

# *FACILITYSOLUTIONS*group

Dear:

RE:

Enclosed please find your Subcontract along with other documentation for the above referenced project. Please use the following checklist to ensure the necessary items are executed and returned with your Subcontract.

Exhibit C – Certificate of Insurance	_____
Exhibit D – Labor & Performance Bond (if applicable)	_____
Schedule of Values	_____

Please sign, initial, and return **both** copies of your Subcontract with **all** Exhibits, along with the necessary documents with in three (3) business days to:

Should you take exceptions to any of the conditions of this agreement, please do not mark on these copies, send your requested changes in writing for review. All documents must be in-place prior to your company starting work. A signed original will be returned to you for your records.

Thank you,

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# **FACILITY SOLUTIONS GROUP, INC. - SUBCONTRACT**

## **DEFINITIONS**

This Subcontract is entered into as of \_\_\_\_\_, by and between \_\_\_\_\_ (Subcontractor) and **Facility Solutions Group, Inc.** (hereinafter "Facility Solutions, Group", "Contractor" or "FSG"), which is a subcontractor under a contract with \_\_\_\_\_ (Prime Contractor).

## **SUBCONTRACT DOCUMENTS**

The Subcontract Documents, in order of precedence, consist of the following (collectively called the Contract):

- A. The executed Subcontract between FSG and Subcontractor, including the following Attachments, which are incorporated at this point as if fully set forth in Exhibits A, B & C.
- B. The Prime Subcontract, consisting of the entire and integrated agreement between Prime Contractor and Facility Solutions Group, Inc.
- C. The Prime Contract, consisting of the entire and integrated Agreement between Owner and Prime Contractor. ,

Subcontractor certifies and agrees that it is fully familiar with all of the terms, conditions and obligations of the Subcontract Documents, the location of the job site, and the conditions under which the Work is to be performed, and that it enters into this Subcontract based upon its investigation of all such matters and is in no way relying upon any opinions or representations of Contractor. It is further agreed that the Prime Contract and the Prime Subcontract are incorporated into this Subcontract with the same force and effect as if they were set forth in full, and that Subcontractor and its subcontractors are bound by all terms of said contracts as they relate in any way, directly or indirectly, to the work covered by this Subcontract. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Prime Contractor and Owner under the Prime Contract and Prime Subcontract.

## **ARTICLE 1 – PERFORMANCE OF WORK**

**1.1 Schedule of Work.** Subcontractor will provide Contractor with scheduling information it proposes for its work. The information will be provided ten (10) days before Contractor is required to submit the schedule to Prime Contractor or to proceed with the Work. Contractor will consult with Subcontractor regarding such information and, if possible, incorporate the same into the schedule to Prime Contractor. Contractor shall prepare the schedule for performance of the Prime Subcontract and Subcontract ("Progress Schedule") and may revise and update the Progress Schedule as the work progresses. It shall be Subcontractor's obligation to conform to the Progress Schedule, as updated by Contractor. Subcontractor shall furnish at all times sufficient, qualified and competent forces and supervision as well as adequate, conforming and usable materials, equipment, plans, tools and other necessary items, to achieve progress according to Contractor's current Progress Schedule and any revisions thereof. Subcontractor shall prepare and obtain approval as required by the Contract for all shop drawings, details, samples; shall perform any required Subcontractor testing; and conduct all other items necessary and incidental to the prosecution of the Subcontract in order to comply with the Progress Schedule. Subcontractor shall coordinate the work covered by this Subcontract with Contractor and all other subcontractors with whom Subcontractor must interface for the proper and timely completion of Subcontractor's work. Contractor shall have the right to determine the time and order in which the various portions of the work shall be installed, the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly performance of the work of Subcontractor on the project.

Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the work shall be performed and all other matters relative to the timely and orderly performance of Subcontractor's work. Subcontractor shall be reasonably notified of all subsequent changes and additional details.

**1.2 Time is of The Essence.** Time is of the essence for both parties, and they mutually agree to ensure the performance of their respective work and the work of their subcontractors and suppliers so that the entire project may be completed in accordance with the Prime Contract and the Prime Subcontract.

## **ARTICLE 2 – SUBCONTRACT INTERPRETATION**

**2.1 Inconsistencies and Omissions.** Should inconsistencies or omissions appear in the Contract, it shall be the duty of Subcontractor to so notify Contractor in writing within three (3) working days of Subcontractor's discovery. Upon receipt of such notice, Contractor shall inform Subcontractor as to the measures to be taken and Subcontractor shall comply with Contractor's instructions. If Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to Contractor and advance approval by appropriate authorities, including Contractor, then Subcontractor shall assume full responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation(s). The Contractor shall have sole authority to determine who is responsible to perform a particular item of work or repair damage to any particular item of work.

## **ARTICLE 3 – CONTRACTOR'S OBLIGATIONS**

**3.1 Authorized Representative.** Contractor shall designate one or more persons who shall be Contractor's authorized representative(s) onsite and offsite. Such authorized representative(s) shall be the primary person(s) Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

**3.2 Lay Down Areas.** If available, Contractor shall allocate Subcontractor area(s) for Subcontractor's material and equipment during performance of the Subcontract.

**3.3 Timely Communications.** Contractor shall, with reasonable promptness, transmit to the appropriate parties all submittals, transmittals and written approvals relating to Subcontractor's work. Communications by and with Subcontractor's subcontractors and suppliers shall be through Subcontractor.

**3.4 Layout Responsibility and Levels.** Except as may be provided by the Prime Contractor, Subcontractor shall establish principal axis lines and elevations of the structures and site. Subcontractor shall layout and is strictly responsible for the accuracy of Subcontractor's work and for any loss or damage to Contractor or others by reason of Subcontractor's failure to set out or perform its work correctly. Subcontractor shall exercise prudence so that the actual final conditions and details of its work shall result in alignment of finish surfaces.

#### **ARTICLE 4 – SUBCONTRACTOR'S OBLIGATIONS**

**4.1 Responsibilities.** Subcontractor shall furnish all labor, materials, equipment and services necessary or incidental to perform its work in accordance with the Subcontract Documents. Subcontractor shall provide to Contractor a list of its proposed subcontractors and suppliers within 10 days prior to the commencement of Subcontractors work.

**4.2 Compliance with Laws, Rules, Ordinances, Regulations, and Taxes.** Subcontractor shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work, pay all real property taxes and tangible personal property taxes on real property or tangible personal property owned by Subcontractor, pay all manufacturers' taxes, sales taxes, use taxes, and all federal and state taxes, insurance and contribution for Social Security and unemployment which are measured by wages, salaries or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations.

**4.3 Hazardous Materials.** A hazardous material or substance is any substance or material classified as such now or in the future under any federal, state, provincial, or local law or regulation, or any other substance which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal and/or clean-up. Material Safety Data (MSD) Sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Contractor, Subcontractors the Owner or others shall be maintained at the Site by the Contractor and made available to the Owner, Subcontractor and Others. During the performance of the Work, the Subcontractor shall be responsible for the proper handling, use and appropriate disposal of all Hazardous Materials brought to the Site by Subcontractor.

**4.4 Licensing.** Subcontractor shall, upon request, provide Contractor with occupational licenses for each employee or agent or subcontractor of subcontractor providing service under this Agreement. Failure to provide licenses constitutes default.

