

# SUBCONTRACTOR AND VENDOR PREQUALIFICATION



Applicant: Please submit this completed form along with the following required documentation to our Charlotte office or to [info@amkinggroup.com](mailto:info@amkinggroup.com):

1. Current W-9
2. Certificate of Insurance showing your standard coverage
3. Most recent Balance Sheet
4. Letter from bonding agent showing current bonding capacity, amount currently bonded and bond rate
5. OSHA logs 300 and 300a for past 3 years

If this application is being submitted regarding a specific project, please indicate which project and if you have had previous experience with the project owner: Project Name and location: \_\_\_\_\_

## **Section 1 Organizational Information**

Legal Name of Applicant: \_\_\_\_\_

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

Physical Address: ☐ same \_\_\_\_\_

Primary Contact and Title: \_\_\_\_\_

Email and Telephone: \_\_\_\_\_

Business Website: \_\_\_\_\_

Type of Business: ☐ Corporation/LLC (State \_\_\_\_ ) ☐ Partnership ☐ Individual ☐ Joint Venture ☐ Other \_\_\_\_\_

Affiliated company: \_\_\_\_\_ Other names operated under: \_\_\_\_\_

Officers, Partners, Owners or Key Personnel: \_\_\_\_\_

Number of Permanent Employees: \_\_\_\_\_ Construction \_\_\_\_\_ Non-construction

## **Section 2 Trade Information**

Area of business:

☐ Professional Services/Consultant ☐ Subcontractor/Installer ☐ Vendor ☐ Manufacturer ☐ Other: \_\_\_\_\_

Primary areas of work: ☐ Industrial ☐ Commercial ☐ Processing ☐ Institutional ☐ Other: \_\_\_\_\_

Scope(s) of work including CSI Divisions of Construction for which you are prequalifying: \_\_\_\_\_

Work performed with own forces and %: \_\_\_\_\_

Subcontracted to others and %: \_\_\_\_\_

States in which you work including licenses #'s (if applicable): \_\_\_\_\_

Labor relations: ☐ Open Shop ☐ Union

In house: ☐ Engineering ☐ Fabrication ☐ LEED accredited personnel ☐ Safety Professional

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## Section 3 Project History and Experience

Previous projects completed with A M King: \_\_\_\_\_

Value of largest project complete in last 2 years: \$ \_\_\_\_\_ Value of work in progress: \$ \_\_\_\_\_

Projects completed or in progress for the same scope of work as this prequalification:

Project Name, City, State	Architect / Engineer	Owner	Work & Contract Amount	Date Completed

## Section 4 Financial Information

Annual sales volume for last 3 years:

Year:	\$	Year:	\$	Year:	\$
Current Backlog:	\$				

Have you ever failed to complete a project? \_\_\_\_\_ If so, provide details.

Are there any material judgments, claims or lawsuits, pending or outstanding against you? \_\_\_\_\_ If so, attach details.

Are you in default on any loan or financial agreement with any bank, financial institution or other? \_\_\_\_\_ If so, attach details.

Are you currently involved in any lien disputes, either directly or through 3<sup>rd</sup> party suppliers? \_\_\_\_\_ If so, attach details.

Have there been any criminal proceedings against firm or firm's officers during the past 10 years? \_\_\_\_\_ If so, attach details.

## Section 5 Bonding and Surety

Bonding Company: list company, phone number, contact name and title:

Complete the following:

Bond Rate:	Total Aggregate Limit:	Active Bonds:	Single Project Limit:

Has there ever been a claim against filed against any of your Performance or Payment Bonds? \_\_\_\_\_ If so, attach details.

Have you ever had a project which a Surety company has refused to bond? \_\_\_\_\_ If so, attach details.

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## Section 6 Insurance

Carrier information: list company, phone number and contact name:

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Agent information: list company, phone number and contact name:

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Standard Coverages for all policies that you carry:

Insurance	Insurance Company	Coverage Limits
Commercial General Liability		
Automobile Liability		
Umbrella Liability		
Workers Compensation		
Professional Liability		
Pollution Liability		
Riggers Liability		
Other:		

## Section 7 Health and Safety

Workers Comp Experience Modification Rating for past 3 Years:

Year	EMR	Year	EMR	Year	EMR
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Information from OSHA 300a Log for past 3 Years:

Year	# Employees	Total Hours	Injuries /Illnesses	Lost Workdays	Restricted Workdays	Deaths

Have you had any OSHA recordable citations in past 3 years? \_\_\_\_\_ If so, attach details.

What ongoing safety training is required of your on-site personnel in any position? \_\_\_\_\_

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Does your company:	Yes	No		Yes	No
Have a Written Safety and Health Program			Have a Substance Abuse Policy (check all that apply):		
Hold toolbox safety meetings			Pre-employment testing		
Frequency:			Random testing		
Conducted by:			Accident testing		
Attendee rosters signed and kept on site			Testing for cause		
Have a written training program			Testing for reasonable suspicion		

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	Yes	No		Yes	No
Do you have an approved EEO plan			Are you in compliance with EEO requirements		
Would you object to drug screening for all personnel working at our projects?					

List any major safety (or other) awards you have received. (i.e., STEP, NSEA, AQC) \_\_\_\_\_

## Section 8 References

Trade References: list company name, address, telephone and contact name:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Owner References: list company name, address, telephone and contact name:

1. \_\_\_\_\_
2. \_\_\_\_\_

Bank References: list bank, phone number, contact name and title:

1. \_\_\_\_\_
2. \_\_\_\_\_

## Section 9 Certification and Authorization

Have you reviewed the A M King Construction Company, LLC:

Subcontract Agreement (if applicable)

Yes

No

\_\_\_\_\_

\_\_\_\_\_

Professional Services Agreement (if applicable)

\_\_\_\_\_

\_\_\_\_\_

Insurance Requirements

\_\_\_\_\_

\_\_\_\_\_

Bond Requirements

\_\_\_\_\_

\_\_\_\_\_

Will you provide your most recent Financial Statement upon request?

\_\_\_\_\_

\_\_\_\_\_

Can you certify that if awarded the work, you would execute the applicable Agreement without modifications?

Yes

\_\_\_\_\_

No

\_\_\_\_\_

As an Authorized Representative of the Applicant Company, I hereby certify that the information and answers contained herein are true and correct.

Signature

Date

Printed Name and Title

Email address of signer



## SUBCONTRACT AGREEMENT

This AGREEMENT made this «StartDate» by and between **A M KING CONSTRUCTION COMPANY, LLC**, hereinafter called the “Contractor”, and «FirmName» hereinafter called the “Subcontractor.”

SUBCONTRACTOR ADDRESS:

«POAddress»

«POCity», «FirmState» «POZip»

Attention: «ContactFName» «ContactLName»

Telephone: «ContactPho ne» Mobile: «ContactMobilePhone»

Email: «ContactEmail»

SUBCONTRACT #: «SL»

SUBCONTRACT AMOUNT: «TotalSubcontract»

BOND REQUIRED: No

Phase Code

«ContractItem»

Price

«ExtendedPrice»

**WITNESSETH:** For the consideration hereinafter named, Contractor and Subcontractor agree to legally bind themselves as follows:

**SECTION 1. WORK TO BE PERFORMED:** The Subcontractor agrees to furnish all labor, services, materials, supervision, tools, scaffolds, hoisting facilities, cranes, equipment, supplies, taxes, permits, licenses, insurance, inspection costs, incidentals, and other facilities of every kind and description, unless specifically excluded herein, necessary to perform and complete in every respect the «SLDescription» (generic description of the Work, e.g., mechanical, electrical) Work described herein and in the Contract Documents (herein “the Work”). The Work shall be performed in strict accordance with the Project Schedule and all provisions, terms and conditions of this Subcontract for:

«ProjectDescription»

«JobAddress», «JobCity», «JobState» «JobZip»

«Owner»

(the “Project”) located at

(the “Site”) for

(the “Owner”)

in accordance with drawings and specifications herein enunciated by:

«ArchEngName», «udarchitect2», «udarchitect3», «udarchitect4», «udarchitect5»

(the “Architect” or “Engineer”)

Including all of the terms and conditions, including general, special, supplementary and other conditions, of the Agreement between Owner and Contractor for the Project as well as the bid package referenced below. The documents referenced in this Section are collectively referred to herein as “the Contract Documents” and are by reference made and considered a part of the Subcontract.

