

**AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR FOR THE  
FOLLOWING PREVAILING WAGE CONSTRUCTION PROJECT. THE BASIS OF  
PAYMENT BEING A STIPULATED SUM.**

Agreement as of

Between the Contractor: **Frankoski Construction Company**  
**314 Dodd Street**  
**East Orange, NJ 07017**  
**(973) 414-9224**

And

The Subcontractor:

Project:

Architect:

1. Please sign this agreement and return one copy to Frankoski Construction's main office and one copy to the field office. This signed agreement must be accompanied by your insurance certificate described below and an IRS W-9 form to verify tax identification in order to proceed with work.

2. The Contractor and Subcontractor agree as set forth: All work will be done as per complete plans entitled " " dated " " and marked "Construction Set" and Project/Specifications Manual entitled " " Project No. dated " " both by . Subcontractor to supply all financing, insurance, administration, supervision, equipment, labor and materials for a complete job. Subcontractor will maintain a clean site at all times and remove his/her rubbish on a daily basis to a container provided by the Contractor This agreement supercedes in their entirety any prior proposals, estimates, conditions, agreements and negotiations either written or verbal between the subcontractor and Frankoski Construction relative to this project and scope of work..

3. Contractor's contract with each prospective Owner, identified in the agreement, including specifications, plans, terms and conditions, insurance requirement(s), indemnification provision(s), choice of law provision(s), venue provision(s), liquidated and/or consequential damage(s) provision(s) and/or supplemental general conditions referred to therein are specifically incorporated herein by reference so that the Subcontractor agrees to be bound unto the Contractor to the same extent that Contractor is bound unto the Owner. Pertinent parts of the contract will be made available upon Subcontractor's written request. In the event of any conflict between these terms and conditions and the contract between Contractor and the Owner, the more strict provisions in favor of the Contractor shall govern.

**4. Contract Sum**

The Contractor shall pay the Subcontractor for the performance of the Contract, the sum of \$ for the materials and labor to supply and install .

**5. Completion Period**

Work will be manned with sufficient competent trade force in order to complete the project in a continuous and timely fashion as related to the Contractor's overall schedule. Failure to staff the job with adequate resources to achieve schedule requirements will result in termination without reimbursement. In the event Subcontractor fails to maintain the schedule, Subcontractor shall, without additional compensation, work such overtime as Contractor may direct until Subcontractor is in compliance with such schedule. Any disputes arising from changes in the work, scope of work, specifications, financial matters, change orders, etc. shall be resolved through negotiations with Contractor without delay to the project schedule. Any delays in the project schedule shall result in backcharges to the responsible party(ies). Failure to continue work until completion shall subject Subcontractor to penalty. Subcontractor understands there may be both union and open shop labor utilized on the project and is responsible for maintaining the schedule. Subcontractor and it's workforce shall not participate in work stoppages, slowdowns or protests on this site.

**5.1** In the event the Subcontractor is delayed in the performance of its work, for any reason whatsoever, Subcontractor shall only be entitled to an extension of time. In no event shall Contractor or Owner be liable to Subcontractor for prospective or speculative profits, or special, indirect or consequential damages, including, but not limited to, a claim for delay damages, extended field conditions, unabsorbed home office overhead, interference or any other additional expenses claimed by the Subcontractor in connection with its work.

