



SUBCONTRACT AGREEMENT

Subcontractor: _____ **Project:** _____
Address: _____ **Address:** _____

Phone: _____ **Fax:** _____ **Project #:** _____
Subcontractor #: _____ **Owner:** _____
Cost Code: _____ **Architect / Engineer:** _____

- 1. THE PARTIES.** This Subcontract Agreement ("Subcontract") is entered into on _____ by and between Ultra Company, Inc. (Contractor) and Subcontractor. Contractor and Subcontractor agree as set forth below.
- 2. CONTRACT DOCUMENTS.** The Contract Documents for this Subcontract consist of this Subcontract, the exhibits referenced herein ("Exhibits") and the Contract between Contractor and Owner (Prime Contract). The Exhibits and the Prime Contract are incorporated herein by reference. By executing this Subcontract, Subcontractor acknowledges that it has had ample opportunity to review all documents that are part of this Agreement and that it is bound by their provisions.
- 3. WORK.** Subcontractor shall furnish all labor, supervision, materials, equipment, tools, appliances, permits, insurance, sales tax and all other items necessary or incidental to perform all of the work required by this Subcontract ("Work") in strict compliance with the Contract Documents and per your Proposal
- 4. PRICE OF WORK.** Contractor agrees to pay Subcontractor for the full and faithful performance of the Work the sum of Dollars _____, subject to additions and deductions for written changes as may be agreed upon in writing, provided at all times that Contractor's obligation to pay Subcontractor shall be conditioned on Subcontractor's progress, quality of Work, and compliance with the requirements of the Contract Documents.
- 5. PAYMENT.** Subcontractor shall furnish Contractor with a tabulated breakdown of the Work in sufficient detail to easily facilitate payment estimates to be checked by Contractor as the Work progresses. Subject to paragraph 4 above, Contractor shall make prompt monthly payments to Subcontractor, pursuant to Subcontractor's proper monthly billings, covering all labor and materials furnished to and installed for the Work by Subcontractor subsequent to its previous monthly billing, provided that each monthly billing is delivered to Contractor not less than five (5) days prior to the date Contractor is scheduled to deliver its corresponding billing to Owner and is in accordance with Exhibit D (Accounting Forms/Information). Contractor shall not be required to pay any monthly billing of Subcontractor prior to the date Contractor receives payment of its corresponding monthly billing from Owner. Payment to Subcontractor does not constitute or imply acceptance of any portion of the Work.
- 6. STORED MATERIALS.** If provided in the Contract Documents and approved in advance by Contractor, monthly billing may include materials and equipment not yet incorporated in the Work but delivered and suitably stored at the site or at some other location agreed upon in writing. Payment for such stored materials and equipment on or off the site shall be conditioned upon submission by Subcontractor of bills of sale and/or storage affidavit satisfactory to Contractor to establish Owner's title to such materials and equipment or otherwise protect Owner's and Contractor's interests therein. Risk of loss for such stored materials remains with Subcontractor, until the stored materials have been incorporated into the Work.
- 7. RETAINAGE.** Contractor shall be entitled to withhold ten percent (10%) of each monthly billing of Subcontractor as retainage, or such larger percentage as may be retained by Owner on Contractor's monthly billings, until the Work shall have been fully completed and accepted by Contractor and Owner, and until Contractor shall have received final payment from Owner. It is hereby acknowledged that final payment from Owner to Contractor, including retainage, is a strict condition precedent to Subcontractor's receipt of final payment.
- 8. LIEN WAIVERS.** Subcontractor shall furnish Contractor along with each monthly billing such affidavits and partial releases and waivers of liens and claims as Contractor may require. Before Subcontractor is entitled to final payment, Subcontractor shall submit to Contractor a final affidavit of payment and release of liens and claims in the form required by Contractor.
- 9. WITHHOLDING PAYMENT.** Contractor may withhold or, on account of subsequently discovered evidence, nullify the whole or any part of the amount due upon any monthly billing in order to protect Contractor from loss on account of (a) Subcontractor's failure to properly pay for Work performed by its lower tier subcontractors or suppliers; (b) defective Work not remedied; (c) claims filed by subcontractor, lower tier subcontractors or others, or reasonable evidence indicating probable filing of such claims; (d) damage caused by subcontractor or lower tier subcontractor; (e) delay in performance of the Work such that the Work will not be completed within the time required by the Contract Documents; or (f) reasonable evidence that the unpaid balance of the Price of the Work is insufficient to cover the cost to complete the Work. Contractor further reserves the right to issue joint checks to Subcontractor and its subcontractor(s) and/or material suppliers to insure payment to same. In the event Contractor decides to issue such joint checks, Subcontractor is obligated and agrees to endorse such joint check(s).
- 10. SITE VISITATION.** Subcontractor acknowledges its obligation to visit the site of the Work and visually inspect the general and local conditions which could affect the Work. Any failure of Subcontractor to reasonably ascertain from a visual inspection of the site such general and local conditions will not relieve Subcontractor from its responsibility to properly complete the Work without additional expense to Contractor.

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11. PERFORMANCE OF WORK. Subcontractor shall use its best care, skill and diligence in performing the Work. Subcontractor shall have responsibility and control over the performance of the Work, including means, methods, techniques, and sequences. Subcontractor shall at all times provide competent supervision of the Work. Subcontractor shall obtain and pay for all permits, inspections, fees, licenses and royalties necessary for the execution of the Work, and shall pay all local, state and federal taxes in connection with the Work.
12. SCHEDULE/PROGRESS. Time is of the essence of this Subcontract. Subcontractor agrees to commence and complete the Work as directed by Contractor in accordance with the timeline as set by the Contract Documents (Schedule) and so as not to delay Contractor, Owner or other contractors or subcontractors. Subcontractor shall promptly increase its work force, accelerate its performance, work overtime, including Saturdays, Sundays and holidays, all without additional compensation if, in the opinion of Contractor, such work is necessary to maintain proper progress. No premium time will be paid unless authorized in writing by Contractor. If Subcontractor is responsible for any delay in the Schedule, Subcontractor shall pay Contractor for all costs and damages suffered by Contractor as a result of such delays, including, but not limited to, any actual or liquidated damages assessed against Contractor.
13. TEMPORARY SERVICES/FACILITIES. Subcontractor at its sole expense shall furnish all temporary services and/or facilities necessary to perform the Work.
14. LOWER TIER SUBCONTRACTORS/SUPPLIERS. Subcontractor shall provide a list of proposed lower tier subcontractors and suppliers. Contractor shall have the right to reject any proposed subcontractor or supplier on reasonable grounds.
15. SUBSTITUTIONS. No substitutions shall be made in the Work unless permitted in, and approved in accordance with, the Contract Documents. Subcontractor shall indemnify Contractor for any increased costs incurred by Contractor as a result of any such substitution, regardless of whether Subcontractor has obtained approval for such substitution.
16. SHOP DRAWINGS, PRODUCT DATA, SAMPLES. Subcontractor shall submit promptly to Contractor for approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Subcontractor shall be responsible to Contractor for the accuracy and conformity of its submittals to the Contract Documents. Subcontractor shall prepare and deliver its submittals to Contractor in accordance with the Schedule and in such time and sequence so as not to delay Contractor or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Contract Documents unless express written approval is obtained from Contractor authorizing such deviation, substitution or change.
17. COORDINATION AND COOPERATION. Subcontractor shall coordinate its work with Contractor and with that of all other contractors, subcontractors and suppliers. To the extent of any interference, delay or damage caused by Subcontractor, Contractor shall have the right to withhold payment and backcharge Subcontractor. Subcontractor shall participate in the preparation of coordination drawings and work schedules involving the Work in areas of congestion; cooperate with Contractor and all others whose work may interfere with the Work; and immediately advise Contractor of any interference with the Work.
18. PROJECT CLEANUP. Subcontractor shall follow Contractor's cleanup directions. At all times, Subcontractor shall keep the building and premises free from debris, and shall broom clean each work area prior to discontinuing work in that area, and at the direction of the Contractor.
19. SAFETY. Subcontractor shall give all required notices and comply with all applicable safety laws, rules, regulations, orders and other governmental requirements. Subcontractor shall implement adequate safety measures pertaining to the Work and the site of the Work, including all property and structures adjacent to the site of the Work. Subcontractor shall exercise extreme care in carrying out any Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. Subcontractor is required to designate a full-time employee of Subcontractor who shall act as Subcontractor's designated safety representative. Unless otherwise identified by Subcontractor in writing to Contractor, the designated safety representative shall be Subcontractor's project superintendent or foreman.
20. HAZARDOUS SUBSTANCES. Material Safety Data Sheets (MSDS) required by law and pertaining to materials or substances used or consumed in the performance of the Work shall be submitted to Contractor by Subcontractor. Should Subcontractor encounter asbestos or other hazardous substances at the site of the Work, Subcontractor shall take all steps required by the Contract Documents and by law to protect persons and property from injury or damage, including stopping the Work in the affected areas and promptly advising Contractor in writing of the conditions encountered.
21. COMPLIANCE WITH LAWS. Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work. If Subcontractor performs any Work knowing such Work to be at variance with such laws, ordinances, rules, regulations and orders without having first received written authorization by Contractor of such variance, Subcontractor shall assume full responsibility and shall bear all costs and damages attributable to such Work. If professional design services or certifications by a design professional are required of Subcontractor by the Contract Documents, Subcontractor shall cause such services, certifications or approvals to be provided by a licensed design professional in accordance with applicable law. Such design professional's signature and seal shall appear on all drawings, calculations, specifications, certifications, and submittals prepared by such professional. Owner, Architect and Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications or approvals performed by such design professionals.
22. CHANGES IN THE WORK. Contractor may, without invalidating this Subcontract, order additions, deletions, or other changes in the Work, such changes to be effective only upon written order of Contractor. Any adjustment to the Price of Work or to the time for completion of the Work shall be made in accordance with the applicable provisions of the Contract Documents, or in the absence of such provisions, on a fair and

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equitable basis. Notwithstanding any inability to agree upon any adjustment or the basis for an adjustment to the Price of Work or time for completion of the Work, Subcontractor shall, if given a written order by Contractor, nonetheless proceed in accordance with the order, and the Price of Work and time of completion of the Work shall be adjusted in accordance with the Contract Documents, or in the absence of such provisions, on a fair and equitable basis. If requested by Contractor, Subcontractor shall submit within seven (7) calendar days of an order for a change in the Work its detailed estimate of the value of and time involved in any such change, including unit costs if requested. If any such changes reduce the quantity of Work, they shall not form the basis for a claim by Subcontractor for loss of anticipated profits. Subcontractor shall not be entitled to any increase in the Price of Work or extension of the Schedule for any change in the Work that was not ordered by Contractor in writing prior to the performance of such change.

23. **DELAYS IN THE WORK.** In the event that Subcontractor's performance of the Work is delayed or interfered with, for any reason for which Subcontractor is not responsible, Subcontractor may request an extension of time for performance of the Work. Any such request shall be made in writing within three (3) business days of the occurrence of such delay. Subcontractor shall not be entitled to any increase in the Price of Work or to damages or additional compensation as a consequence of such delays, except to the extent the Contract Documents entitle Contractor to compensation for such delays from Owner, and then only to the extent of any amounts that Contractor may, on behalf of Subcontractor, actually receive from Owner for such delays. Except as provided in the previous sentence, an extension of time shall be Subcontractor's sole and exclusive remedy for delays.

24. **CORRECTION OF WORK.** Subcontractor shall promptly correct Work rejected by Contractor or failing to conform to the requirements of the Contract Documents, whether discovered before or after completion of the Work and regardless of whether fabricated or installed. Contractor shall give notice promptly after discovery of such condition. Costs of correcting such Work, including additional testing and inspections, shall be borne by Subcontractor. If after completion of the Work, any of the Work is found not to conform to the requirements of the Contract Documents, Subcontractor shall correct the nonconforming Work promptly after receipt of written notice from Contractor to do so unless Contractor previously has given Subcontractor written notice of acceptance of the nonconforming Work.

25. **CONTRACTOR'S RIGHT TO COMPLETE THE WORK.** If Subcontractor at any time shall refuse or neglect to supply adequate and competent supervision, or sufficient properly skilled workmen or materials of the proper quality or quantity, or otherwise fail in any respect to perform the Work with promptness and diligence, or otherwise delay the Work, Contractor shall have the option to take possession of the Work and to finish the Work on behalf of Subcontractor in any way determined by Contractor upon 48 hours' written notice to Subcontractor. Thereafter, Subcontractor shall not be entitled to receive any payment under this Subcontract until the Work is finished and final payment is made by Owner to Contractor. If the unpaid balance of the Price of Work shall exceed the expenses incurred by Contractor in finishing the Work, and any costs or damages sustained by Contractor by reason of Subcontractor's failure to perform the Work with diligence and promptness, such excess shall be paid by Contractor to Subcontractor, but if such expenses, costs or damages shall exceed such unpaid balance, Subcontractor shall pay the difference to Contractor within 30 days of demand by Contractor.

26. **CLAIMS.** Subcontractor agrees to make all claims against Contractor for which Owner is or may be liable in the same manner and within the time limits provided in the Contract Documents for like claims by Contractor against Owner and in sufficient time for Contractor to make such claims against Owner in accordance with the Contract Documents. Notice of any such claims shall be made within seven (7) days after the event for which such claim is to be made, or immediately upon Subcontractor's first knowledge of the event, whichever shall first occur, otherwise, such claims shall be deemed waived. Subcontractor shall continue performance of the Work and any change directive during the period of any such unresolved claim. Any and all claims which are not resolved to Subcontractor's satisfaction by the Architect and/or Owner during the course of the Work, shall be included in the presentation and submittal of any and all claims of Contractor to Owner at a time deemed appropriate by Contractor, in Contractor's sole discretion. Subcontractor shall be bound by the outcome and determination of such claims, whether same is determined through litigation, arbitration, settlement or other dispute resolution process. Subcontractor shall be entitled to its proportionate share of any actual net recovery, less overhead and profit to Contractor and less Contractor's expenses and attorneys' fees in handling such claims.

27. **INSURANCE.** Subcontractor shall maintain at its own cost such workers' compensation insurance as required by the laws of the state in which the Work is being performed and also such a minimum of \$1,000,000 limit per occurrence commercial general liability and property damage insurance by the Contract Documents and Exhibit E (Insurance Coverage Requirements) and/or Exhibit F (Special Requirements). Subcontractor will provide the contractor with a current insurance certificate that includes general liability insurance with limits of \$1,000,000 for each occurrence and \$2,000,000 aggregate and workers compensation insurance. The general liability policy shall be endorsed to include the Contractor as an "additional insured" for "on going" and "completed" operations per endorsement CG2010 and CG2037 or equivalent endorsements, a copy of such endorsements will be included with the insurance certificate. It is expressly agreed and understood that the insurance provided by subcontractor shall be primary and non-contributory. Contractor and Owner shall be named as additional insureds on Subcontractor's liability insurance policies. Contractor and Subcontractor waive all rights against each other and Owner for loss or damage to the extent covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Subcontractor shall procure and maintain at Subcontractor's own expense insurance for materials stored off site or in transit. Prior to commencing the Work, Subcontractor shall deliver to Contractor certificates of insurance evidencing the coverage required herein.

28. **INDEMNIFICATION.** To the fullest extent permitted by law, Subcontractor shall indemnify and defend Contractor, Owner, Architect, their agents, consultants and employees from and against all claims, losses, costs and damages, including but not limited to attorneys' fees, arising out of or connected with Subcontractor's performance of this Subcontract. The Subcontractor shall hold Contractor harmless and indemnify and defend Contractor against any and all claims, demands, lawsuits, damages, acts, costs of whatever nature which may be brought against or chargeable to Subcontractor.

29. **WAIVER, RELEASE AND DISCHARGE OF LIENS.** Subcontractor hereby waives and releases all lien rights it may have or obtain in the future against the Work or property of Owner or against any funds owed Contractor by Owner, whether now or in the future. Subcontractor shall obtain a discharge of record of any liens against the Work and property filed by any of its lower tier subcontractors or suppliers, laborers or materialmen, within fifteen (15) days after notice of filing thereof. If Subcontractor shall fail to obtain such discharge of record, within such period, Contractor may do so and deduct any expenses connected with obtaining such discharge, including attorneys' fees, from the Price of Work.



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- 30. **PAYMENT AND PERFORMANCE BONDS.** Subcontractor shall, if requested in writing, provide payment and performance bonds in a form and with a surety acceptable to Contractor in the full amount of this Subcontract. Contractor shall pay the premiums for these bonds unless previously included in the Price of Work.
- 31. **WARRANTY.** In addition to any other Subcontractor warranties required by the Contract Documents, Subcontractor shall warrant in writing that all Work will be in strict accordance with the Contract Documents, fit for the use specified or intended, and free from defects in material and workmanship for a period of not less than one year from the date of Substantial Completion.
- 32. **TERMINATION FOR CAUSE.** Contractor may terminate this Subcontract if Subcontractor is in material default of any provision contained herein, provided that Contractor has given Subcontractor written notice specifying the default(s) and a five-day opportunity to cure and Subcontractor has not cured.
- 33. **TERMINATION FOR CONVENIENCE.** Contractor reserves the right to terminate this Subcontract for convenience at any time. If Contractor terminates for convenience, Contractor shall compensate Subcontractor for all actual expenditures and costs incurred and approved by Contractor. In no event shall overhead and profit be allowed on Work not completed. Termination under this paragraph shall not relieve Subcontractor of its responsibilities under the Contract Documents for completed Work.
- 34. **DISPUTE RESOLUTION.** In the event a dispute arises between Contractor and Subcontractor, each agrees to put forth its best efforts to resolve the dispute by good faith negotiations before proceeding to any other form of dispute resolution. If any dispute cannot be resolved by such negotiation, Contractor and Subcontractor agree to submit to mediation in an attempt to resolve the dispute prior to commencing any other form of dispute resolution. The submission of the dispute to mediation shall be a condition precedent to filing any action at law or in equity. Mediation shall be conducted under the Construction Industry Mediation Rules of the American Arbitration Association. Unless otherwise agreed in writing, Subcontractor shall carry on the Work and maintain the Construction Schedule pending resolution of any dispute and Contractor shall continue to make payments in accordance with this Subcontract. At the sole option of Contractor, all claims, disputes and other matters in question arising out of, or relating to, this Subcontract shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect.
- 35. **GOVERNING LAW/JURISDICTION.** This Subcontract shall be governed by the laws of the Commonwealth of Virginia, conflict of laws excluded. Subcontractor agrees to submit to the jurisdiction of the courts of the Commonwealth of Virginia in any legal proceeding arising out of this Subcontract.
- 36. **SEVERABILITY, MODIFICATION, WAIVER.** The invalidity of one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. This Subcontract may not be modified except in writing signed by both parties. The failure of either party to insist upon the performance of any of the terms of this Subcontract, or to exercise any right granted herein, shall not be construed as a waiver or relinquishment of such term or right as respects future performance.
- 37. **INTEGRATION.** This Subcontract represents the entire Subcontract between Contractor and Subcontractor with respect to its subject matter and supercedes all proposals, correspondence, negotiations and oral agreements made prior to its execution.
- 38. **ASSIGNMENT.** Subcontractor shall not assign this Subcontract or its proceeds nor subcontract the whole or any part of the Work without prior written approval of Contractor, which shall not be unreasonably withheld.
- 39. **EXHIBITS.** The following exhibits, together with any other exhibits attached to this Subcontract, are incorporated into and form a part of this Subcontract:

CONTRACTOR: Ultra Company, Inc.

By _____

Title _____

Date _____

SUBCONTRACTOR:

By _____

Title _____

Date _____



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Rev: 07/27/19

EXHIBIT D (Accounting Forms/Information)

Certificate Holder:

Ultra Company, Inc.
14522G Lee Road
Chantilly, VA 20151

Additional Insureds:

To: All Ultra Incorporated Subcontractors

The following procedures must be followed before any payments will be released.

Submit the following:

- A. **Certificate of Insurance** showing your general liability (with a minimum of \$1,000,000 limit per occurrence and \$2,000,000 aggregate) and worker's compensation coverage. The Certificate must list Ultra Company as the certificate holder and additional insured as well as reference project information (address and/or Ultra's job number and our client's additional insured's). The Certificate must be an original copy from your Insurance Company. Failure to provide a Certificate or lack Workers Compensation coverage will result in an automatic deduction of 10% on all payments. A certificate is needed for each project.
- B. **W-9** completed and signed indicating your company's full/registered name with the IRS. Include either your social security number or federal tax identification number.
- C. **Itemized invoice** for all work accomplished.
- D. **Lien Release** must be submitted for the amount invoiced. You may contact Ultra Company, Inc. for a lien release form should you need one.
- E. **Send electronic copies of invoices with waivers to invoices@ultracompany.com**