**SECTION 2. ENTIRE AGREEMENT:** The Subcontract and the enumerated Contract Documents embody the entire agreement between Contractor and Subcontractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in the Contract Documents. It is understood and agreed that the Subcontractor's bid or proposal to perform the Work are not part of the Subcontract or the Contract Documents, and that any inconsistent or limiting term, condition, or other qualification in such bid or proposal is superseded by the terms of this Subcontract. Except as otherwise provided hereinafter, no changes, modifications or amendments of any kind of the terms and conditions hereof shall be valid unless agreed by the parties in writing and signed by their authorized representative.

### **SECTION 3. SCOPE OF WORK:**

A. **Documents Included:** This Agreement consists of this document and the following exhibits:

«udExhibitNotes»

- B. Owner/Contractor Obligations: Subcontractor assumes toward Contractor all of the obligations and responsibility that Contractor, by the Contract Documents, assumes toward the Owner. All of the Contract Documents are available for Subcontractor's review in Contractor's office. With reference to this Subcontract, and so far as applicable, the term "Contractor" in the Contract Documents shall mean this Subcontractor. Subcontractor agrees to perform all Work shown either on the drawings, or depicted in the specifications, or reasonably inferable from either the drawings, specifications, applicable building codes, addenda or other regulations.
- C. Bid Package: (if applicable). The n/a Bid Package, dated n/a is hereby made a part of the Contract Documents.
- D. Drawings: The Drawings and Specifications described on the attached Drawing List Exhibit "A" are part of the Contract Documents and depict, in part, the Subcontractor's Scope of Work.
- E. Schedule: Time is of the essence in the performance and completion of this Subcontract. The Schedule which is part of Exhibit "B" referenced herein is part of the Contract Documents. The parties acknowledge that unanticipated delays, the work of other trades, intervening events and other occurrences may require the alteration of the original Project Schedule. Subcontractor acknowledges that the Contractor may reschedule and re-sequence Subcontractor's Work, from time to time, and as the demands of the Project require, without any additional cost or expense to be paid to Subcontractor. Subcontractor shall initiate its Work whenever any or all of the Work becomes available or as otherwise directed by Contractor and shall thereafter proceed to complete performance of the Work promptly, diligently, in a workmanlike manner, in complete cooperation with other trades, and in such a manner and sequence as to permit completion of the Project within the time frame provided by the Contract and the Project Schedule.
- F. Scope Clarification Sheet: Any deviations from or additions to the Subcontract scope defined above shall be made on the Subcontract Scope Clarification Sheet(s) attached hereto as Exhibit "B" and made a part of the Subcontract.
- G. Supplier/Sub-Subcontractor Listing: Within ten (10) days of the date of this Subcontract, Subcontractor shall furnish to the Contractor a list containing the names, addresses, telephone numbers, work scope, and contract price for all subcontractors and material suppliers that the Subcontractor intends to use in the performance of the Subcontract, and whose supply or labor contracts have a value of \$1,000.00 or more. The Subcontractor agrees that the Contractor has the right to contract any of its lower-tier subcontractors and suppliers in connection with either the performance of the Subcontract or the payment of the lower-tier subcontractors and suppliers by the Subcontractor. If Subcontractor later desires to contract with other or additional subcontractors or suppliers, it shall first obtain Contractor's consent and then promptly supplement this listing.
- H. Location: The Subcontractor acknowledges that, prior to the execution of this Contract, it has by its own independent investigation ascertained the conditions involved in performing its Work, including the location of the Work, accessibility, the character of the site, the quality and quantity of surface and subsurface conditions, other Work being performed, transportation, disposal, handling and storage of materials, availability of labor and labor scales, location and availability of utilities and access roads, equipment and facilities needed for the prosecution of the work, the uncertainties of weather or physical conditions at the site, and any other matters which might in any way affect the Work, or the cost or timing thereof.
- I. Pricing: Subcontractor acknowledges that it has read and understands all Contract Documents and Subcontract terms, and that Subcontractor is fully qualified and able to perform and complete the Work in accordance therewith and for the lump sum price of «TotalSubcontract». The Subcontract price is in U.S. Dollars, is firm, and is not subject to escalation or change, except by written change order. The Subcontract price includes all costs, expenses, fees and taxes, of every kind and description, required for the completion of the Work described herein. Any failure by the Subcontractor to anticipate or acquaint itself with information, conditions or difficulties which may affect the cost, time, or difficulty in the performance of the Work shall not relieve Subcontractor from its responsibility for timely and efficiently performing the Work for the Contract price referenced above.

#### **SECTION 4. PAYMENT:**

- A. Subcontract Consideration: From the General Contract sum to be paid to Contractor by the Owner, the Contractor will pay Subcontractor for the proper performance and completion of the Work the consideration set forth herein in current United States funds, subject to additions or deductions as provided herein. The first \$100.00 of the Subcontract consideration paid to the Subcontractor is acknowledged by the parties as constituting specific consideration for all indemnity obligations undertaken by the Subcontractor. Contractor agrees to pay to Subcontractor for satisfactory performance hereunder, subject to any increases or decreases which may be authorized as hereinafter provided.
- B. Schedule of Values: Prior to the submittal of the first partial payment request, Subcontractor shall furnish a breakdown of the Subcontract price for Contractor's approval. The breakdown shall show as nearly as possible the true value of each identifiable phase of the Work in relation to the actual Subcontract price, and separate figures shall be shown for labor and materials, with overhead and profit prorated to each. The approved breakdown will be used only for the purpose of making partial payment estimates.

- C. Monthly Payment Estimates: On or before the 20th of each month, Subcontractor shall submit to Contractor an acceptable partial payment estimate for the portion of the Work performed during the preceding month, as well as for the Work Subcontractor reasonably expects to complete by the end of that month. The payment estimate shall be on Contractor's payment estimate form attached hereto as Exhibit "C." The payment request shall identify the Subcontract by number, and the individual line items in the request must identify and correspond to the line items in the approved Schedule of Values. The Subcontractor's partial payment request, after review by the Contractor, will be included in Contractor's request to the Owner for partial payments allowed by the Contract Documents. Unless otherwise provided herein, the Contractor shall cause partial payments to be made to Subcontractor within ten (10) days following Contractor's receipt of payment from the Owner for Work performed by Subcontractor, including approved Changes in the Work, and to the extent of Subcontractor's interest therein. Notwithstanding anything to the contrary herein or in any other Contract Document the Owner's actual payment to Contractor of funds representing the Work of Subcontractor, shall be an express condition precedent to any obligation of Contractor to pay Subcontractor. The amount paid to Subcontractor shall not exceed the amount allowed and paid by the Owner on account of Subcontractor's Work, less all previous payments, less the amount of retainage provided for herein, less all charges for materials or services furnished by Contractor and properly chargeable to Subcontractor, less all sums properly withheld by Contractor as allowed by the terms of this Agreement. Subcontractor shall, in turn and in the same manner, pay in full its laborers and make partial payments to its subcontractors and suppliers. Subcontractor shall submit one (1) copy of all invoices and all necessary supporting detail to Contractor. Subcontractor's failure to submit a proper and timely payment request, together with all additional and supporting documentation required herein or by the Contract Documents, will result in the request for payment being held over for submission during the succeeding payment period.
- D. Material Billings: Original bills of lading or shipping receipts shall be attached to invoices where required to substantiate materials received on the Project. Materials stored, but not yet incorporated into the Work, shall not be included as part of the Subcontractor's payment application, unless the Contract Documents specifically allow for the payment of stored materials, and then only upon such conditions as the Contract Documents and the Contractor may require.
- E. Payments in Trust: Subcontractor shall, as often as requested by Contractor, furnish an Affidavit showing the names and addresses of all persons who have furnished labor, equipment, services or materials in connection with the Work, as well as the amount due, or to become due, to each such person, and the amounts paid to each such person by Subcontractor.
- F. Condition Precedent to Payments: The Subcontractor's furnishing of each of the following, in a timely and proper manner, shall constitute independent conditions precedent to the Contractor's obligation to make any payment to Subcontractor:
1. A signed, returned, unaltered and approved Subcontract Agreement; (contractor may, in its sole discretion, waive this condition for the 1st payment;
  2. Insurance Certificates satisfying the requirements of Section 5 herein;
  3. Acceptable, fully-executed performance and payment bonds, if required by the Subcontract;
  4. A schedule of values in accordance with this Section 4 of the Subcontract, in such form and content as specified by Contractor;
  5. A proper and timely progress payment application, with all necessary supporting documents, as required by this Section 4;
  6. Certified payrolls, if requested by the Contractor, as well as evidence satisfactory to Contractor of payment by Subcontractor of any and all contributions made by Subcontractor for health and welfare payments, payroll taxes, and other contributions required by law;
  7. Releases of lien and waivers of claims from all sub-subcontractors and materialmen supplying labor, services, equipment or materials to Subcontractor, evidencing payments through the previous month, if required by Contractor;
  8. Subcontractor's execution of the Partial Waiver and Release of Lien Rights and Claims in the form attached hereto as Exhibit "D;"
  9. Subcontractor's satisfaction or removal, by bonding or otherwise, of any lien or bond claim, or other claim, against the Contractor, Owner, Contractor's surety, the Project funds, or the Project, by anyone claiming to have furnished labor, materials, equipment or services for the Project at the request of the Subcontractor; this condition shall not apply if Subcontractor has not been paid amounts owed which relate to the lien or bond claim; and
  10. Applications for Payment must reference this subcontract number: «SL»
- G. Retention: It is agreed that Contractor shall retain «RetainagePCT»% of the amount due Subcontractor on each progress payment until final completion and acceptance of Subcontractor's Work by the Contractor's Director of Construction Management and the Owner. The Subcontractor's retainage shall be paid as part of the Final Payment provided for herein, and subject to all conditions provided for the making of that Final Payment.
- H. Withholding of Payments: Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owed by Subcontractor to Contractor. Contractor may withhold from Subcontractor an amount sufficient to protect Contractor from the consequences of Subcontractor's breach of its Subcontract obligations, including the following:
1. Defective work that has not been remedied, materials that have not been properly furnished, clean-up that has not been performed, or materials that do not meet production requirements or quality standards;
  2. Damage caused, in whole or in part, by Subcontractor to any portion of its Work or the work of others;
  3. Claims, levies, attachments, or legal proceedings made against the Contractor, the Owner, the Project or the Project funds by the Subcontractor or anyone performing any part of the Work on the Subcontractor's behalf, as well as reasonable evidence indicating the likely filing of any such claim, levy, attachment or legal action;

