

# MATHIAS CORPORATION

Subcontract Agreement No. 01-0000S  
Project No. 29000

THIS AGREEMENT made this Insert Date by and between Insert Subcontractor Name whose principal office is at Insert Subcontractor Address ("the Subcontractor"), and MATHIAS CORPORATION whose principal office is at 3150 Main Street, Suite 200, Duluth, Georgia 30096 ("the Contractor").

The Subcontractor and the Contractor, for the consideration hereinafter named, agree as follows:

- 1.1 The Subcontractor shall furnish and pay for all materials, labor, scaffolding, equipment, tools, appliances, taxes, insurance, and everything necessary for completion and functional installation of the work described in Article 2 hereof, for Insert Project Name ("the Project"), for Insert Owner Name ("the Owner"), in accordance with the Contract between the Owner and the Contractor, the General Conditions of said Contract and the Drawings and Specifications prepared by Insert Architect Name ("the Architect"); all of which General Conditions and Drawings and Specifications, form a part of the Contract between the Owner and the Contractor, dated Insert Prime Contract Date, and are hereby made a part of this Subcontract by reference. This Subcontract is subject to the approval by the Architect and Owner. In addition, all work performed under this Subcontract shall be completed in conformance with all local ordinances, requirements of city and county building codes and of federal and state authorities which are applicable to the work, local sanitary laws and rules and regulations, and all orders and interpretations of such ordinances, requirements, laws, rules and regulations by governing public authorities. Subcontractor shall furnish, without any extra charge, any additional materials and labor (1) which may be required to comply with such ordinances, requirements, laws, rules, and regulations, or (2) which are not specifically included in this Subcontract or the Drawings and Specifications but are reasonably inferable therefrom and are necessary for the proper completion of the work.

## ARTICLE 2

### EXHIBIT 1 - GENERAL SCOPE OF WORK

- 2.1 Subcontractor and Contractor agree that the work to be done by Subcontractor, including the materials to be supplied in connection with that work, is described in the attached Exhibit One dated Insert Date.

## ARTICLE 3

### EXHIBIT C

- 3.1 All work performed under this contract will be in accordance with the Contract Documents as listed in the attached Exhibit C dated Insert Date, as well as all applicable codes and ordinances.

## ARTICLE 4

### NO ASSIGNMENT

- 4.1 Subcontractor shall not let, assign, assign the proceeds, subcontract, piecemeal, or otherwise transfer this Subcontract or any part thereof, or any interest therein, without the written consent of Contractor. Subcontractor agrees not to transfer actual or beneficial control of the company without the written consent of Contractor. Failure to seek the consent and approval of the Contractor may result in default of this Subcontract.

## ARTICLE 5

### SUBCONTRACT AMOUNT

- 5.1 Contractor agrees to pay Subcontractor for the performance of its work the amount (hereinafter called "Subcontract Amount") of Insert Amount Dollars and Zero Cents (\$). Payment to Contractor by Owner for the work performed by Subcontractor shall be a condition precedent to Contractor's obligation to pay Subcontractor. No payment to Subcontractor shall operate as an approval of Subcontractor's work or material or any part thereof.
- 5.2 Subcontractor represents, warrants and acknowledges that it has thoroughly reviewed and approved the Subcontract Amount in view of the work to be performed under this Subcontract, and Subcontractor recognizes that Contractor has and/or will act in reliance on the Subcontract Amount in entering into contractual agreements with Owner and/or other subcontractors. Subcontractor agrees that no modification or termination of this Subcontract or the Subcontract Amount shall be made due to any error or omission on the part of Subcontractor with respect to the Subcontract Amount specified herein.
- 5.3 The Subcontract Amount shall be increased or decreased under those circumstances only where the Scope of the Work as described in EXHIBIT ONE has increased or decreased. The increase or decrease shall be added to or subtracted from the original Subcontract Amount and EXHIBIT ONE, General Scope of the Work, only in the form of a written Subcontract Change Order signed by all necessary parties. All Subcontract Change Orders issued under this Subcontract shall be subject to all of the terms of this Subcontract and the Contract Documents.

## ARTICLE 6

### PAYMENT AGREEMENT

- 6.1 Contractor agrees to pay Subcontractor progress payments for the value of labor and materials incorporated by Subcontractor in the work and of materials stored on-site and off-site in a manner acceptable to Contractor and Owner, less 10 % retainage on the cumulative approved billings to date, less the aggregate of previous payments. Progress payments shall be based upon the approved breakdown of estimated costs required by section 6.2 of this Subcontract. Subcontractor shall make payments promptly to its sub-subcontractors, laborers and materialmen for material and labor used in the performance of said work, and shall promptly remove any claims of lien filed by any sub-subcontractors, laborers or materialmen.

Subject to the other conditions of this Subcontract, Contractor agrees to make payments required by the Subcontract in the following manner:

PROGRESS PAYMENTS:

Progress payments under the Subcontract shall be due upon Subcontractor's satisfactory completion of each of the following conditions precedent:

- A. Owner has paid Contractor for the work represented by each Request for Payment submitted by Subcontractor.
- B. Subcontractor has submitted a fully executed and notarized Request for Payment form and supporting documents.
- C. Contractor has determined that Subcontractor has achieved satisfactory progress in maintaining mutually agreed upon schedule.
- D. Subcontractor has submitted fully executed Subcontract.
- E. Subcontractor has submitted current Certificate of Insurance, as required.
- F. Subcontractor has submitted executed Payment and Performance Bonds, as required.
- G. Subcontractor has submitted current Sales & Use Tax form.
- H. Subcontractor has submitted all other documentation required by the Contract Documents.

