

SUBCONTRACT

SB# 08-3200-0002-1205

THIS AGREEMENT (this "Subcontract") is made this 3rd day of **MAY 2023**, by and between **KIRLIN-WAY MECHANICAL, LLC** ("Contractor") and **National TAB** ("Subcontractor"). Contractor and Subcontractor are hereafter collectively referenced as the "Parties," or individually as a "Party."

RECITALS

WHEREAS, Contractor has entered into a contract dated **MARCH 22nd, 2023** (the "Contract") with **ROBINS & MORTON**. (the "Customer"), to perform certain labor and to furnish certain materials defined in the contract documents described in the Contract (the "Contract Documents"), including without limitation the plans, specifications, addenda, and other contract documents described in the Contract, for the following "Project":

**Harrah's Cherokee Valley River Casino & Hotel
777 Casino Parkway
Murphy, NC 28906**

WHEREAS, the architect of record for the Project is **JCJ Architecture / Vanderweil Engineers, LLP** (the "Architect"); and,

WHEREAS, the Parties desire to contract with reference to part of the work described in the Contract Documents.

NOW THEREFORE, for and in consideration of the mutual and reciprocal obligations contained in this Subcontract, the Parties agree as follows:

Scope and Subcontract Value

- 1. (A) Subcontractor shall furnish and pay for all necessary labor, services, equipment, and materials to perform all the work necessary or incidentally required for the completion of the part of the work described below in accordance with the Contract Documents (the "Subcontract Work").

TEST & BALANCE SCOPE PER HARRAH'S BID DOCUMENTS SPECIFICALLY SECTION 230593 WITHIN THE 100% PERMIT SET OF CONSTRUCTION DOCUMENTS DATED 1/31/23; ADDENDUM #2 DATED 12/12/22; BULLETIN #1 DATED 2/14/23; BULLETIN #2 DATED 3/15/23. TEST & BALANCE OF THE NEW CASINO & HOTEL INCLUSIVE OF COMMISSIONING ASSISTANCE & SEASONAL TESTING.

- (B) Contractor agrees to pay Subcontractor for Subcontract Work performed according to the Contract Documents the sum of **ONE HUNDRED THIRTY-NINE THOUSAND SEVEN HUNDRED NINETY-FIVE AND XX/100 (\$139,795.00)**, subject to additions and deductions as herein provided, and such sum shall be paid by Contractor to Subcontractor as the work progresses in monthly installments as described in paragraph 6.(A), provided however, that no payments shall be due unless current insurance certificates as described in paragraph 10.(A) have been submitted to the Contractor, and the Subcontractor has signed the Project Agreement and subsequent change orders thereto in addition to any other provisions herein affecting Subcontractor's right to payment.

- 2. This Subcontract includes the following terms and conditions:

- (A) As soon as possible after execution of this Subcontract, and no later than thirty (30) days thereafter, Subcontractor shall forward to the Contractor a list of all materials, items, and equipment to be supplied on this Project, the estimated fabrication time, and proposed deliveries and completion dates for each item. After approval of shop drawings, Subcontractor shall revise the list to incorporate any changes and shall forward the list to the Contractor.

ACCEPTED: CONTRACTOR: CO SUBCONTRACTOR: [Signature]

(B) Special Conditions – **Exhibit “A” Contractor’s Insurance Requirements
Exhibit “B” Interim and Final Lien Waiver Form
No sales tax – Tax Exempt, see Sales Tax Exempt form. OCIP Project
Add for DALT witnessing is \$10,000.00 if required. Phase 2 of the project
if added to the scope is \$5,000.00**

3. (A) To the fullest extent permitted by law, Subcontractor shall be bound to the Contractor by the same contractual relationship, including liquidated damages provisions, all applicable duties, warranties, liabilities, conditions, restrictions and limitations which the Contractor assumes toward the Customer. Subcontractor has read, and is thoroughly familiar with, the Contract Documents. Subcontractor agrees to be bound to Contractor by the terms of the Contract Documents to the extent that they relate to the Subcontract Work and to assume towards Contractor, in connection with the Subcontract Work, all of the obligations and responsibilities that Contractor by the Contract Documents assumes towards the Customer. While this Subcontract includes notice provisions for delays, claims, and other such matters, to the extent that the Contract Documents specify shorter times for the Contractor to provide such notices to the Customer, Subcontractor shall provide its notices to Contractor so that Contractor has remaining at least one-third of the time allowed by the Contract Documents to give notice to Customer. Except as to other referenced documents that may be needed to effectuate the Parties’ agreement, this Subcontract shall be considered the entire contract of the Parties and there are no representations, terms, covenants or conditions made by any one of the Parties except as herein expressly contained or made reference to.
- (B) Contractor shall not be liable to Subcontractor for any delay to Subcontractor’s work resulting from the act, negligence or default of Customer, Architect, or Contractor, or by reason of fire or other casualty or on account of riots, strikes, or other combined action of the workmen or others, or on the account of any acts of God or any other cause beyond the Contractor’s control; or on account of any circumstances caused or contributed to by Subcontractor.

Architect

4. The Subcontract Work shall be performed under the direction of the Architect, and the Architect’s decisions as to the true construction and meaning of the drawings and specifications shall be final. Subcontractor shall conform to and abide by additional specifications, drawings, or explanations furnished by the Architect to detail and illustrate the work to be done.

Changes

5. (A) Subcontractor shall make all alterations, furnish materials for, and perform all extra work Contractor may require without nullifying this Subcontract, at a reasonable addition to/or deduction from the subcontract price set forth in paragraph 1.(B) of this Subcontract which amount shall not exceed Subcontractor’s direct cost to perform such extra cost, plus overhead and profit of five (5) percent for work performed by others, or ten (10) percent for work performed by Subcontractor’s own forces. However, no alterations or changes shall be made except upon Contractor’s written order from the Contractor’s project manager for the Project (the “Project Manager”). No other person is authorized to amend the terms of this Subcontract, or issue, or approve change orders. The amount to be paid by Contractor, or allowed to Subcontractor, as a result of such changes or alterations, shall be stated in such order. For any portion of this Subcontract which cost-plus or time and material provisions are applicable, Contractor’s representative shall have access, at all reasonable times, to all Subcontractor’s personnel, books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description pertaining to Subcontract Work for the purpose of auditing and verifying costs of work upon prior notice to Subcontractor. Contractor’s representatives shall have the right to reproduce any of the aforesaid documents. In the event lump-sum elements are included under this Subcontract along with any cost-plus or time-and-material items, then audit rights shall also extend to include the Contractor’s access to those records of Subcontractor and Sub-subcontractor which pertain to lump-sum elements that are needed to provide for assurance that the portions of the work performed on a cost-plus or time-and-material basis are not being charged with costs which are by their nature intended to be covered by lump-sums. Subcontractor shall preserve and shall cause its Sub-subcontractors to preserve all of the appropriate above-mentioned documents for a period of three (3) years after the completion and acceptance or termination of the work. Subcontractor expressly agrees that if reasonable proof exists of duplicative charges, non-substantiated charges, or items charged as changes that should have been included in the lump-sum

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or base bid quantities (hereinafter referred to as "non-conforming items"), then any such written and issued change orders covering such non-conforming items would be considered null and void, and the Subcontractor agrees to accept a deductive change order for the dollar amount of such non-conforming items and to reimburse Contractor (or to provide a credit to Contractor) if such amounts have already been paid to the Subcontractor.