4. An allegation that Subcontractor has failed to make payments properly to its sub-subcontractors or for labor (including fringe benefits and contributions), materials or equipment, transportation or shipping costs, taxes, fees, licenses or any other claims arising out of Subcontractor's Work;
  5. Reasonable doubt that Subcontractor's Work can be completed for the unpaid balance of the Subcontract price or in accordance with the then-approved schedule for the completion of the Project Work;
  6. Subcontractor is not satisfactorily prosecuting its Work;
  7. Subcontractor has failed to deliver current insurance certificates, as-built drawings, written guarantees or warranties, or other approvals or submissions required by the Subcontract or by any authority having jurisdiction over the Subcontractor's Work;
  8. The filing by the Subcontractor of a petition for bankruptcy or reorganization, or any filing by the Subcontractor indicating its insolvency or inability to pay its creditors and its financial obligations as they become due; and
  9. Any other material breach of this Agreement by Subcontractor which is not cured after reasonable notice from the Contractor. Amounts as are then due shall be paid or credited to Subcontractor when Subcontractor removes or cures the above grounds for withholding payment. Contractor may withhold amounts otherwise due under this Subcontract or any other agreement between the parties to protect Contractor from the consequences of any breach by Subcontractor under this Subcontract or pursuant to any other agreement between the parties. Subcontractor shall indemnify and hold harmless both Contractor and Owner from all claims, demands, actions or disputes to the extent caused by the negligence or intentional misconduct of Subcontractor, including all attorney's fees incurred in connection therewith, and including those costs and losses resulting from any claims asserted by any sub-subcontractor, employee, or supplier of Subcontractor.
- I. Joint Checks: Progress of final payments may, in the discretion of Contractor, be made in the form of checks payable jointly to Subcontractor and its creditors (including, without limitation, sub-subcontractors, materials suppliers, laborers, labor unions, equipment suppliers and sureties), or by direct payment to Subcontractor's creditors as provided herein. In the event Contractor receives any notification from any such sub-subcontractor, suppliers, laborer or other creditor claiming that Subcontractor has failed to timely pay any indebtedness for labor, materials, services, equipment, benefits or the like in connection with the Work performed by Subcontractor on the Project, Contractor may, after seven (7) days written notice to Subcontractor, pay the amount of any such claimed liability and recover the amount thereof from Subcontractor, directly or by application of any portion of the Subcontract amount then or thereafter becoming due. Contractor's authority to make payment of Subcontractor's liabilities by joint check or by direct payment is completely discretionary, and Contractor has no legal or equitable obligation to any such third-party creditor. Subcontractor's failure to timely and satisfactorily explain in detail and justify its failure to make any such creditor payment shall constitute an acknowledgement of the legitimacy of the debt claimed and a waiver of all claims against Contractor on account of its making any direct or joint payment to Subcontractor creditors.
- J. Final Payment: Final payment by Contractor to Subcontractor shall be subject to all conditions of this Subcontract which apply to partial payments, including, but not limited to, the occurrence of the following independent conditions precedent to Contractor's obligation to make payment to Subcontractor:
1. Subcontractor's full and proper performance of all Subcontract requirements;
  2. The acceptance of Subcontractor's Work by Contractor, the Owner and Architect;
  3. The receipt of any written guarantees or necessary brochures or data, as-built drawings, operation and maintenance manuals and any other documentation required by the Contract Documents;
  4. Subcontractor's execution and delivery to Contractor of a Final Release and Affidavit, on the form attached as Exhibit "E," which shall, among other things, affirm that all labor, material, equipment, services and other debts incurred in connection with the Subcontract Work have been fully paid, satisfied or released and free and hold harmless the Contractor, Owner, Contractor's surety and Project from all claims arising out of or in connection with the Subcontract performance;
  5. The receipt of the Consent of Surety confirming final contract amount of any Subcontractor surety to the making of final payment to Subcontractor;
  6. Evidence satisfactory to Contractor that Subcontractor has paid for all labor, material, equipment or services supplied to or for the benefit of Subcontractor in the performance of the Work; and
  7. Within twenty (20) days of the satisfaction of all conditions precedent to final payment as outlined above, and unless some different time frame is required by applicable law, final payment shall be made to Subcontractor. Neither final payment, nor the Owner's acceptance and use of the Project, shall be construed as an acceptance of defective work, improper materials, or incomplete performance of the Work by the Subcontractor. The Subcontractor's acceptance of final payment shall constitute a waiver of all claims by Subcontractor against Contractor, Contractor's Surety, the Owner, the Architect and the Project.

**SECTION 5. INSURANCE AND BOND REQUIREMENTS:** Before commencing the Work, and until completion and final acceptance of the Work, the Subcontractor shall procure and maintain, at its own expense, the insurance coverages described below. Before starting the Work, Subcontractor shall furnish a Certificate of Insurance, in a form acceptable to Contractor, evidencing the Subcontractor's compliance with the Subcontract insurance requirements. All insurance policies are to be written through a company duly authorized to transact that class of insurance within the jurisdiction of the Project site and shall be with insurance companies acceptable to Contractor and with A.M. Best Rating of A minus or better. The Certificate Holder shall be included, and if requested, Owner and Owner's agents, as Additional Insured on General Liability coverage, including Ongoing and Completed Operations, when required by written contract. Coverage is primary and non-contributory. Umbrella follows form. Waiver of Subrogation applies in favor of Additional Insured on General Liability coverage and Workers Compensation coverage when required by written contract. All Insurance Certificates shall state policy numbers, dates of expiration, policy limits, and provide that the insurance will not be cancelled or changed unless Contractor has been given written notice at least thirty (30) days prior to the date of the

proposed change or cancellation. If the Subcontractor fails to procure or maintain required insurance coverages, Contractor shall have the right, but not the obligation, to procure and maintain the required insurance for and in the name of the Subcontractor, and Subcontractor shall pay the cost thereof and furnish all necessary information to make effective and maintain such insurance. Subcontractor shall not commence work until all insurance requirements are met.