## **6. Payment**

This is a Prevailing Wage Project. Subcontractor and all sub-subcontractors are required to comply with all New Jersey Prevailing Wage Rules in effect and applicable during the course of the project in addition to those outlined in this agreement. The Wage Rates applicable to this project are posted in the Contractor's office trailer at the project site. Copies may be obtained upon written request. A copy of the Subcontractor's New Jersey Public Works Registration Certificate must accompany this signed contract. Any changes to the certificate must be reported to Contractor within seven (7) days of occurrence. Certified Payroll Reports must be submitted to the Contractor within five (5) days of Subcontractor's Pay Date which is . Contractor will review and submit to Owner. If the pay date of any sub-subcontractor(s) differs from that of the Subcontractor, attach a separate list containing each Sub-subcontractor's Name, Contact Person, Address, Telephone Number, Fax Number, Email Address and include a copy of each Sub-subcontractor's New Jersey Public Works Contractor Registration Certificate. Include the list and certificates along with this signed contract. Any changes to a sub-subcontractor's certificate must be reported to Contractor within seven (7) days of occurrence. The use of Apprentice's on the project must be done in accordance with the terms of the Wage Rates applicable to this project. Prior to using an Apprentice, Subcontractor (or Sub-subcontractor) must furnish copies of evidence that the Apprentice is enrolled in an approved program in accordance with Prevailing Wage Rules.

**6.1** Upon signing of this contract, subcontractor shall submit to the Project Superintendent an AIA G703 – Schedule of Values to be used as the basis for payment requisitions for the duration of the project. Project Superintendent shall review and advise of any required changes prior to the first payment requisition.

**6.2** The Subcontractor acknowledges that it is relying on the credit of the Owner and specifically assumes the risk of the Owner's insolvency. The Subcontractor's right to payment is conditional upon Contractor's receipt of payment from the Owner for the Subcontractor's work. The Subcontractor's right to payment shall not be enlarged by reason of the existence of any labor and material payment bond, mechanic's lien discharge bond or other security that may exist.

**6.3** Any and all funds payable to Subcontractor hereunder are declared to constitute trust funds in the hands of Subcontractor, to be applied first to payment of claims of sub-subcontractors, architects, engineers, surveyors, laborers and suppliers arising out of the work, to claims for utilities furnished and taxes imposed, and to the payment of premiums on surety bonds and other bonds before application to any other purpose.

**6.4** Contractor may withhold payment to Subcontractor because of (i) defective work not remedied; (ii) claims filed, or reasonable evidence of probable filing of claims, by third parties relating to Subcontractor's work; (iii) failure of Subcontractor to make payment properly to sub-subcontractors and/or suppliers; (iv) reasonable evidence that the work cannot be completed for the unpaid balance of the Subcontract price; (v) failure to maintain the schedule; (vi) persistent offsets or backcharges arising out of any request for work issued by Contractor to Subcontractor. Contractor shall have the right but not the obligation to pay the Subcontractor's sub-subcontractors and suppliers directly upon satisfactory proof of non-payments by Subcontractor.

**7. Progress Payments:** On the 21st day of each month the Subcontractor shall submit to the Contractor's Project Superintendent a pencil copy of the requisition for payment for all labor and materials incorporated in the work up to the last day of the month of the requisition minus 10% retainage. Following approval by the project superintendent, the Subcontractor shall submit a formal copy to the Contractor's Main Office and to the Project Superintendent by the 25<sup>th</sup> day of each month. The Contractor will pay the amount of the requisition within forty five (45) days providing payment has been received from customer. All payment requisitions must be presented along with a schedule of values using AIA documents G702 and G703, a Release of Liens for Progress Payment as applicable and an AIA Form G706A – Affidavit of Release of Liens and an AIA Form G706 – Affidavit of Payment of Debts and Claims. All completed payment requisitions and Release of Liens documents must be submitted to the Contractor's main office in addition to the project site. Incomplete or inaccurate Payment Requisitions or Release of Liens forms will cause payment to be deferred to the following month as will failure to submit payment requisitions by the required due dates.

**7.1** When submitting the second payment requisition package, subcontractor shall also submit a list of all major sub-subcontractors and suppliers being used on the project along with contact names, addresses and phone numbers. Any additions to this list must be provided with each subsequent payment requisition.