**4.5 Site Visitation.** Subcontractor acknowledges that it has visited the project site and visually inspected the general and local conditions which could affect its work. Any failure of Subcontractor to reasonably ascertain, from a visual inspection of the site, the general and local conditions which could affect its work will not relieve Subcontractor from its responsibility to properly complete its work without change in the Subcontract Price.

**4.6 Shop Drawings, Samples, Product Data and Manufacturers' Literature.** Subcontractor shall promptly submit to Contractor for approval all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. Subcontractor shall be responsible to Contractor for the accuracy and conformity of its submittals to the requirements of the Subcontract Documents. Subcontractor shall prepare and deliver its submittals to Contractor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay Contractor or others in the performance of the Contract work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from Contractor, Prime Contractor, and Owner authorizing such deviation, substitution or change. In the event the Subcontract Documents do not contain submittal requirements pertaining to Subcontractor's work, Subcontractor agrees upon request to submit to Contractor in a timely fashion for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required. Contractor, Owner and all design professionals are entitled to rely on the accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all calculations and any governing performance requirements.

**4.7 Authorized Representative.** Subcontractor shall designate in writing one or more competent Contractor approved persons who shall be the authorized Subcontractor representative(s) onsite and offsite. Such authorized representative (s) shall be the only person(s) to whom Contractor shall issue instructions, orders or directions, except in an emergency. Subcontractor communications by and with Prime Contractor, Owner, Architect, separate contractors and/or other subcontractors and suppliers of Contractor, regardless of tier, shall be through Contractor.

**4.8 Workmanship.** Every part of Subcontractor's work shall be executed in accordance with the Contract in a workmanlike manner. All materials needed by Subcontractor shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Subcontract Documents to be otherwise. Subcontractor shall use its best care, skill and diligence in supervising, directing and performing its work. Subcontractor shall have responsibility and control over the performance of its work, including the construction methods, techniques, means and sequences for coordinating and completing the various portions of its work.

**4.9 Substitutions.** No substitutions shall be made by Subcontractor unless permitted in the Subcontract Documents and only then upon Subcontractor first receiving all written approvals required under the Subcontract Documents for substitutions. If Subcontractor initiates a substitution, deviation, or change in the work which affects the scope of the work or the expense of other trades, Subcontractor shall be liable for all resulting expenses.

**4.10 Warranty.** Subcontractor warrants all materials and workmanship and agrees to replace at its sole cost and expense, and to the satisfaction of Contractor, any materials that are defective or improperly installed, and further agrees to defend, indemnify and hold harmless Contractor from and against any liability, loss or damage (including attorneys fees) arising from or relating to such materials and installation through the period of Subcontractor's performance and for a period (a) as required by the Prime Contract; and (b) from final completion of the Prime Contract. If the period of warranty is specified in excess of four years by the Prime Contract, or the Prime Subcontract, Subcontractor shall be bound for the longer period specified.

**4.11 Correction of Work.** Subcontractor is required to correct within 48 hours of receiving notice, any of its work rejected by Contractor, Prime Contractor or Owner for failing to comply with the Subcontract Documents. Subcontractor shall correct at its own cost and bear the expense of additional services for any nonconforming work for which it is responsible, and shall remain responsible even after the warranty period for fraud, misrepresentation or for defects.

**4.12 Clean-Up.** Subcontractor shall follow Contractor's cleanup directions, and (a) at all times keep the building and premises free from debris resulting from Subcontractor's work; (b) broom or rake clean each work area prior to discontinuing work in each area; and (c) Subcontractor's work shall not be considered complete until Subcontractor removes from the site all temporary structures, debris and waste incident to its operation and cleans all surfaces, fixtures, equipment, etc., relative to the performance of its work.

If Subcontractor fails to immediately commence compliance with the above cleanup duties after written notification from Contractor of noncompliance, Contractor may implement appropriate cleanup measures without further notice and deduct the resulting costs from any amounts due or to become due Subcontractor under the Subcontract.

**4.13 Safety.** Subcontractor is responsible for prevention of accidents arising from or relating to its work. Subcontractor shall comply fully with all federal, state and local laws, orders, citations, rules, regulations, standards and statutes affecting or relating with the Subcontract or its performance. Subcontractor shall comply with the accident prevention and safety program of Owner, Prime Contractor, and Contractor. Establishment of a safety program by Contractor shall not relieve Subcontractor of its safety responsibilities. Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required by governmental authorities having jurisdiction and by Prime Contractor, Contractor and Owner. Subcontractor shall notify Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished to Contractor. **Subcontractor shall defend, indemnify and hold Contractor harmless from all damages and expenses (including attorneys' fees), including but not limited to all fines, penalties or costs of abatement imposed on Contractor as a result of safety violations caused by Subcontractor's failure to comply with applicable safety requirements.** Subcontractor shall notify Contractor in writing of any unsafe condition it discovers or observes and shall stop work until informed by Contractor in writing that it may resume work.

**4.14 Duty to Proceed.** In the event of any dispute or controversy with Contractor, Prime Contractor, Owner, another subcontractor or other third party involved with the project, Subcontractor shall not cause or permit any delay or cessation of its work or cause delay or disruption to the work of any other subcontractor or Contractor on the project, but shall proceed with performance of its work pending resolution of such dispute or controversy. Contractor shall continue to make payments in accordance with the Subcontract.

**4.15 Contractor Expending Money.** Whenever any money is expended or costs or expenses are on account of Subcontractor, which amounts Subcontractor should have paid, and for which amounts Subcontractor is required to reimburse Contractor, or if Contractor continues or completes the work after default by Subcontractor, Subcontractor shall pay to Contractor interest at the rate of 10% per annum from the time said money is expended or said costs or expenses are incurred until those amounts are repaid to Contractor by Subcontractor. In the event that the balance of the monies due pursuant to this Subcontract are insufficient to cover Contractor's damages or exposure, then Contractor shall have the right to offset against monies owed Subcontractor on other projects, if any.

#### **ARTICLE 5 – INDEMNIFICATION**

**TO THE FULLEST EXTENT PERMITTED BY THE LAW OF THIS STATE, SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER, PRIME CONTRACTOR, FSG, AND ENTITIES WHICH DIRECTLY OR INDIRECTLY CONTROL, OR ARE CONTROLLED BY, THE DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES OF OWNER, PRIME CONTRACTOR OR FSG (THE "INDEMNITEES") AGAINST ANY AND ALL LIABILITY AND CLAIMS FOR THE DEATH OF OR INJURY TO ANY PERSON, INCLUDING BUT NOT LIMITED TO EMPLOYEES OF THE SUBCONTRACTOR OR OF ANY INDEMNITEE, OR PROPERTY DAMAGE, INCLUDING THE LOSS OF USE OF PROPERTY, INCLUDING EXPENSES AND ATTORNEYS' FEES RELATED THERETO, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANYWAY RELATED TO THIS AGREEMENT, ANY WORK ORDER OR SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF THE SUBCONTRACTOR AND ITS AGENTS AND EMPLOYEES, EVEN IF SUCH CLAIM OR LIABILITY IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE. IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE SUBCONTRACTOR INDEMNIFY THE INDEMNITEES FROM THEIR OWN NEGLIGENCE. THE SUBCONTRACTOR ALSO AGREES TO INDEMNIFY INDEMNITEES AND HOLD THEM HARMLESS FROM ALL EXPENSES, INCLUDING ATTORNEYS' FEES, CAUSED BY OR RELATED TO ANY BREACH BY SUBCONTRACTOR OF THIS AGREEMENT. THE SUBCONTRACTOR SHALL BE RESPONSIBLE FOR DAMAGE TO OR LOSS OF THE WORK, WHETHER COMPLETED OR UNDER CONSTRUCTION, UNTIL RESPONSIBILITY FOR THE WORK HAS BEEN ACCEPTED BY THE OWNER, PRIME CONTRACTOR AND CONTRACTOR. THE SUBCONTRACTOR ALSO AGREES TO INDEMNIFY INDEMNITEES AGAINST ALL EXPENSES AND COSTS CAUSED BY ANY SUCH DAMAGE OR LOSS FROM ANY CAUSE, EVEN IF SUCH DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE.**

