

## Subcontractor Qualification Statement

### I. YOUR FIRM

Name of Firm: \_\_\_\_\_ Contact: \_\_\_\_\_

Street Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_ Fax: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

What services do you provide? \_\_\_\_\_

### II. ORGANIZATION

Indicate your type of business organization:  Corporation  Partnership  Sole Owner

2. Names of Officers:

a.) President: \_\_\_\_\_

b.) Vice President(s): \_\_\_\_\_

c.) Secretary: \_\_\_\_\_

d.) Treasurer: \_\_\_\_\_

3. State and year this business was founded: \_\_\_\_\_

4. Please indicate if your business qualifies as one of the following DBE's:

Woman Owned Business  Minority Owned Business  Disadvantaged Owned Business

Veteran Owned Business  Small Business Enterprise

State of Certification: \_\_\_\_\_ Certification number: \_\_\_\_\_

5. Name of KEY construction personnel: (List name, title, age and years of construction experience)

Name	Title	Age	Years of Exp.
a.) _____	_____	_____	_____
b.) _____	_____	_____	_____
c.) _____	_____	_____	_____
d.) _____	_____	_____	_____

6. Please check all areas you are willing to work in:

Berks County, PA  Bucks County, PA  Chester County, PA  Delaware County, PA

Lehigh County, PA  Montgomery County, PA  Northeast PA  Central PA

Western PA  DE, North  DE, South  MD

NJ, North  NJ, South  Washington, DC  Entire USA

### III. FINANCES

1. Banking Reference:

Bank Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

2. Bonding Reference:

Surety: \_\_\_\_\_

Bonding Agency: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Bonding Program (Single Project / Aggregate Limit): \_\_\_\_\_ / \_\_\_\_\_

3. Accounting:

Accounting Firm: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

4. Business Volume:

New Contracts

Total Volume

This Year To Date \$ \_\_\_\_\_ \$ \_\_\_\_\_

Last Year \$ \_\_\_\_\_ \$ \_\_\_\_\_

Two Years Prior \$ \_\_\_\_\_ \$ \_\_\_\_\_

Three Years Prior \$ \_\_\_\_\_ \$ \_\_\_\_\_

5. Current Backlog: \$ \_\_\_\_\_

6. Minimum and maximum job size within which you prefer to conduct your business:

Minimum: \$ \_\_\_\_\_ Maximum: \$ \_\_\_\_\_

7. Has your organization ever failed to complete a construction contract or purchase order?

Yes\*  No \* If yes, explain on a separate piece of paper and attach to this qualification form.

8. Does your firm have any current or pending litigation or arbitration with past or present clients or subcontractors?

Yes\*  No \* If yes, explain on a separate piece of paper and attach to this qualification form.

9. Do the principals of your firm currently, or in the past, trade(d) under another name?

Yes\*  No \* If yes, explain on a separate piece of paper and attach to this qualification form.

10. Has your firm, or any of its principals trading under any other name, ever filed for protection under any chapter of the bankruptcy code?

Yes\*  No \* If yes, explain on a separate piece of paper and attach to this qualification form.

11. Does your firm, or has your firm ever, assigned or factored your accounts receivable?

Yes\*     No    \* If yes, explain on a separate piece of paper and attach to this qualification form.

**IV. LABOR**

1. Choose all categories that apply:     Union                       Open Shop                       Prevailing Wage

2. List the trades your firm normally employs and current level of staffing:

	Trade	# of Employees	Union	Local #	Open Shop
1.	_____				
2.	_____				
3.	_____				
4.	_____				
5.	_____				

3. List the total number of Foremen and/or Superintendents that your firm currently employs:

Foreman: \_\_\_\_\_ Superintendents: \_\_\_\_\_

4. If your firm normally employs union tradesman, will you work on Merit Shop projects?     Yes     No

5. If union, do you...

negotiate your wage agreements directly with the union representatives, or...

are you a member of an association which carries on the negotiations?

6. If union, is the Labor Agreement to which your firm is a signatory     Local     National

7. Do you ever use "1099" contract employees for trade labor?

Yes\*     No    \* If yes, explain on a separate piece of paper and attach to this qualification form.

8. Do you ever supplement your workforce with rental employees?

Yes\*     No    \* If yes, explain on a separate piece of paper and attach to this qualification form.

9. Do you routinely subcontract portions of your work to other firms?

Yes\*     No    \* If yes, explain on a separate piece of paper and attach to this qualification form.

**V. REFERENCES**

PAST CLIENTS ( A minimum of 3 is **required**. Please make sure to list phone and **fax** numbers.)

- 1. Contracted Project Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Project Relationship (CM, GC, Owner, Architect, etc.) \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_
- 2. Contracted Project Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Project Relationship (CM, GC, Owner, Architect, etc.) \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_
- 3. Contracted Project Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Project Relationship (CM, GC, Owner, Architect, etc.) \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

CURRENT VENDORS OR SUBCONTRACTORS ( A minimum of 3 is **required**. Please make sure to list phone and fax numbers.)

- 1. Company: \_\_\_\_\_ Credit Limit: \$ \_\_\_\_\_  
Supplies what materials or services? \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_
- 2. Company: \_\_\_\_\_ Credit Limit: \$ \_\_\_\_\_  
Supplies what materials or services? \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_
- 3. Company: \_\_\_\_\_ Credit Limit: \$ \_\_\_\_\_  
Supplies what materials or services? \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**LIST CURRENT CONTRACTS**

- 1. Project: \_\_\_\_\_ Contract Amount: \$ \_\_\_\_\_  
Award Date: \_\_\_\_\_ % Complete: \_\_\_\_\_ Scheduled Completion: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Company Name: \_\_\_\_\_
- 2. Project: \_\_\_\_\_ Contract Amount: \$ \_\_\_\_\_  
Award Date: \_\_\_\_\_ % Complete: \_\_\_\_\_ Scheduled Completion: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Company Name: \_\_\_\_\_
- 3. Project: \_\_\_\_\_ Contract Amount: \$ \_\_\_\_\_  
Award Date: \_\_\_\_\_ % Complete: \_\_\_\_\_ Scheduled Completion: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Company Name: \_\_\_\_\_

**VI. SAFETY**

- 1. Do you have a written safety program?  
 Yes\*  No \* If yes, explain on a separate piece of paper and attach to this qualification form.
- 2. Indicate your firm's Workers Compensation modification factors for the following years:  
Last Year: \_\_\_\_\_ 2 Years Prior: \_\_\_\_\_ 3 Years Prior: \_\_\_\_\_
- 3. Do you conduct safety inspections?  Yes\*  No \* If yes, who conducts the inspections?  
Name: \_\_\_\_\_ Title: \_\_\_\_\_  
How often? \_\_\_\_\_
- 4. Do you hold safety meetings?  Yes\*  No \* If yes, how often?  
 Weekly  Bi-Weekly  Monthly  Other \_\_\_\_\_
- 5. Do you have a safety representative for your company?  Yes\*  No  
\* If yes, who assumes the responsibility?  
Name: \_\_\_\_\_ Title: \_\_\_\_\_
- 6. Do you have a Drug and Alcohol Abuse Policy?  
 Yes\*  No \* If yes, please attach a copy of the program format.
- 7. Please comment on any other are of your company's safety program and policies that you feel will be appropriate in our evaluation: \_\_\_\_\_

**VII. REPRESENTATIONS**

I hereby certify that the above information is a true and accurate response.

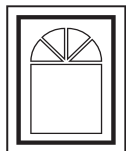
Company Name: \_\_\_\_\_

Signature of Principal: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Signature of Witness/Attest: \_\_\_\_\_ Date: \_\_\_\_\_

Document4



J.J. DeLuca Company, Inc.

610•543•8100

760 West Sproul Road, Suite 300 Springfield, PA 19064

FAX 610•543•6660

## SUBCONTRACT

Project Name: «Project\_Name» Project No.: «Project\_No»  
Subcontract No.: «Subcontract\_No» Date: «Subcontract\_Date»  
Location: «Location\_Street» Cost Code: «Cost\_Code»  
«Location\_City\_State»  
Owner: «Owner»

### CONTRACTOR:

J.J. DeLuca Company, Inc.  
760 W. Sproul Road, Suite 300  
Springfield, PA 19064  
Phone: (610) 543-8100  
Fax: (610) 543-6660

### SUBCONTRACTOR:

«Subcontractor\_Name»  
«Sub\_Address1»  
«Sub\_Address2»  
«City\_State\_Zip»  
Phone: «Sub\_Phone»  
Fax: «Sub\_Fax»  
License No.: «License\_No»  
F.I.N.: «Federal\_ID\_No»

### **THE ATTACHED TERMS AND CONDITIONS ARE PART OF THIS SUBCONTRACT.**

- A. Subcontractor's Responsibilities: The Subcontractor agrees to furnish all materials, labor, supervision, tools, equipment and supplies as necessary to perform all of Subcontractor's work as hereafter described, in the construction of «Project\_Name» (the "Project"), in accordance with the terms and conditions of the contract between «Owner», (the "Owner") and Contractor, dated «Owner\_Contract\_Date», together with all Drawings, Specifications, General, Supplemental or Special Conditions, Addenda, Amendments, Alternates and all other documents referenced or made part thereof (collectively, including the General Contract, the "Contract Documents").
- B. Subcontractor's Work: "Subcontractor's Work" shall consist of the following (identify attached Exhibits or Schedules, if any):  
  
Exhibit(s) «Exhibit\_Listing»
- C. Subcontract Price: As total compensation for Subcontractor's Work, and subject to the provisions of this Subcontract and the Contract Documents, Contractor shall pay to Subcontractor, the lump sum of «Contract\_Amount» («Contract\_Value» State and City sales taxes are included), or instead of a lump sum, the following: the ("Subcontract Price").