A. Required Insurance Coverages: The insurance coverage to be provided includes:

1. Commercial General Liability (CGL): with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate:  
If the CGL coverage contains a general aggregate limit, such general aggregate shall apply separately to each project. CGL coverage shall be written on ISO Occurrence Form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. Contractor, Owner and all other parties required of the Contractor, shall be included as an additional named insured's on the CGL, using ISO Additional Insured Endorsement CG 20 10 and CG 20 37 or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insured shall be as broad as the coverage provided for the named insured Subcontractor. It shall apply as Primary/Non-Contributory Insurance for completed and ongoing operations. Subcontractor shall maintain CGL coverage for itself and all additional insured for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for the length of the state's statute of repose of the state where the project is located or if such state does not have a statute of repose, a minimum of 5 years after the completion of the work.
2. Automobile Liability: Business Auto Liability with limits of at least \$1,000,000 each accident. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles. Contractor, Owner and all other parties required of the Contractor, shall be included as additional named insured's on the auto policy.
3. Umbrella Liability: Umbrella limits must be at least \$2,000,000. Umbrella coverage must include as insureds all entities that are additional insureds on the CGL. Umbrella coverage for such additional insured shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor.
4. Workers' Compensation and Employer's Liability: Employers Liability Insurance limits of at least \$500,000 each accident for both bodily injury by accident and \$500,000 each employee for injury by disease. Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy. Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
5. Professional Liability: Professional Liability (if applicable) with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
6. Pollution Liability: Pollution Liability (if applicable) per forms CGD246 and CGD316 with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
7. Riggers Liability: Rigger's Liability (if applicable) with limits of insurance to be determined and a \$1,000 deductible to cover direct physical loss caused by a covered peril to property of others that is in subcontractor's care, custody, and control for which they have been hired for rigging work to cover the item being lifted.
8. Waiver of Subrogation: Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or worker's compensation and employer's liability insurance maintained per requirements stated above.
9. Additional Insured Endorsement: Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability policy.
10. Notice of Cancellation: Thirty (30) day Notice of Cancellation will be provided to Contractor prior to policies cancellation. The Subcontractor's insurance policies will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the Contractor.

In accordance with the above, the following must be insured:

1. Indemnity Agreement: The Subcontractor covenants to defend, indemnify and save harmless and exonerate the Contractor and the Owner of and from all liability, claims and demands for bodily injury and property damage arising out of the work undertaken by the Subcontractor, its employees, agents or its subcontractors, and arising out of any other operation no matter by whom performed for and on behalf of the Subcontractor to the extent such is caused by the negligence or misconduct of Subcontractor or one for whom Subcontractor is responsible, whether or not due in part to conditions, actions or omissions done or permitted by the Contractor or Owner.
2. Certificate of Insurance: The Subcontractor will submit to the Contractor one (1) certificate of insurance certifying that the insurance policies carried by him were in force before the work started. The certificate of insurance will reflect insurance requirements set forth in Section 5.

B. Sub-subcontractor Insurance: If Subcontractor elects, with Contractor's approval, to subcontract any portion of the Work to another Subcontractor, Subcontractor shall require of such Sub-subcontractor insurance coverage similar to that required of Subcontractor hereunder and shall furnish to Contractor evidence that such insurance coverages are currently in effect. Moreover, Subcontractor shall require any such Sub-subcontractor to name Contractor and Owner as additional insureds on Sub-subcontractor's Commercial General Liability Insurance and will provide Contractor with a waiver of subrogation form from such Sub-subcontractors worker's compensation carrier.

Failure of Subcontractor to require sub-subcontractor to obtain the coverages required herein or to furnish Contractor evidence of such coverage shall be grounds for termination for default.

C. Bond Requirements:

1. Contractor shall have the right to require the Subcontractor to furnish bonds covering faithful performance of the subcontract and payment of contract and payment of obligations arising thereunder, to include, but not limited to, payment and performance bonds in a form and from a surety acceptable to the Contractor. The cost of such bonds shall be included in the subcontract price.
2. Subcontractor shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Subcontractor's obligations under the Contract Documents. The Payment Bond must be issued on form AGC 607 and shall remain in effect at least until one year and the Performance Bond must be issued on form AGC 606 and shall remain in effect at least until two years after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Owner's contract.
3. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
4. If the surety on any Bond furnished by Subcontractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 3, Subcontractor shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 3 and 5.
5. All Bonds and insurance required by the Contract Documents to be purchased and maintained by the Subcontractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Owner's Supplementary Conditions.

- D. Waivers of Subrogation: The Contractor and Subcontractor waive all rights against each other and any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other for causes of loss to the extent covered by insurance obtained pursuant to this Agreement or any other insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Contractor or Subcontractor, as appropriate, shall require of the Owner, Architect, Architect's consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**SECTION 6. LABOR CONDITIONS:**

- A. Labor Harmony: Subcontractor agrees that all labor employed by it, its agents, subcontractors, or assigns for work on the Project shall be in harmony with and be compatible with all other labor being used by the Contractor or other subcontractors. Neither the Subcontractor nor any of his subcontractors shall employ or continue to employ on the Project any person whose employment on the Project is objected to by the Contractor or the Owner. Subcontractor agrees that if any portion of the Work covered hereby is further subcontracted, such lower-tier subcontractor shall be bound by and observe the provisions of this Section to the same extent as herein required of Subcontractor and that this Section shall be included in any lower-tier subcontract. Should the Work of Contractor or Subcontractor be stopped, delayed or disrupted due, in Contractor's opinion, to Subcontractor's failure to employ proper workmen or to insure work harmony as required herein, Contractor shall have the right, upon forty-eight (48) hours prior written notice and Subcontractor's failure to cure such condition or begin curing such condition if such cannot be cured within 48 hours, to terminate this Subcontract and to employ such workmen as may be necessary to complete performance of the Subcontract, with all costs resulting thereby to be charged against the Subcontractor.
- B. Sub-subcontractors: Subcontractor will not sublet the whole or any part of the Subcontract without prior written consent of Contractor. Before the Contractor's consent to sublet is requested, Subcontractor will incorporate into any subcontracts and purchase orders it has with any other party all of the provisions of the Subcontract which affect the rights of Contractor.
- C. Prohibition On Assignment: Neither the Subcontract nor the payments to become due thereunder shall be assignable without the written consent of Contractor. Any assignment without such consent shall vest no rights in the assignee against Contractor. Any assignment, transfer or partial disposition of the Subcontract consented to by Contractor shall not relieve Subcontractor of its primary responsibility to Contractor for full performance of the Subcontract, and Subcontractor shall be liable to Contractor for all acts and omissions of its subcontractors and assigns.

D. Nonperformance Due to Labor Disputes:

1. Subcontractor shall at all times supply a sufficient number of skilled workers to perform Subcontractor's Work with promptness and diligence. Should any workers performing Subcontractor's Work engage in a strike or other work stoppage or cease to work due to

picketing or a labor dispute of any kind, the Contractor may, at its option and without prejudice to any other remedies it may have, after forty-eight (48) hours written notice to Subcontractor and Subcontractor's failure to cure such condition or begin curing such condition if such cannot be cured within 48 hours, provide any such labor and deduct the cost thereof from any monies then due or thereafter to become due Subcontractor. Further, the Contractor may, at its option, without prejudice to any other remedies it may have, terminate the employment of Subcontractor for Subcontractor's Work, and shall have the right to enter upon the Construction Site and take possession, for the purpose of completing Subcontractor's Work, of all of Subcontractor's materials, tools and equipment thereon and to finish Subcontractor's Work either with its own employees or other subcontractors; and in case of such termination of the employment by the Contractor, Subcontractor shall not be entitled to receive any further payments under this Subcontract or otherwise until the work is completed but shall nevertheless remain liable for any damages which the Contractor incurs. If the expenses incurred by the Contractor in completing Subcontractor's Work shall exceed the unpaid balance due Subcontractor, Subcontractor shall pay the difference to the Contractor together with any other damages incurred by the Contractor as a result of Subcontractor's default. Subcontractor understands and agrees that a strike, picket, walkout, or other work stoppage or slowdown caused by any labor dispute shall not constitute a force majeure occurrence in any event under the terms of this Contract. Contractor further understands and agrees that any delays in the progress of the work caused by a strike, picket, walkout, or other work stoppage or slowdown resulting from any labor dispute shall not constitute a delay directly caused by an act of the Owner or Contractor. Subcontractor agrees that, in the event of any strike, picket, walkout, or other stoppage or slowdown caused by any labor dispute, subcontractor will continue to perform the Work without interruption or delay.