**To the extent the Subcontractor has been paid and pursuant to the terms of this Agreement, the Subcontractor agrees that neither it nor its subcontractors, suppliers or mechanics or anyone claiming under them shall have any lien upon the Work, or the premises on which**

the Work is performed, and the Subcontractor hereby waives on behalf of itself and its subcontractors, suppliers and mechanics and those claiming under them, all right to any such lien. The Subcontractor agrees to indemnify Contractor, Prime Contractor and the Owner against all lien claims and bond claims, including expenses, costs of bonds to remove liens, and attorneys' fees related to such claims, which may be asserted by mechanics, materialmen, suppliers or subcontractors of the Subcontractor or anyone claiming as one of them. The Subcontractor also agrees that if liens are placed on the Work or the premises on which the Work is performed, it will immediately obtain such bond that is necessary to remove such lien. If bond claims and/or lien claims are filed by any subcontractors, materialmen, suppliers or mechanics of the Subcontractor, Contractor may suspend payments to the Subcontractor and either withhold money due the Subcontractor or make payments to the claimants and charge the payments against the Subcontractor.

FSG / Subcontractor

Initials \_\_\_\_/\_\_\_\_

#### **ARTICLE 6 – MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES**

To the extent the Owner-Prime Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Prime Contractor, the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, including to the extent provided in the Owner-Prime Contractor agreement, damages to principal office expenses and the compensation of personnel stationed there, loss of financing, business and reputation, and for loss of profit. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor, Prime Contractor or the Owner in accordance with this Agreement or the Owner-Prime Contractor agreement. To the extent the Owner-Prime Contractor agreement does not preclude the award of liquidated damages, nothing contained in this paragraph shall preclude the imposition or pass through of such damages to subcontractor.

#### **ARTICLE 7 – CHANGES**

**7.1 Performance.** Subcontractor shall proceed with all written directions issued by Contractor so as not to delay the work. Subcontractor shall adhere strictly to the Subcontract Documents unless directed otherwise in writing. Subcontractor shall not make any changes to the work set forth in the Subcontract Documents, either as additions or deletions, without the written direction of Contractor.

**7.2 Notification of Additional Costs or Time.** Subcontractor shall immediately provide written notification to Contractor if a written direction could result in additional costs or time of performance so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner in accordance with the Contract.

**7.3 Submission of Cost Proposals and Requests For Time Extensions.** Subcontractor shall submit its cost proposal(s) in sufficient time for Contractor to comply with any submission requirements of Owner. All such cost proposals shall itemize, in a form acceptable to Contractor, any change in costs or time for performance which result from any written direction issued by Contractor.

#### **ARTICLE 8 – DELAYS**

**8.1 Excusable Delays.** An excusable delay is one which is caused by circumstances or events beyond the control and without the fault or negligence of Owner, Prime Contractor, Contractor or Subcontractor, and which is recognized by the Contract as "excusable," that is, a delay for which the contract time is extended but for which no compensation is allowed. To the extent excusable delays occur and affect Contractor's and/or Subcontractor's ability to complete their work in accordance with the updated schedule, the affected party's time for performance shall be extended, but only as allowed by Owner and Prime Contractor.

**8.2 Subcontractor Caused Delays.** Subcontractor caused delays are delays caused by the failure of Subcontractor, or any party for which Subcontractor is responsible, to perform any portion of its work in accordance with the updated schedule. If Subcontractor delays cause delay and/or disruption to the Subcontract and/or Prime Contract work, Subcontractor shall be liable for all costs and damages sustained by Contractor or for which Contractor may be liable to Owner, Prime Contractor or any other party, including consequential damages and liquidated damages. If Subcontractor delays are only one of multiple causes for delay to the Contract work, Subcontractor shall only be liable for its proportionate share of any resulting damages.

#### **ARTICLE 9 – CLAIMS**

**9.1 Notification of Claims.** Subcontractor shall immediately provide written notification to Contractor of any claims so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner and/or Prime Contractor in accordance with the Contract. Subcontractor's failure to immediately provide Contractor with written notification of said claim, upon onset of an event giving rise to a claim, shall result in a waiver of Subcontractor's right to receive additional costs or time as a result of the claim.

**9.2 Submission of Claims.** Subcontractor shall submit its claims in sufficient time for Contractor to comply with any submission requirements of Owner and Prime Contractor. All such claims shall itemize, in a form acceptable to Contractor, any additional costs or time for performance being sought by Subcontractor.

**9.3 Claims with Owner and/or Prime Contractor.** To the extent Contractor determines Subcontractor's claim is one for which Owner and/or Prime Contractor may be liable, the following procedure shall apply: (a) Contractor will present Subcontractor's claim to Prime Contractor's or

Owner's first level designated representative. The decision of such representative will be conveyed in writing to Subcontractor and such decision shall be final unless Subcontractor notifies Contractor in writing of its desire to proceed further in sufficient time for Contractor to comply with any notification or submission requirements to Prime Contractor or Owner; (b) upon receipt of Subcontractor's written notice to proceed further, at Contractor's option, Subcontractor's claim may be further pursued with Prime Contractor. In such event, Contractor may allow Subcontractor to act on its own behalf and with its own consultants/attorneys at Subcontractor's cost to continue the required process and any subsequent administrative proceeding or litigation. If Contractor does not allow Subcontractor to act on its own behalf or it is procedurally impermissible for Subcontractor to proceed on its own behalf, and Contractor elects to allow the continued pursuit of Subcontractor's claim, then at the written request of Subcontractor, Contractor will proceed with the dispute on condition that Subcontractor pay to Contractor all of its actual costs arising out of such process.

#### **ARTICLE 10 – DISPUTE RESOLUTION**

**10.1 Claims Not Involving Owner or Prime Contractor.** To the extent Subcontractor submits a claim which Contractor determines is one for which Owner or Prime Contractor may not be liable, or is one which Contractor elects to not allow Subcontractor to further pursue with Owner or Prime Contractor, the following procedures shall apply and begin within sixty (60) days of written notification of the claim: (a) if the dispute cannot be settled through direct discussions, the parties shall attempt to settle the dispute by mediation before recourse to any other method of dispute resolution including litigation. Unless the parties agree otherwise, the mediation shall be conducted in accordance with the Construction Mediation Rules of the American Arbitration Association; (b) If mediation does not resolve the dispute, then the parties agree to resolve the dispute through binding arbitration.