- D. Commencement and Completion: Subcontractor shall commence Subcontractor's Work on the date specified by Contractor in a written or oral notice to proceed, or if none is given, on the date specified on the Project Schedule located at the Project construction site, as may be amended by Contractor from time to time (the "Project Schedule"). Subcontractor shall achieve final completion of Subcontractor's Work in the time specified in the Project Schedule.
- E. Payment: Subject to the provisions of this Subcontract and the Contract Documents, including without limitation, the rights of Owner or Contractor to withhold payment, the Contractor shall pay Subcontractor the Price as follows:
1. Progress payments will be made on a monthly basis (unless a different payment schedule is set forth in the Contract Documents), based on the percentage of Subcontractor's Work completed, less a retainage of ten percent (10%) of the amount otherwise owing.
  2. Subcontractor shall submit applications for payments on the standardized form attached hereto as Exhibit "B" on or before the 25th day of each month. If Subcontractor has performed in accordance with the terms of its Subcontract, contractor shall pay Subcontractor within seven (7) days after Contractor receives payment from Owner. Subcontractor shall include with all applications for payment, all supporting documentation required by this Subcontract and the Contract Documents.
  3. Contractor shall make final payment to Subcontractor within ten (10) days after Contractor receives final payment from Owner and Subcontractor has met all other conditions required for final payment.
  4. Condition Precedent To Payment: Notwithstanding anything in the Subcontract or these Terms and Conditions to the contrary, Subcontractor agrees that all progress payments and final payment to Subcontractor are contingent upon and subject to Owner's acceptance of Subcontractor's Work and Contractor's receipt of payment from Owner for Subcontractor's Work and Contractor's work. Subcontractor agrees to accept the risk of non-payment if Contractor is not paid progress payment and/or final payment from Owner for any reason. Subcontractor further agrees that Owner's payment to Contractor of all progress payments and final payment for any work performed by Subcontractor, other subcontractors and Contractor, shall be an express condition precedent of any obligation of Contractor to make any progress payment, retainage, or final payment to Subcontractor, and Subcontractor waives all right to commence litigation or arbitration until payment is made to Contractor.

Subcontractor is hereby advised that payment from Owner to Contractor is due not later than 30 days after the 1<sup>st</sup> Wednesday of each month provided an Application for Payment is received by the Architect not later than the 1<sup>st</sup> Wednesday of each month. If the application is received by the Architect after the Application date above, payment shall be made by the Owner no later than 60 days after the Architect receives the Application for Payment.

If Contractor has provided payment or performance bonds or a combination payment and performance bond, the obligation of Contractor and its surety under any of these bonds to make any payment (whether a progress or final payment) to a claimant on that bond or bonds is similarly subject to the express condition precedent of payment by the Owner. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor or its bonding company, for payment for its work. Subcontractor shall only be paid provided that a properly completed

application for payment, in the form referenced above with the required supporting documentation, is delivered to Contractor on or before the date provided herein.

F. Insurance. Subcontractor shall maintain the insurance policies and in the amounts set forth on Exhibit "C" attached hereto.

G. Bonds. Subcontractor shall furnish and maintain payment and performance bonds in the form attached hereto as Exhibit "D" and in the amount specified in Section VIII(C) of the Terms and Conditions.

If the Subcontractor is signatory to any organized union labor local, and the local required Benefit Bonds to be posted, Subcontractor shall furnish evidence of the "Benefit Bond" by attaching a copy of the bond or a copy subscription to local trade organization that may provide this bond. Subcontractor will be responsible to update their bond or subscription in the event their bond term expires during the period of this project.

H. Successors and Assigns: The parties hereto, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants and agreements herein specified.

I. The Architect: The Architect is the party identified as the Architect in the Contract Documents, and any replacement therefore.

J. Terms and Conditions; Exhibits: The Terms and Conditions to this Subcontract, together with the Exhibits identified below are attached hereto and made a part hereof.

- EXHIBIT A Scope of Work.
- EXHIBIT A.1 Scope of Work Checklist (if required)
- EXHIBIT B Subcontractor Application for Payment with Partial Release of Liens
- EXHIBIT C Insurance Requirements
- EXHIBIT D Form of Payment & Performance Bond
- EXHIBIT E Project Schedule
- EXHIBIT F Hazard Communication Program and Safety Requirements
- EXHIBIT G Federal Labor Standards Provisions and the Prevailing Wage (if required)
- EXHIBIT H Non-Collusion Affidavit
- EXHIBIT I PHA/PHFA/OHCD/PHDC/RDA/HUD Requirements (if required)
- EXHIBIT J Drawing List

(List Additional Exhibits as Appropriate)

IN WITNESS WHEREOF, the parties have executed this Subcontract effective as of the day and year first above written.

**J.J. DeLuca Company**  
\_\_\_\_\_  
Contractor

**«Subcontractor\_Name»**  
\_\_\_\_\_  
Subcontractor

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_

Seal \_\_\_\_\_

Seal \_\_\_\_\_

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**I. CONTRACT DOCUMENTS.**

- A. Subcontractor Bound by Contract Documents. Subcontractor agrees that Subcontractor has examined, read, and understood the Contract Documents, including without limitation, the General Contract and all Drawings and Specifications relating to or affecting Subcontractor's Work, and that Subcontractor has resolved to its satisfaction any ambiguities or discrepancies within or among the Subcontract, these Terms and Conditions or the Contract Documents. Subcontractor and its sub-subcontractors, materialmen and suppliers are bound by any and all parts of the Contract Documents in the same manner and to the same extent that Contractor is bound to Owner under the Contract Documents. Subcontractor assumes toward Contractor all of the obligations and responsibilities assumed by contractor toward Owner, as applicable to the Subcontract and these Terms and Conditions, including without limitation, any obligation to pay liquidated damages and to participate in and be bound by any specified dispute resolution procedures.
- B. Familiar With Project Site. Subcontractor acknowledges that Subcontractor has physically visited the Project site and is familiar with and has verified the conditions under which Subcontractor's Work is to be performed, including without limitation, applicable laws, codes and other restrictions, local labor conditions, local weather patterns, and the access restrictions of the Project site. Subcontractor acknowledges Subcontractor has familiarized himself with all existing conditions, the scope of work defined in this agreement whether identified on the Contract Documents or not, and all other matters which may affect the time and cost of completing Subcontractor's Work.
- C. Conflict Between Contract Documents. The Subcontract, these Terms and Conditions, and the Contract Documents are intended to be read as a whole. In the event of a conflict between the Subcontract or these Terms and Conditions and any of the Contract Documents, the provisions of the Subcontract and these Terms and Conditions shall control, provided, however, that if the Contract Documents impose a stricter requirement on Subcontractor than the Subcontract or these Terms and Conditions, such stricter requirement shall control. In the event of a conflict between the Subcontract and these Terms and Conditions, the provisions of the Subcontract shall control.

**II. SCOPE OF SUBCONTRACTOR'S WORK.**

- A. General Scope of Work. Unless expressly provided otherwise herein, Subcontractor shall provide all supervision, labor, materials, supplies, equipment, tools, shop, working and coordination drawings, permits and testing to complete Subcontractor's Work, including without limitation all work described in the applicable portions of the Drawings and Specifications or reasonably inferable therefrom or typically performed by Subcontractor's trade. Subcontractor shall begin, carry on and complete Subcontractor's Work in a skillful, prompt and diligent manner so as not to interfere with or delay the work of Contractor or the work of any other subcontractor.
- B. Approval by Architect. Subcontractor's Work shall be subject to the final approval by Architect or Owner's authorized agent. The Architect or Owner's authorized agent's decision relating to aesthetic matters shall be final.
- C. Storage of Materials: Risk of Loss. Subcontractor shall store materials and equipment at the Project site only in areas designated by Contractor. Materials delivered to and stored at the Project site shall be limited to materials required to be incorporated into Subcontractor's Work, taking into account any space restrictions at the Project site. Such material, once delivered, shall not be removed from the Project site except that any excess materials shall be removed from the Project site upon completion of Subcontractor's Work. Subcontractor will be responsible for proper security, storage and for any damage, defect, deficiency or theft of any material stored on the Project Site. Subcontractor shall retain all risk of loss or damage of all materials stored at the Project site.
- D. Use of Contractor's Equipment. Subcontractor agrees that Contractor's equipment will be available to Subcontractor only at Contractor's discretion and on mutually satisfactory terms. Should Contractor allow the use of its equipment and/or its operator by Subcontractor, Subcontractor agrees that such operator shall be considered as the agent or servant of Subcontractor and Subcontractor shall be solely responsible for the acts of such operator during the time of the equipment use. Subcontractor shall make a thorough inspection to Subcontractor's satisfaction as to the physical condition and capacity of the equipment as well as the competency of the operator, there being no representations or warranties by Contractor with reference to such matters. Subcontractor waives any and all claims against Contractor relating to the use by Subcontractor of Contractor's equipment or operators.
- E. Lien Free Project. Subcontractor shall ensure that the Project remains free and clear of all claims, encumbrances and liens for labor, services, or materials. If Subcontractor fails to pay for any labor, services, or materials used or purchased for use in the prosecution of Subcontractor's Work, Contractor may, at its option, notwithstanding anything herein to the contrary, and without notice to Subcontractor, pay any such claim and deduct the amounts thereof from amounts owed to Subcontractor. In the event suit is filed against Owner, Contractor or Contractor's bonding company, be any person, firm, or corporation asserting a claim or lien for labor, services, or materials used or purchased for use in Subcontractor's Work, Subcontractor will, at its own cost and expense, including attorney's fees, defend such suit and pay any judgment rendered therein.
- F. Protection of Work. Subcontractor shall secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the Project and the workers of contractor, Owner and other subcontractors, and adjacent property from Subcontractor's operations. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the Project site caused by Subcontractor or its agents, employees, or guests. In the event of loss or damage to Subcontractor's Work, whether caused by subcontractor or others, Subcontractor shall proceed promptly to repair or replace the damaged work, property or materials at its own expense, and as directed by Contractor. Subcontractor waives all rights it might have against Contractor for loss or damage to Subcontractor's Work, property or materials, except to the extent that the loss or damage was caused solely by Contractor.