FINAL PAYMENT:

Final payment of the Subcontract Amount shall be due upon Subcontractor's satisfactory completion of each of the following conditions precedent:

- A. Contractor has received final payment under its contract with the Owner.
- B. Subcontractor has achieved final completion of all work required by the Subcontract, including agreed changes.
- C. Final Acceptance of Subcontractor's work by Owner.
- D. Contractor has received from Subcontractor an executed Final Affidavit, Release of Claims and Waiver of Lien in the form attached hereto as EXHIBIT B.
- E. Subcontractor has furnished to Contractor such other documents and evidence as Contractor may reasonably require in order to confirm that all costs for labor and material incurred by Subcontractor in connection with its work have been paid in full.
- F. Subcontractor has completed Owner's, Architect's, and Contractor's punch lists.
- G. Subcontractor has provided all as-built drawings required by Contract Documents.
- H. Subcontractor has provided all equipment manuals as required by Contract Documents.
- I. Subcontractor has provided all warranty forms required by Contract Documents.
- J. Subcontractor has provided all supplier lien releases, if required.
- K. Subcontractor has provided all Sub-subcontractor lien releases, if required.
- L. Subcontractor has executed all outstanding and agreed-upon Change Orders.
- M. Contractor has obtained final consent of Subcontractor's Surety, if required.
- N. Subcontractor has supplied all Owner Attic Stock, if required.
- O. Subcontractor has provided all required current Sales and Use Tax forms.

When Contractor has determined that Subcontractor has substantially completed the Subcontract except for minor punch list work, Contractor may, in its sole discretion, pay Subcontractor a portion of the retainage being held by Contractor. Any retainage that Contractor continues to hold until final payment shall be paid as part of final payment. It is expressly agreed by Contractor and Subcontractor that the retainage provisions of this Subcontract are independent of any retainage provisions of the contract between Contractor and Owner, irrespective of the provisions of Article 32 of this Subcontract, and shall be effective as between Contractor and Subcontractor, regardless of the amount or percentage of retainage that Owner withholds, or has the right to withhold, from Contractor. The parties stipulate that the foregoing provisions of this section 6.1 shall control over any conflicting provisions of this Subcontract, the contract between Owner and Contractor, and the Georgia Prompt Pay Act, O.C.G.A. §13-11-1, et seq.

- 6.2 Subcontractor shall submit to Contractor, within thirty (30) days after execution of this Subcontract and fifteen (15) days before the first application for payment hereunder is due, a correct breakdown, in a format as specified by Contractor, showing the estimated cost of each part of the work covered by this Subcontract, the total of which shall equal the Subcontract Amount, and such breakdown, when approved by Contractor and Architect or Owner, shall be used as a basis for preparing and checking periodical estimates for partial payments. The approval by Contractor and Architect or Owner of such breakdown shall in no way preclude Contractor and/or Architect or Owner from requiring Subcontractor to submit a revised breakdown if a previously-approved breakdown proves, in the opinion of Contractor or Architect or Owner, to be inaccurate. Subcontractor's invoice, complete with sufficient breakdown data to permit checking and approval, shall be delivered by Subcontractor to Contractor not later than the 25th day of any month during which Subcontractor has performed work or furnished materials to the project, for which Subcontractor requests payment.
- 6.3 Subcontractor shall not make or cause to be made any contract for materials or equipment of any kind or nature whatsoever to be used in connection with the Work on a conditional sales or any other basis whereby the title to the equipment or materials does not pass to the Owner upon payment by the Owner for incorporation in the Project, free and clear of any lien, financing arrangement, or other impediment to title. The covenants of this Paragraph are separate, distinct and independent covenants and no default by the Contractor under the terms of this Subcontract shall relieve or release Subcontractor of and from the covenants set forth in this Paragraph.
- 6.4 Subcontractor shall be deemed to waive all rights to submit any claim for any cost not requested in the final Request for Payment, and shall be deemed to waive all rights to submit any claim for any cost for which proper documentation was not retained or does not exist.

ARTICLE 7  
PAYMENT WITHHELD/TERMINATION

- 7.1 Payments due to Subcontractor may be withheld by Contractor on account of unexecuted subcontract, defective work not remedied, claims filed, reasonable evidence indicating probability of filing claims, failure of Subcontractor to make payments properly to its sub-subcontractors or for material or labor, the reasonable belief of Contractor that the unfinished work to be performed under this Subcontract cannot be completed for the balance then unpaid or the reasonable belief that the unfinished work to be performed under this Subcontract cannot be completed within the remaining scheduled time. If any of the foregoing said causes are not removed, if Subcontractor at any time shall refuse or neglect to supply adequate and competent supervision or a sufficiency of properly skilled workmen or materials of the proper quality or quantity necessary for the performance of the work hereunder, or fail in any respect to prosecute the work with promptness and diligence, or fail to perform to adhere to any agreement on its part herein contained, Contractor shall have the option, after forty-eight (48) hours' written notice to Subcontractor, to pay such claims and/or provide for such labor or materials and to deduct the cost thereof, including reasonable attorney's fees and costs, from any money due or thereafter to become due by Contractor to Subcontractor. In addition to the foregoing rights and remedies, Contractor shall have the option to terminate the employment of Subcontractor under this Subcontract and to enter upon the premises and take possession of all materials or appliances, of any kind whatsoever, thereon and to employ any other person or persons to finish the work and to provide the materials therefore. In case of such termination of the employment of Subcontractor, Subcontractor shall not be entitled to receive any payment under this Subcontract which might be due, until the said work shall be finished and payment in full therefore shall be made by Owner to Contractor, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the expenses incurred by Contractor in finishing Subcontractor's work, such excess shall be paid to Subcontractor. Should the unpaid balance of the amount to be paid under this Subcontract be less than the expenses incurred by Contractor in finishing Subcontractor's work, Subcontractor shall pay the difference to Contractor within seven (7) days of Contractor's request. Subcontractor's right to payment under this paragraph shall also be subject to those conditions for payment set forth in this Subcontract. If Subcontractor shall at any time prior or subsequent to the execution of this Subcontract, have entered into another Subcontract with Contractor and if there exists any default or threatened default by Subcontractor in its performance of this Subcontract, then Contractor shall have the right to withhold any and all of the monies due or to become due to Subcontractor under such other subcontracts.