- (B) Subcontractor shall provide sufficient safe and proper facilities at all times for inspection of the work by Contractor, the prime/general contractor for the Project (if not the Contractor), Project owner, and/or the Architect or the Architect's authorized representative(s). Within twenty-four (24) hours after receiving written notice from Contractor, Subcontractor shall proceed to take down all portions of the Subcontract Work and remove from the grounds and buildings of the Project all material, whether worked or unworked, which the Architect shall condemn as unsound or improper or as failing to conform in any way to the Contract Documents, and shall make good all such work condemned and all other work damaged or destroyed in removing or making good such condemned work. However, Subcontractor shall not remove any other material from the building site without Contractor's written permission.
- (C) Subcontractor shall submit written proposals for all changes and/or alterations in the manner provided by the Contract Documents or as instructed by Contractor.
- (D) Subcontractor shall make all claims to the Contractor in the manner provided in the Contract Documents for like claims by the Contractor upon the Customer, except that the time for making claims for extra cost shall be one (1) week after the date of the occurrence of a claimable event, or if such deadline should not apply to Subcontractor's claim for any reason, Subcontractor shall make any claims to Contractor, in writing, not later than the ninety-first (91st) day after the occurrence of the event giving rise to the claim.

Payments


- 6. (A) Payments shall be made monthly in accordance with the following procedure:
 - (1) On the **15th** day of each month, Subcontractor shall submit to the Contractor an estimate of materials on hand and work done. Estimates submitted after the submission date in any month may be held by Contractor until the next submission date for processing. The time for submission of any estimate may be changed either by exhibit hereto or a written direction from the Contractor.
 - (2) If satisfactory, the estimate will be forwarded to the Customer and/or incorporated with the Contractor's estimate.
 - (3) All progress payments and final payment mentioned in this Subcontract are contingent and subject to Customer's acceptance of all work performed by Subcontractor and to Contractor's receipt of payment for Subcontractor's work and Contractor's work. Contractor shall pay Subcontractor all proper progress payments and final payments for any work performed by Subcontractor within the later of (a) seven (7) days after Contractor's receipt of payment from the Customer for such work, and (b) Subcontractor's satisfaction of all requirements for payment. Contractor shall retain from Subcontractor retainage **ten** percentage (**10%**), which is the same percentage of retainage stated in the Contract Documents.
 - (4) If Customer fails to pay Contractor for Subcontractor's work and Contractor is not otherwise entitled to withhold payment from Subcontractor, Contractor will pay Subcontractor within a reasonable time for work completed in accordance with the Contract Documents, subject to all other terms and conditions of this Subcontract. For the purposes of determining the timing of payment under these circumstances, the parties hereby acknowledge and agree that a reasonable time for payment to Subcontractor in the case of Customer non-payment is within 180 days after Contractor's submission of a payment request to Customer that includes the work for which Subcontractor seeks payment or, if litigation or arbitration between Contractor and Customer that involves the monies sought by Subcontractor is instituted within that time, then within 60 days of final adjudication of any such litigation or arbitration.

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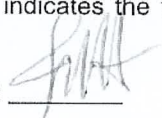
- (5) As an alternative to, or in conjunction with, Contractor pursuing a claim against Customer for payments due to Subcontractor for work on the Project, Contractor may assign its contractual rights against Customer for such funds as Subcontractor may be entitled to for such Subcontract Work that remain unpaid due to failure of payment by Customer to Contractor for whatever reason, and such assignment shall, to the fullest extent permitted by law, operate as full accord and satisfaction of any remaining debt to Subcontractor by Contractor for Subcontract Work. To the fullest extent permitted by law, Subcontractor hereby agrees to accept such assignment in lieu of any other form of payment for its Subcontract Work, and to release and discharge any and all claims for those funds against Contractor upon receipt of such assignment.
- (6) Contractor shall be under no obligation to make any payment to Subcontractor for any costs related to the Subcontract Work until Subcontractor has furnished proof, in a form acceptable to Contractor, of the satisfaction of all debts of Subcontractor for such Work or otherwise related to the monies sought in any application for payment. With each payment application, including progress payments, final payment, retainage, and/or any requested change order, Subcontractor shall, as a condition precedent to any obligation by Contractor to pay Subcontractor, submit proof of payment for all labor, material and equipment included in its application for payment to Contractor, along with such releases, lien waivers, or other evidence or protection Contractor may reasonably require. Failure at any time by Contractor to enforce the terms of this provision shall not be construed as a waiver of its right to enforce these requirements at any other time.
- (7) Final payment will be made within the later of (a) seven (7) days after acceptance of and payment for the entire contract by the Customer and (b) Contractor's receipt of executed lien waivers and releases of the Subcontractor required by the Contractor.
- (8) Title for all materials and work covered by estimates and/or requisitions for payment for which progress payments have been made shall pass to the Contractor (or the project owner, if the arrangements between the Contractor and Customer so provide). However, this provision shall not be considered as relieving the Subcontractor from the sole responsibility for all materials and work upon which payments have been made, the restoration of any damaged work or the maintaining of insurance thereon if required by other provisions of this Subcontract, nor shall it be considered as a waiver of the right of the Contractor or the Customer to require fulfillment of all the items of the Subcontract.
- (9) Contractor shall be under no obligation to make progress payments and/or final payments in the event that Contractor has requested Surety Bonds from Subcontractor, and Subcontractor has failed to provide such Bonds prior to the time of said payments.
- (10) Before any payments are made hereunder, Subcontractor shall submit to Contractor a fair and proper itemized schedule of values for Subcontract Work performed, and payment shall be made to Subcontractor in proportion to acceptable work performed under said schedule less the agreed retention.
- (B) The Subcontractor shall furnish the Contractor with such partial releases and waivers of lien in the form attached hereto, from his materialmen and creditors and himself as the Contractor may request from time to time on labor and/or materials and/or other claims, and final releases and waivers of lien at the time of final payment to the Subcontractor. If Subcontractor cannot provide Contractor with releases from sub-subcontractors or materialmen, then Contractor shall have the option of writing joint checks to such entities and Subcontractor, or direct payments to such claimants. Subcontractor agrees that payments so made will be considered a payment to Subcontractor for work hereunder and credited against the Subcontract balance. The partial release and waiver and final release and waiver forms are attached hereto and incorporated herein as Exhibits B and C, respectively.
- (C) The Subcontractor shall furnish to Contractor as a condition of each progress and final payment hereunder, an Affidavit of Bills Paid in the form attached hereto as Exhibit D and incorporated herein, and the Subcontractor shall furnish, if requested by the Contractor, sworn affidavits from time to time, in accordance with a form provided by the Contractor, which shall state amounts due or to become due, amounts paid, and any other information which clearly indicates the financial condition of the

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Subcontractor, insofar as it relates to labor and material furnished, and to be furnished, under this Subcontract, and the Contractor may take such steps as the Contractor may deem necessary to protect itself against any claims. If at any time the Contractor should determine that the Subcontractor's financial condition has become, in the Contractor's opinion, unsatisfactory, the Subcontractor shall furnish security to the Contractor that is deemed satisfactory by the Contractor within three (3) days after written notice to the Subcontractor's last known address. Failure to furnish such security is a material breach of this Subcontract, and Contractor may, at Contractor's option, terminate this Subcontract and seek damages from the Subcontractor. In the event it appears to the Contractor that the labor, materials and other bills incurred in the performance of Subcontractor's work are not being currently paid, the Contractor may take such steps as he deems necessary to insure that any progress payment will be utilized to pay such bills. This right is in addition to all other rights granted in this paragraph and the Subcontract.