- G. Job and Safety Meetings. Subcontractor shall attend all job and safety meetings, tests, inspections and other meetings pertaining to Subcontractor's Work.
- H. Subcontractor's Job Superintendent. Subcontractor shall designate a job superintendent to supervise Subcontractor's Work at all times. Said superintendent shall have complete authority to act on behalf of Subcontractor, including without limitation, the authority to agree to changes in Subcontractor's Work, and adjustments in the Subcontractor Price.
- I. Labor Relations. Subcontractor shall do whatever is necessary in the progress of its work to ensure harmonious labor relations at the Project site to prevent strikes and other labor disputes. Subcontractor shall strictly comply with all of the terms and conditions of any collective bargaining agreement and jurisdictional decisions executed by Contractor or on Contractor's behalf. Subcontractor shall indemnify and save Contractor harmless from and against any claim, including court costs and attorney fees, resulting in any manner whatsoever, from Subcontractor's failure to comply with the provisions of this Article of this Subcontract. In the event that Subcontractor fails to comply with this Article and does not correct such failure within twenty-four (24) hours after notice thereof is furnished to Subcontractor by Contractor, Subcontractor shall be deemed to be in default of this Subcontract. Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate for Subcontractor's purposes, it shall be the obligation of Subcontractor to continue the proper performance of Subcontractor's Work without interruption or delay. If any person or entity performing Subcontractor's Work engages in a strike, work stoppage or shutdown so that Subcontractor's work is hindered or delayed, Contractor, at its option, may employ others to prosecute Subcontractor's work, and to charge the cost thereof to Subcontractor.
- J. Hours of Work. Subcontractor shall prosecute Subcontractor's Work only during the hours when Contractor's superintendent is present at the Project site unless Contractor gives prior written approval.
- K. Approval of Sub-Subcontractors. Subcontractor shall not engage sub-subcontractors, suppliers and materialmen, nor employ any laborers, to which Contractor has a reasonable objection, and Subcontractor shall promptly remove from Project site any person or entity to which Contractor so objects. Prior to commencing Subcontractor's Work, Subcontractor shall submit a list, for Contractor's review and approval, of sub-subcontractors, suppliers and materialmen to be used in Subcontractor's Work, and shall update said list as changes occur.
- L. Coordination. The Subcontractor shall cooperate with the contractor and other subcontractors whose work might interfere with the Subcontractor's Work and shall prepare sketches and drawings as directed, and participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising the Contractor of any such interferences. Before proceeding with any portion of the Subcontractor's Work, Subcontractor shall verify all dimensions with the Contract Documents and in the field and check the correctness of contiguous work installed by others. Subcontractor shall promptly notify Contractor in writing of any inconsistencies, errors, discrepancies, or deficiencies in the Contract Documents and/or work in place that affects the Subcontractor's Work and Subcontractor shall request in writing clarification of the Contract Documents and/or correction of work in place. The failure to so notify Contractor will preclude Subcontractor from recovery of any resulting costs, expenses, damages, or extensions of time and the Subcontractor warrants that the Subcontractor's Work will not be affected. The Subcontractor shall furnish all temporary services and facilities to perform the Subcontractor's Work. If the Subcontractor's Work includes installation of materials or equipment furnished by others it shall be the responsibility of the Subcontractor to receive, unload, store and examine the items. Any damage or deficiencies to these items not immediately reported to the Contractor shall be Subcontractor's acceptance of same and Subcontractor is obligated to provide such items in place, in satisfactory and proper condition.
- M. Subcontractor's Dealing With Owner. It is agreed that all of Subcontractor's dealing with the Owner's authorized agent, the Owner, or any other parties named in the Contract Documents, shall be through the Contractor. The Subcontractor further agrees that he shall not make any agreement with the Owner's authorized agent or with the Owner pertaining to any phase of the performance of this Subcontract.

### III. PAYMENT.

- A. Schedule of Values. Subcontractor shall, before the first application for payment, submit to Contractor a schedule of values of the various parts of Subcontractor's Work, aggregating the total sum of the Subcontract, prepared in such detail as Contractor or Owner may require, and supported by such evidence as to its correctness as Contractor may direct. Said schedule, when approved by Contractor, shall be used as a basis for approving Subcontractor's application for payment, unless found to be in error.
- B. Applications for Payment. Subcontractor shall submit to contractor monthly applications for payment based on the approved schedule of values. All such applications shall include the adjusted Subcontract Price, percentage of Subcontractor's Work complete to date and corresponding portion of the Subcontract Price earned by Subcontractor, less specified retainage, less amounts previously paid to Subcontractor, and the net amount due to Subcontractor, so as to enable Contractor to submit its application for payment to Owner. Subcontractor shall accompany each application with:
  1. a partial release executed by Subcontractor in a form acceptable to Contractor,
  2. evidence satisfactory to Contractor and Owner that all sub-subcontractors, suppliers, materialmen and laborers have been paid; and
  3. all other documentation required by the Subcontract, these Terms and Conditions, the Contract Documents or reasonably required by Contractor, Owner, or Owner's Lender.
- C. Final Payment. Final payment shall be made after (i) the Project is fully completed and Owner has made final payment to Contractor, (ii) Subcontractor has submitted final lien releases as may be required by the Subcontract and these

Terms and Conditions, the Contract Documents, or as required by Owner, and (iii) Subcontractor has submitted all documentation required under this Subcontract, these Terms and Conditions or the Contract Documents, including without limitations, the warranties, as-built drawings, and other documents described in Section X (B) hereof, and (iv) Subcontractor has provided satisfactory evidence that Subcontractor has paid all sales and use taxes.

- D. Conditions Precedent to Payment. Notwithstanding anything in the Subcontract or these Terms and Conditions to the contrary, Subcontractor agrees that all progress payments and final payment to Subcontractor are contingent upon and subject to Owner's acceptance of Subcontractor's Work and Contractor's receipt of payment from Owner for Subcontractor's Work and Contractor's Work. Subcontractor agrees to accept the risk of non-payment if Contractor is not paid progress payment and/or final payment from Owner for any reason. Subcontractor further agrees that Owner's payment to Contractor of all progress payments and final payment for any work performed by Subcontractor, other subcontractors and Contractor, shall be an express condition precedent of any obligation of Contractor to make any progress payment, retainages, or final payment to Subcontractor, and Subcontractor waives all right to commence litigation or arbitration until payment is made to Contractor. If Contractor has provided payment or performance bonds or a combination payment and performance bond, the obligation of Contractor and its surety under any of these bonds to make any payment (whether a progress or final payment) to a claimant on that bond or bonds is similarly, subject to the express condition precedent of payment therefore by the Owner. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor or the bonding company, for payment for its work.
- E. Payment for Stored Materials. If payments are made to Subcontractor on account of materials not incorporated in Subcontractor's Work but delivered and suitably stored at the Project site, or at some other location agreed upon in writing, such payments shall be in accordance with the terms and conditions of the Contract Documents. Payment on account of materials stored shall constitute transfer of ownership to Contractor and/or Owner but shall not in any way relieve Subcontractor of its responsibility or liability for security, protection and conformance of said materials against damage, theft, or defectiveness.
- F. Payments to Sub-Subcontractors. Subcontractor shall promptly pay for all materials and labor used in, or in connection with, the performance of the Subcontract and these Terms and Conditions, through the period covered by previous payments received from Contractor, and furnish satisfactory evidence when requested by Contractor, to verify such payment. Subcontractor shall promptly notify Contractor of Subcontractor's intention to withhold payment to any sub-subcontractor, supplier, materialman or laborer, and Subcontractor shall not include any such amount in an application for payment until the reason for withholding payment has been resolved and Subcontractor is prepared to pay such subcontractor, supplier, materialman or laborer.
- G. Bonds and Insurance Condition Precedent. No payment will be made on account of any labor or materials furnished under the Subcontract and these Terms and Conditions if the properly executed Subcontract and bonds (if required) and satisfactory evidence of required insurance, or satisfactory renewals or replacements of any of the foregoing, have not been received by Contractor.
- H. Payment Is Not Acceptance. Payments made on account of materials delivered or work completed shall not be construed as acceptance of defective or faulty workmanship or materials.
- I. Payment By Joint Check. Contractor, in its sole discretion, may make payment to Subcontractor by checks made payable jointly to Subcontractor and Subcontractor's sub-subcontractors, materialman, laborers and suppliers.

