of the Subcontractor, but ultimately shall have the right to determine and, if necessary, change the time, order and priority in which various portions of Subcontract Work shall be performed and all other matters relative to Subcontract Work.

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1.4 RELATIONSHIP OF PARTIES

The Subcontractor accepts the relationship of trust and confidence established by this Agreement and pledges its fullest cooperation with the Contractor to exercise its skill and judgment in furthering the interests of the Contractor; to furnish efficient business administration and supervision; to furnish, at all times, an adequate supply of workers and materials; and to perform the Subcontract Work in an expeditious and economical manner consistent with the Contractor's interests. The Contractor agrees to furnish and approve, in a timely manner, information required by the Subcontractor and to make payments to the Subcontractor in accordance with the requirements of this Agreement. Subcontractor shall not assign or sub-subcontract the whole or any part of Subcontract Work or this Agreement without prior written approval of Contractor. The Subcontract Documents shall not be construed to create a contractual or third-beneficiary relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and the Subcontractor. However, the Subcontractor's standard sub-subcontract and material purchase orders shall provide that the Contractor is an intended third-party beneficiary of those second-tier agreements.

ARTICLE 2.0 - SUBCONTRACTOR'S OBLIGATIONS

2.1 SUBCONTRACT WORK

Subcontractor shall perform Subcontract Work under the general direction of Contractor and shall cooperate with Contractor, so Contractor may fulfill obligations to Owner. The Subcontract Work shall be carried out in strict compliance with the Subcontract. Subcontractor shall provide Subcontract Work for the Project in accordance with the Progress Schedule to be prepared by Contractor after consultation with Subcontractor, and as it may change from time to time. Subcontractor shall give timely notices to Contractor and to authorities pertaining to Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete Subcontract Work.

2.2. FAMILIARITY WITH THE PROJECT

Subcontractor's execution of the Subcontract is a representation that the Subcontractor has visited the Project, become generally familiar with local conditions under which the Subcontract Work is to be performed, the status of any construction at the Project, and correlated personal observations with requirements of the Contract Documents. Subcontractor further represents that it has carefully reviewed all information that has been provided by Owner to Contractor, concerning visible and concealed conditions at the Project and in existing improvements (including, without limitation, surveys, reports, data, as built drawings of existing improvements and utility sources, capacities and locations).

2.3 TAXES

Contractor shall obtain from Owner and provide to Subcontractor a copy of tax-exempt certificates, if any, applicable to this Project. Notwithstanding the foregoing, it is Subcontractor's obligation to determine all local, state, and federal taxes measured by or imposed in connection with the performance of the Subcontract Work or furnishing of materials hereunder, including but not limited to all sales, consumers, and use taxes imposed by reason of the purchase or use of any kind of personal property in the performance hereof. The Subcontractor shall incorporate into the Subcontract Amount, and pay, all such applicable taxes. The Subcontractor shall secure, defend, protect, hold harmless, and indemnify the Contractor from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Contractor by any taxing authority with respect to such taxes. The Subcontractor shall cooperate with and assist the Contractor in securing



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qualified refunds of any sales or use tax paid by the Contractor or Subcontractor on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Contractor.

ARTICLE 3.0 – ENVIRONMENTAL, HEALTH & SAFETY

3.1 ENVIRONMENTAL, HEALTH & SAFETY PROGRAM

To protect persons, property, and the environment, Subcontractor shall establish an Environmental, Health & Safety program implementing measures, policies and standards conforming to (1) those required or recommended by governmental and quasi-governmental authorities having jurisdiction and (2) requirements of this Agreement and the Prime Contract. Subcontractor will comply with procedures and policies established by Owner or Contractor related to safety, health, environment, security, access, working hours, drug-free workplace, etc., at the Project and assumes responsibility for all Environmental, Health & Safety requirements related to the Subcontract Work. The Subcontractor shall notify Contractor supervision of any incident, relating to the Subcontractor's work, involving people, property or environment immediately. A formal incident report shall be submitted to Contractor within 24 hours.

If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employees on the site.