**8. Final Payments:** Final payments constituting the entire unpaid balance of the contract sum excluding retainage shall be made by the Contractor to the Subcontractor when the work has been completed, the contract fully performed and approved by the Owner and Contractor, as-built drawings completed and three copies of all guarantees/warranties and pertinent literature have been delivered to the Contractor. Subcontractor shall submit to the Contractor's Project Superintendent a pencil copy of the requisition for payment for the balance of labor and materials incorporated in the work by the 21<sup>st</sup> day of the month. Following approval by the project superintendent, the Subcontractor shall submit a formal copy to the Contractor's Main Office and to the Project Superintendent by the 1<sup>st</sup> day of the following month. The Contractor will pay the amount of the requisition within forty five (45) days providing payment has been received from Owner. All final payment requisitions must be presented along with a schedule of values using AIA documents G702 and G703, a Release of Liens for Final Payment, an AIA Form G706A – Affidavit of Release of Liens and an AIA Form G706 – Affidavit of Payment of Debts and Claims. All completed payment requisitions and Release of Liens documents must be submitted to the Contractor's main office in addition to the project site. Final payment to be made within forty five (45) days of invoice presentation providing payment has been received from customer.

**9. Retainage Payments:** Retainage payments shall be made by the Contractor to the Subcontractor upon final acceptance of the work by the Owner and in accordance with the terms of the Prime Contract. Contractor shall notify Subcontractor when Retainage Requisitions will be accepted. Subcontractor shall submit to the Contractor's Project Superintendent a pencil copy of the retainage requisition for payment. Following approval by the project superintendent, the Subcontractor shall submit a formal copy to the Contractor's Main Office and to the Project Superintendent within five days of approval of the pencil copy. The Contractor will pay the amount of the retainage requisition within forty five (45) days providing payment has been received from Owner. All retainage payment requisitions must be presented along with a schedule of values using AIA documents G702 and G703, a Release of Liens for Retainage Payment, an AIA Form G706A – Affidavit of Release of Liens and an AIA Form G706 – Affidavit of Payment of Debts and Claims. All completed payment requisitions and Release of Liens documents must be submitted to the Contractor's main office in addition to the project site. Retainage payment to be made within forty five (45) days of invoice presentation providing payment has been received from Owner.

**9.1** Subcontractor shall be liable for any damages incurred by Contractor, including legal fees, as a consequence of the failure by the Subcontractor to comply with these terms and conditions.

## **10. Other Conditions and Provisions**

**10.1 Safety** – Subcontractor shall follow all standard safety procedures as required and set forth by Frankoski Construction, Local, State and Federal safety regulators. The Subcontractor shall provide all necessary safety equipment and supplies to its employees and agents, take all necessary safety precautions with respect to performance of this subcontract, shall comply with any additional safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property in accordance with the requirements of the prime contract. The Subcontractor shall immediately report accidents to the Contractor and shall report to the Contractor within twenty-four (24) hours any injury to an employee or agent of the Subcontractor which occurred at the site. The subcontractor designates \_\_\_\_\_ as the qualified person from his/her staff as safety officer who will make weekly inspections of his/her workforce for adherence to safety guidelines as listed above. Violations of safety rules will result in disciplinary action up to and including a \$ 100. per incident backcharge. Repeat offenders (individuals) will be subject to discharge from project site.

**10.2 Quality Control** – The Subcontractor is responsible for total quality control of their work. Prior to performing their work, Subcontractor shall verify field conditions and conformance with drawings and specifications. Subcontractor shall also inspect any prior trade's work for non-conformance (ie: level, plumb, square, finish, etc.) as related to his/her work and will notify Project Superintendent of deficiencies. Under no circumstances will "good work over bad" be accepted. The Subcontractor's designated Quality Control Officer will be \_\_\_\_\_.

**10.3 Coordination of Work-** The Subcontractor is responsible to coordinate their work with that of other trades as required by the Project Superintendent. The Subcontractor shall overlay their work through direct communications with other trades and the Project Superintendent. Any conflicts or inconsistencies shall be brought to the immediate attention of the Project Superintendent. Failure to do so will result in reimbursement by the Subcontractor to the affected trade(s) for labor, material and profit associated with any required corrective measures that need to be taken.