#### **IV. SCHEDULING; DELAYS; ACCELERATION.**

- A. Subcontractor's Schedule. Prior to commencement of Subcontractor's Work, Subcontractor shall submit to Contractor, for Contractor's review and approval, a schedule showing the completion dates for all portions of Subcontractor's Work. Subcontractor's schedule shall conform with the performance schedules and sequencing prepared by Contractor and Owner. Subcontractor shall proceed with each portion of Subcontractor's work in a prompt and diligent manner and in strict compliance with Subcontractor's schedule, and all of Owner's and Contractor's performance schedules and sequencing, as directed by Contractor. The Subcontractor agrees to keep himself thoroughly informed as to the overall progress of the project; to commence and to prosecute the Subcontract Work in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such time or times as the Contractor may direct, so as to promote the general progress of the entire project, and Subcontractor shall not by delay or otherwise interfere with or hinder the work or progress of the Contractor or any other subcontractor. Subcontractor shall promptly provide all information and data requested by Contractor for preparation of revisions to necessary performance schedules. Upon Contractor's request, Subcontractor shall furnish evidence as the Contractor may require relating to Subcontractor's ability to fully perform this Subcontract in the manner and within the time established herein. The Subcontractor agrees to notify the Contractor of its objection to, or inability to comply with, any directive, notification, order, schedule or revision thereof dealing with the time or times of his performance hereof, and to do so within 72 hours of Contractor's issuance thereof.
- B. No Damage For Delay. Contractor shall not be liable to Subcontractor for damages due to delay to Subcontractor's Work by the act, neglect, or default of Owner, Contractor, Architect or others, or by reason of fire or other casualty, or on account of riots or strikes, acts of war or the combined action of the workers or others, or on account of any acts of God, or any other cause or on account of any circumstances caused or contributed to by Subcontractor. Upon any such delay described herein, excepting a delay caused solely or in part by Subcontractor, Subcontractor shall receive an extension of time only if (i) written claim for delay is made to Contractor within seventy-two (72) hours from the beginning of the delay, and (ii) Owner has granted Contractor a similar extension. No other damages for delay are compensable, except to the extent Contractor actually receives compensation from Owner under the Contract Documents with respect to Subcontractor's Work.

- C. Acceleration Of Subcontractor's Work. If in the judgment of Contractor, there exists a reasonable basis to believe that Subcontractor will not be able to fully complete Subcontractor's Work by the completion date, or complete a portion of Subcontractor's Work as necessary for the overall coordination and completion of the Project, Contractor may order Subcontractor to prosecute Subcontractor's Work on an overtime basis and Subcontractor shall, at the expense of Subcontractor, promptly commence and continue to perform Subcontractor's Work on such basis to the extent necessary to cause Subcontractor's Work to be fully completed in a timely fashion in accordance with the Subcontract and these Terms and Conditions.

## V. CHANGES IN SUBCONTRACTOR'S WORK.

- A. Contractor's Right to Order Changes. Contractor, at any time before the completion of Subcontractor's Work, may order additions, deletions or alterations to Subcontractor's Work by providing a written directive to Subcontractor and Subcontractor is to make any and all changes or deviations from the original Contract Documents without nullifying the original Subcontract. Contractor is in no way required to place the Subcontractor's surety, (if any) on notice of any change orders or deletions to the Subcontract and that any changes or deletions in no way effect any bonds provided by the Subcontractor. Subcontractor shall diligently proceed to complete any directed change in Subcontractor's Work, whether or not Subcontractor has agreed on any adjustments to the Subcontract Price or required completion times hereunder. Contractor may solicit proposals from Subcontractor for changes in Subcontractor's Work, in which case Subcontractor shall respond promptly with proposed adjustments, if any, in the Subcontract Price and time. Contractor shall have no obligation to use Subcontractor to complete any change in Subcontractor's Work.
- B. Subcontractor Initiated Changes. While Subcontractor acknowledges that only the Owner may initiate change orders, Subcontractor may submit proposed revisions in Subcontractor's Work to Contractor in writing, but shall not proceed therewith until Contractor, in writing, has approved the proposed change or directed the Subcontractor to proceed with the proposed change. Contractor shall not be liable to Subcontractor for any work not authorized by Contractor as provided herein.
- C. Adjustment Of Contract Price Or Time. As soon as reasonably possible after Contractor has directed a change in Subcontractor's Work or approved a change proposed by Subcontractor, Subcontractor and Contractor shall attempt to agree on adjustments, if any, in the Subcontract Price and time. Any such adjustment shall be effective only if agreed to in writing by the Project Manager of Contractor. Unless otherwise provided in the Contract Documents, the adjustment in price for additional work or deleted work shall be at a cost similar to the rate for similar items of Subcontractor's Work. Subcontractor shall submit detailed backup support for any price quoted. Subcontractor shall be paid for changes or alterations in Subcontractor Work the actual amount allowed therefore by Owner. Payment will be made within seven (7) calendar days after Contractor receives such payment by Owner, such payment by Owner to Contractor being a condition precedent to payment to Subcontractor and the source of such payment. If Subcontractor disagrees with a proposed adjustment in the Subcontract Price or time included as part of a change directive, Subcontractor shall submit such disagreement as a Claim within the time and in the manner specified in Article IX hereof. If Contractor and Subcontractor are unable to agree on the appropriate adjustment to the Contract Price and the adjustment amount is submitted to a dispute resolution proceeding, the amount attributable to Subcontractor's overhead and profit shall not exceed allowable percentage as stated in the Subcontract documents and in no event shall exceed ten percent (10%) of the direct actual cost of the ordered change. No employee of Contractor has authority to incur any debts in connection with the Project, including Subcontractor's Work, other than Contractor's Project Manager.
- D. Certain Changes Which Do Not Adjust Contract Price Or Time. In the event any changes in the Work, the Drawings and/or the Specifications are necessary to complete the Subcontractor's Work due to differing site conditions, unforeseen conditions, code interpretation, or to be in accordance with all applicable building codes and regulations, standard and customary practices, or any other reason determined in the course of the construction, provided that the change is within the general scope of Subcontractor's Work, then Subcontractor shall perform all work required by the change without any additional cost, extension of time, or charge to the Contractor or Owner.

## VI. WARRANTY; INDEMNITY.

- A. Warranty. Subcontractor warrants and guarantees that all materials and equipment incorporated in Subcontractor's Work shall be new and that all work shall be of good quality, free from faults and defects and in conformance with the requirements of the Subcontract, these Terms and Conditions and the Contract Documents. Contractor shall have the right to inspect the Subcontractor's Work and to reject any portion thereof not in accordance with the requirements of the Subcontract and these Terms and Conditions, and Subcontractor shall promptly replace rejected portions of Subcontractor's Work in manner satisfactory to Contractor. Further, upon the receipt of a written notice from contractor, Subcontractor shall promptly repair and make good in accordance with the Contract Documents any defect that may appear in Subcontractor's Work within one (1) year after final completion of the Project (as determined in accordance with the Contract Documents), or within such longer period as is required in the Contract Documents, with respect to any specific aspect of Subcontractor's Work. Said one-year period shall begin anew with respect to any defect so repaired beginning at the time of completion of such repair. The obligation of repair defects in Subcontractor's Work as described herein shall not limit the obligations of Subcontractor or rights of Contractor or Owner under the Subcontract, these Terms and Condition, the Contract Documents and applicable law. The Subcontractor further agrees to assume, as a direct obligation to the Contractor and/or the Owner, any guarantees or warranties which would otherwise be the responsibility of the Contractor or other subcontractors, when such guarantees or warranties have been canceled as a result of the subcontractor's operations and performance of this Subcontract.

- B. Indemnity. To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend, and hold harmless Contractor, Contractor's surety, Contractor's officers, directors, shareholders, employees and agents, Owner, the Architect and all other persons or entities Contractor is required to indemnify under the Contract Documents (collectively, the "Indemnitees") for, from and against the entire amount of any and all claims, demands, causes of action, damages (including without limitation any liquidated damages under the Contract Documents), liens, costs, penalties, fines, liability and expenses, including without limitation reasonable attorney's fees which the Indemnitees may at any time suffer or sustain or become liable for by reason of:
1. any damages or injury either to person or property, including without limitation the Work, the Project or adjoining property, in any manner arising out of or relating to the acts or omissions of Subcontractor, its sub-subcontractors, suppliers and materialmen, or anyone employed by any of them or anyone for whose they may liable (collectively, the "Responsible Parties"), or the presence of Subcontractor or any other Responsible Party on the Project site, even though the same may have resulted from the joint, concurring or contributory act, omission or negligence, whether passive or active, of any Indemnitee or any other person or entity, unless the same be caused by the sole negligence of Contractor;
  2. infringement of patents or violation of patent rights by Subcontractor or any other Responsible Party;
  3. any damage to or delay in the prosecution of the work on the Project of Contractor, any subcontractor or any other person or entity, arising out of or relating to the acts or omissions of Subcontractor or any other Responsible Party;
  4. any liens filed against the Project relating to Subcontractor's Work;
  5. failure of Subcontractor or any other Responsible Party to comply with any federal, state or local law, regulation or ordinance; or
  6. any damages or injury either to person or property, including without limitation the Work, the Project or adjoining property, in any manner arising out of Subcontractor's or any other Responsible Party's use of Contractor's equipment or operations as provided in Section II (D) hereof.
- C. Additional Indemnity. Subcontractor acknowledges and agrees to the following indemnification in addition to any other indemnification requirements of this Subcontract, and to the extent not already required by any such provision. In the event that the General Contract requires the provision of professional design services, certifications, and/or approvals as part of the Work, to the extent that such Work is within the scope of the Work of this Subcontract:
1. Assumption of Full Responsibility. Subcontractor assumes responsibility and liability to the fullest extent for any and all claims and/or damages of any nature of character whatsoever relating to or arising out of the performance (or lack of performance) of such professional design services or issuance of such certifications and/or approvals; and
  2. Agreement to Indemnify. To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify, and hold harmless the Indemnitees from and against all claims, demands, liabilities, loss damage, fines, penalties, attorney's fees, costs and expenses of whatsoever kind or nature, including property damage or for personal injuries (including death) to any and all person (whether such persons are employees of Contractor or employees of Subcontractor, or employees of the Subcontractor's subcontractors (or others), relating to or arising out of the performance (or lack of performance) of such professional design services or issuance of such certifications and/or approval.
- D. The coverage of any insurance policy required by this Subcontract or actually carried by Subcontractor shall not limit the extent of Subcontractor's liability under the indemnities set forth in this Section VI. In any and all claims against an Indemnitee by an employee of Subcontractor or any other Responsible Party, the indemnification and defense obligations of Subcontractor under this Section VI shall not be limited in any way by the provisions of any workers' compensation acts, disability benefit acts or other employee benefit acts.