#### **ARTICLE 8 SCHEDULE**

- 8.1 Subcontractor agrees to commence the work when directed by Contractor and to perform such work diligently and continuously within the timetable specified by Contractor. If Subcontractor does not or cannot adhere to the timetable defined in the Project schedule, Subcontractor shall be obligated at direction of Contractor, to furnish sufficient manpower and equipment and/or work overtime as required to bring Subcontractor's work back into adherence with the project schedule. Such recovery efforts shall be at the expense of the Subcontractor and Subcontractor shall not be entitled to an increase or other adjustment in the Subcontract Amount. Furthermore, in the event of one or more lost work days during a normal work week due to inclement weather or other uncontrollable circumstances, Subcontractor shall be required to work on Saturday, if deemed necessary by Contractor, as a make-up day with no increase in the Subcontract Amount. It is agreed that Contractor may revise the project schedule as required to achieve the date of substantial completion or final completion as outlined in the contract documents. Subcontractor shall not be entitled to an increase or other adjustment in the Subcontract Amount as a result of said project schedule revisions. All schedule float time belongs to Contractor.
- 8.2 TIME IS OF THE ESSENCE OF THIS SUBCONTRACT and any breach of same shall go to the essence hereof, and Subcontractor, in agreeing to complete the work within the time herein mentioned, has taken into consideration and made allowances for all hindrances and delays incident to its work. If Subcontractor's performance of the work is delayed or interfered with, for any reason and for any period of time, by the acts or omissions of Owner, Contractor or other subcontractors, Subcontractor may request an extension of time for performance of the work, but shall not be entitled to any increase in the Subcontract Amount or to damages of any sort or to additional compensation as a consequence of such delays or interference, except to the extent that Contractor is entitled to compensation for such delays from the Owner, and then only to the extent of any amounts that Contractor, on behalf of Subcontractor, actually receives from Owner for such delays. Should Subcontractor be delayed in his work by Contractor, then Contractor shall grant Subcontractor only an extension of time equal to the delay caused and then only if a written claim for delay is made to the Contractor within forty-eight (48) hours from the time of the beginning of the delay. Any extension of time granted by the Contractor to Subcontractor for any delay shall only be for the individual activity or activities in the schedule affected by the delay. All float time in the schedule shall remain the possession of Contractor. Under no circumstances shall Contractor be liable to pay to Subcontractor any compensation for Contractor caused delays.
- 8.3 Subcontractor acknowledges that the Contractor reserves the right to contact any and all of Subcontractor's suppliers, vendors, and sub-subcontractors to inquire and to assist with the status and delivery of any material to be used on the project. Contractor reserves the right to assist and to expedite materials directly with the manufacturer or supplier. Contractor also reserves the right to inquire about Subcontractor's payments to the suppliers or sub-subcontractors. In no way shall rights reserved by the Contractor hereunder relieve the Subcontractor from its sole responsibility of procuring material in a timely fashion and performing the work in accordance with the project schedule or any of its other duties, obligations or responsibilities under this Subcontract.
- 8.4 This Subcontractor agrees to provide Mathias Corporation a complete detailed listing of all manufacturers, suppliers and second tier subcontractors. This listing shall contain contacts, addresses, phone numbers; order numbers and lead times for each item from approved submittal to delivery to the site.
- 8.5 If Subcontractor is responsible for any delays in the time or sequence of the Schedule, Subcontractor shall be liable for all resulting costs and damages.

#### **ARTICLE 9 JOB COORDINATION**

- 9.1 Subcontractor acknowledges that the work to be performed under this Subcontract will take place amidst and in the vicinity of work to be performed by Owner, Contractor and other subcontractors, and Subcontractor agrees to coordinate the work, under this Subcontract, with other work being performed on the Project by other trades, so that Contractor shall not be delayed, impeded or inconvenienced by any act or omission of Subcontractor in completion of the Project within the timetable specified in the Owner Contract. Subcontractor understands that the Contractor reserves the right to conduct project meetings, including pre-construction, as needed through the course of the Project, and Subcontractor agrees to attend all such project meetings as directed by the Contractor with individuals authorized to provide reliable information and make commitments with regard to manpower and compliance with the timetable specified by the Contractor. Subcontractor shall pay to Contractor two hundred dollars (\$200) for each scheduled meeting missed by Subcontractor, except when excused by Contractor in advance.

- 9.2 It is specifically agreed and understood that this Subcontractor shall coordinate all work necessary with all interrelated trades, as well as other subcontractors involved with this Project, to ensure all items of work included in this Subcontract are completed in accordance with the Contract Documents and the Project schedule. Sequencing of the work in the field shall be at the contractor's sole option. This subcontractor shall repair or shall pay the reasonable cost of repair for any work previously installed that is damaged by this subcontractor's operations.
- 9.3 Prior to commencing any work, Subcontractor shall inspect all portions of the Project that may be affected by Subcontractor's work to determine whether they are suitable to receive Subcontractor's work. Any inspections, testing, or verifications required to determine suitability of affected areas to receive work shall be the responsibility of this Subcontractor. Subcontractor's commencing work shall constitute acceptance by Subcontractor of all such affected portions of the Project as being suitable and of satisfactory condition to receive Subcontractor's work.
- 9.4 The Subcontractor shall carefully review and give notice to the Contractor of any errors, inconsistencies or omissions it may discover in the Contract Documents prior to or subsequent to the entry of this Contract, and shall be liable for any damages resulting from said errors, inconsistencies or omissions if it recognizes same or should have recognized same in the course of a careful review and performs a construction activity without providing advanced notice to the Contractor.