**10.4 Insurance** -The Subcontractor will furnish a Certificate of Insurance to Frankoski's Main Office indicating all applicable coverages per the project specifications to the Contractor upon the signing of the Contract naming Frankoski Construction as Certificate Holder and \_\_\_\_\_ and Frankoski Construction as additionally insureds.

Coverage must remain effective during current and completed operations. All insurance certificates are required prior to the commencement of work. If this requirement is not met, this contract will automatically become null and void. Likewise, any insurance coverage that expires prior to completion of all contract work (including change orders), will be considered a breach of contract and will also subject the Subcontractor to fees and backcharges. Insurance coverage shall extend through the specified warranty period. See attached Exhibit containing insurance provisions.

**10.5 Staffing** – The Subcontractor Project Executive shall be \_\_\_\_\_ and the Subcontractor will have a designated Site Foreman for the duration of the project on site who shall be \_\_\_\_\_. He /She must speak fluent English and be capable of all layout per plan and specification interpretation. All tradespeople must be qualified in their trade and job description. The Subcontractor will work from a complete set of plans and specifications and will include reproduction costs in his/her contract. Subcontractor responsible to provide competent workforce with legal immigration status. Any legal action, fines, etc. relating to the immigration status of the workforce is the responsibility of the subcontractor. Subcontractor is also responsible for any labor disputes or issues that may arise involving their respective trade(s) and will ensure there is no interruption in progress or scheduling.

**10.6 Meetings** - Project scheduling and progress meetings will be held on site as required by Frankoski Project Superintendent. The Subcontractor's Project Executive shall be \_\_\_\_\_ who shall attend all required meetings and who shall be authorized to make decisions regarding the schedule, scope of work and contract terms. Advance notice will be provided by fax and phone at least five days prior to the meeting date. Failure to attend a meeting will result in a minimum penalty of \$ 500.00 per occurrence.

**10.7 Submittals** - The Subcontractor will submit a schedule of values on AIA form G703 to the Contractor upon the signing of the Contract. Within two weeks of signing the contract, the subcontractor will submit a submittal schedule for his/her phase of the work on AIA Document G712 or similar, listing all required submittals as per specifications and drawings and a time line for his/her phase of the work as it relates to the Contractor's schedule.

**10.8 Minor Changes in Work** - Changes in the scope of work not affecting cost or schedule must be issued in writing by the General Contractor before performance of change. Any needed clarifications or changes must be submitted in writing as a Request for Information for approval by the Contractor. Any dispute arising from changes in the work shall be resolved separately through negotiation with the Contractor without delaying the project schedule. If agreement cannot be reached then the decision will be made through binding arbitration conducted under the guidelines of the American Arbitration Association.

**10.9 Change Orders** – Subcontractor acknowledges that the only means by which any Contractor employee or agent is authorized to procure services from the Subcontractor is in writing by Contractor's main office. Any oral request for services is expressly not authorized by Contractor's corporate officers and Subcontractor may not rely upon any representations by any Contractor employee or agent to the contrary. Change Orders must be submitted in writing to the Contractor before performance of the work. All proposed Change Orders must be broken down into Labor (man hours) and Materials (Cost per Line Item) organized by Trade and itemized by CSI Division and Section format indicating quantity take-offs and unit pricing. No other forms of proposals will be accepted. Change Orders can include a maximum markup of fifteen percent (15%) for overhead and profit over and above the bare cost for materials and labor. Acknowledgement of changes to the scope of work must be approved in writing from one of the principals of Frankoski Construction, specifically Mr. Stan Frankoski, Mr. Joseph Frankoski and Mr. Anthony Frankoski prior to work being performed. Approved Change Orders should then be added as separate line items on the G703 form for the next payment requisition. Any dispute arising from change orders shall first be resolved separately through negotiation with the Contractor without delaying the performance of the change order work or project schedule. If agreement cannot be reached then the decision will be made through binding Arbitration conducted under the guidelines of the American Arbitration Association. This same process shall apply to any and all claims or disputes that may arise between Frankoski and this subcontractor. Any discovery of discrepancies between the plans and specifications and field conditions shall be brought to the attention of the Contractor (Frankoski) in writing within Three days of discovery, or no compensation shall be considered. It is the responsibility of the subcontractor to take measurements and verify field conditions prior to installing any work.