2. In the event of any inconsistency between the provisions of Section 6.D.1 and any other provision of this Agreement or the Contract Documents, the provisions of Section 6.D.1 shall prevail. Specifically, but not by way of limitation, any provisions of this Agreement or the Contract Documents with respect to dispute resolution, mediation, and/or litigation shall not apply to Section 6.D.1.

- E. Reserved Gates: Reserved gates may be established on the Construction Site. If established, Entrance No. 1 shall be utilized by nonunion firms, their subcontractors, employees, suppliers and material handlers. Entrance No. 2 shall be utilized by union firms, their subcontractors, employees, suppliers and material handlers. These entrances, if established, shall not be misused. The entrances shall also be observed by the management of Subcontractor and its subcontractors, suppliers and materialmen as well as all other employees.

In the event that Subcontractor violates the provisions of this Section 6.E, the Contractor shall have the right, without prejudice to any other rights or remedies it may have, to terminate the employment of Subcontractor for Subcontractor's Work, and shall have the right to enter upon the Construction Site and take possession, for the purpose of completing Subcontractor's Work, of all of Subcontractor's materials, tools and equipment thereon and to finish Subcontractor's Work either with its own employees or other subcontractors; and in case of such termination of the employment by the Contractor, Subcontractor shall not be entitled to receive any further payments under this Agreement or otherwise but shall nevertheless remain liable for any damages which the Contractor incurs. If the expenses incurred by the Contractor in completing Subcontractor's Work shall exceed the unpaid balance due Subcontractor, Subcontractor shall pay the difference to the Contractor together with any other damages incurred by the Contractor as the result of Subcontractor's default.

- F. Notification: Subcontractor agrees that it will notify Contractor and Owner immediately of any labor dispute that may affect Subcontractor's performance in any respect under this Contract. Contractor or Owner may require such assurances from Subcontractor as they deem necessary that Subcontractor will be able to complete the work in the event of a strike, picket, walkout, or other work stoppage or delay resulting from the labor dispute. In the event Subcontractor fails to provide such assurances or otherwise fails to comply with the provisions of this paragraph, Contractor or Owner may, in addition to all other rights Contractor has under this Subcontract or at law, terminate this Subcontract for cause.

## **SECTION 7. PERFORMANCE:**

- A. Supervision of the Work: Subcontractor shall, at all times, furnish competent and adequate staff as necessary for the proper administration, coordination, supervision and performance of all work required under the Subcontract. Within ten (10) days of the execution of the Subcontract, Subcontractor shall submit to Contractor in writing for approval the names, classification, experience and project function of each proposed staff or supervisory representative of Subcontractor. All staff or supervisory representatives of Subcontractor who are approved by Contractor shall not be changed, or have their duties altered, without approval of Contractor, unless they prove to be unsatisfactory to Contractor or Owner, or cease to be employed by Subcontractor. Subcontractor agrees to have, at all times, a representative at the site of the Work with full responsibility and capability for the prosecution of the Work, with full authority to act on behalf of Subcontractor in all matters, and with the knowledge and capacity to render full reports to Contractor on the progress and plan for the completion of the Work. Instructions, directives, and notices issued to this representative shall be binding upon Subcontractor. Subcontractor shall at all times enforce strict discipline and good order among its sub-subcontractors, materialmen and employees, and shall not employ on the Work any person deemed by Contractor to be unfit or insufficiently skilled in the task assigned to him, and can be replaced at no cost to Contractor and with no extension of the Subcontract time.
- B. Ascertaining Errors: Should the proper performance of the Work depend upon the proper performance of other Work not included in this Subcontract, Subcontractor shall use all reasonable means to discover any defect in any such other Work and shall report that discovery promptly to the Contractor. If Subcontractor discovers any errors, omissions, discrepancies, or conflicts in the plans or specifications for the Project, it shall immediately so inform Contractor in writing. Any work affected by such discoveries which is performed by Subcontractor prior to authorization by Contractor shall be at Subcontractor's risk.

- C. Protection of Work: When material is furnished to the Subcontractor by Contractor or others it shall be used without unreasonable waste, and Subcontractor shall pay for any material ruined, lost, stolen or damaged. Unless otherwise stated, when material is furnished by Contractor or others, it shall be delivered at Contractor's option FOB to Subcontractor's designated location or to a central point at the Project Site, either of which shall constitute completion of delivery to Subcontractor. Subcontractor shall promptly check items delivered and report in writing all damages, deficiencies and shortages to Contractor not later than the close of business on the day of the delivery. Failure to so report any damages, deficiencies or shortages to Contractor in writing shall constitute a complete waiver by Subcontractor of its right to contest the quantity or quality of any materials delivered. Quantities of materials used shall be reported weekly to Contractor in writing. Subcontractor shall be responsible for and shall protect its Work in place from the elements and other causes of damage until completion and final acceptance, and shall adequately store and protect its own materials and materials furnished to it by others. The cost of such protection shall be borne by Subcontractor. Subcontractor shall not cause damage or injury to the work of other subcontractors; and if such damage or injury should occur, Subcontractor shall pay all costs incurred in repairing or replacing the damaged or injured Work.
- D. Temporary Facilities and Use of Site: Subcontractor shall provide, and be responsible for the cost of, all temporary facilities necessary for the performance of the Work or required by the Contract Documents, including, but not limited to, temporary electrical, gas, telephone and security systems, on-site offices, storage yards, tool protection, equipment and materials, fabrication plants, drinking water, storage facilities, hoisting, material and equipment handling and waste and trash disposal. The Subcontractor shall at all times keep the Work Site clean and free from rubbish, debris, waste and surplus materials resulting from its operations.
- E. Shop Drawings and Submittals: Subcontractor shall timely, and as requested by Contractor, furnish to Contractor such shop drawings and submittals as may be required by the Contractor, Owner or Architect in connection with the Subcontractor's Work. Subcontractor shall revise and resubmit, as requested, shop drawings and submittals which are not approved without notation or exception by the Contractor, Architect, or Owner.
- F. Work Continuation: Subcontractor agrees to continue the diligent performance of the Work and to proceed in accordance with the directives of Contractor, under protest, in the event of a dispute or a controversy of any nature. Failure to so proceed shall constitute a material breach of the Subcontract, regardless of the ultimate outcome of the dispute, it being understood and agreed that any controversy between the parties shall not constitute a basis to delay, suspend, disrupt or hinder the Work.
- G. Failure to Prosecute: Should the Subcontractor at any time refuse or neglect to supply sufficient skilled workmen or materials of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or tend to cause by any action or omission the stoppage or delay of or interference with the Work of Contractor or any other Subcontractors on the Project, or fail in the performance of any of the agreements on its part contained herein, or become bankrupt or insolvent or go into liquidation either voluntarily or involuntarily, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, Contractor shall be at liberty (but without obligation) after three (3) days written notice to Subcontractor and Subcontractor's failure to cure the deficiency complained of in that notice, to exercise any one or all of the Contract remedies provided below:
1. Without taking over the performance of the Subcontract, provide through itself or through others any labor, services, equipment or materials deemed necessary by Contractor to cure the Subcontractor's default, and to deduct the cost thereof from any money due or thereafter to become due to the Subcontractor; and
  2. Contractor may take over and complete the performance of this Subcontract at the expense of Subcontractor, by exercising its rights pursuant to the Termination Clause in Section 11 hereof.
- H. Work Policies: The Subcontractor shall observe all Project and safety policies instituted by the Contractor or Owner.
- I. Non-Waiver of Contract Requirements: Contractor's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Subcontract, or its failure to exercise its rights with respect to a Subcontract breach, shall not impair such right or remedy, or any other right or remedy, or thereafter be construed to change or waive any such term, condition, instruction, right or privilege.
- J. Deviations and Substitutions: Subcontractor shall not deviate from the plans and specifications without the written consent of Contractor, and no changes shall be taken up with Owner or its authorized representative except through Contractor. Subcontractor shall identify any variations from the strict requirements of the plans and/or specifications, and any failure to do so as required by the Contract Documents shall be interpreted to mean that the equipment, fixture, material or other Work meets all of the requirements of the Contract Documents. Contractor's review of shop drawings, cut sheets, samples, material lists and other submissions shall not be construed as a complete review or approval, nor shall it relieve the Subcontractor from responsibility for errors of any sort therein, or from the necessity of furnishing any Work required by the Contract Documents which may have been omitted by Subcontractor. If any substitutions proposed by Subcontractor are accepted by the Architect as an "or equal" product, Subcontractor shall remain fully responsible for all costs flowing from the substitution.
- K. Daily Reports: Subcontractor's superintendent, foreman or other designated individual shall deliver a report, in form and content specified by Contractor, to Contractor's job site or home office before the end of each working day on the Project. The report will state the number

and names of the Subcontractor employees on site, the work categories for each employee, the hours worked by each employee, a general description of the type and quantity of Work performed, and a record of any problems encountered or anticipated.