#### **ARTICLE 11 – PAYMENT**

**11.1 Schedule of Values.** As a condition precedent to payment hereunder, within ten (10) days of Contractor's request, Subcontractor shall prepare and submit to Contractor a Schedule of Values which breaks down Subcontractor's work into individual activities. Each activity contained in the Schedule of Values shall be assigned a monetary price such that the total of all such items shall equal the Subcontract Price. The Schedule of Values shall be prepared in such detail as may be required by Owner, Prime Contractor and Contractor.

**11.2 Payment and Verification.** Subcontractor is required to pay for all labor (including trust funds, if applicable), materials and equipment used in the performance of Subcontractor's work through the most current period applicable to progress payments received from Contractor. Contractor may require reasonable evidence, including but not limited to lien waivers and canceled checks, to show that all obligations relating to Subcontractor's work are current through all payments received from Contractor before releasing any payment due for Subcontractor's work.

**11.3 Progress Payment Applications.** Subcontractor shall apply for payment utilizing standard AIA documents G702 & G703. Subcontractor's applications for payment shall be itemized and in accordance with Subcontractor's Schedule of Values and any other substantiating data as required in the Prime Subcontract for Contractor's payment applications. Subcontract payment applications may include amounts for Subcontract change orders which have been fully executed by Subcontractor and Contractor. Subcontractor cannot include in its payment applications any amounts for changes which have not been fully executed by Subcontractor and Contractor or for disputed work. Subcontractor shall not be entitled to any payment until this Subcontract has been properly executed and returned to Contractor. All invoices received prior to the 25<sup>th</sup> and thereafter approved will be paid on the 20<sup>th</sup> day of the following month.

**11.4 Time for Submission of Application.** Subcontractor's progress payment application shall be submitted to Contractor in sufficient time for Contractor to include it in Contractor's payment request to Prime Contractor. Contractor shall incorporate the amount of Subcontractor's progress payment application approved by Prime Contractor into Contractor's payment application to Prime Contractor for the same period and timely submit it to Prime Contractor. If requested by Subcontractor, Contractor shall inform Subcontractor of Prime Contractor's or Owner's changes to Subcontractor's percentages of completion reflected on Subcontractor's payment application and/or other adjustments affecting Subcontractor.

**11.5 Lien Waivers.** Subcontractor shall provide, in a form satisfactory to Prime Contractor, Owner and Contractor, lien or claim waivers in the amount of the application for payment from Subcontractor, and its subcontractors, materialmen and suppliers for the completed work. Contractor may refuse to pay Subcontractor if Subcontractor fails to provide such waivers. If such waivers are conditional upon payment, Contractor may choose to make payment by issuance of joint checks to Subcontractor and its subcontractors, materialmen and suppliers. Subcontractor shall not be required to sign an unconditional waiver of lien or claim prior to receiving payment, or in an amount in excess of what it has been paid.

**11.6 Application Reduction Rejection or Nullification.** Contractor may reduce or reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage. Should Owner or Prime Contractor fail or refuse to make payment to Contractor for any payment application in which Subcontractor's labor and materials have been included for payment, Subcontractor hereby acknowledges that it shall have no recourse, whether legal or equitable, against Contractor for amounts due Subcontractor for labor and materials that have not been paid to Contractor by Owner or Prime Contractor to Contractor. This is a "Pay if Paid" contractual agreement and nothing herein shall change the nature or validity of this contractual provision. Contractor shall give written notice to Subcontractor, at the time of reducing, disapproving or nullifying an application for payment, of the specific reasons for Contractor's action. When the above reasons for reducing, disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

**11.7 Retention.** Contractor shall withhold from Subcontractor retention at a rate of ten (10%) percent of each pay application, or as provided by law, in the State where such work is being performed

**11.8 Payment Not Acceptance.** Payment to Subcontractor does not constitute or imply acceptance of any portion of Subcontractor's work. All progress payments shall constitute advances toward the full and satisfactory completion of all work contemplated by this Subcontract. Contractor

reserves the right to demand repayment of any progress payment previously made in the event that Subcontractor breaches the terms and conditions of this Subcontract.

**11.9 Final Payment Application.** Contractor is required to incorporate Subcontractor's application for final payment into Contractor's next application for payment to the Prime Contractor only after the following occur: (a) acceptance of Subcontractor's work by Contractor, Prime Contractor and Owner; (b) if requested by Contractor, evidence acceptable to Contractor that all payrolls, bills for materials and equipment, and other indebtedness connected with Subcontractor's work have been fully paid, or will be fully paid by issuance of joint checks in return for unconditional releases; (c) if requested by Contractor, consent of Subcontractor's surety to final payment; (d) satisfaction of closeout procedures, including, but not limited to delivery of all manuals, as-built drawings, guarantees and warranties, as may be required by the Subcontract Documents; and (f) if requested by Contractor, releases and waivers of liens, stop notices, bond rights, or any rights against Contractor, its surety, Prime Contractor or Owner, effective upon payment, to the extent and in such form as may be designated by Contractor.

**11.10 Effect of Final Payment.** Acceptance of final payment by Subcontractor shall constitute a waiver of claims by Subcontractor, except for claims reserved in a final release.

## **ARTICLE 12 – TERMINATION**

**12.1 Termination For Cause.** If Subcontractor fails to perform any of its Subcontract obligations, Contractor may, after two (2) calendar working days' written notification and in lieu of or in addition to any other remedies, terminate the Subcontract. A separate written notice of termination shall be issued by Contractor to Subcontractor at the time the Subcontract is terminated. If such a termination occurs, Contractor shall have the right to take and use any materials, equipment, appliances or tools furnished by, belonging or delivered to Subcontractor and located at the project for the purpose of completing any remaining Subcontractor work.

In the event the Subcontract is terminated for cause, Subcontractor shall not be entitled to receive any further payment until the Contract work is completed. At that time, if the amounts earned but not paid Subcontractor before the termination exceed the expenses incurred by Contractor in completing Subcontractor's work, any excess shall be paid by Contractor to Subcontractor; but, if Contractor's expense to complete Subcontractor's work exceeds the amount earned and unpaid, Subcontractor shall promptly pay the excess amount to Contractor. The expense incurred by Contractor shall include Contractor's costs for completing the work, including overhead, profit and attorneys' fees, expert witness fees and any damages incurred by Contractor by reason of Subcontractor's default.

**12.2 Termination By Owner or Prime Contractor.** If Owner or Prime Contractor terminates the Prime Contract or Prime Subcontract, or any part which includes portions of Subcontractor's work, Contractor shall notify Subcontractor in writing and Subcontractor shall immediately stop the performance of the terminated work, follow Contractor's instructions regarding any shutdown and termination procedures, and mitigate all costs. If Owner's or Prime Contractor's termination partially eliminates Subcontractor's work, Contractor may terminate the Subcontract in its entirety. Contractor's liability to Subcontractor for any damages incurred or claims resulting from Owner or Prime Contractor termination for convenience shall be limited to the amount Owner or Prime Contractor is determined to be liable to Contractor for Subcontractor's damages. Contractor's liability to Subcontractor for Owner's or Prime Contractor's termination for cause shall be determined pursuant to the Claims and Dispute Resolution Articles of the Subcontract.