## VII. SAFETY PRECAUTIONS; COMPLIANCE WITH LAWS.

- A. Removal of Debris. Subcontractor shall at all times keep the Project site clean of debris arising out of Subcontractor's Work, and shall remove, as often as directed by Contractor, all rubbish, debris and surplus which may accumulate from the prosecution of Subcontractor's Work. Should Subcontractor fail to do so, then Contractor may, at its option and pursuant to written notice, cause the same to be removed and charge the expense of such removal to Subcontractor. Upon completion of portion(s) of Subcontractor's Work, Subcontractor shall broom clean the area affected by such portion(s).
- B. Hazardous Substances. Before using at the Project any material or substance considered hazardous under applicable federal, state or local law, regulation or ordinance, Subcontractor shall furnish Contractor with a copy of the Materials Safety Data Sheet for such material or substance and Subcontractor shall file a copy of such Materials Safety Data Sheet for such material or substance and documentation as may be required by the proper authorities. Subcontractor shall notify Contractor in advance of storing or using any hazardous materials on the Project site. Subcontractor shall label all hazardous materials on the Project site, and shall be solely responsible for the proper storage, removal and disposal thereof. In the event the Subcontractor encounters at the site constituting the work, material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, or the uncontained release on the project of controlled hazardous or toxic substances in a manner violating applicable law (the foregoing collectively referred to as "Hazardous Substances"), the Subcontractor shall immediately stop work in the area affected and report the condition to the Contractor, Owner and Architect in writing. Work in the affected areas shall only be

resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless or contained or remediated in accordance with applicable law.

- C. Safety Requirements. Subcontractor shall be solely responsible for and comply with all statutory safety requirements and any special requirements that may be stated in the Contract Documents and fully cooperate and comply with safety programs and measures initiated by Contractor. Subcontractor shall report in writing to Contractor, within seventy-two (72) hours of occurrence, any injury to Subcontractor's employees at the Project site.
- D. Compliance With Laws. Subcontractor shall at all times comply with all federal, state and local laws, regulations, rules and ordinances applicable to Subcontractor's Work. Without limiting the generality of the foregoing, Subcontractor shall comply with all (i) OSHA requirements, (ii) equal opportunity requirements (iii) Drugs-in-the-Workplace requirements, (iv) social security, unemployment and workers' compensation requirements, and (v) environmental requirements.
- E. Discrepancies With Applicable Law. Subcontractor shall notify Contractor in writing of discrepancies in the Plans and Specifications and any laws, ordinances, rules, regulations or orders of any public authority bearing on performance of Subcontractor's Work. In the event Subcontractor commences Subcontractor's Work without notice to Contractor of such discrepancy, Subcontractor shall be solely responsible for bringing Subcontractor's Work (and the work of others affected thereby) into conformance with applicable law.
- F. Payment of Taxes. Subcontractor shall pay all sales, consumer, use and other similar taxes on materials and equipment supplied, ordered or used in connection with Subcontractor's Work, and shall secure and pay for all permits and licenses and official inspections and testing necessary for the execution of the Subcontractor's Work.

#### **VIII. INSURANCE; BONDS**

- A. Insurance. Subcontractor shall procure and maintain the insurance policies meeting the requirements set forth on "EXHIBIT C" including without limitation the naming of Contractor and other designated entities as additional insured on said policies as provided therein. However, if the Contract Documents require more extensive insurance coverage, the Contract Documents shall prevail.
- B. Sub-Subcontractor's Insurance. If Subcontractor should subcontract any of Subcontractor's Work to a third party, Subcontractor shall also require that such third party procure and maintain the insurance policies set forth on "EXHIBIT C", including without limitation the naming of Contractor and other designated entities as additional insured on said policies as provided therein. A third party's obtaining the required insurance shall in no manner lessen or affect Subcontractor's obligations or liability as set forth herein or otherwise imposed by law.
- C. Payment and Performance Bonds. Unless specified otherwise in the Subcontract or unless the requirement is waived in writing by Contractor, Subcontractor shall furnish Contractor with payment and performance bonds in the full amount of the Subcontract Price, issued by a surety acceptable to Contractor. If the original Subcontract Price increases during the course of Subcontractor's Work, the amount of said bonds shall be increased to the adjusted Subcontract Price. The payment and performance bonds shall be in the form attached hereto as "EXHIBIT D" unless Contractor in its sole discretion agrees in advance, in writing, to another form. No change, alteration, or modification to or deviation from the Subcontract and the Terms and Conditions, or any of the Contract Documents, shall release or exonerate, in whole or in part, any surety issuing a payment and performance bond, and no notice is required to be given to such surety of any change alteration, modification, or deviation.
- D. Failure to Obtain Evidence of Insurance/Bonds Not A Waiver. Failure of Contractor to require or obtain evidence of the insurance or the bonds required hereunder shall not be deemed a waiver of such requirements.
- E. Waiver of Subrogation. Contractor and Subcontractor waive, and shall require all sub-contractors to the lowest tier to waive, all rights against each other and against the Owner and all other persons or entities providing labor or material to the Project as required by the Contract Documents for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property and equipment insurance relating to the Project, except such rights as any of them may have to the proceeds of such insurance.
- F. Waiver By Subcontractor Of Insured Losses. Subcontractor waives, and shall require all its sub-subcontractors to the lowest tier to waive, all rights of recovery against Contractor and Owner (and such other persons or entities as required by the Contract Documents) for losses within the scope of Subcontractor's (or sub-subcontractor's) insurance.

#### **IX. CLAIMS; DISPUTES.**

- A. Claims. All claims by Subcontractor relating to Subcontractor's Work, including without limitation, any claimed adjustment to the Subcontract Price and any claimed delay in prosecution of Subcontractor's Work (collectively, a "Claim") shall be submitted to Contractor in writing within seventy-two (72) hours after the occurrence of the event giving rise to the Claim or, if earlier, in advance of the time required for submitting any such Claim under the Contract Documents. Any Claim not timely submitted shall be deemed waived by Subcontractor. Any failure of Subcontractor to prosecute in a diligent and timely manner Subcontractor's Work including any work subject of any claim shall be a default of this Subcontract entitling Contractor to all remedies provided herein or provided by applicable law. Unless otherwise agreed in writing, Subcontractor, as a condition precedent to maintaining a claim and being paid for any work subject of a claim shall prepare time and material tickets daily, which shall be verified and signed daily by a duly authorized representative of the Contractor.
- B. Dispute Resolution Involving Owner. In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves Subcontractor's Work, or in the event of any dispute or claim between Contractor and Subcontractor which directly or indirectly involves a claim against Owner for either additional compensation or an extension of time under the Contract Documents, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor by all decisions, findings or determinations made by the person so authorized in the

Contract Documents, by an administrative agency, court of competent jurisdiction, or arbitration panel, whether or not Subcontractor is a party to the proceedings before said person, agency, court or panel. If any dispute or claim is prosecuted or defended by Contractor, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorney's fees, incurred in connection therewith to the extent of Subcontractor's interest in such claim or dispute. It is expressly understood and agreed in connection with the determination of such claims or disputes that, as to any and all work done and agreed to be done by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor in connection with the Project, Contractor shall never be liable to Subcontractor to any greater extent than Owner is liable to Contractor. If a dispute between Contractor and Subcontractor is not subject to the dispute resolution procedure set forth in the Contract Documents, then the dispute resolution procedure set forth in Section IX (D) and (E) shall apply.

- C. Mediation. Subcontractor agrees, upon the request of Contractor, to submit all disputes to a mediator and to negotiate in good faith to reach an agreement with respect to all disputes. Any such mediation proceedings shall be under the auspices of and governed by the rules of the Construction Industry Mediation rules of the American Arbitration Association. In such event, neither party shall proceed with arbitration or litigation until the completion of mediation proceedings.
- D. Election Of Arbitration Or Litigation. In the event of a dispute between Contractor and Subcontractor, Contractor may elect to arbitrate such dispute in the manner provided below, or to litigate the dispute in a forum with jurisdiction to decide the dispute. Any arbitration proceeding shall be conducted in accordance with the Construction Industry Rules of the American Arbitration Association provided, however, that only one arbitrator shall hear the dispute. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- E. Enforceability of Elections. If the elections afforded Contractor in Section IX (C) and (D) hereof are not enforceable, then both parties shall be bound to arbitrate all disputes in which the disputed amount is less than Five Hundred Thousand Dollars (\$500,000.00) and may litigate any dispute involving a higher amount.
- F. Venue. Unless otherwise required under the Contract Documents, the venue for any mediation, arbitration or litigation proceeding relating to Subcontractor's Work shall be in the county in which Contractor's home office is located.