- (D) The Subcontractor agrees and covenants that monies received by him for the performance of this Subcontract shall be used first for the purpose of paying for labor and materials used in work covered under this Subcontract and that in making such payments the Subcontractor will specifically state that the funds being disbursed originated under this Subcontract. Only equipment and materials to be used in the Subcontract Work, or incorporated into the Project, may be delivered to the Project.
- (E) Subcontractor shall at all times supply adequate tools, appliances and equipment, a sufficient number of properly qualified workers and a sufficient amount of materials and supplies of proper quality to prosecute said work efficiently and promptly, and shall promptly pay for all materials purchased, and shall timely pay all workers, and at Contractor's request shall obtain and furnish Contractor weekly with signed receipts from all workers, showing the date of payment, amount paid, number of hours paid for, the days on which said work was performed, the classification of the labor so paid, and the rate of wage per hour paid, and at Contractor's request shall supply Contractor weekly with a reasonable number of copies of payroll verified by Subcontractor.
- (F) The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owing by the Subcontractor to the Contractor. The Subcontractor expressly recognizes that this right of Contractor applies to the right of set off or recoup payments otherwise due to Subcontractor on contemporaneous projects or due pursuant to this Subcontract.

Schedule, Prosecution of Work and Delays

- 7. (A) Subcontractor shall begin the Subcontract Work immediately upon notice from Contractor that the construction upon which said work is to be done is ready for said work, and shall carry on said work promptly, efficiently and at a speed that will not cause delay in the progress of Contractor's work or other portions of the work carried on by other subcontractors. Subcontractor shall prosecute certain portions of the work in preference to others, if so ordered by Contractor.
- (B) Time is of the essence of this Subcontract. Should Subcontractor at any time refuse or neglect to supply a sufficient number of properly qualified workers or a sufficient quantity of materials of properly quality, or abandon the work or fail in any respect to prosecute the work covered by this Subcontract with promptness and diligence or fail in the performance of any of the agreements herein contained, Contractor may, at its option, after forty-eight (48) hours' notice to Subcontractor, provide any such labor and materials and deduct the cost thereof from any money due or thereafter to become due to Subcontractor under this Subcontract or otherwise; or Contractor may, at its option, terminate this Subcontract and, for the purpose of completing the work covered by this Subcontract, Contractor shall have the right to take possession of all the materials, tools, and appliances belonging to Subcontractor at the site of the work, and Contractor may either complete said work itself or may employ or contract with any other person or persons to complete the work and provide the materials therefore; and in case of such termination or abandonment of this Subcontract, Subcontractor shall not be entitled to receive any further payment under this Subcontract until said work shall have been finished completely and payment therefor made by Customer, at which time if the unpaid portion of the amount to be paid under this Subcontract exceeds the charges, expenses and damages sustained by the Contractor in completing the work or as a result of such default, such excess shall be paid by Contractor to Subcontractor, but if such charges, expenses and damages exceed said unpaid portion, Subcontractor shall pay difference to Contractor.

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- (C) Subcontractor waives all damages for delay.

Safety and Regulations

8. (A) Safety is of paramount importance at this jobsite. The Subcontractor must plan to execute Subcontract Work in such a way as to provide whatever protective means are necessary to safeguard against bodily injury to its employees, employees of others, and of the general public, and prevent damage to its work or the property of others. It is the Subcontractor's responsibility to inspect the area around it and to report any unsafe conditions to Contractor's jobsite superintendent and/or Project Manager for corrective action. The Subcontractor shall attend scheduled safety meetings and strictly abide by safety rules, regulations, and policies of Contractor and shall follow any other safety rules, OSHA regulations and policies necessary for the safe performance of his work, or required by Contract Documents.
- (B) Subcontractor shall conform to the highest standards of safety practices in performance of the Sublet Work and shall conform to all safety practices and requirements of Customer or Contractor. The Subcontractor warrants that any and all work performed and/or equipment delivered to Customer or Contractor or its designee under this Subcontract shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time, and including all regulations adopted pursuant to such Act, and shall comply with all requirements of any applicable health or safety statute or regulation of any state or local government agency having jurisdiction in the location to which such equipment is to be shipped or such work is to be performed pursuant to this Subcontract. Subcontractor shall be solely responsible for compliance with all such laws or regulations without relying upon enforcement thereof by, or instructions of Customer, Architect, Contractor, or any other third party, and shall promptly report in full to Contractor and safety or health inspections by governmental authorities. To the fullest extent permitted by law, Subcontractor shall defend and indemnify Contractor against any and all loss, damage, or expense resulting from Subcontractor's failure to comply with this provision.
- (C) Subcontractor shall comply with all federal, state and municipal laws, codes, regulations, and ordinances effective where the work under this Subcontract is to be performed, and to pay all fees, licenses, taxes, including sales and use taxes, and expenses required by such compliance, and also pay all taxes and contributions imposed or required by any law for any employment insurance, pensions, old age retirement funds, or similar purposes, in respect to the work under this Subcontract and the employees of Subcontractor in performance of said work.
- (D) Subcontractor accepts exclusive liability for all taxes and contributions required of the Contractor or Subcontractor by the Federal Social Security Act and the unemployment compensation law or similar law of any State, in respect to the employees of Subcontractor in the performance of the work herein provided for, and agrees to furnish Contractor with suitable written evidence that Subcontractor has been authorized to accept such liability. If Subcontractor fails to furnish such evidence prior to beginning said work, Contractor may, at its option, pay or reserve for payment said taxes and contributions and deduct amount so paid or reserve from payments due or to become due to Subcontractor. Subcontractor agrees to protect and hold harmless Contractor against all liability in respect to said employees under any said laws.

Without limiting the generality of the foregoing sections 8(A) through 8(D):

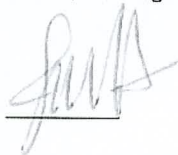
- (E) IMMIGRATION REFORM AND CONTROL ACT. Subcontractor warrants and represents to Contractor that Subcontractor is and shall comply with the Immigration Reform and Control Act of 1986 at all times. Subcontractor shall verify the immigration status of all of its agents and employees, and shall contract for employment or services only with those whose immigration status is verified by E-Verify.
- (F) To the fullest extent permitted by law, Subcontractor hereby agrees to defend, indemnify, and hold harmless Contractor and Customer against all liabilities, costs and expenses (including fines and statutory penalties) caused or occasioned by, directly or indirectly, the failure to comply fully with the Immigration Reform and Control Act of 1986 of Subcontractor, its agents, employees or its Subcontractors or Materialmen.