3.2 CLEANING UP

Subcontractor at all times shall keep the Project free from debris such as waste, rubbish and excess materials and equipment caused by the performance of the Subcontract Work. Subcontractor shall not leave debris under, in or about the Project but shall promptly remove same from the Project. Upon final completion, and as a condition precedent to final payment, Subcontractor shall remove from the Project all tools, surplus materials, equipment, scrap, debris, and waste, and leave the Project "broom clean." If Subcontractor fails upon 24 hours' notice from Contractor to perform its cleaning obligation, Contractor may arrange to do so, and back charge the Subcontractor the cost thereof.

ARTICLE 4.0 – CHANGES

4.1 CONTRACTOR CHANGES

Contractor may, in writing signed by its authorized agent and without notice to Subcontractor's surety (if any) and without invalidating this Subcontract, make changes by substituting for, adding to, deducting from, or otherwise changing the Subcontract Work, with the Subcontract Price adjusted accordingly. However, Subcontractor will not perform any changes absent a prior written directive signed by Contractor's authorized agent. Any extra work performed without Contractor's written directive in accordance with this Subcontract will be at Subcontractor's sole expense, including any extra work attributable solely to Contractor's acts or omissions. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without written direction from Contractor. All change proposals must strictly comply with the Prime Contract, including but not limited to any mark-up limitations, and be submitted in time for the Contractor to comply with the timeliness requirements thereof, or Subcontractor's claim is deemed waived. Subcontractor is bound by any decisions of Owner relating thereto. No act, omission or course of dealing by the parties shall alter the requirement that modifications



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of the Subcontract Amount or time of performance can be accomplished only by written documents signed by the parties.

4.2 SUBCONTRACTOR CHANGES

If Subcontractor discovers a condition or situation that it believes constitutes a change to the Subcontract Work, or otherwise requires a change to the Contract Documents, Subcontractor shall provide written notice of the change within five (5) calendar days from discovering such changed condition or situation. If a dispute arises between Contractor and Subcontractor about whether particular work constitutes a change to the Subcontract Work, Subcontractor, upon direction from Contractor, shall timely perform the disputed work and give written notice of any claim for additional compensation for the disputed work within seven (7) days after the disputed work was performed. Subcontractor's failure to give timely notice of any change and claim constitutes an agreement by it that Subcontractor will not be paid for the disputed work.

4.3 DOCUMENTATION

When time and material, hourly rate or overtime work is authorized by Contractor in accordance with this Article 4, Subcontractor will submit time sheets and material delivery records on a daily basis for signature by Contractor's authorized representative. If requested by Contractor, Subcontractor will provide access to all pertinent records required to establish the validity of payment requests. No payment will be due for time and material, hourly rate, or overtime work absent strict compliance with this Section 4.3. Contractor's authorized representative signature on these records only verifies hours worked or material delivered and assumes that Subcontractor has submitted a proposed change and obtained Contractor's written approval in accordance with this Subcontract to undertake time and material, hourly rate or overtime work; the signature does not constitute approval for a change to the Subcontract Work or Subcontract Price. Overtime will not result in an adjustment to the Subcontract Price unless Contractor requests specific overtime in writing and agrees in writing to adjust the Subcontract Price for the overtime work specified. Such overtime will be chargeable at actual cost of the premium portion of labor only (without markups for overhead or profit), plus legally applicable labor taxes and fringes. All other overtime shall be deemed voluntary and is at Subcontractor's sole expense.

4.4 SUBCONTRACTOR'S CLAIM

Contractor will submit to Owner a claim by Subcontractor related to any delay, interference, acceleration or other damages to Subcontractor, resulting from or arising out of (a) any acts or omissions by Owner or Architect or anyone for whom either of them may be responsible, or (b) fire or other casualty, riots, strikes or other combined action of the workmen or others, any acts of God, or any other causes beyond Subcontractor's reasonable control and not foreseeable by Subcontractor, but only if and to the extent Owner is liable to Contractor for a claim related to such matters and actually grants relief for such claim. It is expressly understood that the only obligation Contractor has to Subcontractor under this provision is to pass on to Owner any claim Subcontractor has against Owner or Architect, and to pay to Subcontractor any amounts which Owner or Architect pays to Contractor or grants time extensions as a result of such claim. Subcontractor will reimburse Contractor for all costs and expenses, including attorneys' fees, incurred in connection with presenting any such claim to Owner.