## **ARTICLE 13 – SUSPENSION OF WORK**

**13.1** Contractor may order Subcontractor in writing to suspend all or any part of Subcontractor's work for such period of time as Contractor deems appropriate. Contractor's liability to Subcontractor for any delay or disruption resulting from such suspension shall be determined pursuant to the Claims and Dispute Resolution Articles of the Subcontract. If the suspension is directed or caused by Prime Contractor or Owner, Contractor's liability to Subcontractor shall be limited to the amount Owner or Prime Contractor is determined to be liable to Contractor for Subcontractor's damages.

## **ARTICLE 14 – MISCELLANEOUS**

**14.1 Disputes Over Responsibility For Performance.** Subcontractor agrees that in the event a dispute should occur between Subcontractor and another subcontractor or Contractor as to who has the responsibility to perform a particular item of work or repair damage to any particular item of work, the determination of who shall perform the work shall be made by Contractor.

**14.2 Law, Venue, and Jurisdiction.** The Subcontract shall be governed by the law of the State of Texas. Venue shall be proper in a Court of competent jurisdiction, either State or Federal, which is located in Travis County, Texas. The Contractor and Subcontractor, by executing this contract, hereby voluntarily submit to personal jurisdiction of the Courts of the State of Texas.

**14.3 Severability and Waiver.** The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the Subcontract, or to exercise any right provided to it, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

**14.4 Entire Agreement.** The Subcontract is solely for the benefit of the signatories and represents the entire and integrated agreement between the parties and, unless specifically stated otherwise, supersedes all prior negotiations, representations or agreements, either written or oral.

**14.5 Waiver of Any Breach.** Waiver of any breach, alleged breach, provision, covenant or condition of the Subcontract by Contractor shall not be construed as a waiver of the same or any other provision of the Subcontract on any other occasion, nor shall such waiver serve as an estoppel of

any other right Contractor may have. Should any provision in the Subcontract, or its attachments, be held or declared void or invalid, all other provisions shall remain in full force and effect.

**14.6** This Agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns, and personal representatives.

**14.7** The Company may waive any default without waiving any other prior or subsequent default. Neither failure by the Company to exercise, nor delay by the Company in exercising nor discontinuance of the exercise of any right, power or remedy upon or after any default shall be construed as a waiver of such default or as a waiver of the right, power, or remedy at a later date. No single or partial exercise by the Company of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time.

**14.8** The Agreement and/or a Work Order may be modified or amended only by agreement in writing by both parties.

**14.9** This Agreement, together with any applicable Work Orders, shall constitute the entire understanding and agreement between the parties and supersedes all prior written and oral understandings and agreements between the Company and the Subcontractor.

**14.10** All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows: (a) when delivered personally to the recipient's address as stated in this Agreement; (b) three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement, or (c) when sent by fax or email to the last fax number or email of the recipient known to the person giving notice, notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail, or the recipient delivers a written confirmation of receipt.

**14.11** Subcontractor shall not, without written consent of Contractor, assign its rights in the Subcontract to others. This Subcontract may be assigned by Contractor to its bonding company.

#### **ARTICLE 15 – REPRESENTATION BY SUBCONTRACTOR**

**Contractors are required by law to be licensed and regulated by the Contractors' State or Provincial License Board, if any, which has jurisdiction to investigate complaints against contractors including if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation.**

Subcontractor warrants that it is properly licensed by the Contractors' State License Board of the State in which the work is performed, if any, with the proper license classifications for performance of its work relative to each every purchase order and attachment thereto issued by Contractor to Subcontractor. Subcontractor further warrants that its license is and will remain current, active and in good standing all times during performance of its work relative to each and every purchase order and attachment thereto issued by Contractor to Subcontractor.

This Subcontract has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

The parties have executed this Subcontract for themselves, their heirs, executors, successors, administrators and assigns at the place and on the day and year first written above, and by signature below represent that the person executing this Subcontract has the authority to so execute.

#### **SUBCONTRACTOR**

#### **CONTRACTOR**

**FACILITY SOLUTIONS GROUP, INC.**

\_\_\_\_\_  
*SIGNATURE*

\_\_\_\_\_  
*SIGNATURE*

\_\_\_\_\_  
*PRINT NAME*

\_\_\_\_\_  
*PRINT NAME*

\_\_\_\_\_  
*TITLE*

\_\_\_\_\_  
*TITLE*

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

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

**EXHIBIT A – SCOPE OF SUBCONTRACT WORK**

**Independent Contractor.** Subcontractor shall provide all labor, materials, equipment and services necessary or incidental to perform its work as an "independent contractor" in accordance with the Subcontract Documents. This Subcontract does not create a joint venture relationship between Contractor and Subcontractor. All persons who will provide services on behalf of Subcontractor are employees, subcontractors, or agents of Subcontractor, and are not employees of Contractor.

**Temporary Services.** Subcontractor will provide, at its own expense, all necessary temporary services for the completion of its work, and as may be required by the Prime Contract.

**Sub-Contract Work.** Subcontractor shall perform the following scope of work: \_\_\_\_\_.

Subcontractor shall furnish, in strict accordance with the Contract Documents, all labor, materials, tools, machinery, equipment, hoisting, facilities, utilities, supplies and services and do all things necessary for the construction of the Work described in all purchase orders and attachments thereto issued by Contractor to Subcontractor. Said purchase orders and attachments thereto are fully incorporated herein. Whether or not shown on the plans or mentioned in the specifications, the Work includes the following: (A) Any item of labor, service and/or material reasonably implied by or from the plans and/or specifications or customarily furnished by a Subcontractor performing work in this line; any item of labor, service or material required to make the Work comply with any ordinance, governmental law or regulation; (B) All plans, drawings, permits and fees required by law, regulations, ordinance or building codes; and (C) All items and/or quantities that may be required by the true conditions of the site.

**Scope Definition:**

## EXHIBIT B – SUBCONTRACT PRICE

As full compensation for satisfactory performance of the Subcontract, Contractor agrees to pay Subcontractor in the manner described below, subject to all provisions of the Subcontract:

- (a) the firm fixed price of \_\_\_\_\_ **Dollars (\$** \_\_\_\_\_ **)** subject to additions and deductions as provided for in the Subcontract; and/or
- unit prices in accordance with the attached Unit Prices and estimated quantities; and/or
  - time and material rates and prices in accordance with the attached Labor and Material Costs; and/or
  - other, as identified in an attachment.
- (b) the project's tax status

- |                          |   |
|--------------------------|---|
| <input type="checkbox"/> | resale tax is included in this subcontract price        |
| <input type="checkbox"/> | material tax only is included in this subcontract price |
| <input type="checkbox"/> | this project is tax exempt                              |

The firm fixed price, unit prices, time and material rates and prices and/or other identified manner of payment are referred to as the "Subcontract Price".

### **Pricing Definition:**

## **EXHIBIT C - INSURANCE**

**Subcontractor's Insurance.** Subcontractor's Insurance. Prior to start of its work, Subcontractor shall procure for its work and maintain in force Workers' Compensation Insurance, Employer's Liability Insurance, Business Automobile Liability Insurance, Commercial General Liability Insurance on an occurrence basis (ISO Form 0001 10 01), and any other insurance required of Subcontractor by the Subcontract Documents as specified below Sample shown at the end of Exhibit C.