#### **ARTICLE 10 CHANGES IN THE WORK**

- 10.1 No alterations shall be made in the work as shown or described in the Drawings and Specifications as modified by applicable ordinances, requirements, laws, rules and regulations as set forth in paragraph 1 hereof, except on the written authorization of Contractor. When so made, the value of the work or materials added or omitted and any extension or deduction from the time of completion necessitated thereby shall be computed and determined by Subcontractor, subject to the written approval and acceptance by Contractor. The amount so determined shall be added to (if Subcontractor has not previously agreed to perform the additional work under the terms of this Subcontract) or deducted from the Subcontract price or prices and time of completion. Any such change in the Subcontract price shall be determined in one of the following manners:
- (a) By mutual agreement of a lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Contractor.
  - (b) By unit price stated in this Subcontract or as subsequently agreed upon.
  - (c) In the event (a) and (b) are inapplicable, on the basis of the reasonable cost to Subcontractor of such work, Subcontractor shall keep and present in such form as Contractor may request an itemized accounting, together with supporting information, of the costs of such work.
- In no event shall Subcontractor's overhead and profit as described by the Contract Documents exceed 10 % of the cost of such work, Subcontractor shall have no claim for the cost of additional work or for an extension of time (including, without limitation, claims for impact damages or for costs due to delay) unless such work and the cost and expenses thereof or time is stated on the face of a written change order and approved and accepted by Contractor on such written change order. Any attempted reservation by Subcontractor of the right to subsequently claim any amount or extension of time not stated on the face of a written change order approved and accepted by Contractor shall be null and void. All change orders issued under this Subcontract shall be subject to all of the terms of the Subcontract.
- 10.2 It is the responsibility of the Subcontractor to review revised Contract Documents and respond in writing within five (5) calendar days, unless an earlier time period is required by Contract Documents, after receipt of said documents concerning changes in the scope of work, if any, as well as the corresponding pricing. Failure to respond to revised documents issued to the Subcontractor, in accordance with the conditions set forth herein, will constitute a waiver of any right of Subcontractor to request an adjustment to either the Subcontract Amount or Project timetable.

#### **ARTICLE 11 INDEMNIFICATION**

- 11.1 To induce Contractor to enter into this Subcontract and for ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Subcontractor, Subcontractor agrees to defend, indemnify and hold Contractor and Owner wholly harmless from any damages, claims, demands, suits by any person, persons or entity, losses, and expenses whatsoever (including but not limited to, reasonable attorneys' fees and court costs), arising out of or resulting from the execution of the work provided in this Subcontract or occurring in connection therewith (including Subcontractor's failure to comply with the terms of this Subcontract), excluding liability to the extent caused by the negligence of Contractor or Owner. Subcontractor shall maintain at his own cost such insurance as will protect him from claims under the Worker's Compensation Law of the state in which the work is being performed and also Public Liability, Property Damage, Completed Operations (for a period of one (1) year from the date of final completion of the Project or for such longer period as required by the Drawings and Specifications). Prior to commencing work, Subcontractor shall have his insurance company or companies which are acceptable to Contractor execute a Certificate of Insurance form and file a copy of the same with Contractor prior to beginning work on the site; and should Subcontractor fail or neglect to provide the required insurance, Contractor shall have the right, but not the duty, to provide said insurance and deduct from any money that may be due or become due to Subcontractor any and all premiums paid by said Contractor for and on account of said insurance.
- 11.2 No Limitation: The indemnification obligation under this Article 11 shall not be limited in any way by any limitations on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

#### **ARTICLE 12 INSURANCE**

- 12.1 A. Project Insurance: Subcontractor shall maintain at its own cost such insurance as will protect it from claims under Public Liability, Property Damage, Completed Operations (for a period of three (3) years from the Date of Substantial Completion of the Project or for such longer period as may be required by the Contract Document(s) and such other insurance in such amounts and for such coverage as shown on the Certificate of Insurance form furnished Subcontractor by Contractor. Prior to commencing work, Subcontractor shall have its insurance company or companies, which are acceptable to Contractor, execute the Certificate of Insurance form and file a copy of the same with Contractor. Should Subcontractor fail or neglect to provide the required insurance, Contractor shall have the right, but not the duty, to provide said insurance and deduct from any money that may be due or become due to Subcontractor any and all premiums paid by said Contractor for and on account of such insurance.

- B. **Workmen's Compensation:** Subcontractor shall maintain at its own cost such insurance as will protect it from claims under the Workmen's Compensation Law of the state in which the work is being performed. Subcontractor will supply a Certificate of Insurance to Contractor showing coverage. Subcontractor shall be responsible for legislated increases in such insurance that may take effect during the life of this Subcontract.

The certificate of insurance shall indicate the following minimum coverages, which shall be in force for the duration of the project:

<u>Coverage</u>	<u>Statutory Limits</u>												
<b>Workman's Compensation Employer's Liability:</b> (Each Accident, Each Employee Disease, Disease Policy Limit)	100/500/100												
<b>Comprehensive General Liability:</b> (General aggregate limit shall apply on a per project basis)	<table border="0"> <tr> <td>Each Occurrence</td> <td style="text-align: right;">1,000,000</td> </tr> <tr> <td>Damage to Rented Premises</td> <td style="text-align: right;">100,000</td> </tr> <tr> <td>Medical Expenses</td> <td style="text-align: right;">5,000</td> </tr> <tr> <td>Personal &amp; Adv Injury</td> <td style="text-align: right;">1,000,000</td> </tr> <tr> <td>General Aggregate</td> <td style="text-align: right;">2,000,000</td> </tr> <tr> <td>Products – Comp/Op Agg</td> <td style="text-align: right;">2,000,000</td> </tr> </table>	Each Occurrence	1,000,000	Damage to Rented Premises	100,000	Medical Expenses	5,000	Personal & Adv Injury	1,000,000	General Aggregate	2,000,000	Products – Comp/Op Agg	2,000,000
Each Occurrence	1,000,000												
Damage to Rented Premises	100,000												
Medical Expenses	5,000												
Personal & Adv Injury	1,000,000												
General Aggregate	2,000,000												
Products – Comp/Op Agg	2,000,000												
<b>Commercial Umbrella/Excess Liability:</b>	<table border="0"> <tr> <td>Each Occurrence</td> <td style="text-align: right;">1,000,000</td> </tr> <tr> <td>Aggregate</td> <td style="text-align: right;">1,000,000</td> </tr> </table>	Each Occurrence	1,000,000	Aggregate	1,000,000								
Each Occurrence	1,000,000												
Aggregate	1,000,000												
<b>Comprehensive Auto Liability:</b>  (Hired, non-owned insurance shall be included if there are no company vehicles.)	<table border="0"> <tr> <td>Comb. Single Limit (Each Accident)</td> <td style="text-align: right;">1,000,000</td> </tr> </table>	Comb. Single Limit (Each Accident)	1,000,000										
Comb. Single Limit (Each Accident)	1,000,000												