- L. Independent Contractor Relationship: Nothing contained in this Subcontract or any lower tier subcontract shall be viewed as creating any co-employment relationship between the Owner or Contractor and any Subcontractor or Subcontractor's employees. Subcontractor, as an independent contractor, is the sole and exclusive employer of its employees, is solely responsible for controlling the wages, hours, and working conditions of its employees, and is solely accountable for the manner and quality of such employees' work.

**SECTION 8. CHANGES:** Contractor may, at any time and without notice to Subcontractor's sureties, if any, make changes in, additions to and omissions from the Work, by issuance of a Subcontract Change Order or Change Directive by Contractor's authorized representative. Subcontractor shall promptly proceed with the performance of this Subcontract as so changed.

- A. Notice of Change: If any such written change directive by Contractor, or any other act or omission of Contractor, is deemed by Subcontractor to require an increase in the Subcontract price or a change in the Subcontract schedule, then Subcontractor shall notify Contractor of that fact within five (5) days of the date of the written directive or the occurrence of the act or omission. Subcontractor's notification shall include an explanation of the manner in which the Subcontract price and/or schedule are affected, with such detail and supporting documentation as Contractor may require. Subcontractor's failure to fully and timely comply in writing with the requirements of this subparagraph shall constitute a complete waiver of any Subcontractor claim for additional compensation or an extension of time in connection with the directive, act or omission to the extent Contractor is prejudiced by such failure.
- B. Change Order Proposal: If Contractor requests a proposal with respect to any directed or alleged change in the Work, Subcontractor shall respond in writing with a change order proposal within seven (7) calendar days from the date of the request, unless a shorter time is required by the Contract Documents. The proposal shall be supported by a detailed cost breakdown which shall include a quantity survey, separate labor and material cost calculations, separate mark-up for overhead and profit, and documented material and equipment costs. If Subcontractor fails to timely comply with this proposal requirement, Contractor shall use its best efforts to estimate in good faith the impact of a proposed change on the Subcontractor in any quotation submitted to the Owner, which estimate shall be the maximum equitable adjustment due Subcontractor.
- C. Cost Limitations: With respect to any compensable change in the Subcontract Work, the sum to be paid to Subcontractor for its combined overhead and profit shall not exceed 15% including bond and insurances. If a change in the Work consists of both additions and deletions, any overhead and profit shall be computed on the excess of the additive cost over deductive costs. In the event a change in or deletion of the Work which results in a deductive change (credit), the deductive change shall be inclusive of overhead, profit, insurance, and bond costs. If the Contract Documents contain any limitations on the adjustment of compensation or time schedules as a result of changes, including limitations on mark-ups, then Subcontractor agrees to be bound by such provisions. In all events, any increase in the Subcontract price shall be limited to the Subcontractor's direct, foreseeable and necessary costs, plus applicable mark-ups, but excluding other indirect, consequential, or unforeseeable costs.
- D. Recording Extra Costs: Subcontractor shall keep accurate, detailed and separate records of the costs of any change for which a price has not been agreed upon, and shall report such costs to Contractor in the form and manner directed by Contractor. Subcontractor shall, if requested, furnish daily to Contractor certified copies of all time sheets, receiving and inspection reports, material and equipment records, and all other basic documentation required by Contractor to establish the cost or value of Subcontractor changed work.
- E. Time and Material Work: Work done on a time and material basis must be documented separately by Subcontractor, the documentation signed daily by Contractor's authorized representative, and invoiced monthly during the month in which the Work was performed. Subcontractor's failure to strictly follow these time and material work procedures will release Contractor from all responsibility for payment for the Work, regardless of whether the Contractor has signed for the additional Work, since the parties agree that Contractor's proper evaluation of such Work can be performed adequately only if Subcontractor complies timely with each of the procedures outlined herein. Only the Contractor's Construction Manager or Project Manager is authorized to sign daily time slips and verification of work performed, but only Contractor's Project Manager is empowered to direct or authorize changes in the Subcontract Work.
- F. Change Orders: Upon execution of an appropriate Change Order by the Subcontractor, and upon receipt by Contractor from Owner of payments for changes in the Subcontract Work, Contractor shall make payment to Subcontractor in the manner provided for herein. Subcontractor shall, in turn and in the same manner, make payment to its suppliers, laborers and subcontractors. The Subcontractor's signing of a change order shall constitute a full, final and complete waiver and settlement of any and all claims and causes of action that the Subcontractor has or may have in the future arising out of or relating to the change order, the events upon which the change order is based, or as a result of the impact of changed work on the unchanged work. No attempt by the Subcontractor to reserve or preserve additional claim rights shall be effective unless Contractor and Subcontractor shall both agree, in a separate writing signed by both parties contemporaneously with the Subcontractor's acceptance of the change order, to the specific terms, conditions, scope and duration of such reserve rights. Only the Contractor's Director of Operations is authorized to sign Change Orders.

**SECTION 9. DELAYS AND TIME EXTENSIONS:** Should the Subcontractor's completion of the Work be delayed, hindered, disrupted or otherwise interfered with or made less efficient for any reason beyond the control and without the fault of Subcontractor, and provided such

causes would entitle Contractor to an extension of time under the Contract Documents, Subcontractor shall be entitled to a corresponding extension of time for completion of its Work. Provided, however, that Subcontractor's right to an extension of time is expressly conditioned upon Subcontractor's fully complying with the written notice requirements specified herein within forty-eight (48) hours after the commencement of any delay or disruption, unless a shorter time is required by the Contract Documents. In all events, Subcontractor shall notify Contractor of any delays or disruptions in sufficient time so that Contractor may investigate the claimed delay and timely satisfy its notice requirements with the Owner. Subcontractor's notice shall identify the cause of the delay, the steps being taken by Subcontractor to mitigate the impact of the delay, the work items on the Project critical path affected by the delay, and the estimated effect of the delay on the Subcontractor's completion date. Any request for a time extension based in part on an alleged manpower shortage shall be accompanied with conclusive evidence of the Subcontractor's efforts to obtain necessary manpower and that a manpower shortage in fact exists. Subcontractor's failure to timely and fully comply with each of the above mentioned components of the notice to contractor shall result in a waiver and release of any time extension right to Subcontractor arising out of or in connection with the delay, disruption, or interference. Subcontractor agrees not to make, and hereby waives, any claim for an increase in the Subcontractor price, or for damages or additional compensation, on account of any delay (regardless of extent or nature), hindrance, suspension, disruption, impact, interference (active or otherwise) or other cause which would entitle Subcontractor to an extension of time.