**Minimum Limits of Liability.** Subcontractor's Comprehensive or Commercial General Liability Insurance and Business Automobile Liability Insurance shall be written with limits of liability which meet the requirements set forth in the Contract, but at a minimum are not less than the following:

- A. General Liability:
  - 1. General Aggregate Limit ..... \$2,000,000.00
  - 2. Products/Completed Operations Aggregate Limit ..... \$1,000,000.00
  - 3. Occurrence Limit ..... \$1,000,000.00
  - 4. Personal and Advertising Limit ..... \$1,000,000.00
  - 5. Fire Damage Limit ..... \$100,000.00
  - 6. Medical Expense ..... \$5,000.00
- B. Automobile: ..... \$1,000,000.00
- C. Workers Compensation / Employer's Liability:
  - 1. Each Accident ..... \$1,000,000.00
  - 2. Each Employee ..... \$1,000,000.00
  - 3. Policy Limit ..... \$1,000,000.00
- D. Umbrella: ..... \$1,000,000.00

### **Subcontractor's Insurance Requirements.**

- A. The CONTRACTOR and Owner are to be named Additional Insureds on all of the above General and Umbrella/Excess Liability coverages, except Professional Liability and so described on the Certificate(s) of Insurance. Additional insured endorsement MUST be attached to the Certificate of Insurance and must be ISO forms: CG 2010 (1185) or CG 2010 (0704) in combination with CG 2037 (0704) or the equivalent, which covers on-going and completed operations.
- B. The Worker's Compensation policy must contain a waiver of subrogation in favor of CONTRACTOR and Owner and be so described on the Certificate(s) of Insurance.
- C. Prior to the start of any WORK, SUBCONTRACTOR will furnish original Certificate(s) of Insurance to CONTRACTOR evidencing that all insurance coverage required is in force and that it will not be canceled, non-renewed or materially change with less than thirty (30) days prior written notice thereof mailed by Certified Mail to CONTRACTOR and Owner. Replacement Certificates of Insurance, evidencing replacement or renewed coverage, will be delivered to CONTRACTOR and all Additional and Named Insureds on or before the expiration date of any Policies.
- D. The SUBCONTRACTOR shall not have any exclusion under their General Liability or Umbrella/Excess policies for work performed on Residential Type Projects such as: Apartments, Dormitories, Military Housing, Assisted Living Facilities, Nursing Homes, Hospitals or any facilities capable of providing in-house patient stay. Evidence of this type of coverage must be displayed on the Certificate of Insurance AND through evidence of Endorsement or as displayed and denoted in the policy coverage form, a copy of which must be supplied with the certificate of insurance. Any Exclusion pertaining to this type of work on these policies is UNACCEPTABLE. Further, any exclusion of this type must be declared and a copy submitted with the requested insurance certificate.
- E. All sub-subcontractors shall maintain the same types and amounts of insurance and be subject to the same requirements as SUBCONTRACTOR.
- F. All policies shall be written on an occurrence basis, except for Professional Liability.
- G. All policies shall provide primary coverage and not calling upon any other insurance procured by other parties for defense, payment or contribution. This shall be so described on the Certificate of Insurance(s).

- H. All policies shall contain endorsements requiring thirty (30) days' advance written notice to named and additional insureds of any cancellation, non-renewal or material change in coverages.
- I. All policies shall be written by responsible insurance companies with a Best's rating of A-VII or better and be licensed to do business in the state in which the Job is located.
- J. Completed operations coverage will be maintained for at least two (2) years after completion of the WORK or the end of warranty, whichever is longer.
- K. SUBCONTRACTOR shall forward SUBCONTRACTOR'S Certificate of Insurance through SUBCONTRACTOR'S Agent prior to the commencement of work and/or payment with CONTRACTOR, which shall be subject to the CONTRACTOR'S approval of adequacy of protection and the satisfactory character of the insurer. The Certificate of Insurance should be mailed within five days of receipt of the contract, regardless of when SUBCONTRACTOR'S work will start. If covered under a Blanket Agreement, please submit only one "Blanket" Certificate of Insurance which states: "For "All Jobs, All Locations."
- L. SUBCONTRACTOR shall not do anything to cause any of the insurance required to be invalidated in whole or in part.
- M. At CONTRACTOR'S request, from time to time or at any time, originals or copies of SUBCONTRACTOR'S or sub-subcontractor's policies, certified by the carrier, shall be delivered to CONTRACTOR.
- N. CONTRACTOR does not represent that the coverage and limits set out in these insurance requirements will necessarily be adequate to protect the Subcontractor, and such coverage and limits shall not be deemed as a limitation on the Subcontractor's liability under the indemnities provided to the CONTRACTOR and others under this agreement.
- O. If any action or proceeding is commenced to enforce the rights of the CONTRACTOR as an additional insured under this Subcontract, and the CONTRACTOR prevails in that action, the SUBCONTRACTOR and/or its insurer agrees to pay, in addition to any other relief granted, the actual reasonable attorneys' fees which the prevailing party has paid or is obligated to pay and all costs and expenses, not merely recoverable costs, which the prevailing party has paid or is obligated to pay. This provision is independent and severable from any other provision of this Subcontract and shall be enforceable as a separate agreement.

**Cancellation, Renewal or Modification.** Subcontractor shall maintain in effect all insurance coverage required under the Subcontract at Subcontractor's sole expense and with insurance companies rated as required by Owner, Contractor and Prime Contractor, but no less than a Best rating of A- VII or better. All insurance policies shall contain a provision that the coverages afforded shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to Contractor.

**Builders Risk Insurance.** Builders Risk Insurance. Builder's Risk Insurance is not provided by Contractor or Owner unless specifically stated otherwise via attachment to this Subcontract. If Builder's Risk Insurance is provided by Prime Contractor, Contractor or Owner, upon written request by Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance.

- A. If Builder's Risk Insurance is provided by Owner, Prime Contractor or Contractor, then Contractor and Subcontractor waive all rights against each other and Prime Contractor, Owner, Architect, Architect's consultants and agents or employees of any of them, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk, except such rights as they may have to the proceeds of such insurance. However, this waiver shall not extend to the acts or omissions of Architect, Architect's consultants, and the agents or employees of any of them.

**Endorsement.** If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/11/2011

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

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

<b>PRODUCER</b> Insurance Company Information 1234 Main Dallas TX 75234-7004	<b>CONTACT</b> NAME: PHONE (A/C, No, Ext): XXX-XXX-XXXX FAX (A/C, No): E-MAIL: ADDRESS: PRODUCER CUSTOMER ID #:														
<b>INSURED</b> Subcontract Information Address Austin TX Zip	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Required Carrier Name</td><td>0</td></tr><tr><td>INSURER B:</td><td></td></tr><tr><td>INSURER C:</td><td></td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Required Carrier Name	0	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Required Carrier Name	0														
INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

## COVERAGES

CERTIFICATE NUMBER: 765836544

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Y	Y	Sample Policy	3/11/2011	3/11/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 L AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$1,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y		Policy Number	3/11/2011	3/11/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$			Policy Number	3/11/2011	3/11/2012	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 Follows Form \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	Policy Number	3/11/2011	3/11/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

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

Certificate Holder is listed as Additional Insured applies to General Liability & Auto Liability policies as per written contract. A Waiver of Subrogation applies to General Liability, Auto Liability and Workers Compensation as per written contract. General Liability Insurance is primary and non-contributory.