#### **X. SHOP DRAWINGS; AS-BUILTS.**

- A. Shop Drawings And Samples. Subcontractor shall promptly submit shop drawings and samples as required in order to carry on Subcontractor's Work efficiently and at a speed that will not cause delay in the progress of work carried on by Contractor or other subcontractors. The approval by Architect, Owner or Contractor of shop drawings or samples shall not relieve Subcontractor of responsibility for any deviation, error or omission from the requirements of the Contract Documents.
- B. As-Built Drawings. Upon substantial completion of Subcontractor's Work or of the Project, whichever is earlier, Subcontractor shall submit to Contractor all warranties, guaranties, and maintenance and operations manuals with respect to Subcontractor's Work. Within fifteen (15) days thereafter, Subcontractor shall submit to Contractor as-built drawings and/or record drawings of Subcontractor's Work satisfactory to Owner and Contractor.

#### **XI. DEFAULT; TERMINATION.**

- A. Events Of Default; Remedies. If Subcontractor or any of Subcontractor's sub-subcontractors, suppliers, materialmen or laborers, shall at any time:
  - 1. refuse or neglect to supply a sufficient number of properly qualified workers or a sufficient quantity of materials of proper quality,
  - 2. abandon Subcontractor's Work or fail in any respect to prosecute with promptness and diligence Subcontractor's Work;
  - 3. fail to promptly pay sub-subcontractors, suppliers, materialmen or laborers;
  - 4. fail to accelerate Subcontractor's Work as required by Section IV (C) hereof;
  - 5. give Contractor a reason to doubt that Subcontractor's Work can be completed for the unpaid portion of the Subcontract Price or within the required time;
  - 6. declare bankruptcy or make a general assignment for the benefit of creditors or files for bankruptcy, assigns assets for the benefit of creditors, becomes insolvent or be unable to pay its obligations as they mature;
  - 7. otherwise fail to perform any of the agreements and obligations set forth in the Subcontract, these Terms and Conditions or the Contract Documents; or
  - 8. default in the performance of any contract or agreement with Contractor, whether related to the Project or otherwise; then Subcontractor shall be in default hereunder. In the event of such default, Contractor may do one or more of the following:
    - a. withhold any sums due Subcontractor under the Subcontract and any other contract, whether related to the Project or otherwise, and during such period such withheld amounts shall not accrue interest;
    - b. provide and/or supplement any labor and materials as Contractor shall determine to cure such default and deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under the Subcontract or any other contract, agreement, or otherwise;
    - c. terminate the Subcontract;

- d. take possession of all the materials, tools, equipment and appliances belonging to Subcontractor at the Project site and either complete Subcontractor's Work or employ or contract with other person or persons to complete Subcontractor's Work and provide the materials therefore, in which case if the unpaid portion of the amount to be paid under the Subcontract exceeds the charges, expenses and damages sustained by Contractor in completing the work or as a result of such defaults, such excess shall be paid by Contractor to Subcontractor, but if such charges, expenses and damages exceed said unpaid portion, Subcontractor shall pay the difference to Contractor immediately upon demand; or
- e. offset and apply any amounts due Contractor as a result of such default against any earned but unpaid amounts owing to Subcontractor by Contractor under the Subcontract, including any retainage and any amounts owed to Subcontractor under any other contract, whether related to the Project or otherwise. Prior to exercising the remedies in sub-Sections (b) (c) and (d) above, Contractor shall provide Subcontractor written notice of default and not less than seventy-two (72) hours to cure such default. Contractor's remedies are cumulative, and the exercise of one remedy shall not restrict Contractor, at the same time or thereafter, to exercise any other remedy set forth herein or provided by applicable law.

In no instance will any action whatsoever taken by the Contractor pursuant to this Subcontract relieve or mitigate Subcontractor's full and absolute responsibility for any and all of the Subcontractor's obligations under this Subcontract. Subcontractor hereby waives any and all defenses, claims or causes of action against Contractor based in whole or in part on the contention that Subcontractor would have been able to comply with the Subcontract. If it is determined that Subcontractor was improperly terminated under subparagraph A of this Article, the termination shall be treated as a termination for convenience as more fully set forth below in subparagraph C of this Article.

- B. Termination By Owner. If Owner suspends or terminates the Project or terminates the contract between Owner and Contractor, whether with or without cause, then Subcontractor shall be entitled only to such compensation as is received by Contractor relating to such suspension or termination as is provided under the Contract Documents and relating to Subcontractor's Work.
- C. Termination For Convenience. Contractor may at any time and for any reason terminate Subcontractor's Work at Contractor's convenience. Cancellation shall be by written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue Subcontractor's Work and placing of orders for materials, facilities and supplies in connection therewith, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect portions of Subcontractor's Work already in progress and to protect materials and equipment on the Project site or in transit thereto. Upon such termination, Subcontractor shall be entitled to payment only as follows: (i) the direct actual cost of Subcontractor's Work completed in conformity with the Subcontract; plus, (ii) such other costs actually incurred by Subcontractor as are permitted by the Contract Documents and approved by Owner, plus, (iii) ten percent (10%) of the cost of Subcontractor's Work referred to in clause (i) above for overhead and profit. There shall be deducted from such sums the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

## **XII. GENERAL PROVISIONS.**

- A. No Assignment By Subcontractor. Subcontractor shall not assign the Subcontract or any amounts due or to become due thereunder without the prior written consent of Contractor. Contractor may, at Contractor's option, terminate the Subcontract upon knowledge that an assignment has taken place. Under no circumstances shall any assignment of accounts receivable, have priority over payment responsibilities to Contractor, sub-subcontractors, suppliers, materialmen or laborers of Subcontractor, even if deemed valid, expressly approved or valid by operation of law. Assignees who take an interest in the Subcontract as collateral agree that they shall be paid, after proper notice and presentment under law, only after all sub-subcontractors, suppliers, materialmen and laborers have been paid, and any claims of Contractor hereunder have been satisfied, and further agrees to repay to Contractor upon demand any amount received in violation of this Section XII(A). By making the assignment of the proceeds hereof, Subcontractor agrees to assume full liability for the conveyance to assignees of any payments mistakenly, inadvertently or otherwise made or addressed to Subcontractor and Subcontractor agrees to defend and hold harmless the Contractor from claim or action of any assignee relating to this Subcontract.
- B. Attorney's Fees and Expenses. Should Contractor employ an attorney to enforce any of the provisions hereof, or to protect its interest in any matter arising under the Subcontract or these Terms and Conditions, or to collect damages for the breach of the Subcontract or these Terms and Conditions, or to prosecute or defend any suit resulting from the Subcontract or these Terms and Conditions, or to recover against any surety bond given by Subcontractor under the Subcontract or these Terms and Conditions, Subcontractor and its surety, jointly and severally, agree to pay Contractor all costs, charges, settlements, expenses and attorneys' fees including expert witness fees expended or incurred therein.
- C. No Third Party Beneficiaries. The Subcontract and these Terms and Conditions are solely for the benefit of the signatories hereto.
- D. Severability. Should any clause in the Subcontract or these Terms and Conditions, or a particular application thereof, be held to be invalid or unenforceable, in whole or in part, by any court or arbitration panel, the remaining clauses or other applications herein shall continue in full force and effect.

- E. Entire Agreement. The Subcontract, these Terms and Conditions and the Contract Documents, insofar as they relate in any part or in any way to Subcontractor's Work, constitute the entire agreement between the parties hereto, and it is expressly understood and agreed that there are no agreements or promises by and between said parties, except as aforesaid, and that any additions thereto or changes therein shall be in writing and signed by both parties thereto, and shall not create any third party beneficiaries or third party obligations enforceable against Contractor.
- F. Applicable Law. The Subcontract and these Terms and Conditions shall be governed by the laws of the State of Pennsylvania provided, however, that if a different jurisdiction is specified in the Contract Documents, such jurisdiction shall apply. In consideration for Contractor's agreement to enter into the subcontract, Subcontractor hereby agrees to waive all rights to interest above the legal rate, penalties and/or attorneys fees provided by the Contractor and Subcontractor Payment Act, 73 P.S. §501 et seq. Subcontractor hereby agrees that, if the owner requires Contractor to waive any or all of its rights under the Contractor and Subcontractor Payment Act, 73 P.S. §501 et seq., Subcontractor hereby agrees to similarly waive its rights under the Act.
- G. Notices. All notices required or permitted hereunder shall be made in writing and delivered to the address or transmitted to the teletype number set forth on the front page of the Subcontract, or such other address or number as either party may designate by like notice. All notices shall be deemed given when delivered if in person or made by teletype and seventy-two (72) hours after deposit in the U.S. mail, certified with postage prepaid.
- H. Assignment by Contractor. Contractor shall have the right to assign all or any portion of its rights and interest in the Subcontract to Owner, Owner's lender, a joint venture or partnership of which Contractor is a part, or an entity affiliated with Contractor, and upon such assignment Subcontractor shall be obligated to any such person or entity to the same extent Subcontractor is obligated to Contractor. Upon request, Subcontractor shall promptly provide Contractor with written confirmation of Subcontractor's consent to any such assignment.
- I. Time Is Of The Essence. Time is of the essence of the Subcontract and these Terms and Conditions.
- J. Waiver. Waiver by Contractor of any breach hereof by Subcontractor shall not constitute waiver of any subsequent breach of the same or any other provision.
- K. Waiver of Mechanics' and Construction Liens and Claims. Subcontractor, for itself and its subcontractors, vendors, materials suppliers and all other persons acting for, through, or under it, agrees that they shall not file or maintain any mechanics' or construction liens or claims against the Project, or any buildings or real estate forming any part thereof, for or on account of any work or labor done or materials furnished by them or any of them under this Subcontract, or any change order, amendment or modification hereto, or any supplemental contract, or contract for extra work or otherwise. Subcontractor hereby waives and releases any right it may have to file any such mechanics' or construction liens or claims. The agreement, waiver and release set forth in this paragraph shall be an independent covenant which shall survive the expiration or termination of this Subcontract. Should any lien be filed or created in violation of the provisions of this paragraph, Subcontractor shall cause the immediate removal thereof and, if then approved by Contractor, Subcontractor shall remove such lien by obtaining and filing, at its own expense, a bond satisfactory in form and amount acceptable to Contractor and in accordance with all applicable legal requirements. Said bond shall be obtained and filed within five (5) days after the date on which Contractor provided Subcontractor with notice of such lien or claim.
- L. Acceptance. If Subcontractor does not sign and return this Subcontract within fifteen (15) calendar days of the date of receipt of the Subcontract, this Subcontract will be deemed to be accepted in full as written and Subcontractor agrees to be bound by all provisions as noted herein, or at Contractor's option Contractor may withdraw Subcontract in its entirety without incurring any costs or obligations to Subcontractor by Contractor.