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- (G) Subcontractor shall secure and pay for any and all permits and licenses required for the prosecution of the work covered by this Subcontract.
- (H) HAZARD COMMUNICATION PROGRAM. In accordance with OSHA Hazard Communication Regulation (1926-59), Subcontractor and their Material Suppliers or Sub-subcontractors shall specifically cooperate in Contractor's Hazardous Communication Program, including, but not limited to, furnishing a list of Hazardous Substances and Material Data Safety Sheets on all hazardous substances which Subcontractor may use on job. Under the regulation, each Subcontractor is an employer and is required to have his own Hazard Communication Program (HCP).
- (I) EQUAL EMPLOYMENT OPPORTUNITY. Subcontractor agrees with regard to any non-exempt contract or purchase order that it shall be bound by the provisions of the equal opportunity clause, set forth in 41 CFR 60-1.4(a) and all other relevant regulations pertaining thereto, all of which are hereby incorporated by reference.
- (J) NONSEGREGATED FACILITIES. Subcontractor agrees, with regard to any non-exempt contract or purchase order, that it shall be bound by the provisions of 41 CFR 60-1.8 hereby incorporated by reference, which prohibits the maintenance of segregated facilities.
- (K) FILING STANDARD FORM 100 (EEO-1) AND DEVELOPMENT OF AFFIRMATIVE ACTION COMPLIANCE PROGRAM. Subcontractor agrees and certifies, with regard to any non-exempt contract or purchase order, that, if it has 50 or more employees, Subcontractor will:
- 1) File a complete accurate report on Standard Form 100 (EEO-1) with the Joint Reporting Committee as required by 41 CFR 60-1.7, and otherwise comply with the filing of such other compliance reports as may be required under Executive Order 11246, as amended, and rules and regulations adopted thereunder.
 - 2) Develop a written affirmative action program for each of its establishments as required by 41 CFR 60-1.40.
- (L) EMPLOYMENT OF THE DISABLED. For all non-exempt subcontracts and purchase orders which exceed \$2,500,000, Subcontractor agrees it shall be bound by the affirmative action clause for the disabled, set forth at 41 CFR 60-741.5, and all other relevant regulations pertaining hereto, all of which are hereby incorporated by reference.
- (M) DEVELOPMENT OF AFFIRMATIVE ACTION PROGRAM FOR THE DISABLED. Subcontractor agrees and certifies that, if the value of any non-exempt contract or purchase order is \$50,000.00 or more and Subcontractor has 50 or more employees, Subcontractor will develop and maintain a written affirmative action program for the disabled for each of its establishments as required by 41 CFR 60-741 and all relevant regulations pertaining thereto.
- (N) EMPLOYMENT OF VETERANS. For non-exempt subcontracts which exceed \$10,000.00, Subcontractor agrees it shall be bound by the affirmative action clause for disabled veterans and veterans of the Vietnam era, set forth in 41 CFR 60-250.5 and all other relevant regulations pertaining thereto, all of which are hereby incorporated by reference.
- (O) DEVELOPMENT OF AFFIRMATIVE ACTION PROGRAMS FOR VETERANS. Subcontractor agrees and certifies that, if the value of any non-exempt contract or purchase order is \$50,000.00 or more and Subcontractor has 50 or more employees, Subcontractor will develop and maintain a written affirmative action program for disabled veterans and veterans of the Vietnam era for each of its establishments as required by 41 CFR 60-250.40 and all relevant regulations pertaining thereto.
- (P) Subcontractor shall be directly responsible for compliance with the provisions of this section 8 on the part of its said agents, employees, materialmen and subcontractors; and shall directly receive, respond to, defend, and be responsible for all citations, assessments, fines, or penalties which may be incurred by Contractor, Customer, or Architect by reason of Subcontractor's failure or failure on the part of its agents, employees, materialmen or subcontractors to so comply.

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[Signature]

Indemnities

- 9. (A) To the fullest extent permitted by law, Subcontractor shall defend, indemnify, and hold harmless the Contractor, its partners, members, directors, officers, agents, and employees, and any parties which the Contract Documents require the Contractor to defend or indemnify (collectively, "Indemnified Parties," and, individually, an "Indemnified Party") from and against any and all claims, losses, damages, demands, injuries, judgements, causes of action, suits, and liability of every kind, including without limitation all expenses of litigation, court costs and attorneys' fees (collectively "Claims"), for bodily or personal injury to, or death of any person, or damage to or destruction of tangible property, including the loss of use thereof, to the extent that such Claims arise from the performance of the Subcontract Work and are caused, in whole or in part, by the negligence of Subcontractor or its derivative parties (as that term is defined by N.C. Gen. Stat. § 22B-1); provided, however, that Subcontractor shall not be required to defend, indemnify, or hold harmless any Indemnified Party against its own negligence, in whole or in part.
- (B) To the fullest extent of the law, Subcontractor shall defend, indemnify, and hold harmless all Indemnified Parties from any and all claims or suits for infringement of United States or foreign patents, or violation of patent rights by Subcontractor, and further agrees to pay for all losses and expenses incurred by Contractor by reason of any such claims or suits, including court costs and attorneys' fees, including without limitation any claim based upon the alleged negligence, breach of warranty or strict liability of or by Contractor and/or others who may be wholly, partially, or solely negligent; or otherwise at fault.
- (C) To the fullest extent of the law, Subcontractor shall defend, indemnify, and hold harmless all Indemnified Parties from any and all Claims (other than negligence claims for bodily or personal injury, death, or damage to personal property) caused in whole or in part by the fault of the Subcontractor or its derivative parties (as the terms "fault" and "derivative party" are defined by N.C. Gen. Stat. § 22B-1), including without limitation Claims for which the Contractor is partly or concurrently at fault.

Insurance and Bonds

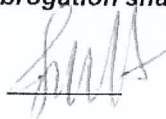
- 10. (A) Throughout the performance of any Subcontract Work, Subcontractor shall maintain at its own cost such insurance as will protect it from claims under the Workers' Compensation Act of the State of North Carolina. Prior to commencement of the Subcontract Work, Subcontractor shall obtain and cause its insurance company to deliver written confirmation of coverage in compliance with this agreement to Contractor, and at all times during the performance of the Subcontract Work, Subcontractor shall maintain at its own cost the policies of insurance listed in **Exhibit A, entitled "Contractor's Insurance Requirements of Subcontractor"**, all in form and substance acceptable to and written by a company or companies acceptable to Contractor.
- (B) To the extent commercially available, each policy of such insurance shall provide that: (i) the insurance coverage set forth therein shall not be modified, canceled, or allowed to terminate without giving the Contractor and any other person named within the policy or an endorsement to the policy at least thirty (30) days advance written notice thereof; (ii) Contractor and Customer are additional insureds; (iii) additional insurance coverage is primary and non-contributory; (iv) no recourse shall be had to Contractor for payment of premiums; and (v) waivers of subrogation by the Subcontractor shall be honored by the insurer.
- (C) 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 the cost of same from any money that may be due or become due to Subcontractor including any and all premiums paid by Contractor for and on account of said insurance. In addition to the insurance required by this paragraph, Subcontractor shall provide any insurance it deems necessary to protect its interest in the Subcontract Work.
- (D) Subcontractor waives all rights of subrogation and its rights of recovery from Contractor, Customer, Architect, and their agents, employees, and independent contractors with regard to all causes of property and/or liability loss. Subcontractor shall cause a waiver of subrogation endorsement to be provided in favor of the each of these parties on all insurance coverage carried by the Subcontractor, whether required herein or not. **Subcontractor's waiver of subrogation shall be effective as to any**

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person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Bonds

Subcontractor shall furnish and pay for payment and performance surety bonds if so required by Contractor, payable to Contractor in a sum not less than the amount of this Subcontract, as set forth in Article 1(B) hereof and in a form acceptable to Contractor, for the faithful performance of this Subcontract, and each and all of its stipulations and agreements, and for the payment of all claims to persons furnishing labor, services or materials used or purchased for use in the Subcontract Work. Such a Bond shall include a waiver by surety of notice of changes.