4.5 TIME REQUIREMENT

If the time periods in the Prime Contract for the giving of notice of change or delay, notice of claims, demands for relief in the case of disputes, or notice to correct a default, are shorter than the time periods set forth in this Agreement, then Subcontractor agrees to meet the shorter period as a requirement of this Subcontract.



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ARTICLE 5.0 – PAYMENT

5.1 SCHEDULE OF VALUES

As a condition of payment, Subcontractor shall provide a schedule of values satisfactory to Contractor not more than fifteen (15) Days from the date of this Agreement if applicable.

5.2 PROGRESS AND FINAL PAYMENTS

Progress payments, less retainage, shall be made to Subcontractor, for Subcontract Work satisfactorily performed, no later than 30 days after receipt by Contractor of payment from Owner for Subcontract Work. Final payment of the balance due shall be made to Subcontractor no later than 30 days after receipt by Contractor of final payment from Owner for Subcontract Work. These payments are subject to (i) approval of the Subcontract Work by Contractor and Owner's representative, to the extent required by the Prime Contract; (ii) a properly executed sworn statement and a partial or a final construction lien waiver, as the case may be, in a form substantially complying with applicable state law; (iii) construction lien waivers appropriate to the stage of the Subcontract Work from all sub-subcontractors and suppliers; (iv) submittal of all warranties, guarantees or other documentation required by this Agreement and (v) compliance by Subcontractor with all other Contract Documents requirements. Moreover, Contractor's receipt of payment for Subcontractor's work from Owner shall, to the fullest extent permitted by Law, be an express condition precedent to the right of Subcontractor to receive payment from Contractor. Subcontractor's right to payment shall not be enlarged by reason of the existence of any labor and material payment bond, mechanic's lien discharge bond or other security that may exist.

5.3 TRUST FUNDS

Any and all funds paid to Subcontractor hereunder are declared to constitute trust funds in the hands of Subcontractor, to be applied first to the payment of claims of Subcontractor's subcontractors, laborers and suppliers arising out of the Subcontract Work, to claims for utilities furnished and taxes imposed, and to the payment of premiums on surety bonds and other bonds before application to any other purpose.

5.4 PAYMENTS WITHHELD

Contractor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage caused by Subcontractor's failure to (1) timely perform Subcontract Work, (2) properly pay its subcontractors or suppliers, or (3) promptly correct rejected, defective or nonconforming Subcontract Work, (4) third party claims involving the Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed unless and until the Subcontractor furnishes the Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims if established.

5.5 LIEN BOND

In the event that any of Subcontractor's subcontractors, material suppliers, laborers, or lower-tier subcontractor, suppliers, or laborers records a construction lien against the Project, and the lien claim is not resolved such that the lien claimant does not voluntarily remove the lien within 30 days of its recording, then Contractor has the right to demand that Subcontractor obtain and record a lien discharge bond. Subcontractor shall promptly obtain and record a lien discharge bond, at Subcontractor's expense, if the Owner so elects to exercise this right.

5.6 WAIVER OF CLAIMS

Subcontractor's receipt of final payment from Contractor shall constitute a waiver of all claims by Subcontractor relating to Subcontract Work but shall in no way relieve Subcontractor of liability for warranties, or for nonconforming or defective work discovered after final payment.



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5.7 DEVIATION FROM PAYMENT TERMS

If, at Subcontractor's request or in Contractor's judgment, Contractor is required to deviate from its normal progress payment procedures due to the Subcontractor's inability to meet its obligation under the Subcontract, any additional cost or expense thereby incurred may be back charged against any sum due or to become due to Subcontractor.

