



Adkins & Kimbrough
MECHANICAL

SUBCONTRACT AGREEMENT

Job Name:	SAMPLE
Job Location:	
Subcontract:	
Cat. Class:	
Tax Exempt:	
Bonds Required:	

This agreement, made this ___ day of _____, by and between _____(hereinafter referred to as “Subcontractor”), and Adkins and Kimbrough Mechanical, LLC, 4415 Turin Dr.; Bessemer, AL 35020 (205) 432-4000 (hereinafter referred to as “AKM”).

WHERE AS, AKM has entered into an agreement with _____ (hereinafter called the “Owner”) regarding _____(hereinafter called the “Construction Contract”); and

WHEREAS, the Subcontractor desires to perform portions of such work in connection with said Project;
NOW THEREFORE, the parties hereto do mutually agree as follows:

Section 1: The Subcontract Documents

This Subcontract shall consist of this Subcontract Agreement and any Exhibits attached hereto, the Construction Contract, the Conditions of the Construction Contract (General, supplementary and other Conditions), the Plans, the Drawings, the Specifications, any Addenda issued prior to and all Modifications and Change Orders issued after execution of the Construction Contract relating to the specified work under Section 3 of the Subcontract. All of the foregoing documents form the Subcontract, and are fully a part of the Subcontract as if attached to this Subcontract or repeated herein.

Subcontractor represents that he/she has, or will have prior to commencing his/her work, carefully reviewed and examined all of the requirements and conditions of the Construction Contract, the Drawings, and the Specifications pertaining to the work. Subcontractor shall compare all documents directly or indirectly relating to the performance of the Subcontract and that any and all errors, omissions, ambiguities and inconsistencies have been reported to AKM in writing and resolved to Subcontractor’s satisfaction.

If, in Subcontractor’s opinion, detailed information sufficient to permit the installation of first-class work under the Subcontract is lacking in these documents, or if work is required in such a manner as to make it difficult or impractical to perform work in the sequence anticipated by Subcontractor, or discrepancies appear among any portions of these documents which adversely affect Subcontractor’s work, Subcontractor shall promptly notify AKM in writing of such conditions and request clarification or interpretation prior to proceeding with any work affected by such conditions. All dimensions and clearances necessary to Subcontractor’s work, as indicated on the drawings and contained in the specifications, shall be verified by Subcontractor at the jobsite and Subcontractor shall report any discrepancies to AKM for adjustment before any work affected thereby is initiated.

Subcontractor represents that he has acquainted him/herself with the plant, labor and materials are, or will be available to Subcontractor when necessary for the performance of Subcontractor’s work.

Section 2: Subcontractor Obligation

Subcontractor agrees to be bound and obligated to AKM by the terms of the Subcontract and the Construction Contract and Subcontractor assumes toward AKM all obligations, liabilities, responsibilities that AKM, by the Construction Contract, has assumed toward the Owner, its agents and representatives, including the Architect/Engineer, if applicable (hereinafter collectively referred to as “the Owner”). AKM shall further have the benefit of all rights, remedies, redress and limitations upon contractual rights against Subcontractor which the Owner has against AKM under the Construction Contract. Any and all decisions by the Owner relative to interpretation of the Construction Contract or any ambiguity or discrepancy therein shall be binding on Subcontractor to the same extent such decisions are binding on AKM. The Subcontractor will comply with all provisions of Equal Employment Opportunity Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

Section 3: Scope of Work

The Subcontractor agrees that he/she will furnish and provide all labor, materials, tools, services, equipment, transportation, permits, fees, shop drawings and supplies necessary or required to fully perform and complete, without any exception, the following work: _____ (hereinafter referred to as the "Work")

Subcontractor shall also provide at no additional cost, any work, materials, labor or equipment of the kind herein contracted for which may be required to conform the Subcontract Work with all laws, ordinances, orders, rules, regulations and requirements of all applicable federal, state and local governing authorities in existence on the date of the Subcontract.

Section 4: Time

It is agreed that time is of the essence in this Subcontract and Subcontractor shall prosecute the work undertaken in a prompt and diligent manner whenever such work, or any part of it, becomes available, or at such other time or times as AKM may direct, and so as to promote the general progress of the entire construction, and shall not, by delay or otherwise, interfere with or hinder the work of AKM or any other Subcontractor and shall complete such work as directed by AKM. Any materials that are to be furnished by Subcontractor hereunder shall be furnished in sufficient time to enable Subcontractor to perform and complete his/her work within the time or times provided for herein.

Subcontractor agrees to reimburse AKM for any and all liquidated damages that may be assessed against and collected from AKM by the Owner, which are attributable to or caused by Subcontractor's failure to furnish the materials and perform the work required by this Subcontract within the time fixed in the manner provided for herein, and in addition thereto, agrees to pay to AKM such other or additional damages as AKM may sustain by reason of such delay by Subcontractor from his/her obligation to otherwise fully perform the Subcontract.