Storage and Cleanup

- 11. (A) Subcontractor agrees to abide by Contractor's decision as to the allotment of all storage and working space at the building site or in the building thereof.
- (B) Subcontractor shall remove from the building or buildings, as often as directed by Contractor, all rubbish, debris, or surplus materials which may accumulate from the prosecution of the Subcontract Work, and should Subcontractor fail to do so upon such notice, Contractor may, at its option, cause the same to be removed at Subcontractor's expense.

Subcontractor's Employees

- 12. (A) Neither Subcontractor nor any of its subcontractors shall employ any workers whose employment on the Subcontract Work is objected to by Contractor.
- (B) If the Contract Documents provide no wage scale, the Subcontractor agrees to pay not less than the scale prescribed by law. If the Subcontractor fails to comply with the preceding sentence, the Contractor shall have the option to cancel this Subcontract forthwith, in addition to exercising any and all other rights given the Contractor hereunder in the event of a breach thereof, including but not limited to all penalties in the Contract Documents.

Liens and Warranties

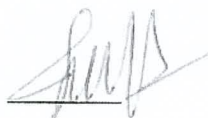
- 13. (A) Subcontractor agrees to turn the Subcontract Work over to Contractor in good condition and free and clear from all claims, encumbrances and liens for labor, services, or materials, and to indemnify and hold harmless Contractor, Customer, the Project owner, and the Project owner's property from all claims, encumbrances, and liens growing out of the performance of the Subcontract Work and all maintenance required under the Contract Documents. Should Subcontractor, during the performance of the Subcontract Work or at any time thereafter, fail to pay for all labor, services and materials used or purchased by Subcontractor for the Subcontract Work, Contractor may in its sole discretion and without notice to Subcontractor, pay such claim(s) and charge the amounts paid to Subcontractor. If any third party files a civil action or demands arbitration or mediation (an "Enforcement Action") to enforce a claim of lien on real property against the real property underlying the Project or a notice of claim of lien on funds against Project funds (collectively, "Liens," and individually, a "Lien"), Subcontractor will defend Contractor at Subcontractor's expense (using counsel reasonably acceptable to Contractor) against Enforcement Action and indemnify and hold Contractor harmless against any resulting judgment, settlement or arbitration award. Subcontractor shall furnish Contractor with a valid release of any bond claim or discharge any Liens in accordance with N.C.G.S. 44A-16 within ten (10) days after Contractor's written request. Contractor may withhold payment of some or all of the funds otherwise due Subcontractor until and unless Subcontractor discharges any Liens. If the Subcontractor fails to discharge Liens, Contractor may, but is not required to, discharge the Liens by depositing into court the funds withheld under this section. Nothing herein shall prevent Subcontractor from filing its own lien if otherwise entitled to do so. Under no circumstances shall Subcontractor allow materials or equipment to be delivered to the Project that are not to be used in the construction of the Project.

ACCEPTED:

CONTRACTOR:



SUBCONTRACTOR:



- (B) Subcontractor warrants the Subcontract Work to Contractor to the same extent that the Contract Documents require the Contractor to warrant the Contractor's work to the Customer. Unless the Contract Documents a longer period, Subcontractor shall correct at Subcontractor's expense all nonconforming or defective Work promptly after receiving written notice for a period of one (1) year after substantial completion of the entire Project. This duty to correct nonconforming work is in addition to warranties of the Subcontractor to the Contractor and others. Failure of the Contractor to provide notice of defective or nonconforming Work before the end of the period for correction of the Subcontract Work shall waive the Contractor's right to require Subcontractor to correct such nonconforming or defective work, but shall not affect Contractor's right to assert a claim against the Subcontractor for breach of contract or breach of warranty.
- (C) No payment made under this Subcontract shall be construed to be an acceptance of defective work or improper materials. Any Subcontract Work not conforming to the requirements of the Contract Documents shall be considered defective.

Disputes

- 14. (A) If at any time any controversy shall arise between the Contractor and the Subcontractor with respect to any matter or thing involved in the Subcontract, and which the parties hereto do not promptly adjust and determine or which the Customer or his authorized representative cannot resolve to the satisfaction of both Parties hereto, then the written orders of the Contractor shall be followed (including without limitation any order of Contractor for Subcontractor to continue the Subcontract Work), and upon the completion of the Subcontract Work and before the final settlement and payment is made, said controversies shall be decided pursuant to the dispute resolution provisions herein.
- (B) Any controversy or claim arising out of or relating to this Subcontract, whether asserted in contract, tort, statute, or otherwise (including whether or not such controversies or claims are arbitrable) shall be submitted to mediation as a condition precedent to further proceedings. In the event no settlement is reached in mediation, any such claim shall be subject to arbitration except as hereinafter provided. Arbitration shall, unless the Parties mutually agree otherwise, be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then currently in effect with a single arbitrator under the regular track procedures, unless otherwise directed by Contractor. This arbitration provision shall be strictly enforceable in accordance with the Federal Arbitration Act; it being agreed by the Parties that this contract affects interstate commerce, Subcontractor consents to being joined and made a party in any arbitration or other legal proceeding in which Contractor is a party, and involving performance of any portion of the Sublet Work or consequences thereof, directly or indirectly. Subcontractor will cause each sub-subcontract and purchase order to each supplier to have similar provisions expressly incorporating binding arbitration and joinder requirements on each sub-subcontractor and supplier just as is required of Subcontractor. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Attorneys' fees, expert witness fees, court costs and all other reasonable and necessary costs of any suit or arbitration hearing shall be recovered by the prevailing party in addition to other relief granted. The arbitrator(s) is (are) authorized to award all relief that could be awarded by a trial judge as if the case were tried under applicable law. Subcontractor's surety agrees to be bound by the ruling in the arbitration, whether or not a party thereto. In the event any party (other than Subcontractor's surety) who is, Contractor's opinion, necessary to afford complete relief in the arbitration cannot be joined in the arbitration for any reason, then all parties are released from the obligation to arbitrate, and shall resolve the claim in any court of competent jurisdiction. Notwithstanding the foregoing provisions of this Section 14(B), Contractor may elect to litigate rather than arbitrate any controversy or claim arising out of or relating to this Subcontract if all parties against which the Contractor may have claims arising from the Project cannot be joined in arbitration. If Contractor elects to litigate such claim or controversy, mediation shall not be a condition precedent to litigation.
- (C) The prevailing party in any dispute shall be entitled to recover its attorneys' fees and litigation expenses in accordance with N.C.G.S. § 6-21.6.

ACCEPTED:

CONTRACTOR:



SUBCONTRACTOR:



Termination

15. (A) If Subcontractor at any time shall refuse or neglect to supply adequate and competent supervision, or a sufficient number of properly skilled workers or materials of the proper quality or quantity, or fail in any respect to prosecute the Subcontract Work with the promptness and diligence necessary to meet the scheduling requirements of Contractor or Customer, or fail in the performance of any obligation on its part herein contained, or otherwise delay the work of Contractor or other subcontractors, Contractor shall have the option, after 24 hours' notice to Subcontractor, without prejudice to any other remedy Contractor may have, to: (a) supplement Subcontractor's efforts with any such labor or materials deemed necessary by Contractor and to deduct the cost thereof from any money due or thereafter to become due by Contractor to Subcontractor; or (b) terminate this Subcontract, in whole or in part, and enter upon the premises and take possession of all materials, equipment or appliances, of any kind whatsoever, of Subcontractor and to employ any other person or persons to finish the Subcontract Work, or terminated portion thereof, and to provide the materials therefore, and in case of such supplementation or termination, Subcontractor shall not be entitled to receive any payment under this Subcontract which might otherwise be due it until all of Subcontractor's obligations hereunder shall be performed and payment in full therefore has been made by Customer 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 supplementing or completing Subcontractor's Work, plus any cost or damages sustained by Contractor by reason of such failure or lack of performance by Subcontractor, including attorneys' fees, such excess shall be paid by Contractor to Subcontractor. If such expenses, costs and damages exceed such unpaid balance, Subcontractor and/or its performance bond surety, if any, shall pay the difference to Contractor.
- (B) Notwithstanding anything contained herein to the contrary, Contractor may at its election, even though no grounds exist for termination under any other provision of this Subcontract, terminate this Subcontract at any time upon written notice to the Subcontractor. In the event the Contractor gives the Subcontractor such notice, Subcontractor agrees to withdraw its employees and equipment from the worksite on the effective date of the termination as specified in said notice (which effective date shall not be less than two (2) working days after the date of the notice), regardless of any claim the Subcontractor may or may not have against the Contractor. The Subcontractor's failure to do so shall entitle the Contractor to bring action for damages, including attorneys' fees and/or to bring an action for injunctive relief. In the event of such termination for convenience, Subcontractor shall be entitled to its actual cost incurred to the effective date of such termination plus a reasonable profit thereon, provided, however profit shall not be paid or allowed in the event the Subcontractor's cost exceeds the Contractor's earnings for the work performed. The Subcontractor shall not be entitled to anticipated profit or damages for any termination under this clause. Upon receipt of payments provided for above, the parties hereto shall have no further obligation to each other except for Subcontractor's obligations to perform corrective and/or warranty work relating to work actually performed by Subcontractor or any of its subcontractors prior to the termination and to indemnify the Contractor as provided for in this Subcontract. If Subcontractor is terminated for default, but that termination is subsequently adjudged to have been without cause, that termination shall be treated as a termination for convenience and this paragraph will govern Subcontractor's rights.

Miscellaneous

16. (A) The entire agreement between the Parties with respect to the Subcontract Work required is expressed in this written Subcontract, and it is agreed that this Subcontract has not been based upon any oral representations, promises or statements of any one representing any party hereto, and that this Subcontract is, therefore, based entirely upon the written documents constituting this Subcontract between the Parties, and supersedes all proposals and negotiations not expressly set forth herein. It is further agreed that this Subcontract shall not be changed, modified, abrogated, or superseded by any subsequent agreement unless it be in writing and signed by both Parties. Subcontractor shall not sublet, assign, or transfer this Subcontract or any part thereof without Contractor's written consent. Any costs incurred by Contractor resulting from or related to such assignment, with or without Contractor's consent, shall be deducted from amounts otherwise due Subcontractor hereunder, or be paid to Contractor directly by Subcontractor upon demand if the amounts then or thereafter otherwise due are insufficient to reimburse all Contractor's related costs.

ACCEPTED: CONTRACTOR:  SUBCONTRACTOR: 

- (B) Although drawn by Contractor, this Subcontract shall in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against either Party.
- (C) This Subcontract, and all provisions contained herein, shall be interpreted under the internal substantive laws of North Carolina without regard to principles of choice of law or conflicts of law. The Parties further agree that the exclusive jurisdiction for all suits shall be a state or federal court of competent jurisdiction over the Project.
- (D) Any notice, demand, or other communication required to be given or to be served upon any Party hereunder, shall be void and of no effect unless given in accordance with the provisions of this section. All notices, demands or other communications must be in writing and delivered to the person to whom the notice is directed, either: (i) in person; (ii) by United States Mail, as a registered or certified item with return receipt requested; or (iii) delivered by a delivery service that obtains a receipt evidencing such delivery. Notices, demands or other communications delivered by mail shall be deemed given and received when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper, addressed properly, with proper postage affixed. Any notice, demand or other communication given other than by certified or registered mail, return receipt requested, shall be deemed to have been given and received when delivered to the below stated address of the party to whom it is addressed. All notices, demands and other communications shall be given to the parties hereto at the following addresses:

Contractor: Kirlin-Way Mechanical
 8610 Wallisville Rd.
 Houston, Texas 77029

With Copy To: Andrews Myers, P.C.
 Attn: Ben Westcott
 3900 Essex Lane, Suite 800
 Houston, Texas 77027-5198

Subcontractor: National TAB
 105 Stone Village Dr
 Fort Mill, SC 29708
 ATTN: Stephan Gabbert

Either party hereto may change the address for notice specified above by giving the other party ten days' advance written notice of such change of address.

- (E) IN WITNESS WHEREOF, the parties hereto set their hands and seals on the day and year first above written.

 Bonds are ___ are not X required for this project.

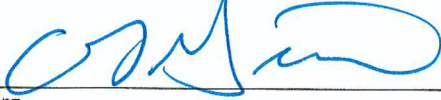
ACCEPTED: CONTRACTOR: CG SUBCONTRACTOR: [Signature]

PERFORMANCE AND PAYMENT BONDS

If forms for such bonds are enclosed with this Subcontract form, they shall be executed in duplicate by a Surety approved by the Contractor, which Surety may be selected by the Subcontractor or alternately utilizing the Surety forms if such forms are not enclosed so long as they comply with applicable Texas law. One executed copy bearing bondsman's power of attorney shall be returned with one executed copy of this Subcontract, held and firmly bound unto the Contractor of Houston, Texas, in the full and just sum of 100% of the Subcontract value.

Contractor:

KIRLIN-WAY MECHANICAL



Signature

Corey Gill
Print Name

Vice President
Title

6.26.23

Date

In the presence of:



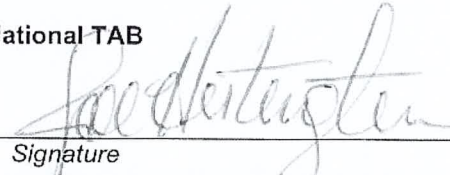
Address of Witness:

8610 Wallisville Road

Houston, Texas 77029

Subcontractor:

National TAB



Signature

Joe Hertenstein
Print Name

President
Title

06-01-2023
Date

In the presence of:

Address of Witness:

ACCEPTED:

CONTRACTOR:



SUBCONTRACTOR:

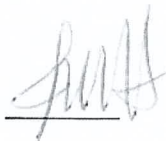


EXHIBIT A.
CONTRACTOR'S INSURANCE REQUIREMENTS OF SUBCONTRACTOR

1.0 **Definitions.** For purposes of this Agreement:

- 1.1 **Contractor Parties.** "Contractor Parties" means (a) Kirlin-Way Mechanical ("Contractor"), (b) the prime or general contractor for the Project, if any, (c) Project owner, (d) Architect, (e) any lender whose loan is secured by a lien against the Work, (f) their respective shareholders, partners, joint venturers, co-venturers, affiliates, subsidiaries, successors, and assigns, (g) any members, directors, officers, employees, or agents of such persons or entities, (h) Customer, and (i) any others required by the Construction Documents.
- 1.2 **ISO.** "ISO" means Insurance Services Office.
- 1.3 **Subcontractor.** "Subcontractor" shall include subcontractors of any tier.

