



200 Arch Street
Williamsport PA 17701
570-323-8535
Fax: 570-323-8535
fb13@lundyconstruction.com

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT ("Subcontract") is made and executed this ___ day of _____, by and between LUNDY CONSTRUCTION CO., Inc., a Pennsylvania corporation ("Contractor") having a place of business at 200 Arch Street, Williamsport, PA 17701, and _____ ("Subcontractor") having a place of business at _____. Contractor and Subcontractor are, at times, collectively referred to as the "Parties" and, individually, as a "Party."

PROJECT: As identified in the Work Order (as defined below).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties covenant and agree as follows:

1. Subcontractor Bound by Contractor's Agreement with Owner

1.1 Contractor and Subcontractor agree this Subcontract is a non-exclusive master agreement and Contractor may, from time, to time, authorize Subcontractor to perform certain construction services and supply materials and equipment (the "Work") for Contractor pursuant to this Subcontract but only upon the execution by Contractor and Subcontractor of a work order ("Work Order" OR "Purchase Order"). This Subcontract does not require either Contractor or Subcontractor to issue or accept any particular Work Order. However, if fully executed, each Work Order shall be governed by the terms and conditions of this Subcontract (whether or not executed), as it may be amended by mutual agreement, and whether or not the Work Order specifically refers to it.

1.2. Subcontractor ("Subcontractor") agrees that it has reviewed or has had the opportunity to review the prime construction contract and all documents attached to or referred to therein affecting or relating to the Work (the "Contract" or "Contract Documents") between Contractor and the owner of the Project (the "Owner") and the plans and specifications, conditions, milestone listing, schedule and addenda referred to in the Contract for the Project and Subcontractor is bound and obligated to Contractor on the same terms, provisions, and conditions as Contractor is bound and obligated to Owner by the Contract including, without limitation, any guarantees and warranties from Contractor to Owner.

1.3. Contractor shall have the benefit of all rights, remedies, and redress against Subcontractor which Owner, by the Contract, has against Contractor.

1.4. Subcontractor acknowledges this Subcontract and the Work Order shall serve in conjunction with Contractor's Contract with Owner and, in the event of any conflicts between the same, the terms and conditions that are more stringent against Subcontractor shall apply.

1.5. Subcontractor agrees this Subcontract shall govern the contractual relationship between Contractor and Subcontractor and the relevant terms and conditions of all previous correspondence including notes, meeting minutes, proposals and verbal instructions have been incorporated into this document, shall not vary the terms of this Subcontract and are no longer pertinent unless so defined explicitly in this Subcontract.

1.6 Documents attached to this Subcontract and/or referred to herein as exhibits shall become part of and are incorporated into this Subcontract.

2. Time of Commencement and Scope of Work

2.1. Subcontractor agrees to commence the Work in accordance with the Project Schedule referred to in Section 4.1 below, or upon written notification from Contractor, and to perform and complete the Work in strict accordance with the Contract Documents (which are defined as all documents referred to in or attached to this Subcontract, including, without limitation, this Subcontract and the Contract between Contractor and Owner) under the general direction of Contractor in accordance with the Project Schedule. Subcontractor shall furnish all materials, labor and equipment, cleanup, necessary services and pay sales and use taxes to fully complete the following Project Work -as more fully described in the attached Scope of Work (Section 17) or as set forth in Exhibit A (Scope of Work Attachment).

2.2. Subcontractor has inspected the job site and agrees that it is knowledgeable about and satisfied with the actual conditions thereof, including, without limitation, any subsurface conditions that might affect the Work.

2.3. Subcontractor shall not impede vehicular or pedestrian traffic on streets, driveways, or sidewalks and shall properly store and safeguard materials as directed by Contractor from time to time.

2.4. Subcontractor shall clean up and remove from the premises all debris caused by the execution of the Work hereunder and will pay for any breakage or damage caused by Subcontractor in such clean up or removal. Upon failure to remove such debris or to pay for such breakage or other damage, Contractor may remove said debris and repair or replace property so damaged and charge the cost thereof to Subcontractor.

2.5. Should Contractor provide any special hoists or elevator service for hoisting of Subcontractor's workmen or other personnel or materials, then any damages therefrom shall be the sole responsibility of Subcontractor and/or its employees which is hereby assumed by Subcontractor.