## CERTIFICATE HOLDER

CANCELLATION Blanket 30 Day Notice

Facility Solutions Group 4401 Westgate Blvd, Suite 310 Austin TX 78745-1494	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2009/09)

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FSG / Subcontractor

SUBCONTRACT

7/20/2011

Initials \_\_\_\_\_ / \_\_\_\_\_

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**EXHIBIT D – SURETY BONDING**

**Copy of Contractor Bonds.** Subcontractor is entitled to receive from Contractor, upon written request, copies of any payment and performance bonds furnished by Contractor for the project.

**Sub-Contractor Bonds.** Sub Contractor surety bond requirements, if any, are as follows:

Subcontractor Performance and Payment Bond:	Required	Not Required
---	----------	--------------

If a performance or payment bond, or both, are required of Subcontractor, such bonds shall name Contractor as obligee, be in the full amount of the Subcontract Price, and shall be in a form and by a surety acceptable to Contractor. Surety must be rated A minus or better. Unless specifically stated otherwise in the individual purchase order, the premiums for such bonds are not included in the Subcontract Price and shall be billed as an extra to the work.

At any time during the performance of the Work, Contractor may by written notice require Subcontractor to furnish a payment and/or performance bond issued by a surety admitted to do business in the State of Texas (or the state or province where the Work is to be performed) and guaranteeing payment and performance under this subcontract. The bond shall be in an amount to be determined by Contractor, in its sole discretion, that is: (1) Not less than the balance of the Subcontract price after deducting payments already made to Subcontractor, nor (2) More than the original Subcontract Price plus executed change orders. In the event Subcontractor shall fail to provide any required bonds within ten (10) days of Contractor's written notification to do so, Contractor may terminate this Subcontract for cause. All costs and expenses incurred by Contractor as a result of such a termination shall be paid by Subcontractor in accordance with the termination for cause article of the Subcontract.

No change, directive, clarification or communication regarding this Subcontract whether made in the manner specified in the Subcontract or not, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract and neither Owner, Prime Contractor, nor Contractor shall be under any obligation to notify the surety or sureties of any change, directive, clarification or communicate with Subcontractor.

**FINAL CONDITIONAL WAIVER OF LIEN**

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

Project Name: \_\_\_\_\_

Period Covered: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**State of Texas County of:** \_\_\_\_\_

I hereby certify that the Work performed and the material supplied to date represents the actual value of labor and materials provided under the terms of the Subcontract/Purchase Order between the undersigned and Contractor relating to the Project. I also certify that payments have been made through the period covered by previous Invoices to all subcontractors and for all material and labor used in or in connection with the performance of this Subcontract/Purchase Order. I accept this payment as full, complete and final payment for work and materials supplied by me on this job. I further certify that I have complied with all federal, state or local tax laws, unemployment compensation laws, workers compensation laws, and federal wages and hour laws.

Furthermore, in consideration of the payments received, the undersigned does hereby waive, release and relinquish all claim or right of lien which Subcontractor/Supplier may now have upon the premises of the Project, including but not limited to any statutory or constitutional liens. Further, Subcontractor/Supplier agrees to indemnify and hold harmless from any liability and to reimburse Contractor for all its costs, expenses and reasonable attorneys fees, on any lien claims hereinafter made in connection with Subcontractor/Supplier or any work performed by it on said Project. I sign this Affidavit on behalf of Subcontractor/Supplier with full authority and knowledge of the facts stated herein under penalty of perjury.

Subcontractor/Supplier: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_

**PARTIAL CONDITIONAL WAIVER OF LIEN**

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

Project Name: \_\_\_\_\_

Period Covered: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**State of Texas County of:** \_\_\_\_\_

I hereby certify that the Work performed and the material supplied to date represents the actual value of labor and materials provided under the terms of the Subcontract/Purchase Order between the undersigned and Contractor relating to the Project. I also certify that payments have been made through the period covered by previous Invoices to all subcontractors and for all material and labor used in or in connection with the performance of this Subcontract/Purchase Order. I further certify that I have complied with all federal, state or local tax laws, unemployment compensation laws, workers compensation laws, and federal wages and hour laws.

Furthermore, in consideration of the payments received, the undersigned does hereby waive, release and relinquish all claim or right of lien which Subcontractor/Supplier may now have upon the premises of the Project, including but not limited to any statutory or constitutional liens. Further, Subcontractor/Supplier agrees to indemnify and hold harmless from any liability and to reimburse Contractor for all its costs, expenses and reasonable attorneys fees, on any lien claims hereinafter made in connection with Subcontractor/Supplier or any work performed by it on said Project. I sign this Affidavit on behalf of Subcontractor/Supplier with full authority and knowledge of the facts stated herein under penalty of perjury.

Subcontractor/Supplier: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_

**EXHIBIT G – SUBCONTRACTOR AFFIDAVIT**

**SUBCONTRACTOR'S AFFIDAVIT**

**State of Texas County of:** \_\_\_\_\_

**BEFORE ME**, the undersigned, having authority, on this day personally appeared \_\_\_\_\_ and, upon oath, after first being duly sworn, deposed and stated:

“My name is \_\_\_\_\_, and I am the \_\_\_\_\_ of \_\_\_\_\_, hereafter sometime referred to in this affidavit as the “Subcontractor.”

The facts set forth herein are true and correct, and I am competent and authorized to make this affidavit. I make this statement under penalty of perjury. Subcontractor supplied labor and/or materials under a subcontract with FACILITY SOLUTIONS GROUP, INC. for construction or repair on a construction site (herein so called) situated at \_\_\_\_\_ and owned by \_\_\_\_\_.

Subcontractor has paid each of its subcontractors, laborers, and materialmen in full for all labor and materials provided to it for construction or repair on the construction site.

NAMES AND ADDRESSES	TYPE	CONTRACT PRICE INCLUDING EXTRAS	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
TOTAL LABOR AND MATERIAL INCLUDING EXTRAS* TO COMPLETE					

There are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

\* EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS TO THE CONTRACT

Subcontractor/Supplier: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

My Commission Expires: \_\_\_\_\_

**EXHIBIT H – HAZARDOUS/UNDERGROUND JOBSITE SAFETY ADDENDUM**

**GENERAL SAFETY REQUIREMENTS**

The prevention of accidents or injuries on, about, or near the vicinity of the project site is the Subcontractor's responsibility. For purposes of this Addendum, the term Subcontractor shall be deemed to include subcontractors and suppliers of all tiers. The Subcontractor must perform its Work in a safe manner, must fully comply with safety measures of Facilities Solutions Group, Inc. (FSG or Contractor), Subcontractor, and those imposed by the Contract Documents, and must adhere to the applicable industry standards, laws, ordinances, rules, regulations, codes and orders of public authorities bearing upon the safety of persons or property or their protection from damages, injury or loss. Subcontractor must comply with the Occupational Safety and Health Act of 1970(OSHA), all rules and regulations established pursuant thereto, and all Amendments and supplements thereto; applicable Federal Regulations; applicable State Regulations; and the Contractor's policies and procedure requirements relative to safety and the prevention of accidents or injuries. Subcontractor shall impose all obligations in this Addendum on its subcontractors and suppliers of all tiers.