**EXHIBIT B**

**SUBCONTRACTOR STATUS REPORT AND PARTIAL WAIVER OF LIENS**

Project: <u>«Project Name»</u>	Initial Subcontract Amount:	
	\$ <u>«Contract Value»</u>	
Owner: <u>«Owner»</u>	Approved Change Orders:	\$
	Revised Subcontract Amount:	\$
Contractor: J. J. DeLuca Company, Inc.	Open Change Order/Claim Amount	\$
	<i>(Must Be Itemized Below)</i>	
Subcontractor: <u>«Subcontractor Name»</u>	Amount of Prior Payment Requests:	\$
	<i>(Net of Retainage)</i>	
Subcontractor's Trade:	Total Payments Received To Date:	\$
<u>«Subcontractor Trade»</u>	Retainage Withheld:	\$
Amount Of Current Payment Request: \$		
<i>(Net of Retainage)</i>		
Last Day of Payment Period:		

1. Subcontractor hereby certifies, represents and warrants to Owner, Owner's lenders and Contractor, and their respective successors and assigns, that:

(a) The information set forth above is true and correct in all respects.

(b) The Current Payment Request set forth above represents the actual value of work performed through the Last Day of Payment Period set forth above (the "Effective Date"), including, without limitation: (i) all labor expended or furnished in the design or construction of the Project; (ii) all materials, fixtures and equipment delivered to the site; (iii) all materials, fixtures and equipment for the Project stored off-site; (iv) all services furnished or performed in the design or construction of the Project; and (v) all equipment used, or provided for use, in the construction of the Project (collectively, "Work").

(c) Subject to receipt of the Current Payment Request, and except for the Open Change Order/Claim Amount set forth above, Subcontractor has received payment in full, less retainage, for all Work performed or provided through the Effective Date.

(d) Except for the Open Change Order/Claim Amount set forth above and detailed in Paragraph 5 below ("Open Change Orders and Claims"), Subcontractor has no claims against Owner, Owner's lenders, Contractor or any other party for payment, damages, changes, extras, delays, interest, penalties or Work relating to or arising from the Project, and Subcontractor hereby waives and forever releases any such claims except for the Open Change Orders and Claims.

(e) Subcontractor has made payment to all sub-subcontractors, vendors, suppliers and materialman for Work performed in connection with the Project to the same extent that Subcontractor has received payment from Contractor therefor.

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(f) Subcontractor has made payment in full for all labor performed by Subcontractor's employees in connection with the Project through the Effective Date, including, without limitation, all amounts due to union benefit funds.

2. Subcontractor acknowledges and agrees that any payments made by Owner or Contractor by joint check or directly to sub-subcontractors, vendors, materialmen or suppliers shall not create any obligation on the part of Owner or Contractor to make any further payments by joint check or direct payments. Subcontractor hereby releases, acquits and forever discharges Owner and Owner's lenders, and their respective successors and assigns, from all claims, liabilities, obligations, causes of action and demands whatsoever, whether known or unknown, directly or indirectly relating to or arising from the Project, based upon any cause, matter or thing whatsoever, from the beginning of the world through the Effective Date.

3. To the extent that Subcontractor now or hereafter receives payment of the Current Payment Request, the Subcontractor forever waives and releases all rights that presently exist or hereafter may accrue to Subcontractor by reason of Work performed through the Effective Date to assert a mechanics' lien or other lien upon the land and/or improvements comprising the Project.

4. Subcontractor agrees to indemnify, defend and hold harmless Owner, Owner's lenders and Contractor, and their respective successors and assigns, from and against any and all claims, damages, costs, judgments, liabilities, demands, suits and expenses (including reasonable attorneys' fees) directly or indirectly relating to or arising from: (a) any false statement made herein or the breach of any representation or warranty set forth herein, (b) any mechanics' lien claim filed against the Project by any sub-subcontractor, materialman, vendor or supplier claiming to have a contract with Subcontractor, and/or (c) any rights waived or released herein.

5. A complete and comprehensive listing, description and explanation of all Open Change Orders and Claims is set forth below. Attach additional sheets, if necessary.

Intending to legally bound, Subcontractor has caused this Subcontractor Status Report and Partial Waiver of Liens to be executed as of the date set forth below.

**SUBCONTRACTOR**

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

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

Name:

Title:

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

\_\_\_\_\_  
Notary Public

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EXHIBIT "C"  
J.J. DELUCA COMPANY, INC.

**INSURANCE REQUIREMENTS**

Project Number: «Project No» Project Name: «Project Name»  
Subcontractor: «Subcontractor Name»  
Subcontract No: «Subcontract No»  
Subcontract Date: «Subcontract Date»

Please **READ CAREFULLY**. Our requirements have been updated as of March 2009 and may be different from the requirements to which you may be accustomed.

Prior to commencement of any work under the Contract and until completion and final payment is made for the work, the Subcontractor and each and every Sub-Subcontractor of the Subcontractor shall, at its sole expense, maintain the following insurance on its own behalf with insurance companies lawfully authorized to do business on an admitted basis in the jurisdiction in which the work is located and furnish to the Contractor Certificates of Insurance evidencing same. In addition, Subcontractor is required to forward these Insurance Requirements to the Subcontractor's Insurance Agent/Broker for their review and approval.

The term "Subcontractor and Sub-Subcontractor" as used in these Insurance Requirements shall mean and include Subcontractors and Sub-Subcontractors of every tier.

- A. Worker's Compensation and Employers Liability Insurance:** in the State in which the work is to be performed and elsewhere as may be required and shall include, where applicable, U.S. Longshoremen's and Harbor Workers' Coverage.
1. Workers' Compensation Coverage: Statutory Requirements.
  2. Employer's Liability Insurance Limits not less than:
    - Bodily Injury by Accident: \$100,000 Each Accident
    - Bodily Injury by Disease: \$100,000 Each Employee
    - Bodily Injury by Disease: \$500,000 Policy Limit
  3. Including Waiver of Right to Recover from Others Endorsement (WC 00 0313) where permitted by state law, naming Contractor, General Contractor and Owner.
- B. Commercial General Liability Insurance:** (covering all operations by or on behalf of Subcontractor to include coverage for Premises, Operations and Mobile Equipment; Independent Contractors; Products Liability/Completed Operations; Contractual Liability (including Liability for Employee Injury as assumed under a Contract); Broad Form Property Damage (including completed operations for at least 2 years following completion of the project); Explosion, Collapse and Underground Hazards; Personal Injury Liability)
1. Occurrence Form with the following Limits of Liability:
    - General Aggregate: \$2,000,000
    - Products Liability/Completed Operations Aggregate:\$1,000,000
    - Each Occurrence: \$1,000,000
    - Personal and Advertising Injury: \$1,000,000

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- Fire Damage (any one fire): \$ 50,000
  - Medical Expense (any one person): \$ 5,000
2. Products Liability/Completed Operations Coverage must be maintained for a period of at least **two (2)** years after final payment.
  3. The General Aggregate Limit must apply on a Per Project basis.
  4. Contractual Liability (including Liability for Employee Injury assumed under a Contract) provided by the Standard ISO Policy Form CG 00 01. Policy does NOT include the restrictive Endorsement CG 24 26 (Amendment of Insured Contract Definition) or any other provision excluding coverage for the Contractor's Sole Negligence which has been assumed by Contract.
  5. Coverage for Mold/Fungus (no Mold/Fungus exclusion), or in the alternative, and upon review and approval by Contractor, coverage for Mold Fungus can be provided by Contractor's Pollution Liability Policy.
  6. No Exterior Insulated Finishing System ("EIFS") or similar exterior wall system exclusion (if applicable under the scope of services of this Contract)

**C. Automobile Liability Insurance:**

1. Coverage to include:
  - All Owned, Leased, Hired, and Non-Owned vehicles (any auto)
  - Contractual Liability Coverage (including Liability for Employee Injury assumed under a Contract),
2. Per Accident Combined Single Limit \$1,000,000

**D. Commercial Umbrella Liability:**

1. Occurrence Limit: \$2,000,000
2. Aggregate Limit (where applicable): \$2,000,000
3. Policy to apply excess of the Commercial General Liability (following form Per Project Aggregate Limit), Commercial Automobile Liability and Employer's Liability Coverage.