- A. **Subcontractor Delay:** Subcontractor acknowledges that it will not be entitled to an extension of time for normal bad weather, or for conditions relating to the accessibility and character of the site, the availability and quality of labor, or for any other cause which could have been identified and taken into account prior to the execution of the Subcontract. Subcontractor shall carry on the Work promptly, efficiently, in accordance with the then-in-effect Project Schedule, and in a manner that will not cause delay in the progress of Contractor's Work or the Work of other Subcontractors. Should Subcontractor fail to properly man or diligently prosecute its Work, or fail to meet the progress required by the then-effective Project Schedule, or otherwise delay, hinder or disrupt the progress of the Work, including the Work of other subcontractors, then Subcontractor shall be responsible for all loss or damage incurred by Contractor as a result. Contractor may direct that the Subcontractor work overtime, employ additional labor, or take other steps in order to remedy any impact of a Subcontractor-caused delay. Subcontractor will immediately commence any such action directed by Contractor, at its own expense. If Subcontractor later establishes that it was not in default of its Subcontract and that it was not responsible for the job delay complained of by the Contractor, then Contractor will pay to Subcontractor the actual premium portion of any overtime wages paid by Subcontractor, plus taxes imposed by law on such additional wages, plus any worker's compensation, levies and liability insurance on such additional wages when required to be paid by the Subcontractor.
- B. **Delays Caused By Other Subcontractors:** Should the completion of the Subcontractor's Work be delayed, hindered, interfered with or made less efficient as a result of the acts or omissions of another subcontractor or supplier employed by Contractor with respect to the Project Work, then Subcontractor may submit to the other subcontractor or supplier a claim for any additional costs thereby incurred. Contractor will facilitate a binding resolution to such claim which the Subcontractor is able to substantiate. Contractor will, if requested by the subcontractors, attempt to mediate the parties' claims. Contractor will write additive/deductive change orders to responsible parties for all substantiated claims.

#### **SECTION 10. RESOLUTION OF DISPUTES:**

- A. **Work:** In the event of any dispute, claim or controversy, the Subcontractor agrees that it shall proceed with the performance of the Subcontract in the manner directed by Contractor so as not to delay or interfere with performance and completion of the Work.
- B. **Mediation:** All claims arising out of disputes and other matters in controversy or relating to this Subcontract shall be submitted to mediation. Mediation shall be a condition precedent to litigation or any other dispute resolution or legal proceedings. The party shall serve written notice demanding mediation within a reasonable time after the potential claim is identified. If the parties cannot agree on a mediator, then the demand for mediation shall be filed with the American Arbitration Association. The parties shall each bear its own attorney's fees, but the parties shall equally share the costs of the mediation and mediator.
- C. **Litigation:** In the event the parties are unsuccessful in settling all or part of the claims in mediation as specified above, then litigation can proceed in a court of competent jurisdiction which shall apply the laws of the state in which the project is located.

**SECTION 11. TERMINATION:** If, in the opinion of Contractor, Subcontractor at any time refuses or neglects to supply a sufficiency of skilled workmen or materials of the proper quality and quantity, fails in any respect to prosecute the Work with promptness and diligence, or causes by any act or omission the stoppage or delay of or interference with the Work of Contractor or of any subcontractors on the project, or fails in the performance of any of the agreements on its part contained herein, Contractor shall be at liberty, if Subcontractor has failed to cure such default within three (3) days following written notice to Subcontractor, in addition to any other remedy provided herein or by law, to terminate all or part of the Subcontractor's right to proceed with the Work and to enter on the Site and take possession, for the purpose of completing the Work, all materials, tools, equipment, documents and other property necessary to the completion of the Subcontractor's Work. In that event, Contractor may complete the Subcontract Work by subcontracting with others, and/or by employing persons to finish the Subcontract Work. In the event that the Subcontractor is bonded, Contractor shall first demand that the Surety exercise its option to complete the Work, or to pay for the completion of the Work, as provided in the Subcontract Performance Bond. Subcontractor shall not be entitled to receive any further payment under this agreement until the Work shall be wholly finished and the Contractor wholly paid on account of the Subcontract Work. If the unpaid balance of the Subcontract shall exceed the expense incurred by Contractor in finishing the Subcontract Work, then the excess shall be paid by Contractor to Subcontractor. If the Contractor's expense in completing the Subcontract Work shall exceed the unpaid Subcontract

balance, plus a mark-up for profit in the amount of 10% thereof, then Subcontractor shall promptly pay the difference to Contractor, along with the full amount of any damages sustained by the Contractor as a result of the Subcontractor's default. In the event that it is determined that a termination of the Subcontract by Contractor was not justified pursuant to this Section, then Subcontractor shall be entitled to recover the Contract value or reasonable value (whichever is less) of its Work actually performed through the date of termination, but no additional damages, profits or costs, as full compensation to Subcontractor for the Contractor's actions.

- A. Bankruptcy or Insolvency: If Subcontractor is adjudged a bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if the Subcontractor is unable to pay its sub-subcontractors and suppliers as those debts become due, the parties recognize that the Subcontractor's performance of the Subcontract could be impaired or frustrated. Accordingly, it is agreed that upon the occurrence of any such event, Contractor shall be entitled to request of Subcontractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with that request within ten (10) days of delivery of the request shall entitle Contractor to terminate this Subcontract and to the accompanying rights set forth above.
- B. Contingent Assignment of Sub-subcontracts and Purchase Order: Effective upon the termination of this Subcontract pursuant to this provision, the Subcontractor hereby assigns to Contractor any agreements, purchase orders, or sub-subcontracts for the furnishing of labor, materials, services or equipment in connection with the Subcontract Work. Provided, however, that Contractor shall not be obligated to accept the assignment of any or all of such agreements. Contractor shall notify the Subcontractor of its election to accept the assignment of any or all of the agreements described herein. Subcontractor shall include in its sub-subcontracts, purchase orders and agreements with others a provision recognizing the assignment rights of the Contractor set out herein.
- C. Termination for Convenience: The performance of Work under this Subcontract may be terminated at the convenience of the Contractor for any reason, in whole or in part, at any time, by written notice. In the event of a termination for convenience, the Subcontractor will stop work and follow the Contractor's instructions for cessation of the job. In such event, the Subcontractor will be entitled to payment for all work satisfactorily completed in an amount equal to the product obtained by multiplying the Subcontract amount by the percent of the work completed as of the effective date of termination, plus reasonable costs associated with such termination. The subcontractor will not be entitled to payment for uncompleted Work, or for anticipated profit or unabsorbed overhead, or any other expenses or damages resulting from termination.

## **SECTION 12. WARRANTY, TESTS AND INSPECTIONS:**

- A. Warranty: The Subcontractor expressly warrants that all materials and equipment incorporated in the Work shall conform to the specifications, drawings, samples and other descriptions set forth in the Subcontract and the Contract Documents and will be of good materials and workmanship and free from defect. Subcontractor's warranty under this Subcontract shall extend for the same period and to the same coverage extent that the Contractor is obligated to guarantee its work under its Contract Documents with the Owner, regardless of when the Work under this Subcontract was performed by Subcontractor or by any of its subcontractors of any tier. Upon receipt of written notice from Contractor or Owner of any breach of warranty during the applicable warranty period, the affected work shall be corrected by Subcontractor and all costs incurred as the result of breach of warranty shall be borne by Subcontractor. Should Subcontractor fail to make the necessary correction promptly, Contractor may perform or cause to be performed the necessary work at Subcontractor's expense. All warranties shall run to Contractor and Owner, their successors and assigns. The above warranties are not intended as a Limitation but are in addition to all other express warranties set forth in this Subcontract and such other warranties as are implied by Law, custom and usage of trade. Subcontractor and its surety or sureties, if any, shall be Liable for the satisfaction and full performance of the warranties set forth herein.
- B. Testing: Subcontractor shall, at its own expense, have its work tested and inspected in accordance with the requirements of the Contract Documents, applicable codes and regulations, this Subcontract, the suppliers or manufacturers of the materials or systems and applicable industry standards, and shall submit one (1) copy of all tests or inspection reports to Contractor within two (2) days of its receipt of said reports. Neither the submission of any tests or inspection reports to Contractor nor the review of said reports by Contractor shall relieve the Subcontractor of its responsibility to comply with the requirements of the Contract Documents. Contractor reserves the right to independently test and inspect Subcontractor's Work, but has no obligation to do so.
- C. Inspection: The Work and all materials and equipment furnished in connection therewith shall at all times be subject to inspection by Contractor or Owner. Subcontractor shall, at its own expense, provide safe and necessary facilities and all samples, documents, drawings and lists necessary for such inspection. If any material, equipment or any part of the Work is determined by Owner or Contractor, either during performance of the Work, or on final inspection, or during any applicable guarantee period, to be defective or not in compliance with the requirements thereof, Contractor shall notify Subcontractor in writing that such material, equipment or work is rejected. Thereupon, Subcontractor shall, at its own expense, immediately replace or correct such defective material, equipment or work by making the same comply strictly with all requirements thereof.