ARTICLE 6.0 – INSURANCE, BONDS AND INDEMNITY

6.1 SUBCONTRACTOR'S INSURANCE

Before commencing the Subcontract Work, and as a condition precedent of payment, the Subcontractor shall purchase and maintain all insurance required by Contractor in the Subcontractor prequalification process, and in Exhibit A of this document, that will protect it from claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants or sub-subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor shall name as additional insureds on its insurance policies for all purposes, including completed operations coverage, for the period required by the Contract Documents: the Contractor; Owner; any party identified as an indemnified party in the Contract Documents; and anyone the Contractor is required to name as an additional insured in the Contract Documents.

6.2 BONDS

When required by the Subcontract, Subcontractor shall furnish to Contractor, as Obligatee, surety bonds in a form acceptable to the Owner, and through a surety mutually agreeable to Contractor and Subcontractor, to secure faithful performance of Subcontract Work and to satisfy Subcontractor payment obligations related to Subcontract Work.

6.3 INDEMNITY

To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their agents, consultants and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in Section 6.3.

In claims against any person or entity indemnified under Section 6.3 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 6.3 shall not be limited on the amount or type of damages, compensation or benefit payable by or for the Subcontractor or the Subcontractor's Sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.



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6.4 RISK OF LOSS

Except to the extent a loss is covered by applicable insurance, risk of loss and/or damage to the Subcontract Work shall be upon the Subcontractor until Subcontract Work completion, unless otherwise agreed to by the Parties.

ARTICLE 7.0 – TERMINATION

7.1 TERMINATION FOR DEFAULT

Should Subcontractor at any time (i) fail to supply a sufficient number of skilled workmen or a sufficient quantity of materials of proper quality; (ii) fail to commence and/or to prosecute the Subcontract Work with promptness and diligence; (iii) fail to meet specified quality; (iv) breach or fail to perform any provision of the subcontract and failure to cure within 10 days following notice from contractor; (v) become insolvent, file (or have filed against it) a petition in bankruptcy, have a receiver or trustee appointed for Subcontractor or its assets, or enter into an assignment for the benefit of creditors; (vi) refuse or be unable to provide Contractor with reasonable assurances that Subcontractor has financial wherewithal to complete the Subcontract Work in accordance with the Subcontract requirements. Contractor may, at its option, after forty-eight (48) hours' notice to Subcontractor and its surety, if any, furnish those materials, equipment and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of Contractor's work. In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice, but Contractor shall give Subcontractor notice promptly after-the-fact as a precondition of cost recovery. Alternatively, Contractor may, at its option, in addition to other available legal and equitable remedies, terminate the Subcontract, and shall then have the right to take possession, for the purpose of completing the Subcontract Work, of all the materials, tools, and equipment Subcontractor has on the Project, and to finish the Subcontract Work. Contractor shall issue written notice confirming the termination to Subcontractor and its surety, if any, at the time this Agreement is terminated.

- 7.1.1** In the event of such a termination, Subcontractor agrees to assign to Contractor any purchase order or subcontract that Contractor deems necessary to complete the Subcontract Work. Contractor will credit Subcontractor's account with the value of the materials and suppliers so used but there will be no credit for rent on equipment.
- 7.1.2** In the event Contractor performs or completes Subcontract Work pursuant to Paragraph 7.1, all costs incurred by Contractor, including reasonable overhead, profit and attorneys' fees, costs and expenses ("Contractor's completion costs"), shall be deducted from any monies due or to become due to Subcontractor. Subcontractor shall be liable for payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. If Contractor's completion costs are less than the monies due Subcontractor as of the date of the termination, then Subcontractor shall receive as its entire and sole compensation the balance after deducting the Contractor's completion costs. At Subcontractor's request, Contractor shall provide a detailed accounting of the costs to perform or to finish Subcontract Work.
- 7.1.3** The Parties agree that the terms of this Article shall be binding if Contractor in good faith has determined that Subcontractor's performance is inadequate and that the Owner or Contractor or other subcontractor may be damaged, or Contractor may be unable to perform its contractual obligations, unless Contractor proceeds under this Article. The Parties agree that such determinations are difficult to make and must be made under pressing circumstances and agree to be bound in accordance with this Article in light of the circumstances confronting Contractor at the time such a decision is made.