**E. Property Insurance:**

Subcontractor is responsible for any damage to their work, materials, equipment, tools, etc. It is the responsibility of the Subcontractor to determine if any Property or Builder's Risk coverage provided by others is adequate to protect the subcontractor. In the event that Subcontractor determines that said coverage is inadequate, Subcontractor may obtain such insurance at Subcontractor's sole expense.

In addition, the Subcontractor waives all rights of recovery and shall cause its Insurers to waive their rights of subrogation against Contractor, General Contractor, Construction Manager, Prime Contractor, Owner, all the Additional Insureds and any of their agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the Work or any other type of property insurance (such as Contractor's Equipment, Installation Floater) maintained by Subcontractor.

F. **Professional Liability Coverage** (if applicable, indicated by an “x” 

Subcontractor shall maintain insurance covering losses caused by Professional Design Work that arise from the operations described under the scope of services of this Contract:

- Per Claim Limit: \$1,000,000
- Aggregate Limit: \$1,000,000
- If coverage is written on a Claims-made basis, the Subcontractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract (including any Design Work for this Contract); and that continuous coverage will be maintained or an Extended Discovery Period will be purchased for a period of two (2) years beginning when the work under the contract is completed.

G. **Pollution Legal Liability Coverage** (if applicable, indicated by an “x” 

Subcontractor shall maintain insurance covering losses caused by Pollution Conditions that arise from the operations described under the scope of services of this Contract.

- a. Per Claim/Aggregate Limit: \$1,000,000/\$1,000,000
- b. If coverage is written on a Claims-made basis, the Subcontractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract (including any Design Work for this Contract); and that continuous coverage will be maintained or an Extended Discovery Period will be purchased for a period of two (2) years beginning when the work under the contract is completed.

H. **Aircraft/Watercraft Liability Coverage** (if applicable, indicated by an “x” 

- a. Per Occurrence Limit: \$1,000,000
- b. Coverage to be provided for losses that arise from the operations of any Owned, Hired and Non-Owned Aircraft or Watercraft under the scope of services of this Contract.

I. **Deductibles or Self Insured Retentions:**

None of the policies of the insurance required of the subcontractor by this agreement shall contain deductibles or self-insured retentions in excess of \$10,000, unless agreed to in writing by the Contractor.

J. **Financial Rating and Admitted Status of Insurance Companies:**

1. A.M. Best Rating: A- (Excellent) or Higher
2. A.M. Best Financial Size Category: Class VII or Higher
3. Insurance companies lawfully authorized to do business on an admitted basis in the jurisdiction in which the work is located.

K. **Additional Insured:**

Contractor, General Contractor, Prime Contractor, Owner and any other party whom the Contractor is required to provide Additional Insured Coverage in their Contract (including their agents, employees, representatives, officers, directors, stockholders, members and managers) shall be added as ADDITIONAL INSUREDS on all liability policies, even for claims regarding their sole negligence. The coverage offered to the ADDITIONAL INSUREDS on Subcontractor’s liability policies shall be primary

coverage to any other coverage maintained by the ADDITIONAL INSUREDS and shall not permit or require such other coverage to contribute to the payment of any loss. In addition, the ADDITIONAL INSUREDS shall also be provided the same Completed Operations Coverage detailed under the Commercial General Liability Coverage Requirements. Subcontractor agrees, for the purpose of additional insured coverage only, that the Work is being performed for all ADDITIONAL INSUREDS identified above and that this Agreement is an agreement between Subcontractor and all ADDITIONAL INSUREDS to provide additional insured coverage.

L. **Advance Written Notice of Any Change in Insurance:** It is agreed that the Subcontractor's and Sub-Subcontractor(s)' insurance will not be canceled, materially changed or non-renewed without at least thirty (30) days advance written notice to ***J.J. DeLuca Company, Inc., 760 West Sproul Road, Suite 300, Springfield, PA 19064-4001***, by Certified Mail – "Return Receipt Requested."

M. **Waiver of Rights of Recovery and Waiver of Rights of Subrogation:**

1. The Subcontractor and Sub-Subcontractors waives all rights of recovery and shall cause its Insurers to waive their rights of subrogation against Contractor, General Contractor, Construction Manager, Prime Contractor, Owner, all Additional Insured and any of their agents and employees for loss or damage covered by any of the insurance maintained by the Subcontractor or Sub-Subcontractor pursuant to this Subcontract.

N. **Indemnification:** To the fullest extent permitted by law, Subcontractor agrees to indemnify, hold harmless and defend ***J. J. DeLuca Company, Inc., 760 W. Sproul Road, Suite 300, Springfield, PA 19064-4001***, and General Contractor, Construction Manager, Prime Contractor, Owner, Architect, Engineer, Partner and Joint Venture and their agents, employees, representatives, officers, directors, stockholders, members, managers and parent, subsidiary and affiliated companies (the "Indemnified Parties") from and against any and all liability for loss, damage or expense for which the Indemnified Parties may be held liable by reason of injury (including death) to any person (including Subcontractor's employees) or damage to any property of whatsoever kind or nature arising out of or in any manner connected with the work to be performed for the Indemnified Parties (including, but not limited to, work performed under this contract, work performed under Change Order, or any such other work performed for or on behalf of the Indemnified Parties, whether performed at the site or not or in any way connected with the use, misuse, erection, maintenance, operation or failure of any machinery or equipment whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnified Parties) even for, and if caused in whole or in part by, any act, omission, or negligence of the Indemnified Parties. It is expressly understood and agreed that the indemnity contained in this paragraph covers claims by Subcontractor's employees and that Subcontractor expressly waives any defense to this indemnification obligation which may arise under the Workers' Compensation Act of any State. In addition, Subcontractor shall defend the Indemnified Parties against any claim which may potentially give rise to indemnification of the Indemnified Parties, even if such claim alleges that the Indemnified Parties are wholly or partially at fault for causing the loss. If Indemnification for the Indemnified Parties' sole negligence is expressly prohibited by Law, such defense shall continue until it is conclusively established by a court of competent jurisdiction that: 1) the Indemnified Parties are solely liable for causing the

bodily injury or property damage alleged; and 2) that neither Subcontractor nor its employees nor any Subcontractor to Subcontractor is liable; at which time the Indemnified Parties will absorb all costs of defense. It is further expressly agreed that Subcontractor assumes the fullest extent of all obligations to indemnify and defend all parties whom **J. J. DeLuca Company, Inc.** is obligated to indemnify and defend in **J. J. DeLuca Company's** contract with General Contractor, Construction Manager, Prime Contractor, Owner, Architect, Engineer, Partner and Joint Venture (whether or not such obligations may extend to items beyond those addressed in this Agreement).

If there are any damages or claims of any kind or nature unsettled when the subcontract work is finished, the final payment by **J. J. DeLuca Company, Inc.** shall be deferred until all such claims shall have been adjusted or suitable coverage or indemnity acceptable to **J. J. DeLuca Company, Inc.** is provided by Subcontractor or Subcontractor's insurance carrier.

Subcontractor and **J. J. DeLuca Company, Inc.** further agree that the Laws of the Commonwealth of Pennsylvania shall apply to the construction and application of the Indemnification and Hold Harmless Agreements set forth above.

O. **General Requirements:**

1. The amount of insurance provided in the aforementioned insurance coverages, shall not be construed to be a limitation of the liability on the part of the Subcontractor or any of their Sub-Subcontractors. The carrying of insurance described shall in no way be interpreted as relieving the Subcontractor of any responsibility or liability under the contract.
2. Any type of insurance or any increase in limits of liability not described above which the Subcontractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
3. Any type of insurance or any increase in limits of liability not described above which the Subcontractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
4. Prior to commencement of work and/or payment, the Subcontractor and Sub-subcontractor shall file Certificates of Insurance with Contractor, which shall be subject to the Contractor's approval of adequacy of protection and the satisfactory character of the insurer. The Certificates of Insurance should be mailed within five days of receipt of these insurance requirements to **J. J. DeLuca Company, Inc., 760 West Sproul Road, Suite 300, Springfield, PA 19064-4001**, regardless of when your work will start. Project description and Job Number must be shown on the Certificate of Insurance. Subcontractor's obligation to provide the insurance set forth herein shall not be waived by any failure to provide a Certificate of Insurance, Contractor's acceptance of a Certificate of Insurance showing coverage varying from these requirements or by Contractor's direction to commence work.

In the event of a failure of Subcontractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Contractor shall have the right

(but not the obligation) to take out and maintain such Insurance as specified above as will protect the Contractor. Subcontractor agrees to furnish all necessary information therefore and to pay the cost thereof to the Contractor immediately upon presentation of an invoice.

5. In no event is Subcontractor to begin work until a Certificate of Insurance showing coverage in the aforementioned amounts required for the job is received and approved by **J. J. DeLuca Company, Inc.** Any work performed without having the Certificate of Insurance received and approved by **J. J. DeLuca Company, Inc.** is at Subcontractor's own risk.
6. The obligations of the Subcontractor to maintain Insurance and provide Indemnification shall survive any termination of this Agreement or the suspension, completion and/or acceptance of the Work or any part thereof, or final payment to Subcontractor, it being agreed that such rights and obligations are and shall be of a continuing nature and effect.