The Subcontractor shall be solely responsible for the protection and safety of its employees, and the employees of its subcontractors and suppliers of all tiers, for the final selection of all safety methods and means, for required safety reports and records, for daily inspection of its Work area and its employees' safety equipment, and for the continual instruction of its employees on health and safety, including weekly safety meetings. The Subcontractor must actively promote safe working performances and practices on the part of its employees and the employees of its subcontractors and suppliers of all tiers. Subcontractors shall also provide to Contractor a list of its subcontractors they intend to use on site. Additionally, subcontractors shall insure that all its subcontractors meet the insurance requirements for this project, including the additional insured endorsement and the indemnity requirement in the subcontract agreement. It is the responsibility of the subcontractor to insure that certificates and endorsements from their subcontractors are received and current prior to sub-subcontractor arrival on site.

The Subcontractor must establish and maintain a safety program (OSHA 1926.21) implementing safety measures, policies and standards conforming, on a comprehensive basis, to its obligations under the following paragraphs.

Each Subcontractor shall be responsible for the following:

1. Subcontractor must conduct employee Safety Meetings. Safety meeting will be held weekly and each tradesman is required to attend. It is the responsibility of the Subcontractor to furnish the following documentation to the Contractor after each safety meeting and prior to monthly payments: Name of company, date of meeting, topic discussed, instructors name, employee names and their trade.
2. Maintenance of safety reports, records and safety manual.
3. Safety orientation and meeting with each tradesman (schedule and methods to be used).
4. Employee complaints and discipline.
5. Regular inspections of work equipment to detect and correct hazardous conditions.
6. Safety rule violations and unsafe work practices and enforcement of these violations.
7. Lost time injury reports will be documented and signed by the representative from each company. Subcontractors or their subcontractors shall furnish the Contractor a copy of the injury report filed with the insurance company and a foreman's Accident Report within 24 hours after the occurrence.
8. Each Subcontractor is responsible to have the following on site:
  - a. MSDS sheets for products brought on site.
  - b. Health and Safety Manual

**SUBCONTRACTOR MINIMUM SAFETY REQUIREMENTS-HAZARDOUS OR UNDERGROUND WORK**

FSG is committed to the elimination of worker injury throughout our operations. FSG's company wide commitment to Zero Injury is the only logical and humane approach to a safe workplace. We are not willing to tolerate any injury to our own workers, or to the worker of any contractor while engaged on our projects. Any

lesser commitment conveys the erroneous message that accidents are inevitable and that some level of injuries are acceptable. Meeting this challenge will take time, hard work, and will require a commitment to safety from all employees and contractors on this project.

There are several areas of work that may involve hazardous or underground work. The following criteria apply to that type of work:

### **Hazardous Materials**

This Subcontract and Subcontractor's performance of Work shall be subject to the following:

1. Definition of Hazardous Materials. For purposes of this Contract, the term "Hazardous Materials" includes (i) any matter or substance defined as a "hazardous material," "hazardous substance," "hazardous waste," "toxic waste," "toxic material" "toxic substance," or any substance or matter listed or subject to regulation in whole or in part under any part of the Resource Conservation and Recovery Act, (RCRA), Toxic Substances Control Act (TOSCA), Comprehensive Environmental Response, Conservation and Liability Act (CERCLA), Occupational Safety and Health Act (OSHA), or any applicable federal, state or local statute, regulation, rule or ordinance, all as amended, or by the Environmental Protection Agency (EPA) or by any federal state or local governmental agency, and (ii) biological agents, including mold.
2. Use of Hazardous Materials. Subcontractor or its agents shall not bring, generate, store, use or release any Hazardous Materials to, on, under, above, from or about the Property (including subsurface soil and ground water) without the prior written consent of Contractor. The Subcontractor must notify the Contractor if any Hazardous Material is encountered during performance of the Subcontractor's Work. The Subcontractor is prohibited from distributing, removing or storing of any equipment or materials deemed to contain hazardous material, unless required by the Contract Documents. The Subcontractor is solely responsible for prevention of hazardous materials being installed as part of its Work. All subcontractors are responsible for all disposals of chemicals, hazardous waste and containers used in the construction of their work on this project. Subcontractors will provide OSHA required material safety data sheets on all chemicals before work is started. All chemical containers must be labeled. Oil drips and other spills must be cleaned up immediately.  
  
Contractor may, in its sole discretion, require that Subcontractor demonstrate and/or furnish evidence to Contractor, which may include expert independent legal or environmental opinion, that such Hazardous Materials are necessary to Subcontractor's performance of the Work and will be generated, stored, used, and disposed of in a manner that complies with all applicable laws regulating such Hazardous Materials and with best industry customs or business practices. Contractor may require Subcontractor to obtain Pollution Liability Insurance to insure against liabilities arising out of Subcontractor's work, and to include Contractor as an additional insured under such insurance policies.
3. **Indemnification. To the fullest extent permitted by law, Subcontractor hereby agrees to indemnify, hold harmless, defend and protect Contractor from and against any and all liabilities, losses, and damages including, but not limited to, damages for the loss or restriction on use of rentable or usable space, judgments, fines, demands, claims, recoveries, deficiencies, cost and expenses including, but not limited to, reasonable attorney's fees and court costs and all other professional or consultant's expenses, arising out of the negligent or wrongful use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under, over or about the Property by Subcontractor, or Subcontractor's agents, including the cost of any restoration, clean-up or detoxification of the Property during the term or after the expiration of this subcontract.**
4. Asbestos. The Subcontractor must notify the Contractor if any material containing asbestos is encountered during performance of the Subcontractor's Work. The Subcontractor is prohibited from storing or installing any equipment or material containing asbestos on the project site. The Subcontractor is solely responsible for the prevention of asbestos containing material or equipment to be installed as part of its Work.

### **Confined Space Entry**

1. Subcontractors may not enter confined spaces without a Confined Space Entry Permit. Subcontractor employees must be trained in confined space entry procedures as well as related procedures (e.g. use of respirators) prior to working in confined spaces and must utilize their company's Confined Space Entry Permit.
2. Subcontractors must have Industrial Hygiene atmospheric monitoring equipment available.
3. Subcontractors must have rescue/retrieval equipment available at point of entry. Workers must provide training

records.

**Excavations and Trenching**

1. All excavations or trenches must be:
  - a. Protected with barricades, flashers, signs or similar warnings.
  - b. Adequately sloped or shored when 5 feet or more in depth.
  - c. Equipped with ladders every 25 feet for trenches in excess of 4 feet deep.
  - d. Inspected and approved daily by a "Competent Person" as required by OSHA standards.
  - e. A registered professional engineer must design any excavations that are greater than 20 feet in depth.
2. High visibility vests must be worn and employee training conducted when working in the highway right-of-way and near Mobile Earth Moving Equipment.

**Lockout/Tagout**

Wherever applicable, lockout/tagout procedures must be followed to control hazardous energy and prevent the unexpected start-up of equipment or release of stored energy. LOTO is required for ANY source of hazardous energy including:

Electrical - Mechanical - Thermal - Liquid Chemical - Gas - Pneumatic Hydraulic – Radiation

**Orientation/Safety Education**

All Subcontractors are required to orientate and train their employees of the hazards and procedures required to perform their job.

**Acknowledgement of Reading and Receipt of this Addendum**

I, the undersigned, authorized representative have read and acknowledge receipt of this Addendum and have had the opportunity to review this document. FSG has all referenced documents available and in the event that we have not received any of them it is our responsibility to review them, as all reference documents will become part of our bid terms and conditions. FSG's Safety Program and this Addendum are an integral part of the contract for subcontractors and suppliers of all tiers.

Subcontractor/Supplier: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_