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7.2 TERMINATION FOR CONVENIENCE BY CONTRACTOR OR OWNER

Contractor may, at its option, terminate for convenience the Subcontract Work in whole or in part by written notice to Subcontractor and its surety, if any. Such notice shall specify the extent to which the performance of work is terminated and the effective date of such termination. Upon receipt of such notice, Subcontractor shall; (a) immediately discontinue the Subcontract Work on the date and to the extent specified in the notice and enter into no further sub-subcontracts or purchase orders, other than as may be required for completion of such portion of the Subcontract Work that is not terminated; (b) promptly obtain cancellation upon terms satisfactory to Contractor on all purchase orders, sub-subcontracts, rentals, or any other agreements existing for the performance of the terminated work or assign those agreements to Contractor as directed; (c) assist Contractor in the maintenance, protection, and disposition of work in progress, plant, tools, equipment, property, and materials acquired by Subcontractor or furnished by Subcontractor under this contract; and (d) complete performance of the Subcontract Work which is not terminated. Upon any such termination, Contractor shall have no liability for any damages, including loss of anticipated profits.

7.2.1 As its sole right and remedy, Subcontractor shall be paid the following: (a) all amounts due and not previously paid to Subcontractor for Subcontract Work completed in accordance with the Subcontract prior to such notice of termination, and for work thereafter completed as specified in such notice; (b) reasonable administrative costs of settling and paying claims arising out of the termination of Subcontract Work under sub-subcontracts or purchase orders; and (c) reasonable costs incurred in demobilization and the disposition of residual material, plant and equipment.

7.2.2 Subcontractor shall submit within 30 days after receipt of notice of termination, a proposal for an adjustment in compensation, including all incurred costs described in Paragraph 7.2.1 above. Contractor shall review, analyze, and verify such proposal, and, if not satisfied, negotiate an equitable adjustment, and the Subcontract shall be amended in writing accordingly.

7.2.3 In the event any termination of the Subcontractor for default under the default termination article is later determined to have been improper, the termination shall automatically be deemed a termination for convenience and the Subcontractor shall be limited in its recovery strictly to the compensation provided for in this subsection.

7.3 IMMEDIATE TERMINATION

Contractor may terminate this Agreement immediately on notice to Subcontractor (a) upon the failure of Subcontractor to maintain the insurance required under this Agreement; (b) if Contractor believes in good faith that the Subcontractor is failing or refusing to take reasonable measures to cure the default within the notice periods in Paragraph 7.1; or (c) in an accelerated situation or condition where the Contractor reasonably believes that the Schedule will not permit the notice specified in Paragraph 7.1.

7.4 CONTINGENT ASSIGNMENT OF SUBCONTRACT

In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner at the Owner's option, upon written notice to the Subcontractor.

ARTICLE 8.0 – DISPUTES

8.1 DAMAGES

If the Prime Contract provides for liquidated or other damages for delay beyond the completion date set forth in this Agreement, and such damages are assessed, Contractor may assess a share of the damages against Subcontractor in proportion to Subcontractor's share of responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against Contractor. Nothing in this Agreement shall be construed to limit Subcontractor's liability to Contractor for Contractor's actual delay damages caused by Subcontractor's delay.



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8.2 WORK CONTINUATION AND PAYMENT

Unless otherwise agreed in writing, Subcontractor shall continue Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If Subcontractor continues to perform, Contractor shall continue to make payments in accordance with this Agreement.

8.3 MULTIPARTY PROCEEDING

The Parties agree, to the extent permitted by the prime agreement, that all Parties necessary to resolve a claim shall be Parties to the same dispute resolution proceeding. To the extent disputes between Contractor and Subcontractor involve in whole or in part disputes between Contractor and Owner, disputes between Subcontractor and Contractor shall be decided by the same tribunal and in the same forum as disputes between Contractor and Owner.