2.0 **Subcontractor Insurance Representations to Contractor Parties.**

- 2.1 The insurance coverages required herein (a) represent Contractor Parties' minimum requirements and are not to be construed to void or limit Subcontractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages Subcontractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by Subcontractor in support of Subcontractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of Subcontractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- 2.2 Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If Subcontractor shall fail to remedy such breach within five (5) business days after notice by Contractor, Subcontractor will be liable for any and all costs, liabilities, damages and penalties resulting to Contractor Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Subcontractor by Contractor. In the event of any failure by Subcontractor to comply with the provisions of this Agreement, Contractor may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Subcontractor, purchase such insurance, at Subcontractor's expense, provided that Contractor shall have no obligation to do so and if Contractor shall do so, Subcontractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

3.0 **Conditions Affecting All Insurance Required Herein.**

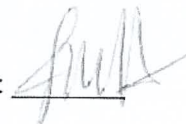
- 3.1 **Cost of Insurance.** All insurance coverage shall be provided at Subcontractor's sole expense.
- 3.2 **Maintenance of Insurance.** All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and for a period of six (6) years after substantial completion of the entire project of which the Subcontractor's Work is a part.
- 3.3 **Status and Rating of Insurance Company.** All insurance coverage shall be written through insurance companies authorized to do business in the State of Texas and rated no less than A-: VII in the most current edition of *A. M. Best's Key Rating Guide*.
- 3.4 **Restrictive, Limiting, or Exclusionary Endorsements.** All insurance coverage shall be provided to Contractor Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of Contractor.
- 3.5 **Limits of Liability.** The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- 3.6 **Notice of Cancellation or Material Reduction in Coverage.** All insurance coverage shall contain the following express provision to the extent commercially available:

ACCEPTED:

CONTRACTOR:



SUBCONTRACTOR:



In the event of cancellation or material reduction in coverage affecting a person named within the policy or an endorsement to the policy, thirty (30) days prior written notice shall be given to such person”, and the words “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon Company, its agents or representatives” shall be deleted from any cancellation provision.

3.7 Waiver of Subrogation. The Subcontractor hereby agrees to waive its rights of subrogation and recovery from the Contractor Parties with regard to all causes of property and/or liability loss and shall cause a waiver of subrogation endorsement to be provided in favor of the Contractor Parties on all insurance coverage carried by the Subcontractor, whether required herein or not.

3.8 Deductible/Retention. Except as otherwise specified herein, no insurance required herein shall contain a deductible or self-insured retention in excess of \$25,000 without prior written approval of Contractor. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at Subcontractor’s sole risk. Subcontractor shall not be reimbursed for same.

4.0 **Insurance Required.** The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required.

4.1 **Commercial General Liability Insurance**

4.1.1 Coverage. Such insurance shall cover liability arising out of all locations and operations of Subcontractor, including but not limited to liability assumed under this contract (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.

4.1.2 Form. Commercial General Liability Occurrence form (at least as broad as an unmodified ISO CG 00 01 07 98 or its equivalent) to include, but not be limited to, coverage for the Subcontractor’s premises, operations (including completed operations), products, and contractual assumption of tort liability.

4.1.3 Amount of Insurance. Coverage shall be provided with limits of not less than:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Product-Completed Operations Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000

4.1.4 Required Endorsements.

- a. Additional Insured. Additional insured status shall be provided in favor of the Contractor Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 or their combined equivalent. It is the intent of the parties to this Agreement that this Additional Insured status shall include coverage for completed operations and for the Contractor Parties concurrent and sole negligence. Notwithstanding the foregoing or anything in this Exhibit “A” or the Subcontract to the contrary, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, the Additional Insured status required hereunder shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend.
- b. Designated Construction Project(s) Aggregate Limit. The aggregate limit shall apply separately to this Agreement through use of an ISO CG 25 03 03 97 endorsement.
- c. Notice of Cancellation or Material Reduction in Coverage, as required in 3.6, above.
- d. Primary and Non-Contributing Liability. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Contractor Parties, with Contractor Parties’ insurance being excess, secondary and non-contributing. This CGL coverage shall be endorsed to provide such primary and non-contributing liability coverage.
- e. Waiver of Subrogation, as required in 3.7, above.

ACCEPTED:

CONTRACTOR:

CG

SUBCONTRACTOR:

[Signature]

4.1.5 Prohibited Endorsements. The Subcontractor's insurance coverage is not permitted to include any of the following endorsements:

- a. Contractual Liability Limitation, CG 21 39 or its equivalent
- b. Amendment Of Insured Contract Definition, CG 24 26 or its equivalent
- c. Exclusion–Damage To Work Performed By Subcontractors On Your Behalf, CG 22 94 or CG 22 95 or its equivalent
- d. Exclusion–Explosion, Collapse And Underground Property Damage Hazard, CG 21 42 or CG 21 43 or its equivalent
- e. Limitation of Coverage To Designated Premises or Project, CG 21 44 or its equivalent
- f. Any type of Classification or Business Description Limitation endorsement
- g. Any type of Construction Defect Completed Operations exclusion endorsement
- h. Any type of Habitational/Residential Exposure exclusion if the Contractor is engaged in any type of habitational/residential-related work.
- i. Any type of Punitive, Exemplary or Multiplied Damages exclusion
- j. Any type of Subsidence exclusion if the Contractor is engaged in any type of earth movement work, including but not limited to compaction, fill, or installation of storm or sewer drains.

4.1.6 Continuing Commercial General Liability Insurance. Subcontractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Subcontractor shall provide written representation to Contractor stating Work completion date.

4.2 Auto Liability Insurance

4.2.1 Coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

4.2.2 Form. Business Auto form (at least as broad as an unmodified ISO CA 0001 or its equivalent).

4.2.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000.

4.2.4 Required Endorsements.

- a. Notice of Cancellation or Material Reduction in Coverage, as required in 3.6, above.
- b. Waiver of Subrogation, as required in 3.7, above.

4.3 Workers' Compensation/Employer's Liability Insurance

4.3.1 Coverage. Such insurance shall cover liability arising out of Subcontractor's employment of workers and anyone for whom Subcontractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted. USL&H must be provided where such exposure exists.

4.3.2 PEO or Leased Employees. Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Subcontractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Subcontractor. Where Subcontractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Subcontractor is strictly prohibited from subletting any of its work without the express written agreement of Contractor and Customer.

4.3.3 Amount of Insurance. Coverage shall be provided with a limit of not less than:

<u>Workers' Compensation:</u>	Statutory limits.
<u>Employer's Liability:</u>	\$1,000,000 each accident and each disease.

4.3.4 Required Endorsements.

- a. Notice of Cancellation or Material Reduction in Coverage, as required in 3.6, above.
- b. Waiver of Subrogation, as required in 3.7, above.

ACCEPTED:

CONTRACTOR:

CG

SUBCONTRACTOR:

[Signature]

4.4 **Umbrella Liability Insurance**

- 4.4.1 **Coverage.** Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision.
- 4.4.2 **Form.** This policy shall have the same inception and expiration dates as the commercial general liability insurance required above.
- 4.4.3 **Amount of Insurance.** Coverage shall be provided with a limit of not less than \$1,000,000.
- 4.4.4 **Continuing Umbrella Liability Insurance.** Subcontractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least six (6) years following Date of Substantial Completion of the Work to be performed under this Agreement. Subcontractor shall provide written representation to Contractor stating Work completion date.

5.0 **Evidence of Insurance.**

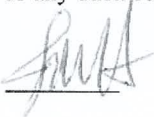
- 5.1 **Provision of Evidence.** Evidence of the insurance coverage required to be maintained by Subcontractor, represented by certificates of insurance, evidence of insurance consistent with the requirements of Chapter 1811 of the Texas Insurance Code, and endorsements issued by the insurance company or its legal agent, must be furnished to Contractor prior to commencement of Work and not later than fifteen (15) days after receipt of this Agreement. New certificates of insurance, evidence of insurance, and endorsements shall be provided to Contractor prior to the termination date of the current certificates of insurance, evidence of insurance, and endorsements.
- 5.2 **Form.** All liability insurance required herein shall be evidenced by ACORD form 25, "Certificate of Insurance", or if such form is not filed with and approved or deemed approved by the Texas Department of Insurance, then on a form filed with and approved by or deemed approved by the Texas Department of Insurance and acceptable to Contractor.
- 5.3 **Specifications.** Such certificates of insurance, evidence of insurance, and endorsements shall specify the following, excluding any such specifications as may be prohibited under Chapter 1811 of the Texas Insurance Code:
 - 5.3.1 Contractor as a certificate holder with correct mailing address.
 - 5.3.2 Insured's name, which must match that on this Agreement.
 - 5.3.3 Insurance companies affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of insurance company.
 - 5.3.4 Producer of the certificate with correct address and phone number listed.
 - 5.3.5 Additional insured status required herein.
 - 5.3.6 Amount of any deductibles and/or retentions.
 - 5.3.7 Cancellation and material reduction in coverage notification as required by this Agreement. A copy of such endorsement must be provided.
 - 5.3.8 Designated Construction Project Aggregate Limits required herein.
 - 5.3.9 Primary and non-contributing status required herein.
 - 5.3.10 Waivers of subrogation required herein.
 - 5.3.11 The certificate of insurance shall list all exclusions and limitations added by endorsement to the general liability insurance coverage.
- 5.4 **Required Endorsements.** A copy of the General Liability additional insured endorsement(s) shall also be provided.
- 5.5 **Failure to Obtain.** Failure of Contractor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Contractor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Subcontractor's obligation to maintain such insurance.
- 5.6 **Certified Copies.** Upon request of any Contractor Party, Subcontractor shall provide to Contractor a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if

ACCEPTED:

CONTRACTOR:



SUBCONTRACTOR:



necessary, shall be delivered to Contractor at least ten (10) days prior to the expiration of the previous policy.

5.7 **Commencement of Work.** Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by Contractor of any rights. Contractor shall have the right, but not the obligation, of prohibiting Subcontractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by Contractor.

6.0 **Use of Contractor Parties' or Customer's Equipment.** Subcontractor, its agents, employees, sub-subcontractors or suppliers shall use Contractor Parties' equipment only with express written permission of Contractor's designated representative and in accordance with Contractor's terms and condition for such use. If Subcontractor or any of its agents, employees, sub-subcontractors or suppliers utilize any of Contractor Parties' equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of Contractor, Subcontractor shall defend, indemnify and be liable to Contractor Parties for any and all loss or damage which may arise from such use to the fullest extent permitted by law.

7.0 **Insurance Requirements of Subcontractor's Sub-Subcontractors.**

7.1 Insurance similar to that required of Subcontractor shall be provided by all sub-subcontractors (or provided by Subcontractor on behalf of sub-subcontractors) to cover operations performed under any subcontract agreement. Subcontractor shall be held responsible for any modification in these insurance requirements as they apply to sub-subcontractors. Subcontractor shall maintain certificates of insurance from all sub-subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from sub-subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to Contractor upon request.

7.2 Subcontractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering Subcontractor's or its sub-subcontractor's property shall be Subcontractor's and its sub-subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, Subcontractor shall not be reimbursed for same. Should Subcontractor or its sub-subcontractors choose to self-insure this risk, it is expressly agreed that Subcontractor hereby waives, and shall cause its sub-subcontractors to waive, any claim for damage or loss to said property in favor of Contractor Parties.

8.0 **Release and Waiver.** Subcontractor hereby releases, and shall cause its sub-subcontractors to release, Contractor Parties from any and all claims or causes of action whatsoever which Subcontractor and/or its sub-subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by Subcontractor and/or its sub-subcontractors pursuant to this Agreement.

ACCEPTED:

CONTRACTOR:



SUBCONTRACTOR:



EXHIBIT B: FORM OF SUBCONTRACTOR LIEN WAIVER

SUBCONTRACTOR'S LIEN WAIVER AND RELEASE

[•] (the "Subcontractor") entered into a subcontract (the "Subcontract") with KIRLIN-WAY MECHANICAL, LLC (the "Contractor") dated [•] for work which was the subject of a contract with [•] (the "Customer") to perform certain labor and to furnish certain materials defined in the contract documents for the PROJECT NAME project, located at STREET ADDRESS, CITY, STATE (the "Project"). The record owner of the real property underlying the Project is [•] (the "Owner").

[END OF OPTIONS]

In consideration of Contractor's payment to Subcontractor of the sum of [•] Dollars (\$[•]), which sum represents the progress payment due to Subcontractor pursuant to Subcontractor Payment Application No. [•] dated [•] (the "Payment Application") for work performed under the Subcontract, and in acknowledgment of prior receipt of total payments from the Contractor of [•] Dollars (\$[•]) for all prior payment applications submitted:

1. The Subcontractor has paid all sums properly due (including without limitation any and all applicable federal, state, and local sales, use, excise, or similar taxes or import duties, licenses and royalties) to all of its vendors and subcontractors for any labor, materials, equipment or supplies furnished to the Project for which Subcontractor has received payment from the Contractor under prior payment applications, and that it has required its vendors and subcontractors to certify the same with respect to their vendors and subcontractors.
2. The Subcontractor will promptly pay all sums properly due (including without limitation any and all applicable federal, state, and local sales, use, excise, or similar taxes or import duties, licenses and royalties) to all of its vendors and subcontractors for any labor, materials, equipment or supplies furnished to the Project for which Subcontractor receives payment from the Contractor under the Payment Application, and that it has required its vendors and subcontractors to certify the same with respect to their vendors and subcontractors.
3. The Subcontractor unconditionally remises, releases, waives, and relinquishes all claims or rights of lien which the Subcontractor ever had or now has or may have against the Contractor, the Customer, or the Owner, or upon the Project, the real property underlying the Project, Project funds, or any buildings or other improvements thereon for labor, material or equipment furnished under the Subcontract for which the Subcontractor has already received payment under prior payment applications.
4. Effective upon receipt from the Contractor of the funds requested in the Payment Application, the Subcontractor remises, releases, waives, and relinquishes all claims or rights of lien which the Subcontractor ever had or now has or may have against the Contractor, the Customer, or the Owner, or upon the Project, Project funds, the real property underlying the Project, Project funds, or any buildings or other improvements thereon for labor, material or equipment furnished under the Subcontract for which the Subcontractor receives payment under the Payment Application.

IN WITNESS WHEREOF, Subcontractor has duly caused these presents to be signed and attested by its duly authorized officer and its corporate seal to be hereunto affixed on the [•] day of [•], 20[•].

[•]:

SWORN to and subscribed before me by _____
this

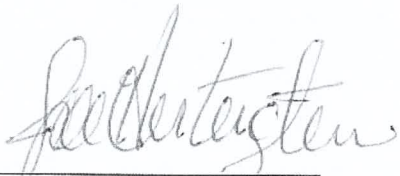
_____ day of _____, 20__.

_____ (Signature)

Notary Public for: _____

My Commission Expires: _____

(Notary Seal)

By: 
 Its: Joe Hertenstein

ACCEPTED:

CONTRACTOR: 

SUBCONTRACTOR: 