Certificate of Insurance to include the statement: Mathias Corporation and the Project Owner shall be included as additional insured as respects to the Project and this insurance shall be primary and non-contributory over any other collectable insurance.

- C. **Builder's Risk:** Builder's Risk insurance may be provided by the Owner or Contractor covering all materials, equipment, machinery and supplies of the insured, or for which the insured shall be liable or shall have assumed liability that becomes a permanent part of the structure or project. It is the responsibility of each Subcontractor to furnish its own coverage for shanties, scaffolding, staging towers, supplies, tools and any other owned/rented equipment not to become part of the structure. Whether or not a loss is reimbursable by builder's risk insurance, each Subcontractor hereby acknowledges its obligation for any loss to its work and will be responsible for the deductible amount under this policy. Subcontractor assumes the responsibility to purchase any additional or gap builder's risk insurance it may deem necessary to protect its interest.

**ARTICLE 13**  
**TAXES**

- 13.1 Subcontractor will pay all social security and other taxes imposed upon him as an employer in connection with the performance of this Subcontract, and will furnish evidence, when required by Contractor, showing that all such payments required to be made have been paid. Subcontractor shall pay all applicable health and welfare charges, local, state, and federal taxes (including sales and use taxes) and union fees in connection with his work. Subcontractor shall make payments promptly to his subcontractors and for material and labor used by him in the performance of his work. Subcontractor shall pay all fines imposed against Subcontractor or Contractor by any governmental entity having jurisdiction over the work attributable to any act or omission of Subcontractor. Subcontractor shall be responsible for legislated increases in such taxes that may take effect during the life of this Subcontract.

**ARTICLE 14**  
**LIENS**

- 14.1 Subcontractor will save and keep the building or buildings referred to in this Subcontract and the lands upon which they are situated free from all mechanic's liens and all other liens by reason of his work or any materials or other things used by him therein. If Subcontractor fails to remove such lien(s) by bonding it or otherwise or if Subcontractor files a lien against the building(s) referred to in this Subcontract or the land upon which they are situated prior to the time when the amount claimed is payable to Subcontractor by Contractor under the terms of the Subcontract. Contractor may retain sufficient funds, out of any money due or thereafter to become due by Contractor to Subcontractor, to pay the same and to

pay all costs incurred by reason thereof, including reasonable attorneys' fees and the cost of any lien bonds that Contractor may elect to obtain, and Contractor may pay said liens or liens and costs of any funds which are or which become due to Subcontractor and which are at any time in the possession of Contractor. Subcontractor does not hereby waive his right to file a lien for any amount due and payable to him under the terms of this Subcontract for work performed hereunder.

**ARTICLE 15**  
**PROJECT SAFETY**

- 15.1 Subcontractor shall comply with applicable safety laws and regulations and shall participate in safety programs and shall carry out safety measures established by Contractor, specifically including, without limitation, Contractor's Standard Accident Prevention Program for Subcontractors, and The Occupational Safety and Health Act of 1970 as may be amended from time to time and The Construction Safety Act of 1969 as may be amended from time to time and the regulations issued pursuant to those Acts. Subcontractor agrees to indemnify and hold Contractor and Owner wholly harmless from any damages, claims, demands, suits, administrative proceedings, losses, expenses and penalties whatsoever (including, but not limited to reasonable attorney's fees and court cost), arising out of or resulting from the execution of the work provided for in this Subcontract or occurring in connection therewith in violation of OSHA Regulations and Rules to the extent caused by the acts of Subcontractor.
- 15.2 **DRUG AND ALCOHOL POLICY** - Subcontractor hereby acknowledges and agrees that (1) Subcontractor has received a copy of the Contractor's Drug & Alcohol Policy and has read and understands the same; (2) As a condition of entering into this Contract with the Contractor, the officers, employees and agents of the Subcontractor, and the officers, employees and agents of any subcontractor of the Subcontract, shall be subject to the terms and conditions of the contractor's Drug & Alcohol Policy when such persons are entering or present on any of the Contractor's job sites, and the Subcontractor shall distribute a copy of the Contractor's Drug & Alcohol Policy to each such person; (3) The provisions of the Contractor's Drug & Alcohol Policy shall control over the provisions of any drug & alcohol policy of the Subcontractor or the subcontractors of the Subcontractor, to the extent any such policy is in conflict with the Contractor's Drug & Alcohol Policy.
- 15.3 **HAZARDOUS COMMUNICATIONS** - This Subcontractor shall provide the Contractor with all hazard communications information in compliance with O.S.H.A. 29 CFR 1910.1200. Prior to delivery of such materials to the site or any other property wherever located.
- 15.4 **HAZARDOUS SUBSTANCES** - Subcontractor hereby represents, warrants, covenants and agrees that all operations or activities concerning Subcontractor's work, or any portion thereof, and any employee, supplier or subcontractors of the Subcontractor, will be in all respects in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal, accidental or intentional) of any hazardous or toxic substances, materials or wastes, including, but not limited to, oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous waste or hazardous substances (collectively, the "Hazardous Substances"), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state, local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "Hazardous Waste Laws"), at, upon, under or within the Project or any contiguous real estate; and that Subcontractor, shall not at any time be engaged in or permit any dumping, discharge, disposal, spillage or leakage (whether legal or illegal, accidental or intentional) of such Hazardous Substances at, on, in or about the Project, or any portion thereof."

**ARTICLE 16**  
**FINES**

- 16.1 Subcontractor shall pay all fines imposed against Subcontractor, Owner or Contractor by any governmental agency having jurisdiction over the work attributable to any act or omission of Subcontractor.

**ARTICLE 17**  
**CLEAN-UP**

- 17.1 It is the responsibility of this Subcontractor to maintain a clean and safe work area by removing all of his trash and debris on a regular basis. Subcontractor will clean up and haul away all debris occasioned by the work done by him hereunder to a location on site as directed by the Contractor and will leave the building and premises clean insofar as the work performed under this Subcontract is concerned. If, after twenty-four (24) hours' notice by Contractor's representative to Subcontractor's representative at the site of the work, Subcontractor has not diligently proceeded with the clean up as outlined in this paragraph, then Contractor has the right to proceed with the clean up work at Subcontractor's cost and expense.

**ARTICLE 18**  
**ICE AND WATER**

- 18.1 The Contractor shall supply ice and water to the Subcontractor. Furnishings of cups and coolers, and replenishing the coolers is the responsibility of the Subcontractor.

**ARTICLE 19**  
**SUBMITTALS**

- 19.1 Subcontractor shall submit to Contractor, within fifteen (15) days after receipt of this Subcontract, a schedule for complete shop drawings, data, catalogue cuts, and/or samples as required by the Contract Documents. Subcontractor must inform Contractor, in writing, of any requested deviations in the shop drawings and samples from the requirements of the Owner Contract and the Contract Documents thereof.
- 19.2 Subcontractor agrees to submit shop drawings, data, catalogue cuts and/or samples in strict accordance with the Contract Documents on a timely basis or as required by Contractor to meet the overall Project schedule.
- 19.3 The Architect, Contractor and Owner, if allowed by Contract Documents, must submit substitutions, for consideration within ten (10) days of award of this Subcontract, unless otherwise specified by the Contract Documents.

**ARTICLE 20**  
**LAYOUT ENGINEERING**

- 20.1 Subcontractor shall be responsible for all layout engineering and field dimensions required for the performance of the work. Any cutting or patching of work of Subcontractor or others caused by Subcontractor's error in layout or installation of its work shall be the responsibility of Subcontractor, and Subcontractor shall bear all of the costs thereof. Reference lines and benchmarks will be established by Contractor and will be adhered to by Subcontractor.

#### ARTICLE 21

##### **PAYMENT AND PERFORMANCE BONDS (Typically on subcontract amounts in excess of \$100,000)**

- 21.1 Subcontractor shall provide Payment and Performance Bonds on the forms prescribed by and with surety acceptable to Contractor in the full amount of this Subcontract for the faithful and complete performance of this Subcontract. Notwithstanding Subcontractor's failure to provide such Payment and Performance Bonds prior to Contractor's execution of this Subcontract and notwithstanding any waiver by Contractor of Subcontractor's obligation to provide such Payment and Performance Bonds, Contractor may, prior to the first date on which any payment is due to Subcontractor for work performed hereunder, again require Subcontractor to provide such Payment and Performance Bonds. Subcontractor's failure to provide such Payment and Performance Bonds within ten (10) days after the date of Contractor's renewed request for such Bonds shall entitle Contractor to terminate this Subcontract in accordance with paragraph 21 hereof. (The premiums for such Bonds shall be paid to Subcontractor by Contractor, provided that Subcontractor submits to Contractor an invoice for such premiums prior to Contractor's final payment to Subcontractor under this Subcontract. The invoice from the Subcontractor will include a copy of the invoice from the bonding company and will not include any markup for fee and general conditions) or (the premiums for such bonds are included in this Subcontract).
- 21.2 Any changes or aggregate of changes to the scope of work that increases the Subcontract Amount by ten (10) percent or more shall require Consent of Surety indicating the additional coverage. All costs associated with this increased coverage should be included and itemized in Subcontractor's proposed change order request as a separate line item. Failure by Subcontractor to include additional bond premium costs in negotiated change orders shall not relieve Subcontractor of its responsibility to provide increased coverage at Subcontractor's expense.
- 21.3 Subcontractor acknowledges that when Payment and Performance Bonds are not utilized for this Subcontract, the Subcontractor agrees to the following:
- A. The Subcontractor shall provide to the Contractor a complete list of containing all of the Subcontractor's sub-subcontractors and material suppliers for the project.
  - B. With each pay application, the Subcontractor shall furnish invoices from the firms on the list required in item (A) listed above.
  - C. With the second and subsequent pay applications, the Subcontractor shall furnish lien waivers on a form acceptable to the Contractor for payments made for the previous month's application to the firms on the list required in item (A) listed above.
  - D. The Contractor reserves the right, but does not have the obligation, to make joint check payments to the Subcontractor and any or all of the Subcontractor's sub-subcontractors or suppliers. The Joint Check Agreement shall be on a form acceptable to the Contractor.
  - E. The above items A-D shall be conditions to be met precedent to payments made to Subcontractor.

#### ARTICLE 22

##### **HOISTING AND UNLOADING**

- 22.1 Subcontractor shall be responsible for unloading and hoisting all of its materials, supplies, tools and equipment. Subcontractor may have use of Contractor's hoisting facilities during regular working hours provided that adequate facilities are available and Subcontractor has scheduled the use of the facilities with Contractor. Should the use of Contractor's hoisting facilities not be available or adequate, Subcontractor shall provide at its expense hoisting facilities sufficient to meet Subcontractor's requirements.

#### ARTICLE 23

##### **TERMINATION**

- 23.1 In the event that Owner terminates or cancels the Owner Contract for any cause whatsoever at any time after the date hereof, within (60) days after such termination or cancellation, Contractor may by written notice to Subcontractor cancel and terminate this Subcontract, and in that event it is agreed that Subcontractor shall have no claim of any kind whatsoever against Contractor for breach of this Subcontract or for any cause or reason whatsoever and that Contractor shall have no liability to Subcontractor except that Contractor shall be liable to Subcontractor for those amounts theretofore or thereafter paid to Contractor by Owner on account of the work performed by Subcontractor under this Subcontract. If this Subcontract is terminated pursuant to this paragraph, Contractor shall, subject to the conditions for payment set forth in this Subcontract, compensate Subcontractor for the value of labor and material theretofore furnished or delivered to the site of the Project, proportioned upon the Subcontract Amount, but in such event, Subcontractor shall not be entitled to prospective profits or overhead on any portion of the work not performed or with respect to materials or labor not furnished to the Project.

#### ARTICLE 24

##### **SUPERVISION AND LABOR**

- 24.1 Subcontractor shall appoint one of its employees to be stationed on the Project site during the performance of the work to supervise the performance of the work. This employee will be subject to Contractor's approval. Contractor has the right to demand the removal of this employee from the project if that employee proves unsatisfactory. This employee shall have the authority to make decisions and to bind the Subcontractor. This employee cannot be reassigned from the Project by the Subcontractor, without Contractor's approval, and shall remain on-site a minimum of 35 hours per week while this Subcontractor is directly performing the work described in EXHIBIT ONE. All communications between Subcontractor and Contractor's project superintendent shall be forwarded through this employee.
- 24.2 Subcontractor agrees that in the performance of the Work called for by this Subcontract, it will employ only such labor as will not delay or interfere with the speedy progress of the Project, and as will be acceptable to and will work in harmony with all other workmen employed on-site of the Project or on any other building, structure, or other improvement whether public or private which Contractor may then be erecting or altering.
- 24.3 Subcontractor shall maintain and assign to the Work, at all times, sufficient staff and personnel to perform the Work in a skilled, professional and satisfactory manner and so as not to delay the progress of the Work. The Subcontractor shall immediately replace or cause to be replaced all employees or workmen whose Work, as determined by the Contractor, does not meet such requirements.
- 24.4 In the event of a strike, disruption, delay or stoppage of the work, whether on the Project site or any other building, structure or improvement which Contractor is erecting or altering, which results from a dispute involving or affecting or which is caused, in whole or in part, by the labor employed

by Subcontractor, Contractor may at its option terminate this Subcontract. If this Subcontract is terminated pursuant to this Paragraph, Contractor shall, subject to the conditions for payment set forth in this Subcontract, compensate Subcontractor for the value of labor and material theretofore furnished or delivered to the site of the Project, proportioned upon the Subcontract Amount, but in such event, Subcontractor shall not be entitled to prospective profits or overhead on any portion of the work not performed or with respect to materials or labor not furnished to the Project.

**ARTICLE 25**  
**THIRD PARTY CLAIMS**

- 25.1 Subcontractor hereby assigns to Contractor any and all claims against other Subcontractors or third parties for damages caused by such parties incurred in Subcontractor's performance of this Subcontract, provided Subcontractor shall also have the right to pursue such claims independently of or together with Contractor.

**ARTICLE 26**  
**WARRANTY**

- 26.1 Subcontractor warrants to Contractor that all work, materials and equipment furnished, or which are furnished by its sub-subcontractors or materialmen, under this Subcontract shall be new and free from defects, unless otherwise specified, and that all work will be first-class quality and shall be in conformance with the terms and conditions of this Subcontract and the Owner Contract, including the Contract Documents thereof. Subcontractor further warrants that all work will comply with all warranties, guarantees and building requirements which are imposed upon Owner, Contractor, or Subcontractor by any local ordinances, requirements of city or county building codes or of federal or state authorities which are applicable to the work, local sanitary laws, rules or regulations, or any orders or interpretations thereof by governing public authorities.
- 26.2 Subcontractor agrees to remedy at its own expense any defects due to faulty materials or workmanship and shall pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the Date of Final Completion of the Project or within such longer time as may be prescribed by law or by the terms of any special warranties or guarantees required by the Contract Documents. Unless extended by the Contract Documents, for the purpose of establishing the Warranty period, the Date of Final Completion shall be deemed to occur when Certificates of Final Completion have been issued for the entire Project. Nothing contained in this paragraph shall be construed to establish a period of limitation with respect to any other obligation that Subcontractor has under this Subcontract, under law or under equity. The establishment of the time period of one (1) year after the date of final completion of the Project or such longer period of time as may be prescribed by law or by the terms of any warranty or guarantee required by this Subcontract or the Contract Documents relates only to the specific obligation of Subcontractor to correct the work, and has no relationship to the time within which its obligation to comply with this Subcontract or applicable provisions of law which may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Subcontractor's liability with respect to its obligations other than specifically to correct the work.
- 26.3 Whenever written guaranties or warranties are called for by the Contract Documents pertaining to this Subcontract, the Subcontractor shall furnish the aforesaid for such period of time as may be stipulated.

**ARTICLE 27**  
**NO WAIVER**

- 27.1 No failure of Contractor to exercise any power or right given hereunder or to insist upon strict compliance by Subcontractor with any of its obligation hereunder, and no conduct or practice of the parties at variance with the terms of this Subcontract, shall institute a waiver, estoppel or variation of Contractor's right to demand exact compliance with the terms hereof.