8.4 DIRECT DISCUSSION

If a dispute arises out of or relates to this Agreement, the Parties shall endeavor to settle the dispute through direct discussion.

8.5 MEDIATION

Disputes between Subcontractor and Contractor not resolved by direct discussion shall be administered by the American Arbitration Association in accordance with its Construction Industry mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceeding but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the filing, unless stayed for a longer period by agreement of the parties or court order. The Parties shall select the mediator within fifteen (15) Days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

8.6 BINDING DISPUTE PROCESSES

If the matter is unresolved after submission of the matter to mediation, the dispute shall be resolved by litigation in Kalamazoo County, Michigan. Michigan law shall govern the interpretation of this Subcontract. the Parties shall submit the matter to the binding dispute resolution procedure designated on.

8.7 COST OF DISPUTE RESOLUTION

The costs of any binding dispute resolution procedure, including attorney and/or professional fees, shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

ARTICLE 9.0 – WARRANTY

9.1 WARRANTY

Subcontractor fully warrants the quality and workmanship of its work or material furnished under this Subcontract in the same manner and upon the same terms and conditions as Contractor warrants its work and materials under the Prime Contract. In addition, Subcontractor warrants to Contractor that the Subcontract Work shall conform to the highest industry standards, the materials and equipment furnished under this Subcontract shall be of good quality and new unless otherwise specified in the Prime Contract, and the Subcontract Work shall be free from defects in materials and workmanship and the Subcontract Work shall conform to the requirements of the Prime Contract for a period of one (1) year following issuance of final payment under this Subcontract, unless the Prime Contract specifies a longer period which in that event shall govern. Subcontractor shall immediately, upon notice from Contractor, remove,



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replace, and otherwise remedy, at its sole expense, any work, materials, or equipment not conforming to warranty terms. Subcontractor acknowledges these legal obligations to remedy defective work and resulting damage are independent of and shall apply regardless of coverage and exclusion terms in its insurance policies.

ARTICLE 10.0 – MISCELLANEOUS

10.1 CONSTRUCTION

The Parties expressly agree that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

10.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts, equal employment opportunity acts, and workers' compensation acts insofar as applicable to the performance of this Subcontract.

10.3 LICENSED AND REGISTERED BUSINESS

Subcontractor hereby represents and warrants to Contractor that it has obtained or will obtain in a timely manner all professional and trade licenses required for performing the Subcontract Work required by any governmental or quasi-governmental entity having jurisdiction over the Project, including, without limitation, approvals from the City and the State where the work shall be performed ("the Licenses"). Subcontractor shall obtain and keep in force during its performance of the Subcontract Work, the Licenses and shall inform Contractor immediately of any lapse in the Licenses or any communications Subcontractor receives from any governmental authority regarding the Licenses. Subcontractor further represents and warrants to Contractor that it is legally qualified and authorized to conduct business in the State where the work shall be performed. Subcontractor shall provide Contractor, upon written request, copies of supporting documentation to substantiate the representations in this Paragraph, including but not limited to Certificate of Good Standing from the Secretary of State and Licenses from the jurisdiction where the Subcontract Work shall be performed.

10.4 CONFIDENTIALITY

Subcontractor may obtain confidential or proprietary information related to Contractor, Owner or the Project in the course of Subcontractor's performance under this Agreement and Subcontractor's completion of the Subcontract Work. Subcontractor: agrees not to use such information for any purpose other than completion of the Subcontract Work; agrees to hold all such information in confidence and not disclose the same to any third party except to persons who need to know such information in connection with the completion of the Subcontract Work and who are under an enforceable duty to refrain from using such information and an enforceable duty to keep such information confidential; and agrees to abide by any provisions in the Prime Contract related to confidential or proprietary information. Subcontractor shall be responsible for any breach of these provisions by its employees, agents and disclosees, and Subcontractor agrees that Contractor may obtain injunctive relief to enforce the restrictions in this Section 10.4



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Insurance Requirements “Exhibit A”

Before mobilization on site or commencing the work, the Subcontractor(s) shall procure and maintain at their own expense, all insurance of the type and having coverage limits in the amount required, including completed operations under the W. Soule & Co. contract, and Owner Terms and Conditions. The Contractor does not represent that any of the below listed policies, coverages or limits of protection are adequate to satisfy the interests of the Subcontractor. It shall be the obligation of the Subcontractor to determine if coverage under Section’s E - H are in effect and satisfactory for the risk management goals of the Subcontractor.

