

**PROJECT NAME:**

**SNB-Floyd**



**JRV#:**

232015

**ADDRESS:**

212 E Main Street

**City, State**

Floyd, VA

**Zip Code**

24091

**WE WILL NOT BE ABLE TO MAKE ANY PAYMENTS TO YOU UNTIL THE SUBCONTRACT HAS BEEN FULLY EXECUTED AND RETURNED WITH ALL REQUIRED PAPERWORK. Including but not limited to, insurance as per the Insurance addendum attached to your subcontract, Original Performance and Payment Bonds if required and any other form requested in your subcontract package.**

ITEMS ENCLOSED		KEEP FOR YOUR RECORDS	SIGN & SEND BACK TO VANNOY	COMMENTS
CONTRACT			✓	You will be sent a fully executed copy.
Scope of Work		✓	✓	
Subcontractors Employment Eligibility Verification		✓	✓	
Safety Acknowledgement Form		✓	✓	
NC Affidavit of Capital Improvements Form E-589CI		✓	✓	
Insurance Addendum Information with Sample COI		✓	Send COI with your Contract	You may forward a copy of the requirements to your Insurance carrier as a guide to write the COI.
W-9			✓	

### SEPARATE ATTACHMENTS

VANNOY CONSTRUCTION SAFETY MANUAL			✓	Only send the last page. (signed)
INVOICING FORMS AND WAIVERS	You will be emailed an Excel file with the Invoicing and Waiver forms.			

Please call **Jackson Palmer** if you have any questions (828)386-7154 or email at [jackson.palmer@jrvannoy.com](mailto:jackson.palmer@jrvannoy.com)

**JAMES R. VANNOY & SONS CONSTRUCTION COMPANY, INC.**  
**NC General Contractor License No. 3810 (Unlimited)**  
**P.O. Box 635, 1608 Hwy 221 North**  
**Jefferson, NC 28640**  
**(336) 846-7191**

This agreement made on this, the 19th day of August 2024 by and in between JAMES R. VANNOY AND SONS CONSTRUCTION COMPANY, INC. (hereinafter referred to as "Contractor", and:

**Strickland Waterproofing Co., Inc.**  
**Eddie Black**  
**500 N. Hoskins Rd.**  
**Charlotte, NC 28216**  
**704-347-1345**  
**eblack@stricklandwaterproofing.com**

ADDRESS TO REMIT PAYMENTS (IF DIFFERENT): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(hereinafter referred to as "Subcontractor"), to perform part of the work on the following project:

**Project Name:** SNB-Floyd  
**Project Address:** 212 E Main Street  
 Floyd, VA 24091  
**Project No.:** 232015  
**Owner:** Skyline National Bank

The contract between the Owner and the Contractor on this Project is hereinafter referred to as the Prime Contract.

**SUBCONTRACTOR WORK:** The Contractor employs the Subcontractor as an independent contractor, to furnish all labor, material, equipment, insurance and any and all taxes thereon to perform the following part of the work on the project, pursuant to the terms and provisions set forth herein, and subject to the approval of the Contractor:

[See Attachments to this Subcontract for exact scope of Work] Trade: Waterproofing

**EXHIBIT "A": Scope of Work**

**EXHIBIT "B": Document Log**

**EXHIBIT "C": Insurance Addendum (Check One):**  Type I - Updated June 12, 2023  
 Type II - Updated June 12, 2023  
 Type III - Updated June 12, 2023

**EXHIBIT "D": E-589CI - Affidavit of Capital Improvements**

**SUBCONTRACT PRICE:** The Contractor shall pay the Subcontractor for the performance of the Work, subject to addition and deletion by Change Order, the sum of: \$74,720.00

**BOND REQUIRED?** (See Scope of Work) Check one:  Yes  No

**RETAINAGE:** The Contractor shall hold 5% of each Application for Payment as retainage.

**SHOP DRAWINGS:** The Subcontractor must submit 2 copies of Shop Drawings to the Contractor for approval. Contractor shall have 14 days to approve the Drawings or return to the Subcontractor for review.

**SAMPLES:** The Subcontractor must provide 2 Samples for selection and approval.

**LIQUIDATED DAMAGES** (See Section 3.3.1): Check One:  No liquidated damages  per day

PROVISIONS: Along with the foregoing, the following are the provisions of this Subcontract:

## **ARTICLE 1 - THE SUBCONTRACT & THE SUBCONTRACT DOCUMENTS**

**1.1 Subcontract.** This Subcontract and the Subcontract Documents referenced and incorporated herein (see list of Subcontract Documents in Article 16) represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. Except as specifically stated herein, this Subcontract shall not be construed to create a contractual or third party beneficiary relationship of any kind between any persons or entities other than the Contractor and the Subcontractor.

**1.2 Not Used.**

**1.3 Amendments.** The Subcontract may be amended or modified only by a written Modification, executed with the same formality as this Subcontract.

**1.4 Subcontract Work.** The Subcontractor represents and agrees that it has investigated the nature, locality, and site of the Work and the conditions and difficulties under which the Work is to be performed, and that it has entered into this Subcontract on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of the Contractor or the Owner. The Subcontractor understands that to the extent customary in the industry, its obligations include all incidental work reasonably necessary for the completion of the Work of this Subcontract even if not specifically described in this Subcontract.

**1.5 Subcontractor May Request Additional Information.** If the Subcontractor deems that the work is not sufficiently detailed or explained on the Drawings, Specifications, or other Subcontract Documents, the Subcontractor shall, prior to the commencement of the Work, request from the Contractor in writing such other and further drawings or explanations as may be necessary and shall conform thereto without additional compensation. In the event of conflicts or discrepancies between the Subcontract Documents, figure dimensions shall take precedence over scale measurements, large scale details shall take precedence over small scale drawings, and drawings of a later date shall take precedence over those of an earlier date. Any part of the Work shown on the drawings but not specifically mentioned in the Specifications, or vice versa, shall be considered as part of the Work, the same as if included in both. In the event of an inconsistency or conflict between the Drawings and Specifications, or within either document not clarified by the Addendum, the better quality or quantity of Work shall be provided in accordance with the Architect's interpretation.

## **ARTICLE 2 - MUTUAL RIGHTS AND RESPONSIBILITIES**

**2.1 Mutual Obligation / Standard Pass-through Provision.** The Owner is an intended third-party beneficiary of this Subcontract and the Subcontractor's obligations herein. The Contractor and the Subcontractor shall be mutually bound by the terms of this Subcontract and, to the extent that the Subcontract Documents apply to the Work of the Subcontractor, the Subcontractor shall assume toward the Contractor all obligations, risks and responsibilities which the Contractor has assumed toward the Owner and the Architect under the Subcontract Documents, and the Contractor shall assume toward the Subcontractor all obligations, risks, and responsibilities that the Owner has assumed toward the Contractor under such documents. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor which the Owner has against the Contractor under such documents with respect to the Work of this Subcontract, and the Subcontractor shall have the benefit of all rights, remedies, and redress against the Contractor which the Contractor has against the Owner under such documents. Where a provision of such document is inconsistent with a provision of this Subcontract, this Subcontract shall govern. The terms and provisions of this Subcontract regarding the Work to be performed by the Subcontractor shall be in addition to and not in substitution for any of the terms and conditions of the Prime Contract and the other Subcontract Documents.

**2.2 Written Agreements Required.** The Subcontractor shall enter into written agreements with all Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other.

## **ARTICLE 3 - CONTRACTOR**

### **3.1 SERVICES PROVIDED BY THE CONTRACTOR**

3.1.1 Cooperation. Contractor and Subcontractor shall cooperate with one another to schedule Subcontractor's work. Subcontractor acknowledges that other subcontractors and the Contractor will be performing work in or near Subcontractor's work areas. Contractor may sequence such work at its discretion.

3.1.2 Stored Materials. Unless otherwise amended in writing, this Subcontract does not allow for the payment to the Subcontractor for stored materials.

3.1.3 Equipment. Except as otherwise provided in this Subcontract, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and only upon mutually satisfactory terms. The Subcontractor, its agents, employees, sub-subcontractors or suppliers shall not use the Contractor's equipment without the express permission of the Contractor's designated representative. If the Subcontractor or any of its agents, employees, suppliers, or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or other items owned, leased, or otherwise under the control of the Contractor, the Subcontractor shall be liable to the Contractor for, and shall save and hold the Contractor harmless from, any claims, losses, or damages (including personal injury or death to the Subcontractor's employees and/or third parties, and damage to the equipment itself) which may arise from such use; this indemnification and save and hold harmless obligation shall include Subcontractor paying for all attorney's fees and all attendant costs, including all costs for mediation, litigation, and/or Arbitration incurred by Contractor or on Contractor's behalf.

## 3.2 COMMUNICATIONS

3.2.1 Information. Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, which affects this Subcontract and which becomes available to the Contractor subsequent to the execution of this Subcontract.

3.2.2 Instructions & Orders. The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

3.2.3 Information from Architect. The Contractor shall permit the Subcontractor to request directly from Architect, in writing, information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor. The Subcontractor shall copy the Contractor on all such requests to the Architect.

3.2.4 Defense of Owner-Based Claim(s). If the Owner raises a claim against the Contractor which is based on deficiencies in the Subcontractor's work, the Subcontractor shall indemnify the Contractor for all costs and expenses incurred by the Contractor in defending and/or resolving such claim, including attorney's fees and all costs for mediation, litigation and/or Arbitration. The Subcontractor shall also cooperate and assist the Contractor in resolving the dispute. The Subcontractor shall participate in any informal dispute resolution procedures agreed upon between the Owner and the Contractor, and shall be bound by the outcome of any formal or informal dispute resolution so long as the Subcontractor has been given the opportunity to participate in the dispute resolution procedure and the settlement is reasonable in light of the circumstances, considering such factors as the nature of the deficiencies in the Subcontractor's work, the likelihood of prevailing against the Owner in litigation, the expense of formal litigation, and the worthy goal of resolving claims amicably.

3.2.5 Prosecution of Claim(s) - If the Contractor asserts a claim against the Owner for non-payment and the Owner raises defenses based on deficiencies in the Subcontractor's work, Subcontractor shall indemnify the Contractor for all costs and expenses incurred by the Contractor or on the Contractor's behalf in prosecuting the claim, including attorney's fees and all costs for mediation, litigation and/or Arbitration. The Subcontractor shall also cooperate and assist the Contractor in resolving the dispute. The Subcontractor shall participate in any informal dispute resolution procedures agreed upon between the Owner and the Contractor, and shall be bound by the outcome of informal dispute resolution procedure so long as the Subcontractor was given the opportunity to participate in the procedures and the settlement is reasonable in light of the circumstances, considering such factors as the nature of the deficiencies in the Subcontractor's work, the likelihood of prevailing against the Owner in litigation, the expense of formal litigation, and the worthy goal of resolving claims amicably.

## 3.3 CLAIMS BY THE CONTRACTOR

3.3.1 Liquidated Damages for Delays in Completion of Subcontractor's Work. The Subcontractor agrees to be subject to the calculation of liquidated damages set forth on Page 1 of this Subcontract for delays in the completion of its work. It is understood and agreed that this calculation of liquidated damage is not a penalty, but rather the Parties' attempt to agree beforehand on a fair measurement of damages that would result from delays in the completion of the Subcontractor's Work but which would be difficult to accurately calculate prior to the actual commencement of the Project (including irreparable damage to the Contractor's relationship with the Owner, damage to reputation / goodwill, and other damages). If a portion of the delay is attributable to the Contractor (and/or any person or entity for whom the Contractor is responsible on the Project),

then such damages shall be appropriately reduced according to the portion of the delay that is attributable to the respective Parties.

3.3.2 If the parties do not insert a calculation for Liquidated Damages on the first page of this Subcontract (or if the parties insert "\$0", "\$0.00", "0", null, or any other symbol or number equivalent to zero in the blank space), then the Subcontractor shall not be assessed with daily Liquidated Damages on the project, but rather shall only be responsible for actual damages that the Contractor incurs due to delays that are directly attributable to the Subcontractor.

3.3.3 Damages for Disruption of the Contractor/Project. In the event that the Subcontractor (and/or any person or entity for whom the Subcontractor is responsible on the Project) interferes with the Contractor and/or disrupts the progress of the Project (other than a mere delay by the Subcontractor in the completion of its work, which is the subject of provisions 3.3.1 and 3.3.2), then the Subcontractor shall be responsible for any damages directly caused to the Contractor thereby, but only to the extent that such damages are directly caused by the Subcontractor (and/or any person or entity for whom the Subcontractor is responsible on the Project).

## ARTICLE 4 - SUBCONTRACTOR

### 4.1 EXECUTION AND PROGRESS OF THE WORK

4.1.1 Schedule. As soon as practicable after execution of this Subcontract, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Subcontractor shall be notified promptly of subsequent changes in the construction and submittal schedules and additional scheduling details, and shall comply with the Contractor's construction schedule. The Contractor shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the time and order of the Subcontractor's performance of the Work.

4.1.2 Progress. The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the work of the Contractor, other subcontractors, or the Owner's own forces. Regularly scheduled progress meetings shall be held weekly, unless otherwise directed. The Subcontractor shall designate a single representative assigned to the Project who shall be responsible for attending all weekly and other meetings, monitoring schedules, and coordinating all activities. The Subcontractor's representative shall have the authority to commit and bind the Subcontractor.

4.1.3 Testing/Certification. The Subcontractor shall secure and pay for all inspections and testing necessary for proper completion, operation, and certification of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract and /or by the applicable laws, ordinances, rules, regulations, and/or orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall be responsible for removing and properly disposing of any waste materials generated by and/or remaining after such inspections and/or testing.

4.1.4 Documentation. The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples, testing results, certifications, and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors. The Subcontractor shall furnish all Product Data, Samples, and Shop Drawings in order to ensure that the Work is complete in every detail and free from any gaps, duplications, or omissions. The Subcontractor shall not be relieved of responsibility for any deviation from the requirements of the Subcontract Documents by the Contractor's, Architect's, Engineer's and/or Owner's approval of Shop Drawings, Product Data, or Samples. The Subcontractor shall direct specific attention, in writing and on resubmitted Shop Drawings, Product Data, or Samples, to revisions other than those required by the Contractor or the Architect on previous submittals.

4.1.5 Schedule of Values. The Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Work of this Subcontract, aggregating the Subcontract sum, made out in such detail as the Contractor shall direct or as required by the Owner, and supported by such evidence as the Contractor may require. In applying for payment, the Subcontractor shall submit statements based upon this schedule.

4.1.6 Changes in Forces or Supervision. The Subcontractor shall notify and obtain the approval of Contractor prior to the arrival of its forces or delivery of materials and equipment to the job site and prior to any substantial change in its forces or supervision. The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment which may be in the course of preparation, manufacture, or transit.

**4.1.7 Right to Reject Non-Conforming Work.** The Subcontractor agrees that the Contractor, Architect, Owner and Engineer will each have the authority to reject Work of the Subcontractor which does not conform to the Subcontract Documents. The Architect's decisions on matters relating to aesthetic affect are final and binding on the Contractor so long as they are reasonable, so they shall be final and binding on the Subcontractor as long as they are reasonable.

**4.1.8 Materials, Equipment, Labor.** The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, including (as a condition precedent to payment) releases and lien waivers on forms provided by Contractor, to verify compliance with the above requirements. If payment is made for material stored off-site, title to such materials shall pass to the Contractor and through to the Owner as may be agreed between the Contractor and the Owner, but the Subcontractor shall remain fully liable for all such materials until incorporated in the Project.

**4.1.9 Protection from Damages.** The Subcontractor shall take necessary precautions to properly protect the Work of the Contractor, other subcontractors, separate contractors hired by the Owner, and the Owner's own forces from damage caused by its operations under this Subcontract. The Subcontractor shall also take reasonable precautions to protect its own Work from damage caused by others working on the Project.

**4.1.10 Cooperation.** The Subcontractor shall cooperate with the Contractor, other subcontractors, and the Owner's own forces whose work might interfere with the Subcontractor's Work. If required, the Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, or the Owner's own forces.

**4.1.11 Retainage on Public Projects.** If this is a public project, the Owner may discontinue withholding retainage from the Contractor's progress payments once the project is fifty percent (50%) complete. If that happens, Contractor will likewise discontinue withholding retainage from Subcontractor so long as Subcontractor has performed and continues to perform satisfactorily, and any nonconforming work has been corrected.

## **4.2 NOTICES, LAWS, PERMITS, LICENSES**

**4.2.1 Notices / Compliance, etc..** The Subcontractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and orders of public authorities bearing on performance of the Work of this Subcontract, including but not limited to Federal, State, and local tax laws, social security acts, unemployment compensation acts, and workers' compensation acts. If the Subcontractor discovers or determines that any portion of the Work is not or may not be in accordance with any applicable design-related statute, law, regulation, or ordinance, the Subcontractor shall notify the Contractor immediately.

**4.2.2 Permits/Licenses.** The Subcontractor shall secure and pay for permits, governmental fees, and licenses necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract and /or by the applicable laws, ordinances, rules, regulations or orders of public authorities bearing on performance of the Work of this Subcontract.

**4.2.3 "Claim Prevention Attachment" (North Carolina Projects Only).** If the Project is located in North Carolina, then one of the following provisions apply to this Subcontract, depending upon whether the project is a public or private project:

- a. **Notice to Lien Agent (North Carolina Private Projects Only).** The "Claim Prevention Attachment" to this Subcontract is the Lien Agent information for this project, and the Contractor has or will send a "Notice to Lien Agent" to the Lien Agent, maintaining proof that such information was delivered. The Subcontractor shall comply with the procedures set forth in N.C.G.S. Chapter 44A, which require the Subcontractor to (1) send its own "Notice to Lien Agent" to the Lien Agent immediately upon entering this Subcontract with the Contractor, and (2) pass the Lien Agent information on to each and every sub-subcontractor and supplier that it contracts with to supply labor, materials, and/or services to the project (maintaining proof that such information was delivered), so that these third parties may have the opportunity to send their own "Notice to Lien Agent" to the Lien Agent. The Subcontractor agrees to indemnify, save, and hold the Contractor and the Owner harmless from any claims and/or damages that result from its failure to follow these statutory procedures.
- b. **"Contractor's Project Statement" (North Carolina Public Projects Only).** The "Claim Prevention Attachment" to this Subcontract is a copy of the "Contractor's Project Statement", which the Contractor has or will file with the local Clerk of Court and post on-site. The Subcontractor shall comply with the procedures set forth in N.C.G.S. Chapter 44A, which require the Subcontractor to pass the "Contractor Project Statement" information on to each and every sub-subcontractor and supplier that it contracts

with to supply labor, materials, and/or services to the project (maintaining proof that such information was delivered), so that such third parties may have the opportunity to file a "Notice of Public Subcontract" with the Contractor. The Subcontractor agrees to indemnify, save, and hold the Contractor and the Owner harmless from any claims and/or damages that result from its failure to follow these statutory procedures.

This provision 4.2.3 is void if the project is not physically located in North Carolina.

**4.2.4 "Notice of Contract" (North Carolina Public and Private Projects).** If the Project is located in North Carolina, the following provision applies to this Subcontract, whether the Project is public or private:

The Contractor has or will file and post a "Notice of Contract", which sets forth the information needed by the Subcontractor and the Subcontractor's sub-subcontractors and/or suppliers to preserve their lien or bond claim rights on the project by filing a "Notice of Subcontract" with the General Contractor. In the event that any of the Subcontractor's sub-subcontractors and/or suppliers files such a "Notice of Subcontract" with the General Contractor, then:

- a. The Contractor may be sending written notice to that sub-subcontractor or supplier each time that it makes a disbursement the Subcontractor on the project; and
- b. Any payment due the Subcontractor that covers materials, equipment, and/or labor provided by that sub-subcontractor or supplier may be made by the Contractor in the form of a joint check made payable to both the Subcontractor and the sub-subcontractor or supplier. The Contractor will mail the joint check payment to the Subcontractor, who agrees to execute the same for payment and forward it to the third party immediately thereafter. In the alternative, the Contractor may choose to make such payments directly to the sub-subcontractor or supplier, if it believes that it is in the best interest of the Project to do so, so long as the Contractor provides the Subcontractor with written notification of any such payment. Any payments made jointly or directly by the Contractor pursuant to this provision shall be credited to the Contractor against the Subcontract Sum as if such payment had been paid to the Subcontractor. This provision does not give rise to any right or expectation to, nor create a beneficiary relationship with, any third party subcontractor or supplier or any other person or entity who is not a party to this Subcontract.

This provision 4.2.4 is void if the project is not physically located in North Carolina.

**4.2.5 "Notice of Commencement" (South Carolina Only, Public and Private Projects) -** If the Project is located in South Carolina, the following Provision applies to this Subcontract, whether the Project is public or private:

The Contractor has or will file and post a "Notice of Commencement", which sets forth the information needed by the Subcontractor's sub-subcontractor and/or suppliers to preserve their lien or bond claim rights on the project by filing a "Notice of First Furnishing" with the Contractor. In the event that any of the Subcontractor's sub-subcontractors and/or suppliers file such a "Notice of First Furnishing" with the Contractor, then any payment due the Subcontractor that covers materials, equipment, and/or labor provided by that sub-subcontractor or supplier may be made by the Contractor in the form of a joint check made payable to both the Subcontractor and the sub-subcontractor or supplier. The Contractor will mail the joint check payment to the Subcontractor, who agrees to execute the same for payment and forward it to the sub-subcontractors or supplier immediately thereafter. In the alternative, the Contractor may make such payments directly to the sub-subcontractor or supplier, if it believes that it is in the best interest of the Project to do so, so long as the Contractor provides the Subcontractor with written notification of any such payment. Any payments made jointly or directly by the Contractor pursuant to this provision shall be credited to the Contractor against the Subcontract Sum as if such payment had been paid to the Subcontractor. This provision does not give rise to any right or expectation to, nor create a beneficiary relationship with, any third party subcontractor or supplier or any other person or entity who is not a party to this Subcontract.

This provision 4.2.5 is void if the project is not physically located in South Carolina.

### **4.3 SAFETY PRECAUTIONS AND PROCEDURES**

**4.3.1 Safety Precautions.** The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable, laws, ordinances, rules, regulations, and orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days any injury to an employee or agent of the

Subcontractor which has occurred at the site. The Subcontractor shall, at its own expense, conform to the safety policies and regulations established by the Contractor in its standard Safety Manual, and shall comply with all specific safety requirements promulgated by any governmental authority. Any questions regarding such policies, regulations and requirements, and requests for a copy of the Contractor's standard Safety Manual, should be directed to the Contractor's Safety Director Jerry Weaver at P.O. Box 635, Jefferson, NC, 28640, (336) 846-7191 ext. 4236.

**4.3.2 No Hazardous Substances Without Approval.** Hazardous substances shall not be used without prior written approval of the Contractor. If hazardous substances of a type which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's sub-subcontractors, or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors, and other employers on the site.

**4.3.3 Hazardous Substances.** The Subcontractor shall not use asbestos or polychlorinated biphenyls (PCBs) or any materials containing those substances in the performance of the Work except with the prior written approval of the Contractor, Owner, and Architect. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance including but not limited to asbestos or polychlorinated biphenyls (PCBs), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and the Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Section 5.4 of this Subcontract.

**4.3.4 Subcontractor's Duty to Comply - Environment.** It shall be the responsibility of the Subcontractor to understand and maintain compliance with any and all rules, regulations, and orders promulgated by any governmental agencies regarding environmental protection. The Contractor shall have the right to conduct regular inspections on the premises of the Project in order to determine the Subcontractor's compliance with any and all applicable environmental regulations. Upon discovery of any failure to comply, the Contractor shall notify the Subcontractor, and if compliance is not obtained within a reasonable time, Contractor may take remedial action to cure the non-compliance, the full cost of which shall be reimbursed by the Subcontractor and/or deducted from any amount due to the Subcontractor under this Subcontract. The Subcontractor shall be responsible for fully indemnifying the Contractor for any and all fines assessed against the Contractor by any governmental agency due to environmental protection law violations caused by the acts or omissions of the Subcontractor or any person or entity for whom the Subcontractor is responsible, as well as any costs incurred by the Contractor in any attempt to mitigate its damages by seeking a reduction of, contesting, settling, and/or defending against such fines; this indemnification obligation shall include Subcontractor paying for all attorney's fees and all attendant costs, including all costs for mediation, litigation, and/or Arbitration incurred by Contractor or on Contractor's behalf.

**4.3.5 Subcontractor's Duty to Comply - Safety.** It shall be the responsibility of the Subcontractor to understand and maintain compliance with all rules and regulations promulgated by any governmental agency relating to the health and/or safety of employees and/or other persons. The Contractor shall have the right to conduct regular inspections on the premises of the Project in order to determine the Subcontractor's compliance with any and all applicable safety regulations. Upon discovery of any failure to comply, the Contractor shall notify the Subcontractor, and if compliance is not obtained within a reasonable time, Contractor may take remedial action to cure the non-compliance, the full cost of which shall be reimbursed by the Subcontractor and/or deducted from any amount due to the Subcontractor under this Subcontract. The Subcontractor shall be responsible for fully indemnifying the Contractor for any and all fines assessed against the Contractor by any governmental agency due to safety violations caused by the acts or omissions of the Subcontractor or any person or entity for whom the Subcontractor is responsible, as well as any and all costs incurred by the Contractor in any attempt to mitigate its damages by seeking a reduction of, contesting, settling, and/or defending against such fines; this indemnification obligation shall include Subcontractor paying for all attorney's fees and all attendant costs, including all costs for mediation, litigation, and/or Arbitration incurred by Contractor or on Contractor's behalf.

**4.3.6 Job Site Safety Rules.** Subcontractor agrees to maintain strict compliance with any and all safety rules promulgated by Contractor on the project, including but not limited to the following:

1. Subcontractor shall be responsible for inspecting and maintaining safe conditions of its work areas. The Contractor will also conduct safety inspections and notify subcontractors of any unsafe practices or conditions found.
2. Personal protective clothing and safety devices shall be used by all employees and subcontractors when required by these rules or when so instructed by the supervisor.

3. The superintendent, subcontractor foreman or other person in charge shall instruct all classes of workers in regard to performing their duties in as safe a manner as possible for themselves and others.
4. The superintendent or subcontractor foreman shall not put workers in a place that is known to be dangerous, except to remove the danger and then only after properly trained and under direct supervision, including ditches or trenches 4' or deeper.
5. No person shall be allowed to work until he/she has satisfied the foreman, by showing that he/she is careful and competent to perform the duties required.
6. All subcontractor foremen shall familiarize themselves with the safety rules and see they are complied with.
7. Watch the new person! Tell him/her what is expected of him/her. Instruct him/her with regard to the hazards involved.
8. See that all workers use the necessary safety devices for the work involved.
9. See that all tools and work areas are kept in a safe condition.
10. Fridays will be clean up day; each subcontractor will assign at least one person to help with the clean up on each job.
11. Report all injuries to the Safety Director and your supervisor immediately (the same day).
12. Horseplay, scuffling and practical jokes are not permitted while on the job site.
13. Explosives shall be handled only by those persons qualified and delegated to do so.
14. Only authorized persons shall be allowed to operate trucks, vehicles or other equipment.
15. No subcontractor will be allowed to operate trucks, vehicles or equipment owned by the Contractor.
16. Machinery shall not be repaired or oiled while in motion.
17. Machinery guards shall be kept in place at all times.
18. Hammer striking tools with chipped, mushroomed heads, broken or split handles shall not be used.
19. Do not leave fuel cans near combustible material or near areas where welding and cutting are being performed.  
If you see them, move them. All gas cans must be in a safety spill proof container and labeled correctly.
20. Firefighting equipment is to be used for that purpose only. Never place obstructions in front of fire extinguishers. All fire extinguishers should be checked each month and initialed.
21. Riding crane hooks, headache balls or crane loads are prohibited.
22. Riding material hoist platforms are prohibited unless hoist is equipped with approved safety devices. Platforms will have top, middle and toe railing around all four sides. The platform will be secured by a chain or cable and employees will be secured by a harness.
23. Hard hats shall be worn when work is being performed, at all times, on all bridges, box culverts and building sites.
24. Safety goggles or glasses shall be worn by all employees. No sawing, sanding, drilling, etc. will be allowed without the use of eye protection.
25. Clothing appropriate to the duties performed shall be worn by all workers. All employees must wear long pants and steel toed boots. Shirts must remain on when working on or near public places. Steel toe safety shoes are required when working on mine or quarry property.
26. Oxygen/Acetylene - welding or cutting without proper cup-type goggles with impact resistant filter lenses and clear glasses is prohibited. Face, eyes and hands must remain protected.
27. Gloves shall be worn when handling rough or sharp edge material or lumber with splinters and projecting nails. Gauntlet gloves are recommended for welders and for other specific operations where workers are subject to possible burns by hot metals, acids, chemicals, etc.
28. Electric welding or cutting without helmet equipment with appropriate filter lens and clear cover glass is prohibited.
29. Tennis shoes or low cut shoes with ankles exposed are prohibited.
30. Avoid flash burns from arch welders. Do not watch flash or be continually exposed to direct flash without proper safety equipment.
31. Powder - actuated tools shall be used only by trained, certified persons who have been instructed in their safe use. All employees and subcontractors using tools must have a certification on file and in their pocket (pocket card), and warning signs must be posted to warn other coworkers that the tool is being used in the area. Bump-firing is unsafe and should never be used.
32. Safe operating instructions issued by individual manufacturer shall be complied with. All guards must remain on all saws including table saws and chop saws.

33. Hand rails are to be used on all scaffolding and platforms at all times. Before any Vannoy employee begins work on a subcontractors scaffolding or platform, prior approval must be obtained by the job site superintendent. The job site superintendent and subcontractors will inspect their scaffolding and platforms at the beginning of each day.
34. Any hole in floor, or roof must be covered and secured with the words "hole cover" to prevent fall hazard. If you remove a hole cover you must cover it back and secure it so it can't be accidentally kicked or removed.
35. All power cords shall remain clear of all walkways and steps. Cords must be removed from service when insulation covering is cut, split, or pulled loose from its plug.
36. Any steps (two or more) must have handrails on both sides. Office trailers will have adequate steps with proper hand rails.
37. All employees when paving state highways shall wear hard hats, safety vest and boots, including roller personnel, paver operators, etc.
38. Injuries sustained while on duty shall be reported to the supervisor immediately (the same day), or as soon as possible after injury is sustained. The superintendent will then notify the Safety Director.
39. First Aid must be obtained immediately after an injury is sustained.
40. All employees shall report to a company doctor when instructed to do so following an injury. The emergency room is not considered as a company doctor. The employee must see the doctor selected by the employer. Any other visits, the employee may be responsible for payment.
41. Any time an employee or subcontractor is climbing onto or off of equipment or trucks, three point contacts must be used. Never jump off equipment or trucks. Never carry tools while climbing.
42. Willful violation of these or other safety rules of this company or project shall be cause for dismissal.
43. Violation of these or other safety rules on a project or at this company may result in loss of all compensation benefits under provisions of worker's compensation law.
44. Each foreman/superintendent and subcontractor must do a weekly safety meeting, and must be able to provide documentation if necessary.
45. Cell phones are to be used in a safe location, away from moving equipment, vehicles, etc.
46. Texting or emailing should never be performed while driving or operating equipment.

#### **4.4 CLEANING UP**

**4.4.1 Clean Conditions.** The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. If the testing of the Subcontractor's work is required for the proper execution, operation, or certification of the Subcontractor's Work under the Prime Contract or the applicable laws, ordinances, rules, regulations, and/or orders of public authorities bearing on performance of the Work of this Subcontract, the Subcontractor shall be responsible for removing and properly disposing of any waste materials generated by and/or remaining after such testing.

**4.4.2 Contractor's Right to Remedy.** If the Subcontractor fails to clean up as provided in the Subcontract Documents after the receipt of written notice of non-compliance from the Contractor, the Contractor may perform the necessary clean-up, the full cost of which shall be reimbursed by the Subcontractor and/or deducted from any amount due to the Subcontractor; the Subcontractor shall not be responsible for unclean conditions caused by the Contractor or other subcontractors, however, and such charges shall be limited to the cost of cleaning up the Subcontractor's debris.

**4.4.3 Dispute.** In the event a dispute arises between subcontractors as to the responsibility for clean up, the Contractor may perform the clean up and reasonably allocate the cost among the subcontractors responsible for the accumulation of waste materials or rubbish as described in Subparagraph 4.4.1.

#### **4.5 WARRANTY**

**4.5.1 Subcontractor's Warranty.** The Subcontractor warrants to the Owner and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work of this Subcontract will be free from defects (including defects in materials and/or workmanship) not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy implied or provided by law or by the Subcontract Documents. If no guarantee or warranty is required of the Contractor in the General

Contract Documents, then the Subcontractor shall guarantee or warranty its work as described above for the period of one year from the date of Final Completion of the Project. The Subcontractor further agrees to execute any special guarantees or warranties that shall be required for the Subcontractor's work prior to final payment.

**4.5.2 Further Agreement.** In addition to all of the Subcontractor's warranties and obligations to correct defective Work implied or provided by law or as set forth in the Subcontract Documents, the Subcontractor agrees, upon notice from the Owner, the Architect, the Contractor, or any tenant, immediately to repair, restore, correct and cure, at the Subcontractor's expense, all defects and omissions in workmanship and materials and all failures to comply with the Subcontract Documents which appear within one (1) year from the date of final completion of the Project. The Subcontractor shall pay for, and if requested, correct, repair, restore and cure any damage or injury, whenever the same shall occur or appear, resulting from any defects, omissions or failure in workmanship and materials, and shall indemnify, hold harmless, and defend the Owner, the Contractor, and any tenant against any and all claims, losses, cost, damages and expenses, including attorney's fees and all attendant costs (including all costs for mediation, litigation, and/or Arbitration), suffered by them as a result of such damage or injury, whenever such damage or injury shall occur or appear.

**4.5.3 Commencement.** The commencement and terms for the guarantees and warranties required by the Subcontract Documents shall not be affected by any delay in the commencement, progress or completion of Work, regardless of the cause.

**4.5.4 No Limitation on Rights.** The foregoing warranties and guarantees shall not affect, limit or impair the Owner's, the Contractor's or any tenant's right against the Subcontractor for latent defects in the Work which do not appear within the applicable warranty period and which could not by the exercise of reasonable care and due diligence, be discovered and ascertained by them within such warranty period, and the Subcontractor shall remain liable for the correction and cure of any such latent defects as otherwise required or provided by law.

**4.5.5 Waiver.** Neither the acceptance of the Work in whole or in part, nor any payment, partial or final, shall constitute a waiver of any claims against the Subcontractor for defects in the Work, latent or apparent, and no such payment or acceptance of the work shall release or discharge the Subcontractor or the Subcontractor's surety, if any, from any such claims.

#### **4.6 INDEMNIFICATION**

**4.6.1 Subcontractor's Indemnification of Contractor.** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor, the Contractor's other Subcontractors, the Architect/Engineer/Design Professional, the Owner, and the agents, consultants, and employees of the same ("the Indemnitees") from all claims, damages, losses, costs, and expenses that may arise from the Subcontractor's performance of the its Work, including reasonable attorney fees, costs, and expenses, but only to the extent that the claim is founded upon either the breach of the Subcontractor's contractual obligations or the negligent acts or omissions of the Subcontractor, its subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

**4.6.2 Limitations on Indemnification.** In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations in this provision 4.6 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

**4.6.3 Indemnity Obligations Do Not Reduce Other Obligations.** The indemnity obligations in this provision shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise be required or provided by law as to a party or person described in this Section 4.6.

#### **4.7 REMEDIES FOR NONPAYMENT**

**4.7.1 Stop Work Upon Failure to Pay Subcontractor.** If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Subcontract, the Subcontractor may, without prejudice to any other available remedies, upon an additional seven days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received.

### **ARTICLE 5 - CHANGES IN THE WORK**

**5.1 Modifications.** Under the terms of the Prime Contract, the Owner may make changes in the Work by issuing Modifications to the Prime Contract. The Contractor shall notify the Subcontractor of any Modification to the Prime Contract

that may affect the Subcontractor's Work. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials, perform Work, or take any other action that would be inconsistent with the changes made by the Modifications to the Prime Contract.

**5.2 Other Changes.** The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions (including those required by Modifications to the Prime Contract issued subsequent to the execution of this Subcontract), the Subcontract Sum and the Subcontract Time being properly adjusted if appropriate. Adjustments in the Subcontract Sum or Subcontract Time resulting from such changes, if any, shall be set forth in a Subcontract Change Order. Unless a different percentage is mandated by the Prime Contract, the allocation of the Subcontractor's markup on Change Orders – including all markup for overhead, profit, etc. – shall not exceed 10% of the underlying value of the Change Order work added to the Subcontractor's scope. Deductive Change Orders shall include an additional deduction equal to 10% of the underlying value of the Change Order work removed from the Subcontractor's scope. Change Orders based on unit prices shall not include an adjustment for overhead and profit because these items shall be deemed already included in the calculation of the unit price. Prior to commencing any changed or revised Work that the Subcontractor believes might entitle it to an adjustment in the Subcontract Sum or Subcontract Time, the Subcontractor shall submit to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents; otherwise such claim shall be waived. THE SUBCONTRACTOR WILL NOT BE ASKED TO PROCEED WITH ANY CHANGE ORDER WORK UNTIL A WRITTEN, SIGNED CHANGE ORDER IS AGREED UPON.

**5.3 Claims for Additional Costs.** The parties understand and agree that the Contractor has only a limited time under the terms of the Prime Contract to submit claims to the Owner for additional costs, extensions of time, and damages for delays or other causes, and that such claim(s) by the Subcontractor may affect or become a part of claims which the Contractor is required to make to the Owner under the Prime Contract; accordingly, such claims must be made in a specified manner and in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract for the making of such claims. The Subcontractor shall make all claims for additional cost, extensions of time and damages for delays or other causes promptly to the Contractor in accordance with the Subcontract Documents and in strict compliance with the procedures provided in Paragraph 5.4 below. Such claim(s) shall be received by the Contractor not less than five (5) working days before the time by which the Contractor's claim must be made to the Owner, and the failure of the Subcontractor to make such claim(s) in a timely manner shall bar the Subcontractor from recovering from the Contractor and/or the Owner on any such claim. The parties understand that under the terms of the Prime Contract the Contractor is bound by the Owner's determination of the validity of any such claim(s), so the Subcontractor agrees to be likewise bound by the Owner's determination of the validity of any such claim(s).

**5.4 Change Order for Additional Sums / Time.** Before commencing with any work on the project that it believes might entitle it to an adjustment in the Subcontract Time or Subcontract Sum, the Subcontractor shall request the issuance of a Change Order by submitting to the Contractor in writing a claim for adjustment to the Subcontract Sum and/or Subcontract Time for such revised Work. NO ADDITIONAL SUMS SHALL BE PAID TO THE SUBCONTRACTOR, AND NO ADDITIONAL TIME SHALL BE GRANTED OR RECOGNIZED, UNLESS THE SUBCONTRACTOR HAS RECEIVED A WRITTEN CHANGE ORDER SIGNED BY THE CONTRACTOR'S PROJECT MANAGER. THE SUBCONTRACTOR SHALL NOT BE ENTITLED TO PAYMENT FOR ANY CHANGE ORDER OR EXTRA WORK THAT WAS COMPLETED IN RELIANCE ON AN UNWRITTEN / VERBAL / ORAL STATEMENT, ORDER, OR PROMISE. VERBAL / ORAL CHANGES OR EXTRAS SHALL NOT BE VALID OR ENFORCEABLE, AND NEITHER THE CONTRACTOR'S PROJECT SUPERINTENDENT NOR THE CONTRACTOR'S PROJECT MANAGER HAVE THE AUTHORITY TO BIND THE CONTRACTOR AND/OR THE OWNER TO CHANGES IN THE WORK OR EXTRA WORK WITHOUT A PROPERLY EXECUTED CHANGE ORDER. IN THE EVENT THAT SUBCONTRACTOR PERFORMS ANY EXTRA OR CHANGE ORDER WORK PURSUANT TO AN UNWRITTEN VERBAL / ORAL ORDER, STATEMENT, OR PROMISE, THE SUBCONTRACTOR SHALL BE DEEMED TO HAVE PERFORMED SAID WORK WITHOUT EXPECTATION OF ADJUSTMENT IN THE SUBCONTRACT TIME OR SUM.

*CONTRACTOR'S NOTE: The purpose of the foregoing requirements is not to avoid paying the Subcontractor for work that it should be getting paid for; rather, it is to avoid the situation where the Subcontractor wants an unexpected Change Order subsequently issued, and the dispute comes down to whether or not a verbal promises was made to pay the Subcontractor for the additional work. The existence of verbal promises are difficult to prove, and the only way to avoid this situation is to make all verbal promises void and mandate that no adjustments will be recognized without a signed Change Order. The time to negotiate a Change Order is before the Change Order work has commenced anyway, not after, and you will not be asked to proceed (and in fact you should not proceed) with any change order work until a written, signed Change Order has been agreed upon and signed. Bottom Line: Get a signed Change Order before you proceed with any work that you believe would entitle you to an adjustment in the Subcontract Sum or Contract Time.*

## **ARTICLE 6 - MEDIATION AND ARBITRATION**

### **6.1 MEDIATION**

**6.1.1 Claims Subject to Mediation/Applicability of Federal Arbitration Act.** Any claim arising out of or related to this Subcontract that is not waived as per the terms of this Subcontract or otherwise disposed of by mutual agreement shall be subject to mediation.

**6.1.2 Mediation Requirements.** In the event of a dispute, the parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation rules of the American Arbitration Association currently in effect. The request for Mediation may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall be a condition precedent to legal or equitable proceedings, which, if filed prior to mediation, shall be stayed pending mediation for a period of 120 days from the date of filing, unless stayed for a longer period by agreement of the parties, by order of the arbitrator(s), or by order of a court with jurisdiction.

**6.1.3 Mediator's Fee.** Unless otherwise agreed in writing, the parties shall share the mediator's fee and any filing fees equally, and the mediation shall be held in the place where the Project is located. Any agreement reached in mediation shall be in writing and shall be enforceable as a settlement agreement by any court having jurisdiction thereof.

### **6.2 ARBITRATION**

**6.2.1 Claims Subject to Arbitration /Applicability of Federal Arbitration Act.** The Owner may require any unresolved disputes on this project to be arbitrated or litigated, depending on its preference; therefore any claim arising out of or related to this Subcontract that is not waived in this Subcontract and not disposed of by mutual agreement shall be subject to arbitration if directed or demanded by the Contractor, who may or may not elect to enforce this provision depending upon whether the Owner is involved in the dispute. Subcontractor specifically agrees that this Subcontract, and the relationship between Contractor and Subcontractor, involve and touch upon interstate commerce, and further agree that the Federal Arbitration Act, and not any state or local arbitration statute or law, shall govern the interpretation of this Subcontract, including this Article 6.

**6.2.2 Requirements for Arbitration.** If the Contractor elects to enforce the foregoing provision, any claims not disposed of by mutual agreement shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for Arbitration shall be filed in writing with the other party to this Subcontract and with the American Arbitration Association, and a copy shall be filed with the Architect.

**6.2.3 Demand for Arbitration.** A demand for arbitration shall be made within the time limits specified in the conditions of the Prime Contract as applicable to the Subcontractor's Work, and in other cases within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations or statute of repose.

**6.2.4 Limitation on Consolidation or Joinder.** The parties to this Subcontract understand and acknowledge that dispute resolution is expensive and time consuming, so the parties agree that the Contractor may consolidate an arbitration conducted under this Subcontract with any other arbitration to which it is a party as long as (1) the arbitration agreement governing the other arbitration permits consolidation; and (2) the arbitrations to be consolidated substantially involve common questions of fact and law. In the event Contractor and any third party become involved in dispute resolution proceedings that are related, in any way, to the Work performed by the Subcontractor pursuant to this Subcontract, Subcontractor consents to the venue and jurisdiction of those dispute resolution proceedings in the event that any party to those proceedings deems it necessary to assert a claim against Subcontractor in them.

**6.2.5 Claims and Timely Assertion of Claims.** The party filing a notice of demand for arbitration must assert in the demand all claims then known to the party on which arbitration is permitted to be demanded.

**6.2.6 Attorney Fees for Prevailing Party.** The award rendered by the arbitrator or arbitrators shall include the attorney fees of the prevailing party, including any fees and costs that the prevailing party may have expended in the defending or prosecuting of any underlying lawsuit on the same subject matter that may have preceded or ran concurrent with the arbitration.

**6.2.7 Judgment on Final Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**6.2.8 Performance of Work in Event of Dispute.** The Subcontractor shall continue performance of the Work and shall proceed in accordance with the directives of the Contractor, under protest, in the event of a dispute or controversy. The existence of a dispute or controversy between the parties shall not justify, delay or suspension of the Work. Failure to so proceed shall constitute a material breach of this Subcontract, regardless of the ultimate decision on the dispute or controversy.

**6.2.9 Payment in Event of Arbitration.** For any work, claim or damage referred to arbitration where the Owner has refused to recognize the validity of a claim made by the Subcontractor and submitted by the Contractor, the Subcontractor shall be bound by the outcome of the Arbitration, and the validity of the Subcontractor's claim as determined in Arbitration shall be a condition precedent to the obligation of the Contractor to pay the Subcontractor for such claim.

**6.3 Arbitration Not Mandatory if Owner Elects Litigation.** Notwithstanding any language in this provision to the contrary, in the event of a dispute that involves the Owner, Arbitration shall not be mandatory if the Owner elects to resolve the dispute through litigation rather than Arbitration.

## **ARTICLE 7 - TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT**

**7.0** Upon receipt of written notice of termination, the Subcontractor shall:

- (1) Cease operations as directed by the Contractor in the notice;
- (2) Take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- (3) Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders unless otherwise directed by the Contractor.

### **7.1 TERMINATION OF THE SUBCONTRACT BY CONTRACTOR FOR DEFAULT**

**7.1.1 Default.** Should the Subcontractor at any time fail to supply a sufficient number of skilled workers or a sufficient quantity of materials of proper quality, or fail in the performance of any of the obligations herein contained, the Contractor may at its option and without prejudice to any other rights and remedies, declare the Subcontractor in Default of this Subcontract.

**7.1.2 Completion of Work Upon Default.** In the event of the Subcontractor's Default, the Contractor may take whatever steps are reasonably necessary to complete the Subcontractor's contractual obligations, including but not limited to supplementing the Work of the Subcontractor, terminating the Subcontractor and completing the Subcontractor's contractual obligations itself, and/or employing alternative subcontractors or other persons to complete the Subcontractor's contractual obligations. Any costs thereby incurred by the Contractor shall be deducted from any sums then due or thereafter to become due to the Subcontractor, and the Subcontractor shall not be entitled to receive any further payments under the Subcontract until the Subcontractor's contractual obligations are complete and the extent of the Contractor's damages for the Subcontractor's Default is known. The Subcontractor shall be also be liable for any other damages which the Contractor incurs directly attributable to such Default, including reasonable attorney's fees and all attendant costs (including costs for mediation, litigation, and/or arbitration), liquidated damages and/or penalties assessed against the Contractor, and loss of profits. If the expenses incurred by Contractor in completing the Subcontractor's contractual obligations and other damages incurred by Contractor exceed the unpaid balance of the Subcontract, the Subcontractor shall pay the difference to Contractor, along with any other damages incurred by Contractor as a result of the Subcontractor's Default. If the expenses incurred by the Contractor in completing the Subcontractor's Work and other damages incurred by the Contractor do not exceed the unpaid balance of the Subcontract, such excess shall be paid to the Subcontractor upon completion of the Subcontractor's contractual obligations and acceptance of the Subcontractor's Work.

**7.1.3 Contractor's Right, But Not Obligation, to Assume Sub-subcontracts / Agreements.** In the event Contractor terminates the Subcontractor for any reason, Contractor shall have the right, but not the obligation, to assume Subcontractor's sub-subcontracts and/or agreements with Subcontractor's sub-subcontractors and/or suppliers on the Project. Further, in the event of Subcontractor's termination for any reason, Contractor shall remain free to re-negotiate new agreements with Subcontractor's sub-subcontractors and suppliers (as opposed to assuming Subcontractor's sub-subcontracts and/or agreements with them) if Contractor, in its sole discretion, deems appropriate. However, neither this Section 7.1.3 nor any other provision of this Subcontract is meant to confer any rights, including third-party beneficiary rights of any kind or type, upon any person or entity, including, but not limited to, Subcontractor's sub-subcontractors and/or suppliers on the Project; Contractor specifically disclaims all such rights, including all alleged third-party beneficiary rights.

**7.1.4 Use of Materials Upon Default.** Upon the Subcontractor's default, the Contractor, or other subcontractors or persons employed by the Contractor to complete the Subcontractor's obligations, may enter upon the jobsite and take possession of any materials left on the jobsite by the Subcontractor for the purpose of completing the Subcontractor's Work. The Contractor shall also have a lien upon, and the Subcontractor does hereby grant a security interest in, all of its equipment, materials, appliances, and tools left on the jobsite to secure the payment of any sums owed under this Subcontract to the Contractor by the Subcontractor.

**7.1.5 Insolvency, Bankruptcy of Subcontractor.** The Subcontractor specifically agrees that should the Subcontractor become insolvent, commit any act of bankruptcy or voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws of the United States, any such action shall constitute a breach by Subcontractor of this Subcontract and Contractor shall have the right to immediate termination as well as all other rights and remedies provided in this Subcontract and by governing law. In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as set forth above, without notice.

## **7.2 TERMINATION OF SUBCONTRACT FOR CONVENIENCE OR BY SUBCONTRACTOR**

**7.2.1 Termination by Contractor.** The Owner may terminate the Project for the Owner's convenience at any time, so the Contractor may at any time terminate this Subcontract for the convenience of the Contractor without any default under the Subcontract Documents. In the event of such a termination for convenience, and provided the Subcontractor is not in default, the Subcontractor shall receive as full compensation its actual necessary and reasonable costs of performing the Work to date of termination, as determined by an audit of the Subcontractor's records, plus a reasonable markup for overhead and profit. In no event shall such amounts exceed the Subcontract Sum. The Subcontractor shall make its records available at reasonable times and places for the Contractor's audit. In the event any termination of the Subcontractors for default is later determined to have been improper, the termination shall be automatically converted to a termination for convenience, and the Subcontractors shall be limited in its recovery strictly to the compensation provided for in this Subparagraph.

**7.2.2 Termination by Subcontractor.** The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, sub-subcontractors, or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead-and profit on Work executed. In no event shall Subcontractor be entitled to recover unexpended overhead unearned (or lost) profit, or other incidental or consequential damages, and Subcontractor specifically waives and disclaims any alleged right to any such damages.

## **7.3 SUSPENSION / TERMINATION / ADJUSTMENT FOR DELAYS**

**7.3.1 Suspension by Contractor.** The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time.

**7.3.2 Termination by Owner.** If the Owner terminates the Contract for the Owner's convenience, the Contractor shall deliver written notice to the Subcontractor.

**7.3.3 Payment.** The Subcontractor understands that the Contractor is bound, under the terms of the Prime Contract, to the Owner's determination of what payments the Contractor is due in the event of Project Suspension or Termination. Accordingly, if the Contractor Suspends or Terminates this Subcontract due to the Owner's Suspension or Termination of the Project, the Owner's determination of the amount that the General Contractor is due under the terms of the Prime Contract for Work properly completed by the Subcontractor shall be binding upon the Subcontractor.

**7.3.4 Adjustment.** An adjustment in the Subcontract Time shall be made for suspension, delay or interruption, except for the extent that performance was suspended, delayed or interrupted by a cause for which the Subcontractor was responsible, and/or adjustment is made or denied under another provision of this Subcontract.

## **7.4 ASSIGNMENT OF THE SUBCONTRACT**

**7.4.1 Assignment of Subcontract by Contractor.** In the event of termination of the Prime Contract by the Owner, the Contractor may assign this Subcontract to the Owner, or to the Owner's financial institution if appropriate, subject to the

provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents.

**7.4.2 No Assignment of Subcontract by Subcontractor without Written Consent.** The Subcontractor shall neither assign this Subcontract nor the Work of this Subcontract, nor subcontract the whole of this Subcontract, without the written consent of the Contractor. In the event of any such assignment or subcontracting, the Subcontractor shall nevertheless remain responsible to the Contractor for the obligations of this Subcontract.

## **ARTICLE 8 - THE WORK OF THIS SUBCONTRACT**

**8.1 Responsibilities of the Subcontractor.** The Subcontractor shall execute the Work described in the Subcontract Documents, including all Labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

**8.2 The Work of the Subcontractor.** The Work of the Subcontractor is specified in the scope attachments hereto, which may include Inclusions, Exclusions, and Clarifications, and which are incorporated herein by reference as if set forth fully. The Work shall be performed in accordance with the Drawings and Specifications and any addenda and modifications thereto, including all labor, materials, engineering, and testing incidental thereto, as usually or typically performed or furnished in connection with such Work, regardless of whether such labor or materials are referred to under one or more headings in the Specifications, it being the intention of the parties that all incidental Work performed by the trade(s) covered by this Subcontract and required by the Prime Contract shall be performed by the Subcontractor.

**8.3 Other Obligations.** Every part of the Subcontractor's work shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner possible. All workmanship shall be of the best of its several kinds and all materials used in the Subcontractor's work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

**8.4 Materials / Equipment Furnished by Others.** In the event the scope of the Subcontractor's work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage attributable to the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

**8.5 Approval of Substitutions.** No substitutions shall be made in the Subcontractor's work unless permitted in the Contract Documents and only then upon the Subcontractor's first receiving all approvals required under the Contract Documents for substitutions. The Subcontractor shall indemnify the Contractor for any increased costs incurred by the Contractor as a result of such substitutions, whether or not the Subcontractor has obtained approval thereof.

## **ARTICLE 9 - DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**9.1 Subcontractor's Date of Commencement.** The Subcontractor's date of Commencement shall be the date of this Subcontract, as first written above, unless a different date is stated below or provision is made for the date in a Project Schedule attached hereto or to be fixed in a Notice to Proceed issued by the Contractor.

**9.2 Notice of Commencement.** Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's work to permit the timely filing of mortgages and other security interests.

**9.3 Substantial Completion.** The Work of this Subcontract shall be substantially completed not later than the date stated on the Project Schedule, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.

**9.4 Time is of the Essence.** With respect to the obligations of both the Contractor and the Subcontractor in this Subcontract, time is of the essence. Within five (5) days of the execution of this Subcontract, the Subcontractor shall prepare a detailed proposed schedule within the constraints of the Contractor's overall Project Schedule, including the stated Project Substantial Completion date and milestone dates, if any, which shall be subject to the approval of the Contractor. The Subcontractor's proposed schedule shall include a detailed breakdown of work items, with the planned duration, start date, and completion date for each item and estimated times for delivery of the major components of the Work and Product Data, Samples, and Shop Drawings, and shall be in the form of a bar chart.

9.5(a) Delays Attributable to Owner and/or Contractor. Except as otherwise provided in this Subcontract, should the Subcontractor's Work be delayed, interfered with, or otherwise disrupted in any manner by the Owner, Contractor, or any party for which they would be responsible, then the Subcontract Time shall be extended for a period equivalent to the time lost due to such causes. The parties understand that the Contractor's right to recover additional compensation from the Owner for delays in the progress schedule is extremely limited, so the Subcontractor agrees that such extension of the Subcontract Time shall be the Subcontractor's exclusive remedy for any such occurrence. The Contractor's exercise of any of its rights under this Subcontract, including but not limited to suspension of the Subcontractor's Work to allow for correction of defective Work, shall not, under any circumstances, be construed as delay, disruption, or interference with the Subcontractor's performance of the Work, and the Subcontractor shall have no claim for damages against the Contractor for any such occurrence. No extension of time will be valid without the Contractor's written consent, and only after such claim has been made by the Subcontractor in accordance with Article 5 of this Subcontract.

9.5 (b) Delays Not Attributable to Subcontractor. Except as otherwise provided in this Subcontract, should the Subcontractor's Work be delayed, interfered with, or otherwise disrupted in any manner by fire, unavoidable casualties, unforeseeable weather conditions, or any other causes that are both beyond the Subcontractor's control and unforeseeable at the time of contracting, then the Subcontract Time shall be extended for a period equivalent to the time lost due to such causes. The parties understand that the Contractor's right to recover additional compensation from the Owner for delays in the progress schedule is extremely limited, so the Subcontractor agrees that such extension of the Subcontract Time shall be the Subcontractor's exclusive remedy for any such occurrence. No extension of time will be valid without the Contractor's written consent, and only after such claim has been made by the Subcontractor in accordance with Article 5 of this Subcontract.

9.6 Subcontract Time / Weather Conditions. The Subcontract Time shall not be extended on the account of weather conditions or other natural phenomenon (except for unforeseeable weather conditions), unsuitable ground conditions, inadequate construction forces, the failure of the Subcontractor to place orders for equipment or materials sufficiently in advance to assure timely delivery, or interruptions to (or suspensions of) the Subcontractor's Work to enable other subcontractors to perform their work.

9.7 Extensions of Time. Under the terms of the Prime Contract, the Contractor has a limited time to submit claims to the Owner for extensions of time due to occurrences on the Project. Accordingly, any request by the Subcontractor for an extension of time for performing or completing the Work covered by this Subcontract must be made in writing to the Contractor, and it must be made no later than ten (10) days after the commencement of the occurrence giving right to the claim; otherwise it shall be waived. The Subcontractor shall provide the Contractor with an estimate of the probable effect of such delay, disruption or interference on the progress of the Work, which the Contractor shall submit to the Owner. The Subcontractor shall only be entitled to an extension of time for performing and completing the work covered by this Subcontract upon the same terms and conditions as an extension of time is allowable and only to the extent actually allowed to the Contractor by the Owner or its representative under the terms of the Prime Contract.

9.8 Overtime. If ordered in writing by the Contractor, the Subcontractor shall work overtime. If the overtime is required because of delays attributable to the Subcontractor, then no additional compensation shall be due. If the overtime work is required because of the delay of others, the additional compensation due the Subcontractor shall be equal to its increased labor costs.

## ARTICLE 10 - SUBCONTRACT SUM

10.1 Subcontract Price. For performance of this Subcontract, the Contractor shall pay to the Subcontractor in current funds the sum set forth as the Subcontract Price on Page one (1) of this document, subject to additions and deductions as provided in this Subcontract.

10.2 Alternates. The foregoing Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:

10.3 Unit Prices. Unit prices, if any, are attached hereto.

## ARTICLE 11 - PROGRESS PAYMENTS

11.1 Progress Payments. Based upon applications for payment submitted to the Contractor by the Subcontractors, corresponding to applications for payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. The Subcontractor shall furnish an affidavit and release of claims form and interim lien waiver acceptable to the Contractor and Owner. Nothing contained herein shall require money

to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create a fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust, or shall entitle any person or entity to an award of punitive or exemplary damages against the Contractor or Subcontractor for breach of the requirements of this provision.

11.2.1 Period Covered. The period covered by each application for payment shall be one calendar month ending on the 25<sup>th</sup> day of the month. The Subcontractor shall submit progress payment applications to the Contractor no later than the 25th day of the month for work performed up to and including the last day of the payment period indicating work completed.

11.2.2 Billing Form. The Subcontractor's progress payment application for work performed in the preceding payment period must be submitted to the Contractor on Vannoy Billing Form B-1, which shall be provided to the Subcontractor upon request.

11.2.3 Amendment Allowed. If the owner requires the Contractor to submit request for payment on a basis that would require the Subcontractor to submit progress payment application earlier or later than the 25<sup>th</sup> day, depending on the Owner's requirement, the Subcontractor agrees to amend this provision to allow Contractor to comply with the Owner's requirements.

11.3 Timely Application for Payment. Provided that an application for payment is received by the Contractor not later than the 25<sup>th</sup> day of the month, the Contractor shall include the Subcontractor's Work covered by the next application for payment which the Contractor is entitled to submit to the Architect. Progress payments shall be made to the Subcontractor in accordance with the North Carolina Prompt Payment Act, N.C.G.S. § 22C-3.

N.C.G.S § 22C-3. **Time of payment to subcontractors after contractor... has been paid.** When a subcontractor has performed in accordance with the provisions of his contract, the contractor shall pay to his subcontractor and each subcontractor shall pay to his [sub]subcontractor, within seven (7) days of receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for such subcontractor's work and materials based on work completed or service provided under the subcontract.

11.4 Late Application for Payment. If an application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

11.5 Schedule of Values. Each application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

11.6 Applications Shall Include Percentage. Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's work as of the end of the period covered by the applications for payment. Submission of an application for an Application for Payment shall constitute a representation that:

- (1) The Work covered by the Application has been completed in accordance with the Subcontract Documents;
- (2) The Work performed to date as shown on the Application for Payment represents the actual value of the Work completed under the Subcontract and all approved Change Orders;
- (3) The Subcontractor has fully paid all sub-subcontractors, material suppliers, and third parties who supplied material, equipment, and/or labor for the project at the Subcontractor's request as of the date of the previous Application for Payment, and that the Subcontractor will pay all sub-subcontractors, material suppliers, and third parties who have supplied material, equipment, and/or labor for the project in the interim immediately upon receipt of the requested payment;
- (4) The current payment shown is now due;
- (5) All amounts previously due have been received and, except as set forth in the Application for Payment, no additional amounts are currently due;
- (6) The Subcontractor has complied with and paid all amounts due under Federal, State, and Local tax laws, including Social Security Unemployment Compensation and Workers' compensation laws, and fringe benefits insofar as applicable;

- (7) The remaining balance of the Subcontract Sum is sufficient to complete the Work free and clear of all liens and encumbrances;
- (8) All of the right, title, and interest in and to all labor and material provided is transferred to the Owner, and the Subcontractor waives, releases, and relinquishes any and all claims to additional compensation that it has or may have against the Owner, the Owner's agents, the Architect, lenders of the Owner, the Contractor, sureties of the Contractor, and the Project, based on Work performed and costs incurred to date, including claims for delay, impact, acceleration, disruption, and labor inefficiency.

**11.7 Payment Computation.** Subject to the provision of the Subcontract Documents, the amount of each payment shall be computed as follows:

11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's work in the schedule of values, less applicable retainage as set forth on Page 1 of this Subcontract. Pending final determination of the cost to the Contractor of changes in the Work which have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime contract, even though the Subcontract Sum has not yet be adjusted;

11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less applicable retainage as set forth on Page 1 of this Subcontract.

11.7.3 Subtract the aggregate of previous payments made by the contractor; and

11.7.4 Subtract amounts, if any, calculated under Subparagraph 11.7.1 or 11.7.2 which are related to Work of the Subcontractor for which the architect has withheld or nullified, in whole or in part, a certificate of payment for a cause which is the fault of the Subcontractor.

**11.8 Direct or Joint Payments by the Contractor.** If, in the judgment of the Contractor, it serves the best interest of the Project, the Contractor may, but shall not be obligated or required to, make direct or joint payment on behalf of the Subcontractor to the Subcontractor's sub-subcontractors, material and/or equipment suppliers, and/or any other third parties who supplied material, equipment, and/or labor for the project at the Subcontractor's request, so long as the Contractor provides written notice of such payment to the Subcontractor. The Contractor shall charge all such direct or joint payments against the Subcontract Sum. However, neither this Section 11.8, nor any other provision of this Subcontract, is meant to confer any rights, including third-party beneficiary rights of any kind or type, upon any person or entity, including, but not limited to, Subcontractor's sub-subcontractors and/or suppliers on the Project; Contractor specifically disclaims all such alleged rights, including alleged third-party beneficiary rights.

**11.9 Written Notification Upon Disapproval.** Upon any partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld. The Contractor may deduct from the amount paid to the Subcontractor, any sums due and owing the Contractor from the Subcontractor pursuant to the Contract Documents.

**11.10 Reduced Payment.** If the Subcontractor's Progress Payment Application is for more than the value of Work completed for the payment period, the Contractor can reduce the Subcontractor's Progress Payment Application and forward the reduced payment. If the reduction by the Contractor is excessive or not justified, the Subcontractor can submit a "Request for Payment Review", in writing, to the Chief Financial Officer (see Notices). A written determination will be made within five (5) business days of receipt of the request. The Subcontractor consents to the reduction if a request is not made within five (5) days after receiving payment.

**11.11 Payment is Not Acceptance of Work.** Payment to the Subcontractor is specifically agreed not to constitute or imply acceptance by the Contractor or the Owner of any portion of the Subcontractor's work, nor shall the approval of the Subcontractor's work by the Owner, Architect, and/or Contractor relieve the Subcontractor from strict compliance with the plans, drawings, specifications, and other requirements of the Subcontract Documents.

**11.12 Payment for Extra Work.** In no event shall the Contractor be liable to the Subcontractor for payments for any extra work the Subcontractor performs over and above the Work required under this Subcontract unless (1) the Subcontractor performs such work pursuant to a Change Order executed by the Contractor, (2) Subcontractor has submitted, prior to beginning such the work, a written notice that Subcontractor believes that the work ordered is outside the scope of its contract

and that a Change Order should thus be issued for such work, or (3) such work was required by an emergency situation, in which latter case an invoice or quote shall be submitted to the Contractor consistent with the Subcontract Documents. The Subcontractor acknowledges and understands that no employee or agent of the Contractor is authorized to direct any extra work by unwritten, verbal or oral order.

11.13 Contractor May Withhold. The Contractor may withhold payment from the Subcontractor, in whole or in part, for any failure of the Subcontractor to perform in strict compliance with the terms or conditions of the Subcontract Documents, or for any reason under which the Owner may withhold payment from the Contractor under the Prime Contract, regardless of whether the Owner has actually withheld payment from the Contractor, including to such extent as may be necessary in the Contractor's opinion to protect the Owners or the Contractor from loss due to:

- (1) Defective Work of the Subcontractor not remedied;
- (2) Third party claims filed, or substantial evidence indicating the possible filing of such claims, because of the Subcontractor;
- (3) Failure of the Subcontractor to make proper payments to its own subcontractors or material, equipment or labor suppliers;
- (4) Evidence that the Subcontractor's Work cannot be completed for the unpaid balance of the Subcontract Sum;
- (5) Damage to the Owner or Contractor attributable to the Subcontractor, or substantial evidence indicating the possibility of such damage;
- (6) Evidence that the Subcontractor's Work likely will not be completed within the Subcontract Time.

#### **11.14 SUBSTANTIAL COMPLETION**

11.14.1 Substantial Completion. When the Subcontractor's work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. After the Architect issues the Certificate of Payment covering such Substantially Completed Work and within ten (10) days after the receipt of payment from the Owner, the Contractor shall, to the full extent allowed in Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover cost of items to be completed or corrected by the Subcontractor. Such payment may also be reduced, and sums withheld, as provided elsewhere in this Subcontract. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's work covered by the certificate. The Owner's approval and acceptance of the Subcontractor's work shall be a condition precedent to the right of the Subcontractor to receive payment from the Contractor. All punchlist work shall be completed within ten (10) days. The Subcontractor shall give written notification upon completion of all punchlist Work.

#### **ARTICLE 12 - FINAL PAYMENT**

12.1 Final Payment. Final payment, constituting the entire unpaid balance of the Subcontract Sum and including all retainage held from the Subcontractor pursuant to the terms of this Subcontract, shall be made by the Contractor to the Subcontractor within ten (10) days of the date when the Subcontractor's work is fully performed in accordance with the requirements of the Subcontract Documents and the Architect has issued a certificate for payment covering the Subcontractor's complete work. The Owner's approval and acceptance of the Subcontractor's work shall be a condition precedent to the right of the Subcontractor to receive final payment from the Contractor; however, no payment from any party, in full or in part, including payment from the Owner to the Contractor, shall constitute acceptance of the Subcontractor's work or evidence that the Subcontractor has completed the Work of the Subcontract in accordance with the requirements of the Subcontract Documents.

12.2 Evidence of Debt Satisfaction. Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's work have been satisfied. The Subcontractor shall, as a condition precedent to the right to receive final payment, furnish (1) a release of all claims conditioned upon receipt of final payment, followed by a final

lienwaiver once final payment has been received, on forms acceptable to the Contractor and the Owner, (2) the number of copies of "As Built" drawings required by the Subcontract Documents (and one additional copy for the Contractor's Use), and (3) copies of the Owner's Operational/Instructional/ Maintenance Manuals, warranties, guarantees and any other close-out documents required by the Subcontract Documents.

## **ARTICLE 13 - INSURANCE AND BONDS**

### **13.1 INSURANCE REQUIREMENTS**

**13.1.1 Insurance.** Subcontractor shall procure and maintain for the duration of the project and three years following, with an insurance carrier acceptable to the Contractor, the insurance coverages set forth in the attached "INSURANCE ADDENDUM".

**13.1.2 Proof of Insurance - Subcontractor.** Subcontractor shall provide acceptable proof of insurance to Contractor before beginning the Work under this Subcontract, including but not limited to a proper certificate of insurance and applicable endorsements. However, the Contractor's failure to note that the Subcontractor has failed to provide a proper and sufficient certificate of insurance before allowing the Subcontractor to begin work shall not release or diminish the liability or obligations of the Subcontractor nor shall it constitute a waiver of any of the insurance requirements under this Subcontract.

**13.1.3 Proof of Insurance – Sub-subcontractor.** If Subcontractor subcontracts any portion of the Work to a sub-subcontractor, the Subcontractor shall enter into a written agreement with the sub-subcontractor and shall require the sub-subcontractor to meet the same insurance requirements. The Subcontractor shall require the sub-subcontractor to provide proof of said Insurance and Worker's Compensation coverage to the Subcontractor in the form of a Certificate of Insurance with applicable endorsements before permitting said sub-subcontractor to proceed with the Work. However, the Contractor's failure to note that the sub-subcontractor has failed to provide the Subcontractor with a proper and sufficient certificate of insurance before beginning work does not release or diminish the liability or obligations of the Subcontractor under this section nor shall it constitute a waiver of any of the insurance requirements under this Subcontract.

### **13.2 BONDING REQUIREMENTS**

**13.2.1 Bond.** If a Performance and/or Payment Bond is required as part of the scope of the Subcontractor's Work of this Subcontract, the Subcontractor shall promptly, upon request of the Contractor, furnish a copy or permit a copy to be made of any Performance or Payment bond covering the Subcontractor's obligations.

**13.2.2 No Bond Required.** If a Performance and/or Payment Bond are not required of the Subcontractor, then the Contractor may at its option, within the duration of this Subcontract, require such bonds, and the Subcontractor shall provide the same, at the cost of the Contractor. Said bonds shall be in the full amount of this Subcontract in a form and by a surety satisfactory to the Contractor. The Subcontractor will be reimbursed without retainage for cost of said Performance and Payment Bond simultaneously with the next progress payment, but the reimbursement amount for the bond shall not exceed the manual rate for the Subcontractor's Work. The Subcontractor's failure to promptly provide such requested bonds shall constitute a default of this subcontract, entitling the Contractor to terminate this Subcontract and re-let the work to another Subcontractor as per the default provisions of this Subcontract.

**13.2.3 Forms Required.** Any Performance or Payment Bonds provided by the Subcontractor pursuant to the requirements of this section shall be in the full amount of this Subcontract by a surety satisfactory to the Contractor, and said Bond(s) shall be in conformance with and shall provide the same terms and guarantees as the bond forms attached to this Subcontract.

## **ARTICLE 14 - TEMPORARY FACILITIES AND WORKING CONDITIONS**

**14.1 Temporary Facilities.** The Contractor shall furnish and make available to the Subcontractor the following temporary facilities, equipment and services; these shall be furnished at no cost to the Subcontract or unless otherwise indicated below:

Temporary power, toilet, local telephone service, dumpster.

**14.2 Dimensions & Elevations.** The Subcontractor is responsible for verifying the dimensions and elevations at the Project site by field measurement prior to ordering materials or in any way commencing the Work. The Subcontractor is responsible for monitoring the progress of the Project and for coordinating and performing all field measurements within the times required by the Project Schedule.

**14.2.1 Notification of Deficiencies.** Prior to the commencement of the Subcontractor's Work, the Subcontractor shall notify the Contractor in writing of any deficiencies that it discovers at the Project site. Any known but unreported deficiencies shall be deemed accepted by the Subcontractor and shall become the responsibility of the Subcontractor.

## **ARTICLE 15 - NOTICES**

**15.1 Questions Concerning Work, Scheduling, Etc.** The Subcontractor shall contact the Contractor's representative(s) for questions concerning the work, scheduling, etc. If a question arises concerning payment for work performed, the Subcontractor should contact Contractor's Accounts Payable Department at the following address:

James R. Vannoy & Sons Construction Co., Inc.  
Attn: Accounts Payable Department  
P.O. Box 635  
Jefferson, North Carolina 28640  
Telephone: (336) 846-7191

**15.2 Questions Concerning Accounts Payable.** If the Subcontractor feels that the Accounts Payable Department has not properly addressed a problem relating to timely payment, the Subcontractor should submit a "Request For Payment Review", in writing to:

James R. Vannoy and Sons Construction Co., Inc.  
Attn: Chief Financial Officer  
P.O. Box 635  
Jefferson, North Carolina 28640  
Telephone: (336) 846-7191

**15.3 Legal Notices.** If legal notices are filed, they shall be served on the following registered agents of the parties:

Contractor's Registered Agent: James R. Vannoy & Sons  
Construction Company, Inc.  
Attn: James B. Maloney, Esq.  
1608 Hwy 221 North  
Jefferson, N.C. 28640

Subcontractor's Registered Agent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**15.4 No Listed Registered Agent:** If the Subcontractor fails to provide a name and address where requested in the preceding paragraph, the Contractor may serve legal notices by mailing the same to the person or entity listed in official public records as the Registered Agent of the Subcontractor, or to the address provided by the Subcontractor for the mailing of disbursements under this Subcontract.

## **ARTICLE 16 - ENUMERATION OF SUBCONTRACT DOCUMENTS**

**16.1 Subcontract Documents.** The Subcontract Documents are enumerated as follows, and are incorporated herein as part of this Subcontract as if set forth fully herein:

- (1) This Subcontract;
- (2) The Insurance Addendum referenced on Page 1, along with any other listed Exhibits;
- (3) The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement;
- (4) Any Modifications to this Subcontract properly made in compliance with its terms subsequent to its original execution by the parties hereto, and any modifications to the Prime Contract properly made in compliance with its terms subsequent to its original execution by the Contractor and the Owner;
- (5) Any Inclusions, Exclusions, and Clarifications attached hereto and incorporated herein by reference; and

- (6) North Carolina Projects Only - The Claim Prevention Attachment ("Lien Agent Information" on Private Projects, "Contractor's Project Statement" on Public Projects). There is no Claim Prevention Attachment if the project is not located in North Carolina.

**16.2 The Prime Contract.** The Prime Contract (which sets forth the Contractor's obligations to the Owner for furnishing labor, materials, equipment, and services in connection with the construction of the Project) and the other Subcontract Documents are available to the Subcontractor for examination, the Subcontractor has the opportunity to examine the Prime Contract and the other Subcontract Documents, and the Subcontractor will have access to such documents as the Work of the Subcontract progresses.

**16.3 Entire Agreement.** This Subcontract, including documents incorporated herein by reference, constitutes the entire agreement between the parties, and the Subcontract may not be amended, modified, or changed except in writing signed by the Contractor and the Subcontractor with the same formality as this Subcontract.

## ARTICLE 17 - MISCELLANEOUS PROVISIONS

**17.1 References.** Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

**17.2 Material Cost Escalations.** It shall be the Subcontractor's responsibility during its pricing of the Work and negotiation of the Subcontract Sum to account for potential material cost escalations and/or changes in the availability of materials during the course of its performance of the Work, and Subcontractor shall not be entitled to an adjustment in the Subcontract Sum due to escalations in the costs of materials and/or changes in the availability of materials.

**17.3 Avoiding Mechanic's Liens.** Upon the request of the Contractor, the Subcontractor shall provide the Contractor with the names and addresses of all third parties who have provided or may provide materials, equipment, and/or labor on the Project, and the Subcontractor agrees to keep the list updated as the Project continues. The Contractor shall have the right to contact and correspond directly with the Subcontractor's and sub-subcontractors' suppliers in order to ensure that the Subcontractor is keeping its credit accounts current.

**17.4 Mechanic's Liens Filed.** If any sub-subcontractor, laborer, or material supplier of the Subcontractor files a mechanic's lien, bond claim, or any other claim on this Project, including claims against monies due or to become due from the Owner, the Contractor may, in addition to all other rights and remedies provided by the Subcontract Documents or by law, immediately pay, satisfy, remove, bond-off or discharge such liens or claims by whatever means the Contractor chooses, at the entire expense of the Subcontractor, including the Contractor's attorney' fees and all attendant costs (including all costs for mediation, litigation, and/or arbitration) and the cost of any and all bonds procured by the Contractor in connection therewith.

**17.5 Attorney Fees.** Should either party engage an attorney to institute suit to enforce any of the provisions hereof, to protect its interest in any matter arising under this Subcontract, or to collect damages for the breach of the Subcontract or to recover on a surety bond given by a party under this Subcontract, then the prevailing party shall be entitled to recover attorney's fees and all attendant costs (including all costs for mediation, litigation, and/or arbitration) expended or incurred therein.

**17.6 Security.** The Subcontractor is responsible for security of its equipment, tools, and materials on site until installation and acceptance of the work.

**17.7 Social Media.** The Contractor is strictly prohibited from posting images and/or information about the Project on any social media platforms without express written permission from the Owner, and is required to pass this obligation down to each Subcontractor on the Project. Therefore, Subcontractor shall prohibit and prevent its officers and employees from posting, on any social media platform, photographs, videos, and/or other images and/or information concerning the Project, including but not limited to photographs and/or other images depicting structures or any other portion of the Project, as well as images depicting the Contractor's or the Owner's company's logo or trademark. "Social Media" includes all means of communicating or posting information or content of any sort on the Internet, including web logs or blogs, journals or diaries, personal websites, social networking or affinity web sites, web bulletin boards or chat rooms, and any other form of electronic communication. Subcontractor acknowledges that remedies at law may be inadequate to protect the Contractor and/or the Owner against a breach of this provision by the Subcontractor's Officers or Employees, so without prejudice to any other rights and remedies otherwise available to the Contractor, Subcontractor agrees to the granting of specific performance and injunctive or other equitable relief, including the immediate removal of such images wherever posted.

**17.8 Governing Laws.** This Subcontract shall be governed by law of the State in which the project is located.

for mediation, litigation, and/or arbitration) and the cost of any and all bonds procured by the Contractor in connection therewith.

17.5 Attorney Fees. Should either party engage an attorney to institute suit to enforce any of the provisions hereof, to protect its interest in any matter arising under this Subcontract, or to collect damages for the breach of the Subcontract or to recover on a surety bond given by a party under this Subcontract, then the prevailing party shall be entitled to recover attorney's fees and all attendant costs (including all costs for mediation, litigation, and/or arbitration) expended or incurred therein.

17.6 Security. The Subcontractor is responsible for security of its equipment, tools, and materials on site until installation and acceptance of the work.

17.7 Social Media. The Contractor is strictly prohibited from posting images and/or information about the Project on any social media platforms without express written permission from the Owner, and is required to pass this obligation down to each Subcontractor on the Project. Therefore, Subcontractor shall prohibit and prevent its officers and employees from posting, on any social media platform, photographs, videos, and/or other images and/or information concerning the Project, including but not limited to photographs and/or other images depicting structures or any other portion of the Project, as well as images depicting the Contractor's or the Owner's company's logo or trademark. "Social Media" includes all means of communicating or posting information or content of any sort on the Internet, including web logs or blogs, journals or diaries, personal websites, social networking or affinity web sites, web bulletin boards or chat rooms, and any other form of electronic communication. Subcontractor acknowledges that remedies at law may be inadequate to protect the Contractor and/or the Owner against a breach of this provision by the Subcontractor's Officers or Employees, so without prejudice to any other rights and remedies otherwise available to the Contractor, Subcontractor agrees to the granting of specific performance and injunctive or other equitable relief, including the immediate removal of such images wherever posted.

17.8 Governing Laws. This Subcontract shall be governed by law of the State in which the project is located.

17.9 Severability. If any provision of this Subcontract is deemed invalid or unenforceable, such provision shall be deemed limited to the extent necessary to render it valid and enforceable, and the validity of the rest of this Subcontract shall not otherwise be affected. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

17.10 Titles. The titles given to this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose.

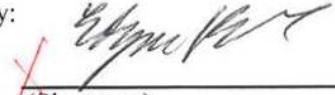
<< SIGNATURES ON NEXT PAGE>>

WITNESS OUR HANDS AND SEALS, the day and year as indicated on the first page of this document.

**SUBCONTRACTOR:**

Strickland Waterproofing Co., Inc.

By:



(Signature)

Edgar Black

(Printed Name and Title)

Telephone: 704-347-1345

ATTEST:

(Signature)



(Printed Name and Title)

SUBCONTRACTOR'S FEDERAL I.D.#

0 56-1596253

**CONTRACTOR:**

**JAMES R. VANNOY & SONS**

**CONSTRUCTION COMPANY, INC.**

By:



(Signature)

Jacob Gentry, Project Manager

(Printed Name and Title)

Telephone: 336-846-4238

JRV OFFICE USE

COST CODE: 07900

SNB-Floyd  
Floyd, VA 24091

Strickland Waterproofing Co., Inc.  
Subcontract #: 232015 - 07900

## EXHIBIT A

### Detailed Scope of Work:

This contract includes but is not limited to the following:

Work per attached quote excl. site retaining wall

#### Additional Provisions:

1. Subcontractor shall provide all engineering and layout from control lines established by Vannoy Construction.
2. Included are all warranties and guarantees per specifications. All warranties and guarantees will begin at Architectural Substantial Completion – not at equipment start-up or installation.
3. Work will comply with all local codes and site requirements as dictated by the Owner and Vannoy Construction.
4. Subcontractor will coordinate with Vannoy Construction Schedule to incorporate updates or revisions as needed throughout construction.
5. The Subcontractor shall protect from damage any existing and/or installed work throughout the duration of the construction schedule. The subcontractor is also responsible for reasonable protection of the Subcontractor's own work throughout the duration of the construction schedule. Any damages to existing or installed finishes caused by this subcontractor will be repaired or replaced by this subcontractor.
6. The Subcontractor has reviewed the Project Schedule and agrees to provide the manpower and/or the hours necessary to maintain the sequencing and durations shown. Subcontractor will be instrumental in the completion of this project. Includes overtime as required to meet the schedule.
7. The Subcontractor acknowledges that the Contract Documents are complementary and what is required by one shall be as binding as if required by all.
8. Subcontractor is responsible for the scheduling and managing of all required inspections.
9. Hoisting, transporting, storage and distributing of materials will be by Subcontractor.
10. Subcontractor is responsible for coordinating all jobsite deliveries with Vannoy's superintendent. Subcontractor is responsible for unloading and staging of all their material and equipment. Vannoy will not unload nor handle any subcontractor deliveries.
11. Subcontractor will be fully responsible for review of drawings for ADA and notification to Vannoy of any discrepancies observed. In areas designated as ADA per documents, this subcontractor shall take extra care to ensure all requirements, clearances, and tolerances are met. All work must comply in full with all applicable environmental, health and safety both local and national legislation. In circumstances where there is a conflict between local or national legislation and Vannoy requirements, the higher (more protective) requirement shall prevail.

Initials \_\_\_\_\_ Initials EB \_\_\_\_\_

12. Subcontractor shall be responsible for Builder's Risk deductibles (not reimbursable) if he is responsible for the claim.
13. Dumpsters to be provided by Vannoy. Removal of trade specific debris and trash by this subcontractor.
14. Temporary toilets provided by Vannoy. Use of base building toilets by subcontractor personnel will not be allowed.
15. Smoking, eating, or drinking (other than water) is not allowed within construction areas.
16. Subcontractor shall continuously maintain and update as-built drawing to reflect their scope of Work. The drawings should be made available for review at any time at the job site. Failure to maintain adequate as-builts may result in with holding of monthly pay applications either in part or completely.
17. The Subcontractor shall maintain daily reports at the job site on the Vannoy daily subcontractor form which shall include, but not be limited to, a brief description of what Work was done and where, manpower used for his and his Subcontractor's forces, weather delays, unusual conditions, important visitors, major equipment delivered to or removed from job site, meetings held and milestones achieved. Copies of the daily report will be provided to Vannoy on a daily basis. Failure to maintain Daily reports may result in with-holding of monthly payment applications either in part or completely until they have been caught up.
18. Project Closeout as required by the Contract Documents such as Owner & Operation Manuals, Demonstrations and attic stock (as applicable) will be required prior to the Owner move-in under this proposal. Warranty information shall be submitted separately from the O&M Manuals based on the established substantial completion date.
19. Subcontractor shall submit all submittal items within one week of receipt of this subcontract. And, upon approval, immediately release and manage equipment procurement to ensure a timely delivery.
20. Subcontractors will maintain adequate supervision at all times onsite when it or any of its subcontractors are on-site. Third tier subcontractors are not to work on-site without supervision by this subcontractor.
21. Subcontractor shall supply Vannoy a cell phone number for each of the subcontractor management & supervisory personnel (onsite/offsite).
22. Subcontractor shall provide his own water and ice.
23. Material storage will be limited to one day's work, or as coordinated with Vannoy Superintendent.
24. Vannoy Construction may remove any employee, subcontractor, supplier, or any other representative of subcontractor for any reason deemed necessary in the best interest of the project. Other than for an imminent safety issue, Vannoy will allow subcontractor 24 hr opportunity to correct.
25. Subcontractor agrees to attend all pre-installation and coordination meetings prior to starting any work as required by the Contractor.
26. Subcontractor shall follow all building rules and regulations.
27. Closeout information to be provided within fifteen days of TCO, including as-built drawings.



PROPOSAL  
Monday, April 1, 2024

## Strickland Waterproofing Co., Inc.

500 N. Hoskins Rd – Charlotte, NC 28216

Phone: (704) 347-1345

Fax: (704) 347-1347

Pricing still good as of  
06/03

Sandblasting /  
Shot Blasting  
  
Masonry Repairs /  
Tuck Point  
  
Sealants /  
Caulking  
  
Exterior  
Waterproofing  
  
Epoxy / Urethane  
Injection  
  
EIFS / Stucco  
Repairs  
  
Elastomeric  
Coatings  
  
Post Tendon  
Repair  
  
Mold  
Remediation  
  
ABAA Certified  
  
Expansion Joint  
Systems  
  
Sika Approved  
Applicator  
  
Water Repellent  
Coatings  
  
Traffic Deck  
Coatings  
  
Fire Stopping  
  
Epoxy and  
Urethane  
Floor Coating  
  
Roof Restoration  
  
Concrete Repair /  
Leveling  
  
Grace 3R Certified  
  
FM 4991 Certified  
  
Over 40 Years  
Experience

McKenzi Wilson  
Vannoy Construction  
1608 US Hwy 221 N-  
Jefferson, NC 28640  
  
**PROJECT:** SKYLINE NATIONAL BANK  
FLOYD, VA  
  
**TELEPHONE:** (336) 846-4226  
**EMAIL:** [mckenzi.wilson@jrvannoy.com](mailto:mckenzi.wilson@jrvannoy.com)

Strickland Waterproofing Company, Inc. is pleased to submit the following Proposal for the above-referenced project. We hereby propose to furnish all necessary labor, material, equipment, tools, transportation, supervision, insurance, and overhead to perform the following scope of work:

SCOPE OF WORK			
<b>SECTION:</b> 071326 – SELF – ADHERING SHEET WATERPROOFING	<b>INCLUDES:</b> Elevator pit walls ONLY	<b>LUMP SUM:</b> \$2,500.00	
<b>ADD:</b> Under slab on pit		<b>LUMP SUM:</b> \$6,000.00	
<b>SECTION:</b> (IF NEEDED) – SITE RETAINING WALL	<b>INCLUDES:</b> Membrane and drain mat ONLY	<b>LUMP SUM:</b>	\$17,500.00
<b>SECTION:</b> 072715 – NON-BITUMINOUS SELF – ADHERING SHEET AIR BARRIER	<b>INCLUDES:</b> Exterior water resistive barrier	<b>LUMP SUM:</b>	\$52,920.00
<b>SECTION:</b> IF THIS JOB NEEDS TO BE AN ABAA CERTIFIED PROJECT	<b>ADD:</b>	<b>LUMP SUM:</b>	\$7,000.00
<u>LEAKAGE TESTING BY OWNER/GC</u>			
<b>SECTION:</b> 079200 – JOINT SEALANTS	<b>INCLUDES:</b> Exterior vertical control joints Exterior hollow metal doors Exterior sidewalk expansion joints Exterior sidewalk to building	<b>LUMP SUM:</b>	\$6,300.00

### END OF SCOPE

Thank you in advance for allowing SWI the opportunity to submit a Proposal to your company. Should you have any questions or comments, please do not hesitate to contact me.

**PLEASE NOTE: PRICES ARE BASED ON ALL SPECIFICATION SECTIONS QUOTED. PRICES MAY BE SUBJECT TO CHANGE. PLEASE CALL FOR ANY REVISIONS. A WARRANTY WILL BE ISSUED THAT EXCLUDES DAMAGE CAUSED BY ACTS OF GOD.**

**TERMS: Payment is due net 30 days. If payment is not received within 30 days of invoice, a service charge of 1 1/2% per month or 18% per year will be charged. All collection fees and attorney fees will be applied to the unpaid balance.**

Proposal Submitted By: Eddie Black Jasmine Leekins 04-01-2024

Eddie Black/Vice President      Jasmine Leekins/Asst. Project Manager

Date

Over 40 Years  
Experience

Proposal Accepted By: \_\_\_\_\_

CAULKING & SEALANTS BELOW & ABOVE GRADE WATERPROOFING MASONRY & PRECAST SEALERS BUILDING CLEANING  
ROOF REPAIR SPECIAL COATINGS & PAINTING HISTORICAL RESTORATIONS

STRICKLAND WATERPROOFING CO., INC.



**Employment Eligibility  
Verification  
Compliance Form**

**Company:** Strickland Waterproofing Co., Inc.    **Project:** SNB-Floyd  
**Address:** 500 N. Hoskins Rd.    **Scope:** Waterproofing  
**City State Zip:** Charlotte, NC 28216

**James R. Vannoy & Sons Construction, Inc.** complies with all of the laws relating to employing legally eligible workers, including citizens, nationals, and aliens authorized to work in the United States. Specifically, James R. Vannoy Construction, Inc. complies with the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and requires all directors, officers, managers, agents and employees to properly complete the Employment Eligibility Verification Form (1-9). We do not knowingly employ anyone who is not authorized to work in the United States. We also want to ensure that our Subcontractors, and any/all other Sub-subcontractors or other party supplying labor and/or materials to this project are not one of those companies which knowingly employ unauthorized workers.

Accordingly, James R. Vannoy & Sons Construction, Co., Inc. & Strickland Waterproofing Co., Inc.

are required that all Subcontractors, Sub-subcontractors or other party supplying labor and/or materials to this project confirm and provide the following:

We, the subcontractor as listed above, supplying labor and/or materials for the project listed above as the subcontractor for the sub trade defined in this document, to the best of our knowledge, all of our directors, officers, managers, agents and employees assigned to our projects are authorized to work in the United States. The General Contractor will maintain the requisite data to comply with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, at the General Contractor's Office for the entire duration of the project. This information will be kept in a locked and secure area with appropriate protections to safeguard personal information. This information will be readily available to be faxed to the project site upon request.

We, the subcontractor listed above, agrees to defend, indemnify and hold harmless:

James R. Vannoy & Sons Construction, Co., Inc., & Skyline National Bank

and its directors, officers, employees and agents for any liability associated with our use or employment of individuals who are not authorized to work in the United States, and/or failure to comply with the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended. Agreement confirmed as so signified by signatures below.

   
Corporate Office Signature

Edgar Black / Vice President      9-5-24  
Corporate Officer Print Name / Title      Date





## Job Site Safety Rules Acknowledgement by Subcontractor

Project Name: SNB-Floyd

Project Location: 212 E Main Street Floyd, VA 24091

Subcontractor Company Name: Strickland Waterproofing Co., Inc.

By signing below, we acknowledge that we have received, either in a separate document or included in the subcontract document, a copy of James R. Vannoy & Sons Construction Co., Inc.'s Job Site Safety Rules, have read and understand them, and agree that all employees of our company and employees of our subcontractors will comply with these safety rules and all applicable OSHA safety rules.

Signature:  Title: Vice President

Print Name: Edgar Black Date: 9-5-24

# E-589CI

## Affidavit of Capital Improvement

Form E-589CI, Affidavit of Capital Improvement, may be used to substantiate that a contract, or a portion of work to be performed to fulfill a contract, is to be taxed for sales and use tax purposes, as a real property contract for a capital improvement to real property.

The receipt of an affidavit of capital improvement for services to real property, absent fraud or other egregious activities, establishes that the subcontractor or other person receiving the affidavit should treat the transaction as a real property contract for sales and use tax purposes.

A real property contract is a contract between a real property contractor and another person to perform a capital improvement to real property.

### Section I. Single Use (*Complete this section to issue the affidavit for a single capital improvement.*)

**A**

Owner, Tenant, or Real Property Contractor		
JAMES R. VANNOY & SONS CONSTRUCTION CO., INC.		
Address		
1608 US HIGHWAY 221 NORTH		
City	State	Zip Code
Jefferson	NC	28640

Real Property Contractor (General Contractor or Subcontractor)		
Strickland Waterproofing Co., Inc.		
Address		
500 N. Hoskins Rd.		
City	State	Zip Code
Charlotte,	NC	28216

Describe capital improvement to be performed:

Waterproofing

Project Name:

SNB-Floyd

Project Address (where the work is to be performed)	City	State	Zip Code
212 E Main Street	Floyd	VA	24091

I certify that, to the best of my knowledge, this affidavit is accurate and complete and that the transaction described to be performed by the Real Property Contractor (General Contractor or Subcontractor identified in box "B") shall be treated as a real property contract for a capital improvement to real property for sales and use tax purposes. I understand that if it is determined that I issued this affidavit in error and the transaction is subject to sales tax as a retail sale of repair, maintenance, and installation services to real property, I will be liable for payment of any additional taxes determined to be due.

Signature of Authorized Person:

Title: Vice President

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

### Section I. Single Use (*Complete this section to issue the affidavit for a single capital improvement.*)

Owner, Tenant, or Real Property Contractor		
Address		
City	State	Zip Code

Real Property Contractor (General Contractor or Subcontractor)		
Address		
City	State	Zip Code

To be completed by the Real Property Contractor Identified in Box C.

I certify that I am a Real Property Contractor who performs capital improvements to real property and all transactions with the real property contractor (subcontractor) identified in box "D" shall be treated as real property contracts for capital improvements to real property for sales and use tax purposes. I understand that if it is determined that I issued this affidavit in error and the transaction is subject to sales tax as a retail sale of repair, maintenance, and installation services to real property, I will be liable for payment of any additional taxes determined to be due.

Signature of Authorized Person: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

## Affidavit of Capital Improvement Instructions

Form E-589CI, Affidavit of Capital Improvement, may be issued to substantiate that a contract, or a portion of work performed to fulfill a contract, is a capital improvement to real property and subject to sales and use tax as a real property contract. Generally, services to real property are retail sales of or the gross receipts derived from repair, maintenance, and installation services, unless a person substantiates that a transaction is subject to tax as a real property contract, subject to tax as a mixed transaction contract, or the transaction is not subject to sales and use tax. A "real property contract" is a contract between a real property contractor and another person to perform a capital improvement to real property.

A mixed transaction contract is a contract that includes both a real property contract for a capital improvement and repair, maintenance, and installation services for real property that are not related to the capital improvement. For a mixed transaction contract, if the allocated sales price of the taxable repair, maintenance, and installation services included in the contract is less than or equal to twenty-five percent (25%) of the contract price, then the repair, maintenance, and installation services portion of the contract, and the tangible personal property, digital property, or service used to perform those services, are taxable as a real property contract for sales and use tax purposes.

- A person that issues Form E-589CI is liable for any additional tax due on the transaction in excess of tax paid on purchases pursuant to N.C. Gen. Stat. § 105-164.4H(a), if it is determined that the transaction is not a capital improvement, but rather the transaction is subject to tax as a retail sale.
- A person who receives Form E-589CI from another person, absent fraud or other egregious activities, is not liable for any additional tax on the gross receipts from the transaction if it is determined that the transaction is not a capital improvement.
- Form E-589CI is not an affidavit of tax paid on tangible personal property, or digital property purchased or used to fulfill a real property contract.
- Form E-589CI may not be used to purchase tangible personal property, or digital property exempt from sales and use tax.

### Exceptions from the Issuance of Form E-589CI to Establish a Transaction is to be Taxed as a Real Property Contract

In lieu of issuing an affidavit of capital improvement, a person may substantiate by other records that a transaction is a real property contract or a mixed transaction contract subject to tax as a real property contract, as discussed above, for a capital improvement to real property. However, where subcontractors are involved, it may be in the best interest of all parties to use Form E-589CI to ensure proper application of the sales and use tax laws.

### Section I. Single Use Instructions

A person may complete "Section I - Single Use" for a one time use to substantiate that a transaction is a real property contract for a single capital improvement to real property and subject to sales and use tax as a real property contract. When a real property contractor hires a subcontractor to perform a portion of the overall real property contract and there is not a recurring business relationship between the two parties (when a period of no more than twelve months elapse between transactions between two parties), "Section I – Single Use" may be completed and the form issued to the subcontractor as notice that the transaction is subject to sales and use tax as a real property contract.

The following scenarios are for reference to assist a person to complete and issue Form E-589CI. The scenarios presented are not intended to cover all possible uses of the form.

A property owner oversees the entire activity to real property that is a real property contract for a capital improvement to real property. The property owner hires various subcontractors to complete the real property contract or portions thereof:

- **Box A - Owner, Lessee/Tenant or Real Property Contractor:** Enter property owner's name and address.
- **Box B - Real Property Contractor (General Contractor or Subcontractor):** Enter a single subcontractor's name and address.
- Owner listed in Box A must describe the real property contract activity to be performed.
- Owner listed in Box A must enter the project address (if different than the address entered in Box A).
- Authorized Person (owner) signs, enters title (owner), enters the date, and issues to the person listed in Box B.

A property owner hires a general contractor to oversee the entire activity to real property that is a real property contract for a capital improvement to real property. The general contractor hires a subcontractor to perform the real property contract, or portion thereof:

- **Box A - Owner, Lessee/Tenant or Real Property Contractor:** Enter general contractor's name and address.
- **Box B - Real Property Contractor (General Contractor or Subcontractor):** Enter subcontractor's name and address.
- General contractor listed in Box A must describe the real property contract activity to be performed.
- General contractor listed in Box A must enter the project address.
- Authorized Person (general contractor) signs, enters title (general contractor), enters the date, and issues to the person listed in Box B.

A lessee/tenant hires a general contractor for the installation of equipment that is to be attached to real property and will be depreciated under the Internal Revenue Code:

- **Box A - Owner, Lessee/Tenant or Real Property Contractor:** Enter lessee/tenant's name and address.
- **Box B - Real Property Contractor (General Contractor or Subcontractor):** Enter general contractor's name and address.
- Lessee or tenant listed in Box A must describe the capital improvement to be performed and indicate the equipment will be depreciated under the Internal Revenue Code.
- Authorized Person (typically lessee or tenant) signs, enters title (lessee or tenant), enters the date, and issues to the person listed in Box B.

### Section II. Blanket Use Instructions

A real property contractor may complete "Section II – Blanket Use" and issue the form to another real property contractor (subcontractor) who is used exclusively to perform part, or all, of real property contracts with respect to capital improvements to real properties, where the parties have a recurring business relationship (when a period of no more than twelve months elapse between transactions between two parties). A blanket use affidavit continues in force so long as the real property contractor named in "Box C" and the real property contractor (subcontractor) named in "Box D" maintain a recurring business relationship or until the affidavit is withdrawn or otherwise notified by the issuer of the form.

The blanket use will generally apply for the following: (1) a builder who hires the same contractor(s) only for new construction; (2) a real property contractor who hires the same subcontractor(s) only for reconstruction; (3) a real property contractor who hires the same subcontractor(s) for remodeling or renovation and the activities performed by the subcontractor(s) for the other party are never repair, maintenance, and installation services for real property based on the contract or agreement between the parties; and (4) a real property contractor who exclusively hires the same subcontractor(s) to perform part, or all, of its real property contracts for capital improvements to real properties.

A general contractor or subcontractor hires a subcontractor that will replace the complete electrical wiring in all renovated homes:

- **Box C - Real Property Contractor:** Enter the hiring real property contractor's name and address.
- **Box D - Real Property Contractor (General Contractor or Subcontractor):** Enter the hired subcontractor's name and address.
- Authorized person listed in Box C signs, enters title, enters the date, and issues to the person listed in Box D.

## INSURANCE ADDENDUM (TYPE II TRADES)

**NOTE: WE AUDIT FOR COMPLIANCE WITH OUR INSURANCE REQUIREMENTS BECAUSE THE OWNER REQUIRES US TO MAKE ALL OF OUR SUBCONTRACTORS MEET THESE COVERAGES ON THE PROJECT. WE THEREFORE RECOMMEND FORWARDING THIS INSURANCE ADDENDUM TO YOUR CARRIERS) SO THAT YOU WILL NOT BE DELAYED FROM STARTING WORK AND/OR RECEIVING PROGRESS PAYMENTS BECAUSE YOU DO NOT HAVE THE RIGHT COVERAGES AND ENDORSEMENTS.**

1. **Insurance.** Subcontractor shall procure and maintain for the duration of the project and three years following, with an insurance carrier acceptable to the Contractor, the following insurance coverages with the following minimum limits:

- (a) **Commercial General Liability**- including Contractual Liability, Broad Form Liability Bodily Injury, Property Damage, Personal Injury, Independent Contractors, Fire Damage Legal Liability, General Aggregate per Project, Occurrence basis, Explosion, Collapse and Underground, Welding (if Subcontractor's work involves welding), and Blasting (if Subcontractor's work involves blasting):

\$1,000,000 each occurrence  
\$100,000 Fire Damage  
\$10,000 Medical Expenses  
\$1,000,000 Personal and Advertising Injury  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate

- (b) **Automobile Liability- Including Hired-Auto and Non-Owned Auto - \$1,000,000 Combined Single Limit.**

- (c) **Worker's Compensation and Employer's Liability.** Must be valid in the state where the work is being performed, and "Deliberate Intent" coverage is required for work to be performed in West Virginia.

Statutory Limits for Workers Compensation  
\$500,000 each accident  
\$500,000 each occurrence by disease  
\$500,000 by disease - policy limit

The Subcontractor agrees that regardless of state law that may allow a proprietor coverage exemption, no employee (including the Subcontractor's owners, officers, and/or proprietors) will physically visit the jobsite unless such person is included on Subcontractor's workers' compensation policy. If Subcontractor's Certificate of Insurance indicates that any Proprietors/Partners/Officers/Members have been exempted from coverage under its Comp Policy, Subcontractor must submit a list of employees/persons who may be physically visiting the site along with adequate assurances that each of those persons are covered under the Policy. The Subcontractor's failure to obtain Workers' Comp coverage for every person (whether Owner, Officer, Proprietor, Agent, or Employee) who that it physically sends to the jobsite shall be a material breach of this Subcontract. The Subcontractor agrees to completely indemnify and hold the Contractor harmless from any injuries sustained and/or claims raised by any such person(s) that would have been covered by Worker's Compensation had the Subcontractor complied with this requirement, including indemnification for claims where Contractor is exposed to liability because the injured person was not covered under the Subcontractor's Comp Policy and/or claims where the claimant would have been barred from raising a claim under the exclusive remedies of the worker's compensation laws in the state where the project is located.

- (d) **Excess Liability - \$1,000,000 Each Occurrence**

- (e) **Architects/Engineers Professional Liability Insurance** If the Work of the Subcontract includes design responsibilities, then for all design work performed by the Subcontractor, Subcontractor shall obtain Architects/Engineers Professional Liability Insurance in the amount of \$2,000,000 per claim/\$4,000,000 annual aggregate. This insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of a project. Such insurance shall remain in full force and effect for the period of Work and any Warranty Period and an additional three (3) years after expiration of the Warranty Period.

- (f) **Pollution or Other Coverage.** If applicable to the Subcontractor's Work, Subcontractor shall obtain pollution and/or other coverage as applicable including but not limited to installation risk, asbestos, aircraft, watercraft, USL&H, railroad protective including amendment of contractual liability on general liability, pollution liability coverage including contractual liability, completed operations and additional insured.

**2 Proof of Insurance.** Subcontractor shall provide acceptable proof of insurance to Contractor before beginning the Work under this Subcontract, including but not limited to a proper certificate of insurance and applicable endorsements. However, the Contractor's failure to note that the Subcontractor has failed to provide a proper and sufficient certificate of insurance before allowing the Subcontractor to begin work does not release or diminish the liability or obligations of the Subcontractor nor constitute a waiver of any of the insurance requirements under this Subcontract.

**3. Assumption of Obligations / Standard Pass—through Provision.** With respect to the Work of this Subcontract, the Subcontractor assumes toward Contractor all the obligations, risks and responsibilities that Contractor has assumed toward the Owner in the Prime Contract and other Contract Documents, and the Subcontractor is bound to the Contractor by those obligations in the same manner as the Contractor is bound to the Owner. In addition to the Contractor's rights and remedies in this Subcontract, Contractor shall also have the benefit of all rights and remedies against Subcontractor which Owner, under the Prime Contract and other Contract Documents, has against the Contractor.

**4. Sub-Subcontractor Insurance Required.** In the event that the Subcontractor enters into an agreement with a sub—subcontractor, including design professionals, to perform some or all of the Subcontractor's Work on this Project, the Subcontractor will require the sub-subcontractor to procure all insurance specified in this Subcontract to be carried by the Subcontractor, in like form and amount and under the same terms and conditions, and require the Sub-Subcontractor to name the Contractor, Owner, and other parties as Additional Insureds under the Sub-subcontractor's policies. The Subcontractor shall provide evidence of this insurance and Additional Insured status to the Contractor prior to the sub-subcontractor beginning work or entering onto the jobsite.

**5. Miscellaneous Insurance Provisions**

- (a) An Excess Liability policy of more than \$2,000,000 on an umbrella form can be used to satisfy the above limits.
- (b) The Owner and Contractor (and all of their collective officers, officials, agents, and employees), shall be named additional insureds on the liability policies listed above (except Workers Compensation) in connection with the services to be provided under this Subcontract.
- (c) This insurance for the additional insured shall be as broad as and at the same limits as that of the insured Subcontractor.
- (d) General Liability shall be written with a per project aggregate limit.
- (e) Insurance shall be primary and any insurance maintained by the Additional Insured shall be excess and non-contributory until all the limits of insurance have been exhausted through the payment of claims.
- (f) The general liability additional insured endorsement should also include completed operations coverage for the additional insured through the addition of ISO Form CG2037 1001 or equivalent.
- (g) All rights of subrogation are waived in favor of the Owner and the Contractor for the policies listed above, including workers compensation. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- (h) The policies listed shall provide for 30 days' advance written notice by certified mail of cancellation, termination or alteration of any policy.
- (i) The issuance or maintenance of insurance by the Subcontractor or the Contractor shall not be deemed or construed to release, limit, waive, or discharge the Subcontractor from the obligations and risks imposed by this Subcontract upon the Subcontractor. No forbearance or omission by the Contractor to require proof of insurance from the Subcontractor before permitting the Subcontractor to proceed or continue with the Work shall be deemed as a waiver of the Contractor's rights or the Subcontractor's obligations regarding the provision of insurance under this Subcontract.
- (j) If Subcontractor subcontracts any portion of the Work to a sub-subcontractor, the Subcontractor shall enter into a written agreement with the sub-subcontractor and shall require the sub-subcontractor to meet the foregoing insurance requirements. The Subcontractor shall provide proof of said Insurance and Worker's Compensation coverage to the Contractor in the form of a Certificate of Insurance before permitting said sub-subcontractor to proceed with the Work. The Subcontractor agrees to completely indemnify and hold the Contractor harmless from any claims and/or other liability that results from the Subcontractor's failure to comply with this provision, including but not limited to Worker's Compensation claims raised by any person(s) that would have otherwise been covered by the said sub-subcontractor's Worker's Compensation policy.

# Request for Taxpayer Identification Number and Certification

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type.  
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>Strickland Waterproofing Company, Inc.</b>	
2 Business name/disregarded entity name, if different from above <b>Same As Above</b>	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or <input type="checkbox"/> C Corporation <input checked="" type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ►	
4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____	
5 Address (number, street, and apt. or suite no.) See instructions. <b>500 North Hoskins Road</b>	
6 City, state, and ZIP code <b>Charlotte, North Carolina</b>	
7 List account number(s) here (optional)	

(Applies to accounts maintained outside the U.S.)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
		-			-				

or

Employer identification number									
5	6	-	1	5	4	6	2	5	3

## Part II Certification

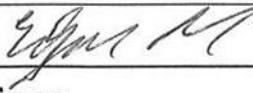
Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ►



Date ► September 5, 2024

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*



TRIWAT-01

JCLARK

DATE (MM/DD/YYYY)

9/6/2024

## CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS 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 have ADDITIONAL INSURED provisions or 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 Lowry Insurance PO Box 30517 Charlotte, NC 28230	CONTACT NAME: PHONE (A/C, No, Ext): (704) 332-8871	FAX (A/C, No):
	E-MAIL ADDRESS: Info@lowryassoc.com	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Berkley Specialty Insurance Co.		
INSURER B : Builders Mutual Ins Co		10844
INSURER C : United Specialty Insurance Co.		12537
INSURER D :		
INSURER E :		
INSURER F :		

COVERS	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 SUBR					
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU/Contractual <input checked="" type="checkbox"/> Indep. Contractors  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC  OTHER:	ADDL INSD WVD	POLICY NUMBER CGL0164307-22	POLICY EFF (MM/DD/YYYY) 7/1/2024	POLICY EXP (MM/DD/YYYY) 7/1/2025	LIMITS	
						EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 OTHER: \$	
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> Comp/Coll Ded. \$1000	<input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	CAP004581707	7/1/2024	7/1/2025	LIMITS	
						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER: \$	
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	BTN2451705	7/1/2024	7/1/2025	LIMITS	
						EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 OTHER: \$	
B	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	N/A	WCP107276408	7/1/2024	7/1/2025	LIMITS
							X PER STATUTE 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)  
 Project: RV#232015 Skyline National Bank - 212 E. Main St., Floyd VA 24091. James R. Vannoy & Sons Construction Co., Inc. and Owner are additional insured as respects general liability, auto and umbrella. All rights of subrogation are waived for general liability, auto, umbrella and workers compensation policies. General Liability coverage for additional insured applies on a primary and non-contributory basis and includes completed operations. Workers Compensation complies with the state statutes in which the Work will be performed.

CERTIFICATE HOLDER	CANCELLATION
James R. Vannoy & Sons Construction Co., Inc. P O BOX 635 Jefferson, NC 28640	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 

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AUTO ENHANCEMENT ENDORSEMENT

### SUMMARY OF COVERAGE AND INDEX

This is a summary of the various coverages provided by this form. No coverage is provided by this summary. This endorsement is subject to the provisions of your policy, which means that it is subject to all limitations and conditions applicable to the coverage forms attached to this policy unless specifically deleted, replaced, or modified herein.

A.	<b>Blanket Additional Insureds</b>	Included
B.	<b>Employee Hired Auto:</b>	
	Liability	Included
	Physical Damage	Included
C.	<b>Limited Liability Company As An Insured</b>	Included
D.	<b>Newly Acquired Or Formed Entities:</b>	Included
E.	<b>Supplementary Payments:</b>	
	Bail Bonds	\$3,000
	Reasonable Expenses Due to Our Request	\$500 Per Day
F.	<b>Hired Autos Physical Damage:</b>	
	Loss of Use	Lesser of \$50,000 or ACV
G.	<b>Towing And Labor</b>	
	Private Passenger Types / "Light Trucks"	\$75 Per Disablement / \$300 Total
	Other Than Private Passenger Types / "Light Trucks"	\$150 Per Disablement / \$300 Total
H.	<b>Personal Effects</b>	\$500
I.	<b>Transportation Expenses – All Vehicle Types</b>	
	Temporary Transportation	\$75 Per Occurrence / \$750 Total
	Return of Stolen Auto	\$5,000
J.	<b>Rental Reimbursement – Private Passenger Type / "Light Truck"</b>	\$75 Per Day / \$750 Per Occurrence
K.	<b>Electronic Equipment</b>	Included
L.	<b>Loan / Lease Gap Coverage</b>	Included
M.	<b>Glass Repair</b>	Comprehensive Deductible Waived
N.	<b>Waiver Of Subrogation</b>	Included
O.	<b>Unintentional Omissions</b>	Included

This endorsement modifies insurance provided under the following:

**A. BLANKET ADDITIONAL INSUREDS**

**Under Section II – LIABILITY COVERAGE**

**A. Coverage 1. Who Is An Insured** is amended to include as an additional "insured":

Any person or organization with who is required under a written contract with you to be included as an "insured" under this policy, but only with respect to their legal liability for acts or omissions of a person for whom Liability Coverage is afforded under this policy.

This coverage shall be primary and not contributory with respect to the person or organization included as an "insured" under this section. Any other insurance that person or organization has shall be excess and not contributory with respect to this insurance, only if it is required in the written contract, permit, or agreement identified in this section and is allowed by law.

**B. EMPLOYEE HIRED AUTO**

The following is added to **Section II – LIABILITY COVERAGE A. Coverage 1. Who Is An Insured**:

- e. An "employee" of yours is an "insured" while operating a covered "auto" hired or rented under an agreement or contract in that "employee's" name, with your permission, only when performing duties related to the conduct of your business.

**Section IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance,**

b. is deleted and replaced by the following:

- b. For Hired Auto Physical Damage Coverage, the following are deemed covered "autos" you own:
- (1) Any covered "auto" you lease, hire, rent, or borrow; and
  - (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name provided your permission has been given and the "employee" is performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented, or borrowed, with a driver, is not a covered "auto".

**C. LIMITED LIABILITY COMPANY AS AN INSURED**

The following is added to **Section II – LIABILITY COVERAGE A. Coverage 1. Who Is An Insured**:

- f. If your business is structured as a Limited Liability Company, you are an insured for any covered "auto". The section Who Is An Insured that applies to anyone else using a covered "auto" you own, hire, or borrow also applies to Limited Liability Companies. The members and managers of the Limited Liability Company are also "insureds" while using a covered "auto" you do not own, hire, or borrow, but only during the course of their employment duties for you. However, members and managers are not an "insured" for any covered "autos" owned by them or members of their household.

**D. NEWLY ACQUIRED OR FORMED ENTITIES**

The following is added to **Section II – LIABILITY COVERAGE, A. Coverage, 1. Who Is An Insured:**

- g. Any legally incorporated entity of which you own more than 50 percent of the voting stock during the policy period. However, "insured" does not include any organization that:
1. Is a partnership or joint venture; or
  2. Is an insured under any other automobile policy; or
  3. Has exhausted its Limit Of Insurance under any other automobile policy.

Paragraph g.2. of this provision does not apply to a policy written to apply specifically in excess of this policy.

This automatic coverage is afforded for only 180 days from the date of acquisition or formation.

However, coverage under this provision does not apply if there is similar insurance or a self-insured retention plan available to that organization.

**E. SUPPLEMENTARY PAYMENTS**

**Section II – LIABILITY COVERAGE, 2. Coverage Extensions, a. Supplementary Payments, items (2) and (4) are deleted and replaced by the following**

- (2) Up to \$3,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the insured at our request, including the actual loss of earnings up to \$500 per day because of time off from work.

**F. HIRED "AUTOS" – PHYSICAL DAMAGE COVERAGE**

The following is added to **Section III – PHYSICAL DAMAGE OVERAGE, A. Coverage, 1.:**

**d. Hired Autos**

You may extend the Comprehensive, Specified Causes Of Loss and Collision Coverages provided on your owned "autos" to any "auto" you rent, hire, lease, or borrow from someone other than your employees, partners, or members of their respective households. Any "auto" you rent, hire, lease, or borrow is deemed to be a covered "auto" you own. Any "auto" that is rented, hired, leased, or borrowed, with a driver, is not a covered "auto".

- (1) This extension only applies to "autos" you rent, hire, lease, or borrow for less than 30 consecutive days.
- (2) The most payable for an individual "loss" is the lesser of \$50,000, the actual cash value of the "auto", or the cost to repair or replace the "auto" less the deductible as determined below:
  - a. The deductible shall be the same as the amount of the highest deductible for any owned "auto" of the same classification for that coverage. In the event there is no owned "auto" on the policy of the same classification, the highest deductible of any owned "auto" will apply for the particular coverage
  - b. No deductible will apply to a "loss" caused by fire or lightning.

**(3) Coverage under this extension will:**

- a. Be excess over any other collectible insurance you have;
- b. Pay in addition to the limit in (2). above, up to \$75 per day and no more than \$750 per loss for:
  1. Any costs or fees associated with the "loss" to a hired "auto"; and

2. Loss of use, provided it is the consequence of an "accident" for which you are legally liable and which results in a monetary loss to the leasing or rental concern.

#### G. TOWING AND LABOR

**Section III – PHYSICAL DAMAGE COVERAGE, 2. Towing**, is replaced by the following:

We will pay towing and labor costs incurred up to the limits shown below each time a covered "auto", classifies and rated as a private passenger type or "light truck" is disabled:

- a. For vehicles classified and rated as private passenger types or "light trucks", we will pay up to \$75 per disablement.
- b. For vehicles classified as other than private passenger type or "light truck" we will pay up to \$150 per disablement.
- c. The most we will pay during the policy period is \$300 in total, regardless of the number of disablements or the types of vehicles involved

However, the labor must be performed at the place of disablement.

**Section V – DEFINITIONS** is changed by the addition of the following:

Q. "light truck" means a truck with a gross vehicle weight (GVW) of 10,000 pounds or less.

1. If registered in North Carolina, the gross vehicle weight (GVW) must be 14,000 pounds or less.

#### H. PERSONAL EFFECTS

**Section III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions** is changed to add the following:

- c. If Comprehensive or Specified Causes Of Loss Coverage is provided for a covered "auto" you own under this

coverage form and that covered "auto" is stolen, we will pay up to \$500, without application of the deductible for the personal effects stolen from that covered "auto". This does not include money, jewelry, securities, or tools. This coverage is excess over any other valid and collectible insurance.

#### I. BROADENED TRANSPORTATION EXPENSES – ALL VEHICLE TYPES

**Section III – Physical Damage Coverages, A. Coverage, 4. Coverage Extensions, a. Transportation Expenses** is replaced in its entirety as follows:

##### a. Transportation Expenses

We will pay up to \$75 per day and no more than \$750 per occurrence for Broadened Transportation Expenses for temporary transportation expenses incurred by you because of the theft of a covered "auto" of any type. We will pay only for those covered "autos" for which you carry either Comprehensive, Specified Causes Of Loss, or Collision Coverage. We will pay for temporary transportation expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

Additionally, we will pay for the expense of returning a stolen covered "auto" to you. The maximum amount we will pay for returning a stolen covered "auto" under this coverage extension is \$5,000

#### J. RENTAL REIMBURSEMENT

**Section III – PHYSICAL DAMAGE COVERAGE, A. Coverage**, is amended by adding the following:

5. We will pay for rental reimbursement expenses incurred by you up to the limits shown below for the rental of an "auto" because of a "loss", other than total theft, to a covered "auto" classified as a private passenger type or "light truck".
  - a. For which you carry either

Comprehensive or Specified Causes Of Loss Coverage if the "loss" arises from such coverage; or

- b. For which you carry Collision Coverage if the "loss" arises from such coverage.

We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, when the covered "auto" is repaired or replaced, or we pay for its "loss". This coverage does not apply while there are spare or reserve "autos" available to you for your operations. The most we will pay for rental reimbursement expenses is \$75 per day with a maximum of \$750 per occurrence.

#### K. ELECTRONIC EQUIPMENT – BROADENED COVERAGE

**Paragraph 4.c. of Section III – PHYSICAL DAMAGE COVERAGE, B. EXCLUSIONS** is revised by adding the following:

This exclusion as it relates to electronic equipment that receives or transmits audio, visual or data signals does not apply if said equipment is permanently installed in a covered "auto".

#### L. LOAN / LEASE GAP COVERAGE

**Section III – PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance** is Amended by the addition of the Following to paragraph 1.:

- c. Balance due under the terms of the loan or lease which the damaged covered "auto" is subject to at the time of the "loss" less:

- (1) Overdue payments and financial penalties associated with those payments as of the date of the "loss",
- (2) Financial penalties imposed under a lease due to high mileage, excessive use, or abnormal wear and tear,
- (3) Costs of extended warranties, Credit

CA 30 00 07 14

Life Insurance, Health, Accident, or Disability Insurance purchased with the loan or lease,

- (4) Transfer or rollover balances associated with prior loans or leases,
- (5) Final payment due under a "Balloon Loan",
- (6) The dollar amount of any unrepaired damage which occurred prior to the "total loss" of a covered "auto",
- (7) Security deposits not refunded by the lessor,
- (8) All refunds payable or paid to you resulting from the early termination of any warranty or extended service agreement on a covered "auto",
- (9) Any amount representing taxes, or
- (10) Loan or lease termination fees.

This coverage only applies to the original loan or lease written on a covered "auto".

**Section V – DEFINITIONS** is changed by the addition of the following:

- R. "Total loss" means a "loss" where the cost of repairs plus the salvage value exceeds the actual cash value.
- S. "Balloon Loan" means a loan with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final payment.

#### M. GLASS REPAIR

**Section III – Physical Damage Coverage, D. Deductible**, is replaced by the following:

##### D. Deductible

For each covered "auto", our obligation to pay for, repair, return, or replace damaged or stolen property will be reduced by the deductible for the coverage as shown on

Page 5 of 6

the Declarations Page. Any Comprehensive Coverage deductible shown on the Declarations Page does not apply to "loss" caused by fire or lightning.

Additionally, the Comprehensive Coverage deductible does not apply to glass, only when that glass is repaired. Should the glass be replaced, the applicable Comprehensive Coverage deductible will apply.

#### N. WAIVER OF SUBROGATION

**Section IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us** is deleted in its entirety and replaced by the following:

##### **5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" arising out of a covered "auto" only when you have assumed liability for such "bodily injury" or "property damage" under an "insured contract". In all other respects, if a person or organization to, or from whom, we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us.

This provision only applies if the written Contract, permit, or agreement has been Executed or issued prior to the occurrence of any "bodily injury" or "property damage".

#### O. UNINTENTIONAL OMISSIONS

The following is added to **Section IV – Business Auto Conditions, B. General Conditions, 2. Concealment, Misrepresentation, Or Fraud:**

We will not deny coverage under this policy if you fail to disclose all hazards existing as of the inception date of the policy, as long as such failure is not intentional.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US - AUTOMATIC STATUS WHEN  
REQUIRED IN CONTRACT OR AGREEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following is added to 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV - Commercial General Liability Conditions:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf in the performance of your ongoing operations or "your work" done under a written contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only when you and that person or organization have agreed to such waiver in writing in a contract or agreement.

All other terms and conditions of this policy remain unchanged.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

## Schedule

**BLANKET WAIVER OF SUBROGATION**

ANY PERSON OR ORGANIZATION WHEN REQUIRED BY WRITTEN CONTRACT

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 7/1/2024 Policy No. WCP1072764 08 Endorsement No. 1  
Insured Strickland Waterproofing Co. Premium \$

**Insurance Company**    **Builders Mutual Insurance Company**

Countersigned by \_\_\_\_\_

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CONSTRUCTION PROJECT GENERAL AGGREGATE LIMIT WHEN  
REQUIRED BY CONTRACT AND  
MAXIMUM PER POLICY GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Limits Of Insurance

Maximum Per Policy General Aggregate Limit	\$5,000,000
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- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **Section I - Coverage A - Bodily Injury And Property Damage Liability**, and for all medical expenses caused by accidents under **Section I - Coverage C - Medical Payments**, which can be attributed only to ongoing operations at a single construction project:
1. A separate Construction Project General Aggregate Limit applies to each construction project when required in a written construction contract or agreement, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under **Coverage A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **Coverage C** regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under **Coverage A** for damages or under **Coverage C** for medical expenses shall reduce the Construction Project General Aggregate Limit for that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Construction Project General Aggregate Limit for any other construction project.
  4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Construction Project General Aggregate Limit.
  5. The Maximum Per Policy General Aggregate Limit shown in the Schedule is the most we will pay for the sum of all Construction Project General Aggregate Limits and the General Aggregate Limit shown in the Declarations regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought;
    - c. Persons or organizations making claims or bringing "suits"; or
    - d. Construction projects.

- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **Section I - Coverage A - Bodily Injury And Property Damage Liability**, and for all medical expenses caused by accidents under **Section I - Coverage C - Medical Payments**, which cannot be attributed only to ongoing operations at a single construction project:
  1. Any payments made under **Coverage A** for damages or under **Coverage C** for medical expenses shall reduce the amount available under the General Aggregate Limit shown in the Declarations or the Products-Completed Operations Aggregate Limit shown in the Declarations, whichever is applicable; and
  2. Such payments shall not reduce any Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, and not reduce the General Aggregate Limit shown in the Declarations nor the Construction Project General Aggregate Limit.
- D. If the applicable construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications, or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of **Section III - Limits Of Insurance** not otherwise modified by this endorsement shall continue to apply as stipulated.

All other terms and conditions of this policy remain unchanged.

## COMMERCIAL EXCESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Coverage Part have special meaning. Refer to Section IV – Definitions. Other words and phrases that are not defined under this Coverage Part but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this Coverage Part will apply. However, the coverage provided under this Coverage Part will not be broader than that provided by the applicable "controlling underlying insurance".

There may be more than one "controlling underlying insurance" listed in the Declarations and provisions in those policies conflict, and which are not superseded by the provisions of this Coverage Part. In such a case, the provisions, exclusions and limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or suit is brought will apply.

### SECTION I – COVERAGES

#### 1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which insurance provided under this Coverage Part applies.

We will have the right and duty to defend the insured against any suit seeking damages for such "injury or damage" when the applicable limits of "controlling underlying insurance" have been exhausted in accordance with the provisions of such "controlling underlying insurance".

When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other suit seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any suit seeking damages for which insurance under this policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or suit, for which we have the duty to defend.

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in Section II – Limits Of Insurance; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under this Coverage Part. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of defense expenses, judgments or settlements under this Coverage Part.
- b. This insurance applies to "injury or damage" that is subject to an applicable "retained limit". If any other limit, such as, a sublimit, is specified in the "controlling underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "controlling underlying insurance".
- c. If the "controlling underlying insurance" requires, for a particular claim, that the "injury or damage" occur during its policy period in order for that coverage to apply, then this insurance will only apply to that "injury or damage" if it occurs during the policy period of this Coverage Part. If the "controlling underlying insurance" requires that the "event" causing the particular "injury or damage" takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the "event" causing that "injury or damage" takes place during the policy period of this Coverage Part.



- d. Any additional insured under any policy of "controlling underlying insurance" will automatically be an additional insured under this insurance. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any "controlling underlying insurance".

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "controlling underlying insurance".

## 2. Exclusions

The following exclusions, and any other exclusions added by endorsement, apply to this Coverage Part. In addition, the exclusions applicable to any "controlling underlying insurance" apply to this insurance unless superseded by the following exclusions, or superseded by any other exclusions added by endorsement to this Coverage Part.

Insurance provided under this Coverage Part does not apply to:

### a. Medical Payments

Medical payments coverage or expenses that are provided without regard to fault, whether or not provided by the applicable "controlling underlying insurance".

### b. Auto

Any loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists coverage.

### c. Pollution

- (1) "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants; or

- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, pollutants.

This exclusion does not apply to the extent that valid "controlling underlying insurance" for the pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits for "injury or damage".

## d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

## SECTION II – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations, and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
  - b. Claims made or suits brought, or number of vehicles involved;
  - c. Persons or organizations making claims or bringing suits; or
  - d. Limits available under any "controlling underlying insurance".

2. The Limits of Insurance of this Coverage Part will apply as follows:

- a. This insurance only applies in excess of the "retained limit".
  - b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this Coverage Part.

However, this Aggregate Limit only applies to "injury or damage" that is subject to an aggregate limit of insurance under the "controlling underlying insurance".

- c. Subject to Paragraph 2.b. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event".

- d. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.



3. If any "controlling underlying insurance" has a policy period that is different from the policy period of this Coverage Part then, for the purposes of this insurance, the "retained limit" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.

The Aggregate Limit of this Coverage Part applies separately to each consecutive annual period of this Coverage Part and to any remaining period of this Coverage Part of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### **SECTION III – CONDITIONS**

The following Conditions apply. In addition, the Conditions applicable to any "controlling underlying insurance" are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

#### **1. Appeals**

If the "controlling underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section II – Limits Of Insurance.

#### **2. Bankruptcy**

##### **a. Bankruptcy Of Insured**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### **b. Bankruptcy Of Controlling Underlying Insurer**

Bankruptcy of the "controlling underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, insurance provided under this Coverage Part will not replace any "controlling underlying insurance" in the event of bankruptcy or insolvency of the "controlling underlying insurer". The insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect and recoverable.

#### **3. Duties In The Event Of An Event, Claim Or Suit**

a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this insurance. To the extent possible, notice should include:

- (1) How, when and where the "event" took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any "injury or damage" arising out of the "event".

b. If a claim is made or suit is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or suit and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or suit as soon as practicable.

c. You and any other insured involved must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the suit; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury or damage" to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### **4. First Named Insured Duties**

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.



At our request, the first Named Insured will furnish us, as soon as practicable, with a complete copy of any "controlling underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Coverage Part.

## 5. Cancellation

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

## 6. Changes

This Coverage Part contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Coverage Part with our consent. This Coverage Part's terms can be amended or waived only by endorsement.

## 7. Maintenance Of/Changes To Controlling Underlying Insurance

Any "controlling underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of aggregate limits in accordance with the provisions of such "controlling underlying insurance" that results from "injury or damage" to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "controlling underlying insurance". Failure to maintain "controlling underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "controlling underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "controlling underlying insurance" is changed.

## 8. Other Insurance

- a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, if no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:
  - (1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and
  - (2) The total of all deductible and self-insured amounts under all that other insurance.

## 9. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. If this policy is auditable, the premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premium is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.



## **10. Loss Payable**

Liability under this Coverage Part does not apply to a given claim unless and until:

- a. The insured or insured's "controlling underlying insurer" has become obligated to pay the "retained limit"; and
- b. The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "controlling underlying insurer" (or a representative of one or more of these) and us.

## **11. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a suit asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, "controlling underlying insurer" and the claimant or the claimant's legal representative.

## **12. Transfer Of Defense**

### **a. Defense Transferred To Us**

When the limits of "controlling underlying insurance" have been exhausted, in accordance with the provisions of "controlling underlying insurance", we may elect to have the defense transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

### **b. Defense Transferred By Us**

When our limits of insurance have been exhausted our duty to provide a defense will cease.

We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Coverage Part of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Coverage Part, we will cooperate in the transfer of control to the insured and its designated representative.

## **13. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## **SECTION IV – DEFINITIONS**

The definitions applicable to any "controlling underlying insurance" also apply to this insurance. In addition, the following Definitions apply.

1. "Controlling underlying insurance" means any policy of insurance or self-insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
2. "Controlling underlying insurer" means any insurer who provides any policy of insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
3. "Event" means an "occurrence", offense, accident, act, or other event, to which the applicable "controlling underlying insurance" applies.
4. "Injury or damage" means any injury or damage, covered in the applicable "controlling underlying insurance" arising from an "event".
5. "Retained limit" means the available limits of "controlling underlying insurance" applicable to the claim.
6. "Ultimate net loss" means the total sum, after reduction for recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
  - a. Settlements, judgments, binding arbitration; or
  - b. Other binding alternate dispute resolution proceeding entered into with our consent.

"Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.



Strickland Waterproofing Co., Inc.  
Policy #CGL0164307 22

COMMERCIAL GENERAL LIABILITY  
CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any person(s) or Organization(s) when required by written contract or agreement	All Projects

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most

we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any person(s) or Organization(s) when required by written contract or agreement	All Projects

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be

broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.