**10.9.1** All work performed by the Subcontractor during the course of this project shall be done through the Contractor.

**10.9.2** Subcontractor represents and warrants it will make no claims for additional compensation on account of performing extra work unless, prior to performing any such work, Subcontractor was issued a written authorization as noted above. Subcontractor hereby waives any claim(s) against Contractor, its surety, and/or the Owner for compensation or equitable adjustment of its contract value or contract time, changed conditions or extra work, except to the extent that same is allowed by the Owner.

**10.9.3** All proposals by the Subcontractor for extra work shall be based on the following straight time hourly rates which will remain in effect for the duration of the project. These rates shall include wages, benefits and overhead & profit.

Foreman: /hr  
Journeyman: /hr  
Apprentice: /hr

**Note: Must Provide Evidence of Participation in an Approved Apprentices Program**

**11. General** - All workers, visitors, drivers, etc. will check in/out at main entrance via sign-in sheet. If required, all workers and visitors must wear name badges.

**11.1** All workers will wear hard hats and safety glasses while working - NO EXCEPTIONS. Smoking is prohibited in all areas of the project site - NO EXCEPTIONS. Playing of radios is prohibited. No eating or drinking on the project site. Appropriate clothing shall be worn at all times.

**11.2** Subcontractor shall provide each of its employees a Photo ID using the individual's photo Driver's License or other valid photo ID to be worn by the employee and clearly visible at all times while on the project site.

**11.3** Workers will only use portable toilet supplied by the Contractor. All debris created by the Subcontractor will be removed by its own work force at the end of each working day and the work area left broom clean. The Subcontractor will be charged for any debris created by the Subcontractor and removed and carried to the dumpster by the Contractor.

**11.4** Contractor has a Zero Tolerance Policy on theft. Anyone caught stealing or borrowing any materials or equipment without authorization by the Project Superintendent will not only be discharged from the project site, but will also be prosecuted to the fullest extent of the law.

**11.5** Contractor has a Zero Tolerance Policy on Drug and Alcohol use. Possession or use of these substances will be immediate cause for discharge of the individual from the project site.

**11.6** It is the responsibility of the Subcontractor to have an agent present during all material and equipment deliveries during specified project hours. Neither the Contractor nor Owner will sign for any deliveries.

**11.7** It is the responsibility of the Subcontractor to have an agent present during all inspections pertaining to their scope of work. If no one is present to represent his or her company, there will be a back charge of \$100 issued per absence.

**11.8** If for any reason due to the actions of the subcontractor, its employees, any firm, or individual on its behalf, cause the project to be legally shut down by any organization, or individual with authority to do so, all closure costs, fines, fees, and project overhead will be the responsibility of the subcontractor. In addition a weekly back charge equaling 1% of the total subcontract cost will be deducted from the total contract amount until the project is reopened.

**11.9** Should Subcontractor at any time fail (i) to supply a sufficient number of properly skilled workers or sufficient material and equipment of the proper quality and quantity (ii) to prosecute the work with promptness and diligence; or (iii) to promptly correct defective work; Contractor may, after two (2) days' written notice, mailed or delivered to Subcontractor's last known address, provide such labor, materials and equipment and deduct the cost thereof, together with all loss or damage occasioned thereby, including actual attorney's fees and other professional fees incurred, from any money then due or thereafter to become due Subcontractor and take possession of and finish the work by whatever method Contractor may deem expedient. In such event, Subcontractor shall not be entitled to receive any further payments until the work is complete. If the cost of finishing the work exceeds the unpaid balance of the contract amount, Subcontractor shall pay such difference to Contractor.