A. COMMERCIAL GENERAL LIABILITY INSURANCE including but not limited to the following coverage:

1. Premises / Operations Liability.
2. Explosion, Collapse and Underground Hazards Included.
3. Products / Completed Operations Hazards Included.
4. Contractual Liability Coverage Included.
5. Personal Injury Liability.
6. The Limits of Insurance shall be at least as follows:

\$2,000,000	General Aggregate Limit (Other than Products/Completed Operations)
\$2,000,000	Products/Completed Aggregate
\$1,000,000	Personal and Advertising Injury Limit
\$1,000,000	Each Occurrence Limit

B. BUSINESS AUTOMOBILE INSURANCE with these policy coverages:

1. Owned Vehicles
2. Hired Vehicles
3. Non-Owned Vehicles
4. Each of the above listed coverages shall provide coverage in the following minimum limits:

\$1,000,000	Bodily Injury & Property Damage each accident
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C. WORKERS COMPENSATION & EMPLOYERS LIABILITY INSURANCE

1. Statutory Workers Compensation Coverage in accordance with the laws of the State within whose jurisdiction the work is performed. In the event that the work of this contract falls within the purview of the United States Longshoremen’s and Harbor Workers’ Compensation Act, The Jones Act or the Federal Employer’s Liability Act, the Subcontractor(s) shall extend coverage to provide and maintain in full force and effect during the period covered by this subcontract, insurance against the liability imposed under either or both of these Acts as applicable, including Sole Proprietors and Corporate Officers performing work on site, \$1,000,000.00 (or Statutory Minimum).
2. Employers Liability Coverage minimum of \$1,000,000.00 each accident including Occupational Disease.

D. EXCESS or UMBRELLA LIABILITY INSURANCE

1. Excess or Umbrella coverage is to be excess over Section A, Section B and Employers Liability in Section C as identified above or per Owner requirements \$5,000,000.

CORPORATE OFFICE

7125 S. Sprinkle Road | Portage, MI 49002
(269) 324-7001 | Fax (269) 324-7950
www.wsoule.com

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E. TRUCKING/CARGO

1. If Subcontractor is providing trucking/hauling services, Subcontractor will maintain Motor Truck Cargo Liability Insurance covering Subcontractor for loss of or damage to any W. Soule & Co. owned, leased, or rented property/cargo whether in transit or under the Subcontractors care and or custody. Policy limits need to equal the value or replacement cost of the cargo/matter insured. Subcontractor needs to comply with Federal and State Regulations and provide the MCS-90 endorsement if transporting hazardous waste. Certificate is to be issued without tariff clause.

F. PROFESSIONAL LIABILITY

1. If the scope of work requires design, engineering or professional services, "Professional Liability (Errors & Omissions) Insurance, in an amount not less than \$1,000,000 per claims made or otherwise specified if Owner requirements are greater, for damages caused by any act or omission of Subcontractor, or of any other person for whose acts or omissions Subcontractor may be liable arising out of the performance of services in a professional capacity. If Subcontractor should terminate such coverage at any time before three (3) years or Owner requirement after acceptance or termination of Subcontractor's Work, Subcontractor shall provide evidence of continuing coverage in the required limits or obtain extended reporting period coverage ("tail cover"), for a period of not less than three (3) years or Owner requirement from Subcontractor's last services. Subcontractor agrees to furnish a copy of the Professional Liability policy on request.