2.6. In carrying out the Work, Subcontractor shall take all necessary precautions to properly protect the finished work of other trades from damage caused by Subcontractor's operations.

2.7. Subcontractor shall cooperate with Contractor and other subcontractors whose work might interfere with Subcontractor's Work, or with whose work Subcontractor's Work might interfere, and shall participate in the preparation of coordinated drawings in areas of congestion as required by the Contract Documents, specifically noting and advising Contractor of such interference or potential interference.

2.8. Subcontractor shall be responsible for the integrity and accuracy of all shop drawings in connection with Subcontractor's Work and/or engineering in connection with Subcontractor's Work and, in the event that there shall be any extra cost or damages on account of any defect, inaccuracy, or inadequacy of such shop drawings or engineering, Subcontractor shall be responsible for such extra cost or damage.

3. Subcontract Sum and Payments

3.1 The contract sum shall be the amount noted on the Subcontract work order or purchase order ("Purchase Order" or "Work Order").

3.2. Contractor agrees to pay Subcontractor for the complete and timely completion of the Work the amount on the Purchase Order which amount includes all taxes (the "Subcontract Sum"). Progress payments, less retainage, shall be made to Subcontractor for Work performed to the satisfaction of Contractor and accepted in accordance with the Contract Documents, including changes as authorized by this Subcontract, within ...10. days after receipt by Contractor of payment from Owner for Subcontractor's Work, which receipt shall constitute a condition precedent to and the sole source of such payment by Contractor to Subcontractor.

3.3. Final payment of the last progress payment due Subcontractor, including retainage, shall be made to Subcontractor no later than 30 days after receipt by Contractor from Owner of such final payment for Subcontractor's Work.

3.4. All such progress payments and final payment are subject to receipt of such lien waivers, affidavits, warranties and guarantees as are required by the Contract Documents or Contractor. Contractor may deduct from any progress payment any sum owed it by Subcontractor or to protect against any claim or lien asserted on account of or relating to Subcontractor's Work.

3.4.1. Acceptance of final payment by Subcontractor shall be a full and complete discharge and release of Contractor. No payment hereunder, including final payment, shall be construed to be an acceptance by Owner or Contractor of defective work or improper materials.

3.4.2 Subcontractor hereby agrees to make prompt payment to all parties furnishing labor, materials, or equipment to Subcontractor in the prosecution of the Work hereunder and that such prompt payment is of the essence of this Subcontract. In the event Subcontractor or its subcontractors or materialmen or any party acting through or under it or them fails to pay any sum of money due any party furnishing labor, materials, or equipment hereunder, Contractor is hereby authorized to retain out of any payment due or to become due hereunder said unpaid sum and to pay same directly to the party to whom such sum is due.

4. Schedule of Work

4.1. Time is of the essence with respect to Subcontractor's performance of the Work in accordance with the project schedule ("Project Schedule") furnished in connection with the Work. Subcontractor shall provide Contractor with any requested scheduling information for Subcontractor's Work. The Project Schedule, including the Work of Subcontractor, shall be prepared by Contractor and may be revised by Contractor as Contractor shall deem necessary while the work progresses, without additional compensation to Subcontractor unless allowed and paid for by Owner in accordance with the Contract Documents. No charges for out of sequence work shall be allowed unless agreement is made in advance in writing. Milestone dates shall be per Owner's schedule. Sufficient manpower shall be employed by Subcontractor to meet the Project Schedule dates and no charges for overtime shall be allowed.

4.2. Subcontractor acknowledges the entire Project must be complete and ready for use to Owner's satisfaction pursuant to the time set forth in the Progress Schedule referred to above in Section 4.1, subject to extensions of time agreed to in writing. Subcontractor agrees to complete its Work in accordance with the Project Schedule developed by Contractor, and as amended by Contractor from time to time, and that Subcontractor will bear responsibility for any delays (including any penalties or damages assessed) arising from its delay in performing the Work.

4.3. Subcontractor shall promptly submit shop drawings and samples required by Contractor in order to perform its Work efficiently, expeditiously and in a manner that will not cause delay in the progress of the Work of Contractor or other subcontractors.

4.4. Subcontractor shall furnish periodic progress reports on the Work as reasonably requested by Contractor, including information on the status of materials and equipment under this Subcontract which may be in the course of preparation or manufacture.

5. Changes

5.1. Contractor may direct Subcontractor in writing to make changes in Subcontractor's Work. Claims for extra or changed work will be allowed only upon prior written authorization by Contractor and must be based upon a lump sum approved by Contractor in writing in advance of the extra or claimed work or upon daily work sheets showing the cost of materials, labor rates, and the hours worked. These daily work sheets shall be approved each day and signed by Contractor's Superintendent. In the absence of such signed work sheet or written approval of lump sum, no payment shall be made for extra or changed work. Allowable markups for direct costs on time and material changes shall be allowed if approved by Contractor in writing in advance. These markups shall apply to this Subcontractor and all of its lower tier subcontractors. At no time shall Contractor be liable to Subcontractor for markups greater than those allowed to Contractor from Owner. See below for other requirements pertaining to Change Orders.

5.2. Change Order Markups: As allowed by governing Contract or as follows, whichever is less:

5.2.1 For change order labor 10% for overhead and 5% for profit shall be allowed;

5.2.2 For change order materials, 10% for overhead and 5% for profit shall be allowed;

5.2.3 For change order equipment: 10% for overhead and 5% for profit shall be allowed;

5.2.4. For subcontractors: 5%.

5.3 Subcontractor's time for completion of the Work and stages thereof, and Subcontractor's obligation to adhere to the Project Schedule, shall not be enlarged or changed, whether or not extras or changed work are required, except upon written approval of Contractor.

5.4. Subcontractor shall make all claims promptly to Contractor for additional cost, extensions of time, damages for delays or other causes in accordance with this Subcontract and the Contract Documents. Any such claim which will affect or become part of a claim which Contractor is required to make under the Contract Documents within a specified time period or in a specified manner shall be made in sufficient time and manner to permit Contractor to satisfy the requirements of the Contract Documents. Such claims shall be received by Contractor not less than five working days preceding the time by which Contractor's claim must be made. Failure of Subcontractor to make such a timely claim shall bind Subcontractor to the same consequences as those to which Contractor is bound.

6. Subcontractor's Insurance

6.1. Prior to commencing the Work, Subcontractor shall procure, and thereafter maintain, at its own expense, until final acceptance of the Work or later as required by the terms of this Subcontract or any individual Work Order, insurance coverage required by the Contract Documents, or as set forth on the attached Exhibit B which is incorporated into this Section 6, whichever shall be later. At a minimum, and subject to modification in individual Work Orders, the types of insurance and minimum policy limits specified shall be maintained in a form and from insurers acceptable to Contractor as set forth below. All insurers shall have at least an A-(excellent) rating by A.M. Best and be qualified to do business in the state where the Project is located. The policies of insurance shall be in such form and shall be issued by such company as may be satisfactory to Contractor. Prior to starting the Work, Subcontractor shall supply to Contractor a certificate for such insurance. In the event that Subcontractor does not timely comply with the foregoing provisions concerning insurance, Contractor, upon notice to Subcontractor, may immediately obtain such insurance on Subcontractor's behalf and, at Contractor's election, may deduct the cost thereof, plus interest at the annual rate of 8%, from any sums otherwise due from Contractor to Subcontractor or may separately bill Subcontractor for the same, payment of which shall be due within three (3) business days from billing.

6.2 The insurance policy(ies) shall provide a defense and indemnification of Contractor, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by Subcontractor's acts or omissions or the acts or omissions of those acting on Subcontractor's behalf.

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

6.4 In the event the insurance company(ies) issuing the policy(ies) required by this Section 6 deny coverage to Contractor, Owner or additional insureds, Subcontractor or Sub-Subcontractor will, upon demand by Contractor, defend and indemnify Contractor, Owner and such additional insureds at Subcontractor's expense.

6.5 Contractor and Owner, along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy (using CG2010 11 85, a combination of CG2010/CG2037 or equivalent), which must be primary and noncontributory with respect to the additional insureds. Subcontractor shall continue to carry Completed Operations Liability Insurance for at least (3) years after either ninety (90) days following Substantial Completion of the Work or final payment to Contractor on any individual Project, whichever is later.

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

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

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

7. Indemnity

7.1 Subcontractor hereby assumes the entire responsibility and liability for all Work, supervision, labor and materials provided under any Work Order issued pursuant to this Subcontract, whether or not erected in place and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the entirety of the Work by Owner. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefor, and shall repair, rebuild, and make good said loss, damage or destruction at Subcontractor's cost. Subcontractor shall be liable to Contractor for all costs Contractor incurs as a result of any failure of Subcontractor, or any of its suppliers or subcontractors of any tier, to perform.

7.2 To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless Contractor, Owner and their respective officers, directors, employees and agents ("Indemnified Parties") from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities (including all costs, reasonable attorneys' fees, consequential damages, and punitive damages), arising out of or resulting from, or alleged to arise out of or resulting from, the performance of Subcontractor's Work under the Subcontract and any Work Order, whether such claim, damage, demand, loss or expense is attributable to bodily injury, personal injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; but only to the extent attributable to the negligence of Subcontractor or any entity for which it is legally responsible or vicariously liable, and regardless whether the claim is presented by an employee of Subcontractor. Such indemnity obligation shall not be in derogation or limitation of any obligation or liability of Subcontractor or the rights of Contractor contained in this Subcontract or otherwise. This indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under any workers' compensation acts, disability benefits acts or other employee benefits acts and includes any loss or injury suffered by an employee of Subcontractor. This indemnification shall be in addition to any indemnity liability imposed by the Contract Documents, and shall survive the completion of the Work or the termination of this Subcontract. Subcontractor's assumption of liability is independent from, and not limited in any manner by, Subcontractor's insurance coverage obtained pursuant to Section 6 or otherwise.

8. Acceptance and Damage to Work

8.1. All loss or damage to Subcontractor's Work resulting from any cause whatsoever shall be borne by Subcontractor solely at its risk and expense until final acceptance by Owner, Architect and Interior Designer for both completeness and desired quality and in accordance with the Contract Documents. Subcontractor shall, at all times and at its expense, protect all of its labor, material, supplies, tools and equipment and that of its mechanics, laborers, materialmen and Sub-subcontractors against any damage, injury, destruction, theft or loss and in no event shall Contractor be liable or responsible therefor, for all of which Subcontractor shall be solely responsible. Subcontractor shall, at its expense, promptly repair or replace damage to work of others, or to the Project, resulting from Subcontractor's act(s) or omission(s) or that of any person or entity for which Subcontractor is responsible or vicariously liable.

8.2. Subcontractor hereby guarantees all labor, materials and work furnished hereunder against all defects which may develop within one (1) year from date of acceptance by Owner or within the guarantee period set forth in the Contract Documents, whichever is longer. Pursuant to such guarantee, Subcontractor agrees to remove, repair and/or replace, as Contractor may require, without charge to Contractor, any and all defective workmanship, materials, equipment and work, to pay any and all costs, expenses and damages, including labor charges, in connection therewith, as well as for the removal, repair and replacement of any other work which may be damaged as a result thereof, and to remedy any defects, latent or patent, except those due to ordinary wear and tear or improper use and maintenance; and to pay for all damage to the property of Owner, Contractor or any other party resulting therefrom. All guarantees and warranties herein provided shall extend to Owner or other awarding authority and to Contractor. The foregoing shall be in addition to, and not in lieu of, any and all warranties and remedies provided by law.

9. Compliance with Law and Safety

9.1. All Work to be furnished by Subcontractor must strictly comply with all applicable laws, regulations, statutes, ordinances and directives of any governmental entity and agency (hereinafter "Laws") now in force or hereafter in effect. All work, labor, services and materials necessary to comply with the Laws will be furnished by Subcontractor without additional compensation. Subcontractor agrees to indemnify, hold harmless, reimburse and defend Contractor and Owner from and against any and all claims, damages, liabilities, losses and expense, including without limitation, attorneys' fees and costs of litigation or investigation in anticipation of or preparation for litigation, caused directly or indirectly by its failure to comply with such Laws.

9.2. Subcontractor agrees that prevention of accidents and injuries to workmen engaged in the Work is solely its responsibility. Subcontractor shall comply with all applicable safety laws and with any safety standards established during the progress of the Work by Contractor. If requested, Subcontractor shall submit a safety plan for review by Contractor. The review of any safety plan by Contractor shall not be deemed to release Subcontractor or in any way diminish its liability, by way of indemnity or otherwise, as assumed by it under this Subcontract.

9.3. When so ordered, Subcontractor shall stop any part of the Work which Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken, with no additional compensation to Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from payment due to Subcontractor. Subcontractor shall timely submit copies of all accident or injury reports to Contractor.

9.4. Subcontractor acknowledges and agrees the job site shall be drug and alcohol-free and that no officer, agent or employee of Subcontractor shall be at the job site or perform any of the Work under the influence of drugs or alcohol. Contractor may, at any time, and without prior notice, at Contractor's expense, require any such officer, agent or employee to be tested for the influence of drugs or alcohol and, if such tests are positive, require that such officer, agent or employee be barred from the job site without any liability to Contractor and Subcontractor shall hold harmless, reimburse, indemnify and defend Contractor (by counsel of Contractor's choice) from and against any such liability, claims, damages or loss on account of barring such officer, agent or employee from the job site including, without limitation, Contractor's attorney's fees and costs of litigation or preparation for litigation.

9.5. In Contractor's discretion or at the discretion of Owner, Contractor may declare the job site to be smoke-free and require that none of Subcontractor's officers, agents or employees or any officers, agents or employees of Subcontractor's subcontractors be permitted to smoke at the job *site*, whether cigarettes, cigars, pipes or other forms of smoking and, in the event of violation, Contractor shall have the same rights and protections as are given to Contractor under Section 9.4 above with regard to barring from the job site any officer, agent or employee testing positive for being under the influence of drugs or alcohol.

10. Equal Opportunity and Employment Practices

10.1. During its performance of the Work, Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, age or national origin. Subcontractor shall comply with any and all equal opportunity or affirmative action requirements or plans as set forth in the Contract Documents. Subcontractor shall also follow all Affirmative Action/Equal Employment Opportunity requirements per Owner's requirements or legal governmental authorities having jurisdiction.

10.2 Subcontractor shall be responsible for the maintenance and observance of sound labor practices by it and its subcontractors, and shall take all steps reasonably necessary to avoid labor disputes and the potential delay and disruption arising therefrom. In particular, Subcontractor shall assure the Trade Union affiliations of persons employed by him and his subcontractors in the performance of the Work are compatible with the employees of other subcontractors on the site. Subcontractor is advised that Contractor will not subcontract any work that is to be done at the site of the Project and which is covered by a collective bargaining agreement to which Contractor is a party, except to a Subcontractor bound by the terms of the applicable collective bargaining agreement. Subcontractor acknowledges the contents of this Section 10.2 and, by signing or doing the Work under this Subcontract, represents that it is a party to the applicable collective bargaining agreement. If, after the execution of or performing Work under this Subcontract, Contractor becomes aware that Subcontractor is not a party to the collective bargaining agreement, Subcontractor shall be liable to Contractor for any costs or damages resulting from delays incurred or due to cancellation of this Subcontract or the Work Order.

11. No Assignment -Subcontractor agrees: (a) that it will not assign this Subcontract or any moneys due it or to become due hereunder or any portion of the Work without first obtaining the written consent of Contractor, which consent may be withheld for any reason or no reason; and (b) that Contractor shall have the right to set off against any moneys due Subcontractor under this Subcontract for any claim or claims against Subcontractor, whether arising under this Subcontract or any other Subcontract or Subcontracts between the Parties.

12. Governing Law, Venue and Service -This Agreement shall be construed under, governed by and enforced in accordance with the laws of the Commonwealth of Pennsylvania. The venue of any proceeding relating to this Subcontract or the Work shall, at the sole option of Contractor, be Lycoming County, PA. Subcontractor further agrees that valid service of

process in any proceeding may be made upon it by certified mail, return receipt requested, and concurrently by ordinary mail, or by a nationally recognized overnight courier at the address first herein above set forth or such other address as Subcontractor may hereafter furnish in writing and that such service shall be sufficient to confer personal jurisdiction over Subcontractor upon the tribunal conducting such proceeding. Subcontractor further agrees that, at Contractor's sole option, such proceeding may proceed in such Court as is selected by Contractor, or by way of arbitration, whether by Complaint, Counterclaim, Cross-claim, Third Party Complaint or otherwise.

13. Termination for Cause or Convenience

13.1. If Subcontractor at any time fails to supply sufficient properly skilled workmen or materials or equipment of the proper quality and quantity, or fails in any respect to prosecute the Work with promptness and diligence, or causes by any act or omission the stoppage or interference with the Work of Contractor or other subcontractors, or fails in the performance of any of the covenants herein contained, or is unable to meet his debts as they mature, or, if Subcontractor shall file for any type of bankruptcy under the Federal Bankruptcy Laws or have filed against it a Bankruptcy Petition, or if Subcontractor shall make a general assignment for the benefit of creditors or shall have a receiver be appointed for it on account of the insolvency of Subcontractor, or fails to submit to Contractor, promptly upon Contractor's request, satisfactory evidence of payment by Subcontractor of all indebtedness incurred for material, labor and equipment included in any previous payment by Contractor to Subcontractor or, in Owner's or Contractor's sole judgment, Subcontractor fails to comply with the requirements of the Contract Documents, Contractor may, at its option, at any time after serving forty-eight hours (or less, if reasonable under the circumstances) advance written notice of such default concerning Subcontractor's failure to cure such default within the time stated in such notice, terminate Subcontractor's engagement under this Subcontract by delivering written notice of termination to Subcontractor. Immediately thereafter, and without the necessity of a Court Order, Contractor may take possession of the Work, materials, tools, appliances and equipment of Subcontractor at the building site, and, through Contractor's employees or others, provide the labor, equipment and materials to prosecute Subcontractor's Work on such terms and conditions as shall be deemed necessary, and shall deduct the cost thereof, including all charges, expense, losses, cost, damages and attorney's fees incurred as a result of Subcontractor's failure to perform from any money then due or thereafter to become due to Subcontractor.

13.2. if Contractor so terminates the engagement of Subcontractor, Subcontractor shall not be entitled to any further payments under this Subcontract until Subcontractor's Work has been completed and accepted by Owner, and payment has been received by Contractor from Owner with respect thereto. In the event the unpaid balance due Subcontractor exceeds Contractor's costs for completion, the difference shall be paid to Subcontractor; but, if such costs for completion exceed the balance due Subcontractor, Subcontractor agrees promptly to pay the difference to Contractor, together with interest thereon at the annual rate of 12%, compounded annually, from notice of the amount due until full payment thereof.

13.3. Contractor shall also have the right to terminate this Subcontract, by written notice, without Subcontractor being at fault, for any cause, for no cause, or for its own or Owner's convenience, and require Subcontractor to immediately stop work. In such event, Contractor shall pay Subcontractor for the Work actually performed in an amount proportionate to the Subcontract Sum, at such time as Contractor receives payment from Owner for such work. Contractor shall not be liable to Subcontractor for any other costs and expenses nor for prospective profit for Work not performed. Any Subcontract termination based upon a default by Subcontractor which is subsequently determined to have been erroneous shall be treated as a termination for convenience in accordance with this Section 13.3.

14. Waiver of Liens

14.1. Without limiting the generality and applicability of this Section 14 of this Subcontract, the applicable section of the Contract between Owner and Contractor concerning Waiver of Liens is hereby incorporated into this Subcontract as though set forth in verbatim, and all provisions of the Contract Waiver of Liens section shall be deemed a part of this Subcontract, and Subcontractor agrees to all provisions of the applicable Contract section concerning Waiver of Liens as it applies to Subcontractor and its Work. Subcontractor further agrees to bind all of Subcontractor's subcontractors, in writing, with respect to Waiver of Liens to the same extent as Subcontractor is bound by this Section 14.

14.2. If at any time there shall be evidence of any lien or claim for which, if established, Owner or Contractor or its sureties might become liable and which is chargeable to Subcontractor, Contractor shall have the right to retain out of any payment due or to become due hereunder to Subcontractor an amount sufficient to completely indemnify Owner and Contractor and its sureties against such lien or claim. The provisions of this Section 14.2 shall not require Contractor to determine or adjust any claims or disputes between those parties furnishing labor, materials or equipment hereunder or to withhold any money for their protection; nor shall Contractor be liable to any party for its failure to do so.

15. Miscellaneous

15.1. This Agreement shall bind and inure to the benefit of the Parties hereto and their successors and permitted assigns.

15.2. This Agreement may be signed in one or more counterparts, each and all of which shall be deemed to be one and the same document.

15.3. This Agreement with a copy of any Party's signature shall be as fully valid and effective as this Agreement with the original signature of such Party.

15.4. Any written notice contemplated, required or authorized by this Subcontract shall be deemed to have been duly given if sent by certified mail, return receipt requested, telegram, telefax or other facsimile transmission to the Party for whom such notice is intended at the address for that Party first set forth hereinabove or to such other address for such Party as such Party may hereinafter furnish by like notice.

15.5. This Subcontract contains the entire understanding and agreement between the Parties hereto and all other prior and contemporaneous promises, agreements and understandings between the Parties hereto, whether written or oral or express or implied, with respect to the subject matter hereof, are merged in and are superseded by this Subcontract. This Subcontract may not be changed or amended except by a writing signed by the Party to be charged.

15.6 The terms "herein," "hereby" and "hereunder" and like or similar terms refer to this Subcontract as a whole unless the context indicates otherwise.

16. Exhibits -The following Exhibits are attached hereto and made a part hereof:

Exhibit A -Scope of Work (if used or as noted in cover sheet) and Work Order Exhibit 8 -Insurance Requirements Exhibit C -Contract Document List Exhibit D -Project Schedule Exhibit E -Proposal (informational purposes only) (if applicable)

17. Scope of Work

17.1. The scope of work for this project shall be as further described below or as set forth on the attached Exhibit A which is incorporated herein, but shall be controlled and limited by the description, provisions and conditions of the Contract. To the extent that any of the terms, conditions and provisions of Exhibit A are inconsistent or in conflict with the Contract, the terms and provisions of the Contract shall control.

17.2 All Plans submitted by Subcontractor shall be signed and sealed by a licensed professional licensed by the State in which the Project is located as may be required by such State or by Contractor.

17.3 All work, labor and materials as required by project plans, specifications, addenda, specific and general scope are subject to the following:

- a. This subcontract includes all labor, materials, and equipment for completion of the Work; including, without limitation, come-backs and punchlist.
- b. Coordination with other trades as required to maintain job progress.
- c. All work shall conform to all OSHA guidelines and safety regulations.
- d. All daily reports, manning reports (EEO), and other applicable paperwork must be submitted according to Contractor's requirements.

18. Accounting Records. Subcontractor shall keep such full and detailed accounts of all items entering into the Work including, but not limited to, labor, materials and equipment, as may be necessary for full, accurate and proper financial management under this Subcontract. Contractor and its authorized representatives shall, at all reasonable times, be afforded access to, and shall have the right to inspect and audit, all of Subcontractor's records, including books of account, payroll records, correspondence, memoranda, instructions, drawings, receipts, vouchers, and similar data relating to the Work ("Records"). Subcontractor shall preserve all Records for a period of three (3) years after final payment or for such longer period as may be required by Contractor or by law.

19. Correction And/Or Completion of Work and Contractor's Right to Carry Out The Work

19.1 If Subcontractor fails to correct Work that is not in accordance with the requirements of the Contract Documents ("Defective Work") or otherwise fails to prosecute the Work diligently and in accordance with the requirements of the Contract Documents, then Contractor, upon two (2) days written notice (or, if reasonable under the circumstances, by oral notice and/or such lesser time as is reasonable) to Subcontractor to cure and Subcontractor's failing to cure within such time, may take action to correct such Defective Work or complete Work including, but not limited to, stopping the Work, correcting Defective Work, supplementing Subcontractor's work force with Contractor's own forces, hiring a different Subcontractor and any other actions deemed necessary by Contractor. At Contractor's sole option, Contractor may deduct the cost of any such actions from any payment then or thereafter due Subcontractor, or issue a Back Charge (as defined below) to Subcontractor. Any such actions by Contractor shall be without prejudice to any other remedy Contractor may have.

19.2 A Back Charge is a billing from Contractor to Subcontractor for costs incurred by Contractor to correct, repair or replace Defective Work or complete Work. At Contractor's sole option, Contractor may notify Subcontractor in writing of Defective Work and request recommendations for methods of correction. Subcontractor shall evaluate all recommended methods and select the most economical and advantageous method for Contractor. After correction of the Defective Work or Contractor's completion of incomplete work, Contractor will issue a Back Charge invoice for all costs incurred by Contractor. Subcontractor agrees to pay any such Back Charge invoices to Contractor within thirty (30) days of receipt. Contractor shall have the right to set off any unpaid Back Charges

invoices or other amounts owed by Subcontractor to Contractor against any amounts otherwise due or thereafter to become due to Subcontractor.

19.3 Prior to acceptance of the Work by Owner and Contractor, and unless otherwise specifically directed by Contractor, Subcontractor shall promptly remove from the site all Defective Work, regardless of whether incorporated into the Project, and shall promptly replace and re-execute all such Defective Work to conform with the requirements of the Contract, and shall make good all work of other contractors or subcontractors destroyed or damaged by such removal or replacement. The obligations of Subcontractor pursuant to this Section 19 extend to and include material, equipment or other portions of the Work manufactured or furnished by third party vendors, suppliers, Subcontractors or Contractor regardless of the form of any third party guarantees with respect to such items, unless otherwise directed by Contractor.

19.4 If Subcontractor refuses to remove Defective Work, Contractor may remove and store the same at the expense of Subcontractor. Contractor may, upon ten (10) days written notice, sell Defective Work at auction or by private sale and shall account to Subcontractor for the proceeds thereof, after deducting all the costs and expenses incurred by Contractor in connection with such action.

19.5 If Contractor prefers to accept Defective Work, Contractor may do so instead of requiring the Defective Work to be removed or corrected, in which case the Contract Sum will be reduced as appropriate and equitable.

IN WITNESS WHEREOF and intending to be legally bound, the Parties have executed this Subcontract as of the dates set forth below, the latest of which shall be deemed to be the date of this Subcontract.

Lundy Construction Co., Inc.

By: _____

Dated: _____

Name Printed: _____

Title: _____

Subcontractor:

By: _____

Dated: _____

Name Printed: _____

Title: _____

EXHIBIT "A" -SCOPE OF WORK

EXHIBIT B -INSURANCE REQUIRMENTS

The Subcontractor shall procure and maintain, prior to starting the Work, at its own expense, insurance in accordance with the following:

A. Comprehensive Automobile Liability

- 1 Bodily Injury \$1,000,000 Combined Single Limit for Each Occurrence
- 2 Property Damage \$1,000,000 Each Occurrence

This auto insurance shall include, at a minimum, all owned/leased vehicles including nonowned and hired vehicles.

B. Workers' Compensation Insurance subject to the laws of the State of Pennsylvania (or the State where the Work is being performed) including Employer's Liability Insurance with the following coverage details:

1. Statutory Benefits of Pennsylvania (or State being worked in) or the following, whichever is higher:

- (a) \$100,000 Each Accident
- (b) \$100,000 Each Employee for Injury by Disease
- (c) \$500,000 Aggregate for Injury by Disease

2. Employer's Liability \$1,000,000/1,000,000/1,000,000

C. Comprehensive General Liability Insurance (excluding Automobile Liability) including Completed Operation coverage for a period of three years after final acceptance of work by Owner shall be provided with the following limits:

- 1 \$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)
- 2 \$2,000,000 General Aggregate per Project
- 3 \$2,000,000 Products & Completed Operations Aggregate
- 4 \$1,000,000 Personal and Advertising Injury Limit

C1. Subcontractor shall provide Excess Umbrella coverage with the limits as required by Owner or Owner's representative and, in no case, shall that be less than \$10,000,000.

C2. Lessor limits may be entertained for smaller subcontractor requests and approval at the sole discretion of Lundy Construction Co., Inc.

D. Subcontractor shall supply to Contractor an insurance certificate that names as additional insureds the following parties on all General Liability and excess/umbrella policies, evidenced by certificates of insurance endorsements as specified in certificate language.

- Lundy Construction Co., Inc., it is officers, directors, owners and employees.
- Project Owner

E. The policy shall be endorsed to indicate the coverage provided to the additional insured shall be primary and noncontributory to any other available/applicable insurance with respect to the Work associated with this Subcontract.

F. For all insurance policies, a 30-day written cancellation notice to Contractor and Owner

Certificate Holder: Lundy Construction Co., Inc.
 200 Arch Street

Williamsport PA 17701



CERTIFICATE OF LIABILITY INSURANCE

OP ID: .

DATE (MM/DD/YYYY)

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).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A:	NAIC #
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	X					EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
	AUTOMOBILE LIABILITY <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						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0		X				EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER 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 (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

LUNDY CONSTRUCTION CO., INC., ITS OFFICERS, DIRECTORS, OWNERS AND EMPLOYEES AND THE PROJECT OWNER ARE NAMED AS ADDITIONAL INSUREDS. INSURANCE IS PRIMARY & NON CONTRIBUTORY

CERTIFICATE HOLDER**CANCELLATION**

Lundy Construction Co. Inc
200 Arch St
Willilamsport, PA 17701

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

1.

EXHIBIT "D" -PROJECT SCHEDULE

EXHIBIT "E" -PROPOSAL (INFORMATIONAL PURPOSES ONLY)