**12. Damage Claims** - In the event that claim(s) for damage(s) are made by the Owner relating to work under this contract, such as failure of the subcontractor to perform in accordance with the contractor's schedule, claims for lost revenue, costs related to relocation during construction, leasing of temporary space, inconvenience, etc., such claim(s) shall be passed along to the Subcontractor for their respective portion(s) of the claim(s). Pending final resolution of a Claim, the Subcontractor shall proceed diligently with performance of the Contract and the General Contractor shall continue to make payments in accordance with the Contract Documents.

**13. Hold Harmless** - To the fullest extent permitted by law, the subcontractor agrees to defend, indemnify, and

hold harmless the contractor, the owner, and their agents, servants, and employees, from and against any and all claims, damages, losses, costs, and expenses of any kind, including but not limited to attorneys fees, incurred by reason of any liability for damage because of bodily injuries, including death resulting from such injuries, and/or property damage to real and personal property of any kind whatsoever, sustained by any person or persons, whether employees of the subcontractor or otherwise, caused by, resulting from, arising out of or occurring in connection with the performance of the work provided for in this contract, together with any change orders or additions to the work included in the contract.

The subcontractor agrees that the obligation to defend, indemnify and hold harmless, as described above, exists whether such injuries to persons or damage to property are due, or are claimed to be due, to the negligence of the contractor or the owner, or the agent, servants and employees of the contractor and owner, or other subcontractors, excepting from the foregoing the sole and complete negligence of the contractor.

The subcontractor agrees that the obligation to defend commences when a claim is made against the owner and/or contractor, even if the subcontractor disputes its obligation to indemnify and hold harmless. The defense shall be provided through counsel chosen by the contractor and/or the owner. The subcontractor agrees to pay for the defense of the contractor and/or owner upon demand.

The subcontractor agrees to be bound to the contractor by the terms and conditions of the contractor's agreement with the owner, a copy of said agreement being available for inspection at the office of the contractor. The subcontractor further agrees that all conditions and requirements imposed, or to be imposed, upon the contractor by its contract with the owner shall be performed by the subcontractor insofar as applicable to the work under the subcontract, and the subcontractor hereby assumes toward the contractor all obligations and responsibilities that the contractor, by contract, has assumed or will assume toward the owner with respect to said work.

**14. Termination** – Failure to perform in accordance with the terms of this contract will be cause for termination without reimbursement. To the extent the costs of completing the work exceed those costs which would have been payable to Subcontractor to complete the work, Subcontractor will be responsible for the difference and this obligation for payment shall survive termination of the contract. Contractor shall not be responsible for damages or loss of anticipated profits on work not performed on account of termination.

**15. Dispute Resolution** – Any dispute or claim arising out of or relating to this contract, or breach thereof, that cannot be settled between the parties shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The losing party shall be responsible to pay all reasonable attorney fees and costs of the arbitration.

The Owners, partners, shareholders, and officers of the Subcontractor acknowledge that the representative whose signature appears below has been given authorization to act on its behalf and, as such, Subcontractor is bound to the terms of this agreement to the fullest extent of the law. This agreement entered into as of the date noted above by:

Frankoski Construction Company

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

**Signed**  
Joseph C. Frankoski, President  
Anthony M. Frankoski, Vice President  
Stanley Frankoski, Sec'y/Treasurer

**Signed**

## **Exhibit A: Insurance Provisions**

### **SUBCONTRACTOR'S INSURANCE**

Prior to commencing the Work, subcontractor shall procure, and thereafter maintain, at its own expense, until final acceptance of the Work or later as required by the terms of the Subcontract or any individual Work Order, insurance coverage required by the Contract Documents and this Subcontract. At a minimum, and subject to modification in individual Work Orders, the types of insurance and minimum policy limits specified shall be maintained in a form and from insurers acceptable to Contractor as set forth below. All insurers shall have at least an A-(excellent) rating by A.M. Best and be qualified to do business in the state where the project is located.