G. ENVIRONMENTAL/POLLUTION LIABILITY

1. If the scope of work requires remediation, abatement, the handling of hazardous or toxic substances, or exposure to causing a pollution event, Pollution / Environmental Liability in the amount of \$1,000,000 each claim, aggregate or otherwise specified if Owner requirement is greater. The coverage shall remain in effect for not less than 3 years following completion or as Owner contract documents dictate. Please see Trucking/Cargo (E) if transporting hazardous waste.

H. INSTALLATION FLOATER/BUILDERS RISK/RESPONSIBILITIES FOR PROPERTY INSTALLED OR BEING INSTALLED

1. If the scope of work requires equipment or materials that are to be permanently installed, an Installation Floater policy shall be required with limits to reflect the contract value and/or the value of any equipment in your care, custody and control. In the event of loss or damage to Subcontractor's equipment, material or contract works during the course of construction; Subcontractor hereby agrees to first seek recovery from its own property insurance coverage if applicable. In cases of claims paid by Owners or Contractors Builders Risk Insurance coverage, Subcontractor is responsible for payment of any deductibles applied to insured losses under those policies, which arise from Subcontractor's work.

Before commencing work, the Subcontractor shall furnish a certificate in the ACORD format from all insurance companies confirming that the above required insurance is in force stating policy numbers, date of expiration, and coverage thereunder. Said certificate should state W. Soule & Co. as Certificate Holder and that such insurance is in effect for any and all work performed under contract to W. Soule & Co., and further that W. Soule & Co., the Owner and any entity listed is an additional insured (except for Professional Liability and Workers Compensation) for any and all work performed under contract to them and that such coverage is on a primary and non-contributory basis. Further, it is a requirement of this subcontract that any/all additional insureds be protected to the full limits carried by Subcontractor, not just to those required by this subcontract. Waivers of Subrogation are necessary in favor of W. Soule & Co. and the Owner. Subcontractor will attach to its certificate a copy of its General Liability policy endorsement under which W. Soule & Co., Owner or any party to be indemnified is added as an additional



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insured, utilizing ISO forms CG 2033 and 2037 or their acceptable equivalents. It is also agreed that all policies provide a thirty (30) day notice of cancellation or reduction in and/or elimination of protection otherwise provided under these policies to W. Soule & Co..

If the Subcontractor fails to procure and maintain such insurance(s), W. Soule & Co. shall have the right to procure and maintain the said insurance(s) for and in the name of the Subcontractor and the Subcontractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance(s). At the option of W. Soule & Co. the cost of said insurance(s) purchased by W. Soule & Co. for the Subcontractor shall be deducted from any amounts then due or which would thereafter become due to the Subcontractor under this or any other contract between W. Soule & Co. and the Subcontractor.

Certificate Holder:
W. Soule & Co.
7125 S. Sprinkle Rd.
Portage, MI 49002

Certificate shall be submitted through the W. Soule & Co. prequalification portal:
www.wsoule.com/subcontractors

Questions can be directed to: prequalification@wsoule.com

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER *** SAMPLE ***		CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:		FAX (A/C, No):
AGENCY NAME AND ADDRESS		INSURER(S) AFFORDING COVERAGE		
		INSURER A : CARRIER NAME		
		INSURER B : CARRIER NAME		
		INSURER C : CARRIER NAME		
		INSURER D : CARRIER NAME		
		INSURER E :		
		INSURER F :		
INSURED *** SAMPLE ***		NAIC #		
SUB-CONTRACTOR NAME AND ADDRESS				

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC	X	X	POLICY NUMBER	EFF DATE	EXP DATE	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS <input checked="" type="checkbox"/> Drive Oth Car			POLICY NUMBER	EFF DATE	EXP DATE	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$0			POLICY NUMBER	EFF DATE	EXP DATE	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	POLICY NUMBER	EFF DATE	EXP DATE	WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, If more space is required)

W. Soule & Its Subsidiaries and Assigns are named as Additional Insured as respects General Liability on a Primary and Non-Contributory basis. Waiver of Subrogation applies in favor of Additional Insured.

CERTIFICATE HOLDER

CANCELLATION

W. Soule & Co.
7125 S. Sprinkle Rd.
Portage MI 49002

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE