

AGREEMENT made this ___ day of _____, between **STROUDWATER CONSTRUCTION CO., INC.**, 96 Ocean Street, South Portland, ME (hereinafter called the "Contractor"), and _____ (hereinafter called the "Subcontractor").

WITNESSETH AS FOLLOWS:

WHEREAS, Contractor has entered into a contract with **Insert Owner Name & Address** (hereinafter called the "Owner") for the construction of **Insert Project Name**

in accordance with the terms of the contract documents, plans, specifications, and addenda thereto and all other documents referred to therein, as prepared by **Insert Design Professional Name and Address** (hereinafter called the "Architect or Engineer"), all of which are hereinafter referred to as the "General Contract"; and

WHEREAS, part of the labor and materials required to be furnished by the Contractor in the completion of the General Contract is the labor and materials which the Subcontractor herein agrees to perform and furnish:

THEREFORE in consideration of agreements herein contained, Subcontractor agrees with Contractor as follows:

1. Scope of Work. The Subcontractor shall furnish all of the materials and perform all of the work necessary to construct and complete, in exact accordance with the terms, drawings and specifications of the General Contract, to the satisfaction and acceptance of the Contractor, Owner, Engineer, and Architect, all of the following described work:

See your proposal dated _____ attached and made a part of this contract.

Total Contract

\$ XXXXXX
\$ XXXXXX

You will be held responsible for meeting all OSHA requirements.

The General Contract is incorporated herein and made a part of this Agreement and the General Contract shall control the construction of the above described work except where this Agreement specifically provides otherwise. At his own expense and cost, Subcontractor shall obtain all necessary permits and conform strictly to laws and ordinances in force in the municipality, county, and state where the work is to be performed. Before this Agreement shall be enforceable against Contractor, the Subcontractor shall be approved by the Owner for the performance of the work set forth herein.

2. Time of Completion. Subcontractor agrees to commence the work to be performed under this Agreement immediately after compliance with all conditions of this Agreement which are preconditions to the commencement of work, and to proceed with said work continuously and diligently without delays of any kind to any other work set forth in the General Contract or to payments by Owner to Contractor or the final acceptance of the work by Owner and to complete said work, subject only to delays occasioned by Acts of God, in such time and manner that Contractor may complete all of the work included in the General Contract not later than the date called for completion in said General Contract, and in default thereof Subcontractor hereby assumes and agrees to pay to Contractor as liquidated damages that percentage of the liquidated damages assessed against Contractor under the terms of the General Contract which Subcontractor's contract price bears to the contract price of said General Contract or that percentage of the liquidated damages assessed against the Contractor under the terms of the General Contract which are in fact caused by the delay of the Subcontractor, whichever is greater. The Contractor shall have the right to exercise complete control over the work to be done by the Subcontractor, which right shall not in any way limit the obligations of the Subcontractor herein.

3. Contract Price and Progress Payments. The Contractor shall pay the Subcontractor for the performance of this Agreement the total sum of **dollars(\$ XXXXXXXXXXXXXXX)** for all work and/or materials covered-by this Agreement, subject to authorized additions or deductions, payable in installments and subject to conditions as of follows:

- A. Ninety-Five (95%) per cent of the value of the work completed by Subcontractor and included in Contractor's payments shall be paid to the Subcontractor within five (5) days after the receipt of said payments by Contractor.
- B. The balance of Five (5) Percent shall be paid after the completion and acceptance of the entire work to be performed by Contractor under the General Contract, and within five (5) days after receipt by Contractor from Owner of its final payment, including all retention's and subject to the following provisions:
 - (i) All applications for progress payments shall be made on forms as furnished or directed by the Contractor.
 - (ii) The Subcontractor shall furnish, within ten (10) days from request of the Contractor, all forms of affidavits, certificates and such other data as may be required by the Contractor to fully comply with all of the requirements of the Owner.
 - (iii) A general release and waiver of liens and right of liens in form as directed by the Contractor shall be executed and delivered by the Subcontractor before final payment shall be made.
 - (iv) The Subcontractor shall submit, upon demand, evidence satisfactory to the Contractor that no unpaid claims exist against him for labor, materials, insurance, sales tax or other obligations incurred by the Subcontractor in the performance of the work.

4. Variations. All additions to or deductions from the work of the Subcontractor as herein defined, and all claims for extras, extensions of time, and for damages for delay or other reasons shall be made in the manner provided for like claims to be made by Contractor to Owner in the General Contract; provided, however, that Subcontractor shall make such claims within one (1) week from the date of the occurrence giving rise to same.

No verbal order, objection, claim or notice shall be of any effect, and Contractor and Subcontractor agree to make all such communications in writing.

The Subcontractor shall not be entitled to receive any extra compensation of any kind whatsoever, regardless of whether the same was ordered by the Contractor or any of its representatives, unless such extra order is given in writing and signed by an Officer or Project Manager of the Contractor. The parties hereto agree that no oral modification of this Agreement shall have any force or effect.

5. Arbitration. All disputes that may arise under this Agreement and in the performance of work hereunder, other than questions concerning the true meaning of drawings and specifications used in the work this Agreement describes and the quality of materials used by the Subcontractor, shall be submitted to arbitration at the option of Contractor. The arbitration decision shall be final without exception or appeal, and binding upon Contractor and Subcontractor who mutually hereby waive their rights to any actions at law or in equity on such disputes. The arbitrator shall be a single disinterested party chosen by Contractor and Subcontractor or by their nominees or such other board of arbitrators as the Contractor and Subcontractor or their nominees may elect. The fees and expenses of the arbitrators' board of arbitrators shall be shared equally by the Contractor and Subcontractor, during the arbitration; provided, however, that the prevailing party shall be entitled to recover all arbitration costs, arbitrator fees, and reasonable attorney's fees and costs as part of the arbitration award.
6. Inspection. Subcontractor agrees to provide sufficient safe facilities at all times for inspection of work by Contractor, Owner, Engineer, and Architect or their representatives, and, on request of Contractor, to produce all vouchers showing amount and quality of materials used.
7. Third Party Liability. The Subcontractor hereby assumes the entire responsibility and liability for any and all injury to or death of any and all persons, including the Subcontractor's employees, and for any and all damage to property caused by or resulting from or arising out of any act or omission on the part of the Subcontractor, its agents or employees, in connection with this Agreement or of the prosecution of the work hereunder, and the Subcontractor shall save harmless the Owner and Contractor from and against any and all loss and/or expenses which they or either of them may suffer or pay as a result of claims or suits due to, because of, or arising out of any and all such injuries, deaths and/or damages, and the Subcontractor, shall assume and defend, at his own expense, any suit, action or other legal proceedings arising there from. The Subcontractor's obligation under this provision shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable by or for the Subcontractor under worker's compensation acts, disability benefits acts or other employee benefits acts. In addition to the foregoing indemnity, the Subcontractor shall provide, and keep in force Workmen's Compensation Insurance in accordance with the requirements of the General Contract, and property damage insurance and fire insurance in a carrier(s) satisfactory to the Contractor, and shall provide evidence of such coverage by delivering to the Contractor, at his demand, signed duplicates of the policies.
8. Warranty. The Subcontractor agrees to furnish all guarantees required for his work by the General Contract, and further to execute a written guarantee for his work, agreeing to make good, without cost to Owner or Contractor, any and all defects due to imperfect workmanship or materials which may appear within one (1) year after final payment.
9. Termination. The Contractor shall have the same power to terminate this Agreement that the Owner has under the General Contract.
10. Assignment. The Subcontractor shall not assign this Agreement or any part thereof or any moneys due or to become due hereunder, without the written consent of the Contractor.
11. Breach. Should the Subcontractor, at any time, fail to provide a full crew of skilled workmen and/or all necessary and proper materials for the work to be done, or fail in any respect to prosecute work with promptness and diligence or fail in the performance of any of the covenants on its part herein contained, or if it should make a general assignment for the benefit of its creditors, or if a Receiver shall be appointed for it in any court, or should a petition in bankruptcy or for reorganization be filed by or against it, under any of the provisions of the bankruptcy act of the United States of America, then the Contractor shall have the right to either: (a) Supply such number of men and quantity of material as the Contractor deems advisable in and about the completion of such work, and charge the cost thereof, together with all other reasonable expenses, to the Subcontractor; or (b) It may terminate this Agreement entirely and the Subcontractor shall be entitled to no moneys of any kind, except the fair market value of his work completed but shall nevertheless remain liable for any damage that the Contractor has suffered; or (c) The Contractor may on seven (7) days written notice to Subcontractor relet the work called for under this contract to any other persons or corporations by one or more contracts, in addition to any labor and material furnished by the Contractor, and the actual contract prices plus the cost of such labor and material furnished by the Contractor, plus reasonable expenses and overhead of the Contractor, and its attorney's fees, are to be charged against the Subcontractor, but this shall not relieve the Subcontractor from the obligation to pay any additional damages or loss that the Contractor may have suffered. In either of the foregoing events, the Contractor shall have the right to take possession of all tools, equipment, materials, appliances, and supplies belonging to the Subcontractor on the premises for use in carrying out the provisions of this paragraph.

12. Insurance

The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

- 1) Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate

- a) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
 - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 (10 93) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 2010 (10 93) AND CG 20 37 (10 01) or CG2033 (10 01) AND CG2037 (10 01) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - d) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
- 2) Automobile Liability
- a) Business Auto Liability with limits of at least \$1,000,000 each accident.
 - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the auto policy.
- 3) Commercial Umbrella
- a) Umbrella limits must be at least \$5,000,000.
 - b) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.
- 4) Workers Compensation and Employers Liability
- a) Employers Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.
 - b) Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.
 - c) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.

Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. These certificates and the insurance policies required herein shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Contractor.

Subcontractor shall provide Certificate of Insurance naming *Stroudwater Construction Co., Inc.* as additional insured on all insurance policies required herein before commencement of any and all work. Prior to commencing work on the Project, the Subcontractor shall provide the Contractor with evidence of Subcontractor's workers comp insurance and liability insurance, in a form and coverage acceptable to the Contractor. In the event the Contractor incurs costs and/or damages due to Subcontractor's failure to provide and maintain required insurance, the Subcontractor shall indemnify and hold the Contractor and Owner harmless for such costs and/or damages.

To the fullest extent permitted by law, Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above.

13. Miscellaneous.

A. The Subcontractor expressly agrees that wherever the General Contract requires the performance of any act or thing by the Contractor, or imposes any obligation upon the Contractor, in connection with the performance or completion of any of the work herein required to be performed by the Subcontractor, such obligation of the Contractor is hereby assumed by the Subcontractor, and the provisions of the General Contract shall be deemed incorporated herein so as to require the performance of such act or thing directly by the Subcontractor provided; however, that nothing herein shall be construed to be a contract between Owner and Subcontractor. In the event that the Contractor should suspend operations or discontinue work at the direction of the Owner or through no fault on its part, this Agreement shall, at the option of the Contractor, be terminated from and after such suspension, and the Subcontractor agrees that it shall not have or assert any other or larger claim against the Contractor than the Contractor may have on account thereof against the Owner.

B. The Subcontractor agrees that any labor and material which, in the opinion of those in authority under the General Contract, is unsatisfactory, whether such opinion is expressed orally or in writing, Article 4 notwithstanding, shall immediately upon notice from the Contractor to the Subcontractor, be removed and replaced by the Subcontractor at its own expense, with satisfactory labor and material, and the question whether such opinion is proper, is not to be considered, any provisions in this Agreement to the contrary notwithstanding, the Contractor shall not be liable to the Subcontractor for any delay caused by the Contractor or by the Owner, or by any of the Contractor's other Subcontractors, or for any other cause whatsoever.

C. Architect, Engineer or Contractor shall furnish Subcontractor with all drawings and specifications necessary to detail and illustrate the work to be performed by Subcontractor; said drawings and specifications are a part of this Agreement and in the event of any question concerning the true meaning of said drawings and specifications, the decision of the Engineer or Architect thereon shall be final and conclusive, and not subject to arbitration.

D. Subcontractor shall indemnify and save harmless Contractor from all claims, demands, causes of action or suits of whatsoever nature arising out of the services, labor and materials furnished by Subcontractor under this subcontract. The Subcontractor's obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers compensation acts, disability benefit acts or other employee benefit acts. Subcontractor shall immediately pay and discharge, or shall provide security sufficient and satisfactory in itself to its laborers, material-men or other creditors, for payment of any obligation or alleged obligation it may have, in aid of enforcement of

which a lien or right of any kind could be established, on or against any work or real property on which work is situated, which is the subject of this Agreement or the General Contract. Contractor may, as condition precedent to any payment hereunder, require Subcontractor to submit complete waivers and releases of any and all claims of any person, firm or corporation. Such releases must be submitted covering all such claims as a condition precedent to final payment.

To the fullest extent permitted by law the Subcontractor agrees to assume the entire responsibility and liability for all damages or injury to all persons, and to all property, arising out of or in any manner connected with the execution of the Work under this Subcontract and to the fullest extent permitted by law, the Subcontractor shall defend and indemnify the Contractor from all such claims including without limitation claims for which the Contractor may be or may be claimed to be liable by reason of its own independent negligence.

The Subcontractor shall defend and indemnify the Contractor from all such claims, including without limitation, claims for which the Contractor may be or may be claimed to be liable in whole or in part, and legal fees and disbursements paid or incurred to defend any such claims, as well as legal fees paid or incurred in connection with enforcing the provisions of this section.

The Subcontractor further agrees to obtain, maintain and pay for such general liability insurance coverage as will insure the provisions of this section and other contractual indemnification assumed by the Subcontractor in this Subcontract.

E. No payment made under this Agreement shall be an admission by Contractor that all or any part of this Agreement has been complied with.

F. The Subcontractor hereby assumes exclusive liability for the payment of all existing or future taxes imposed by Federal, State or Municipal Government including all State and Federal Unemployment and Old Age Benefit Taxes that shall become due or payable arising out of the employment by the Subcontractor of all employees in the performance of work under this Agreement. As a condition precedent to the receipt of the final payment (and/or retained percentage, if any) by the Subcontractor, he shall show evidence to the Contractor that all such taxes are paid.

G. This Agreement has been delivered and executed in the State of Maine and the laws thereof shall govern its validity, interpretation and administration, notwithstanding the residence or incorporation of Subcontractor in another jurisdiction.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

SUBCONTRACTOR:

STROUDWATER CONSTRUCTION COMPANY, INC.

By _____
Its:

By _____
Its: President