**ARTICLE 28**  
**DISPUTES**

- 28.1 Disputes between Subcontractor, Contractor and Owner, Owner's agents, or Architect arising out of or related to this Subcontract shall be resolved by the dispute resolution method set forth in the Contract Documents. Absent a provision for dispute resolution in the Contract Documents, such disputes shall be resolved by litigation. Disputes arising out of or related to Subcontractor's Work or this Subcontract asserted by the Owner are subject to this paragraph.
- 28.2 Subcontractor shall continue to diligently perform all Work despite the pendency of any dispute.
- 28.3 If any dispute is determined to be frivolous or lacking a good faith basis, the prevailing party shall be entitled to its attorney's fees.

**ARTICLE 29**  
**EQUAL OPPORTUNITY CLAUSE**

- 29.1 Subcontractor agrees to comply fully, unless exempted, with the provisions of Executive Order 11246 (as amended) of the President of the United States on Equal Employment Opportunities and the rules and regulations issued pursuant thereto with which the Subcontractor represents that it will comply unless exempted. Subcontractor agrees to indemnify the Contractor and hold the Contractor harmless from any and all penalties, fines, charges, assessments, claims, demands, actions or causes of action by the United States Government or by any other entity or person, and agrees to pay any expenses, including attorney's fees, incurred by the Contractor as a result of such failure.

**ARTICLE 30**  
**IMMIGRATION AND CONTROL ACT**

- 30.1 Subcontractor agrees to comply fully with and remain in full compliance with the Immigration and Control Act of 1986, including but not limited to all required employment and identity verification procedures and record keeping requirements. In the event the Subcontractor fails to comply in any respect with the requirements of the Immigration Reform and Control Act of 1986, the Subcontractor agrees to indemnify the Contractor and hold the Contractor harmless from any and all penalties, fines, charges, assessments, claims, demands, actions or causes of action by the United States Government or by any other entity or person, and agrees to pay any expenses, including attorney's fees, incurred by the Contractor as a result of such failure.



**ARTICLE 31  
PUNCH LIST AND DEMOBILIZATION**

- 31.1 If Subcontractor does not commence and diligently pursue the completion of all "punch list" items within seven (7) days, Contractor may, upon the issuance of forty-eight (48) hours advance written notice of same to Subcontractor, complete items and deduct the actual cost of completing any items from the Subcontract Amount.
- 31.2 Subcontractor agrees to maintain skilled and professional labor on-site with on-site supervision until punch list items are completed and accepted by Owner and Contractor and/or Architect.
- 31.3 Upon Substantial Completion of the Contract by Subcontractor, Subcontractor shall remove from the Project Site all temporary systems, tools, equipment, machinery and surplus materials not required for the continued performance of any Work under this Subcontract, unless otherwise directed by Contractor.

**ARTICLE 32  
ACCEPTANCE OF ALL TERMS SET FORTH IN CONTRACT BETWEEN OWNER AND CONTRACTOR**

- 32.1 Subcontractor agrees to be bound by all of the terms of the Contract between Owner and the Contractor, the General Conditions thereof and the Drawings and Specifications, and to assume towards Contractor all of the obligation and the responsibilities that Contractor by those instruments assumed towards Owner. In the event of a conflict between the Owner and Contractor agreement and this agreement, the Owner and Contractor agreement will prevail.

**ARTICLE 33  
EXHIBITS**

- 33.1 Subcontractor understands and agrees that the following EXHIBITS, copies of which are attached hereto, are a part of this Subcontract and shall be binding on the parties hereto.
- EXHIBIT ONE - General Scope of Work
  - EXHIBIT A - Request for Payment with Interim Waiver (2 pages)
  - EXHIBIT B - Final Affidavit and Waiver of Lien
  - EXHIBIT C - The Contract Documents
  - EXHIBIT D - Contractor's Standard Accident Prevention
  - EXHIBIT E - Certificate of Insurance
  - EXHIBIT F - Drug and Alcohol Policy
- Other EXHIBITS that may be required by the Owner Contract and/or Contract Documents are as follows:
- EXHIBIT G - Basis of Contract
  - EXHIBIT H - Schedule

**ARTICLE 34  
MISCELLANEOUS PROVISIONS**

- 34.1 If any portion of this Subcontract is determined to be invalid or unenforceable, it is to be judicially rewritten so as to make such provision valid and enforceable if permissible. In the event of partial invalidity, all other provisions are to be enforced as written and such permit invalidity shall only affect the invalid provision(s).
- 34.2 The headings and captions of the Articles and/or paragraphs of this Subcontract are not substantive or limiting and are for convenience only. They are not to be considered in construing this Subcontract.
- 34.3 The Subcontract Amount and the other provisions and terms of this Subcontract have been negotiated and agreed to by experienced, knowledgeable and consenting persons. Accordingly, this Subcontract form shall not be construed for, or against, either Subcontractor or Contractor if ambiguity exists.

**ARTICLE 35  
SIGNATURES**

- 35.1 ALL NEGOTIATIONS AND AGREEMENTS PRIOR TO THE DATE OF THIS SUBCONTRACT NOT INCLUDED HEREIN ARE HEREBY VOIDED. THIS SUBCONTRACT MAY BE AMENDED ONLY BY WRITTEN INSTRUMENT SIGNED BY BOTH CONTRACTOR AND SUBCONTRACTOR.

ATTEST:

MATHIAS CORPORATION

\_\_\_\_\_

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

ATTEST:

INSERT SUBCONTRACTOR NAME

\_\_\_\_\_

By: \_\_\_\_\_ (Title)

(CORPORATE SEAL)

\*Subcontractor's Federal Employer Identification Number: \_\_\_\_\_  
(If no E.I. number, enter business Owner's Social Security Number.)

\*Per IRS 3402 (s) 20% of each payment is required to be withheld and remitted to the IRS if E.I. number or Social Security number is not provided. This withholding amount will be in addition to Subcontract retainage.