This insurance will provide a defense and indemnify the Contractor, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by the Subcontractor's acts or omissions or the acts or omissions of those acting on the subcontractor's behalf.

Proof of this insurance shall be provided to the Contractor before the Work commences, as set forth below. To the extent that the Subcontractor subcontracts with any entity or individual to perform all or part of the Subcontractor's work, the subcontractor shall require the other Sub-Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms, and conditions as set forth herein, prior to the commencement of work by the Sub-subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the Work, be deemed a waiver by the Contractor of Subcontractor's or the Sub-Subcontractor's insurance obligations set forth herein.

In the event that the insurance company(ies) issuing the policy(ies) required by this exhibit deny coverage to the Contractor, the Subcontractor or the Sub-subcontractor will, upon demand by the Contractor, defend and indemnify the Contractor at the Subcontractor's or Sub-Subcontractor's expense.

#### Commercial General Liability Insurance

\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)  
\$2,000,000 General Aggregate per Project  
\$2,000,000 Products & Completed Operations Aggregate  
\$1,000,000 Personal and Advertising Injury Limit

#### Business or Commercial Automobile Liability Insurance

\$1,000,000 combined single limit per accident

#### Workers' Compensation and Employers' Liability Insurance

\$100,000 Each Accident  
\$100,000 Each Employee for Injury by Disease  
\$500,000 Aggregate for Injury by Disease

#### Excess or Umbrella Liability

\$1,000,000 occurrence/aggregate

The Contractor and Owner, along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy, which must be primary and noncontributory with respect to the additional insureds. The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following Substantial Completion of the work or final payment to the Contractor on any individual Project, whichever is later.

It is expressly understood by the parties to this Subcontract that it is the intent of the Parties that any insurance obtained by the Contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the subcontractor, the Sub-Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile and Workers Compensation policies in favor of Contractor and Owner and this clause shall apply to the contractor's and Owner's officers, agents and employees, with respect to all Projects during the policy term.

Prior to commencement of Work on any individual Project, Subcontractor shall submit a Certificate of Insurance in favor of Contractor and an Additional Insured Endorsement (in a form acceptable to the Contractor) as required hereunder. The Certificate shall provide for thirty (30) days' notice to Contractor for cancellation or any change in coverage. Copies of insurance policies shall promptly be made available to the Contractor upon request.

## **NO LIMITATION ON LIABILITY**

In any and all claims against the additional insures by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited in by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **CANCELLATION, RENEWAL AND MODIFICATION**

The Subcontractor shall maintain in effect all insurance coverages required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. The policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days prior written notice has been given to the Contractor. Certificates of insurance showing required coverage to be in force pursuant to Subparagraph 9.2.2 must be delivered to the Contractor prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may, at its sole discretion, purchase such coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or, in the alternative, terminate this Agreement.

## **CONTINUATION OF COVERAGE**

The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least three years after either ninety-(90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is later. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

## **ACKNOWLEDGMENT OF REFERRAL OF THIS PROVISION TO SUBCONTRACTOR'S INSURANCE AGENT OR BROKER**

The Subcontractor represents that he has provided a copy of the "Insurance Provision" to his insurance agent and /or broker, and that the Subcontractor has instructed the agent/broker to provide insurance in full compliance with the terms and conditions herein.

The Contractor and Subcontractor hereby acknowledge that this Exhibit is considered a material term of their contract.

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Joseph C. Frankoski, President  
Anthony M. Frankoski, Vice President  
Stanley Frankoski, Sec'/Treasurer