## **SECTION 13. INDEMNITY AGREEMENT:**

- A. For and in consideration of the covenants of Contractor under this Subcontract, the Subcontractor hereby assumes the risk of, and covenants to indemnify Contractor, Owner, and employees and agents of each (hereinafter referred to as the "Indemnitees") arising out of and resulting from all losses, damage, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or resulting from or in any way connected, in whole or in part, with Subcontractor's performance or breach of the provisions or covenants of this Subcontract, to the extent caused by the negligence or misconduct of Subcontractor or one for whom Subcontractor is liable, provided, however, that this Section shall not be construed to constitute an indemnification against any loss, damage, liability, cost or expense caused solely by the negligence of such indemnitee. Further, Subcontractor agrees to defend, indemnify and save harmless the Contractor from any claims, suits, liability or expense for any alleged or actual infringement or violation of any patent or patent rights, arising out of or in connection with this Subcontract and anything done hereunder. At the election of an Indemnitee, Subcontractor, at its own expense, also shall defend such Indemnitee against any claim, demand, action or suit for which indemnification is provided hereunder. If, on account of any breach or default by Subcontractor of its obligations to Contractor under this Subcontract, it shall become necessary for Contractor to employ attorneys to enforce or defend any of its rights or remedies hereunder, and should Contractor prevail, Contractor shall be entitled to receive from Subcontractor its reasonable attorney's fees and other legal costs incurred.
- B. Subcontractor shall fully indemnify and hold harmless A M King Construction and the Owner if the subcontractor's employees, agents, independent contractors and/or sub-subcontractors violate any state and/or federal law, including employment and/or immigration laws.

**SECTION 14. COMPLIANCE WITH LAWS AND REGULATIONS:** In the performance of the Work hereunder, Subcontractor shall comply with all current licensing, permit, labor wage rate, non-discrimination, safety, labor, hiring and reporting requirements imposed by all applicable laws or regulations. Subcontractor shall also comply with all safety requirements, drug and alcohol prohibitions and labor policies of the Contractor as outlined in Exhibit "F" (A M King Subcontractor Safety, Medical Rules and Regulations), and such other like requirements as may be required by Owner during the course of the Subcontract performance. Subcontractor recognizes and warrants that it has and will exercise complete charge and control of its work and employees and will undertake whatever measures are necessary to ensure their safety.

**SECTION 15. REMOVAL OF WASTE AND DEBRIS:** The Subcontractor shall be responsible for keeping the Subcontractor's portion of the project clean and free from rubbish, debris, waste and surplus materials resulting from its operations to the satisfaction of the Contractor, Owner, Architect, or Engineer. Should it become necessary for the Contractor to incur any expense performing cleanup of the Subcontractor's work or removing the Subcontractor's debris from the project, such expense shall be reimbursed to the Contractor by the Subcontractor or may be deducted by the Contractor from any amount due or to become due to the Subcontractor hereunder.

**SECTION 16. MISCELLANEOUS PROVISIONS:**

- A. **Required Information:** In addition to information or documentation required of the Subcontractor herein, Subcontractor agrees to provide, at no additional cost to Contractor, and in a prompt and timely fashion, any and all information or documentation relating to this Subcontract which is required either by the Contract Documents or by law.
- B. **Third Party Beneficiaries:** Neither this Subcontract, nor any actions undertaken by the parties pursuant thereto, shall create any third party beneficiary rights, contract rights, or other legally-enforceable expectations for any person or entity not a signatory party to this Subcontract.
- C. **Controlling Law:** The parties agree that the interpretation and enforceability of this Subcontract, as well as the rights and responsibilities of the parties arising thereunder, shall be construed in accordance with the laws of the state where the project is located, United States of America. In the event that any section or any portion of any section of this Subcontract shall be held to be invalid, void or otherwise unenforceable, the remaining sections and portions of the invalidated section shall remain valid, effective and binding on the parties.
- D. **Communications:** The parties agree that all notices, documents or communications required or permitted by this Subcontract shall be made in writing, in the English language, and shall be properly transmitted if sent by either hand delivery, nationally recognized overnight air carrier, or by certified or registered mail, postage prepaid, return receipt requested. Communications may be made by email or facsimile, provided the communication is promptly confirmed by mail or hand delivery of the communication as otherwise provided herein.
- E. **Access to Books and Records:** Subcontractor shall permit access to its books, records and accounts by representatives by the Contractor or the Owner in order to ascertain compliance with the provisions of the Subcontract or to verify the propriety of any sums claimed by, or paid to, the Subcontractor.
- F. **Assignment of Subcontract Agreement:** Neither party to the Contract shall assign the Contract as a whole without written consent of the other party which consent shall not be unreasonably withheld. If either party attempts to make such an assignment without such consent the party shall nevertheless remain legally responsible for all obligations under the Contract.
- G. **Permission to Share Photographs and Videos:** We encourage our subcontractors and suppliers to share photography and video for A M King projects when appropriate; however, preapproval is required. Each photo/video accompanied by the proposed message must be

submitted prior to posting to Jane Boland, Director of Marketing and Communications at A M King via email at jboland@amkinggroup.com. Our communications staff will secure Owner approval as well and will respond promptly.

H. Claims for Consequential Damages. The Contractor and Subcontractor waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. Damages incurred by the Contractor for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. Damages incurred by the Subcontractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination or suspension. Nothing in this Section shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

IN WITNESS WHEREOF, the Contractor and Subcontractor have executed this Subcontract as of the **first date** written above.

«FirmName»

A M KING CONSTRUCTION COMPANY, LLC

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ACORD™

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/11/2019

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

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

PRODUCER		CONTACT NAME: -- Contact Name --	
-- Insurance Agency Name --		PHONE (A/C, No, Ext): -- Phone #--	FAX (A/C, No): -- Fax # --
-- Address --		E-MAIL ADDRESS: -- Email Address --	
-- Address --			
-- Address --			
INSURED		INSURER(S) AFFORDING COVERAGE	
-- Named Insured --		INSURER A : -- Insurance Company Name --	
-- Address --		-- # --	
-- Address --		INSURER B : -- Insurance Company Name --	
-- Address --		-- # --	
		INSURER C : -- Insurance Company Name --	
		-- # --	
		INSURER D : -- Insurance Company Name --	
		-- # --	
		INSURER E : -- Insurance Company Name --	
		-- # --	
		INSURER F : -- Insurance Company Name --	
		-- # --	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	-- Number --	-- Date --	-- Date --	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	X	-- Number --	-- Date --	-- Date --	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> RETENTION \$0	X	X	-- Number --	-- Date --	-- Date --	EACH OCCURRENCE \$2,000,000 AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	X	X	-- Number --	-- Date --	-- Date --	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000
A	Riggers Liability Pollution Liab Professional Liab	x	x	-- Number --	-- Date --	-- Date --	Limit: TBD-Ded: \$1,000 \$1,000,000/\$2,000,000 \$1,000,000/\$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## ---SAMPLE SUBCONTRACTOR CERTIFICATE---

Re: A M King Job Number, Project Name, and Project Address.

A M King Construction Co. LLC, owner, and any other party required by contract are Additional Insureds on general liability including ongoing and completed operations, pollution liability, and professional liability coverages as required by written contract/agreement per forms #CG2010 & CG2037 or their (See Attached Descriptions)

## CERTIFICATE HOLDER

## CANCELLATION

A M King Construction Co, LLC  
 Attn: Donna Morris  
 1610 East Morehead St, Ste 200  
 Charlotte, NC 28207

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

AUTHORIZED REPRESENTATIVE

Signature Required

## DESCRIPTIONS (Continued from Page 1)

equivalent on a primary & non-contributory basis.

Waiver of Subrogation is provided in favor of A M King Construction Co. LLC, owner, and any other party required by contract on general liability, automobile liability, pollution liability, professional, and workers compensation coverages as required by written contract/agreement.

If any officer is excluded from workers compensation coverage then this needs to be shown in the description section of the certificate.

Umbrella or Excess Liability coverage follows form of underlying general liability, automobile liability, and employers liability coverages provided by policy forms, endorsements, conditions, and exclusions.

30 Days Notice of Cancellation, Non Renewal, and/or Material Change will be provided to the certificate holder except for non payment to which (15) days notice applies when required by written contract/agreement.

SAMPLE