Upon written request by AKM, Subcontractor shall furnish to AKM such evidence as AKM may require relating to Subcontractor's ability to fully perform the Subcontract in the manner and within the time specified herein.

In the event Subcontractor fails to comply or becomes disabled from complying with the provisions herein as to character and time of performance, and the failure is not corrected within three (3) days after written request by AKM to Subcontractor, AKM may, without prejudice to any other right or remedy, take over and complete the performance of the Subcontract or AKM may, without taking over the Work, furnish the necessary materials and/or employ the workmen necessary to remedy this situation, at the expense of Subcontractor. AKM shall have the right to retain out of any money then payable or thereafter to become payable to Subcontractor under this Subcontract or any other agreement then in effect between AKM and Subcontractor an amount sufficient to indemnify AKM for the expense of completing performance.

It is agreed that Subcontractor shall be considered as disabled from so complying whenever a petition in Bankruptcy or for the appointment of a Receiver is filed by or against him/her; but such are not the only eventualities rendering Subcontractor disabled from so complying.

Should Subcontractor be obstructed or delayed in the prosecution or completion of the Work by the sole neglect or default of AKM, the Owner or any other Subcontractor employed by AKM or the Owner upon the Work; or by any damage which may happen by fire, lightning, earthquake, or cyclone, beyond the control of either party hereto, then the time herein fixed for the completion of the Work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid; but no such allowance shall be made unless a claim for extension of time is presented in writing to AKM within forty-eight (48) hours of the occurrence of such delay and approved by AKM and the Owner.

Section 5: Payment

(a) If the Subcontractor shall fulfill this Subcontract to the satisfaction of AKM and the Owner, AKM agrees to pay Subcontractor for furnishing the materials and performing the work as specified herein, the sum of \$ _____ (words) ~~and no/100----~~ Dollars, subject to the additions and/or deductions for changes agreed upon or determined, as hereinafter provided by Section 7. Partial payments will be made to Subcontractor by the **10th** of each month in the amount equal to the scheduled value of work and materials incorporated in the construction and/or material delivered to the site of the work by Subcontractor, as estimated by AKM or the Owner, **less** the aggregate of previous payments, and **less** the retainer of **10%** of the total contract, provided, notwithstanding anything to the contrary that may be contained within any of the contract documents including but not limited to the General Contract, Subcontractor specifically acknowledges that no payment, partial or

final, shall be due or owed to the Subcontractor from Contractor or Contractor's surety unless and until, as a condition precedent, ten (10) days after Contractor receives payment for Subcontractor's work from the owner. The amount of each progress payment to the Subcontractor shall be no more than the percentage of completion allowed to the Contractor for the Work of the Subcontractor applied to the contract sum of the Subcontractor plus the amount allowed for material and equipment suitably stored on site by the Subcontractor less the percentage retainage specified above. Subcontractor shall not submit its request for final payment or bill beyond 98% complete until all close-out documents have been submitted to Contractor for approval. Final payment shall be due 30 days after completion of the Project provided it shall not be due or owed from Contractor or Contractor's surety unless and until, as conditions precedent: (1) the Subcontractor has met the requirements and conditions of this Subcontract, (2) Contractor has received final payment for Subcontractor's Work from the Owner, (3) Subcontractor has furnished a Final Lien Waiver and Release to Contractor in the form and quantity acceptable to Contractor and Owner, and (4) Subcontractor has properly furnished all project close-out documents to Contractor. From any amount otherwise owed Subcontractor, the Contractor is expressly entitled and authorized to withhold and deduct a reasonable sum based upon the breach or impending breach of any provision of this Subcontract by the Subcontractor, or based upon the assertion (or reasonable likelihood of assertion) of any lien, claim, garnishment, attachment, or other levy of a nature covered by Section 9 of this Subcontract, or otherwise, until such breach, controversy, lien, claim, garnishment, attachment or other levy has been resolved. It is hereby expressly agreed that the Contractor may set off against amounts owed by the Contractor to the Subcontractor on any contract or contracts between them any amount or amounts owed, or claimed to be owed, to the Contractor by the Subcontractor under any contract or contracts between the Contractor and the Subcontractor. Payment to Subcontractor shall not be interpreted as an approval of the Work, or materials, or any part thereof. All payments received by Subcontractor from Contractor shall be held as a trust fund and shall not be used to satisfy or secure any indebtedness other than one owed by the Subcontractor to a person or entity furnishing labor or materials for use in performing the Subcontractor's Work. Acceptance of final payment by the Subcontractor constitutes a general release of the Contractor and the Contractor's surety from all claims and liability of whatever nature.

(b) Subcontractor shall, as often as requested by Contractor, and as a condition precedent to any payment hereunder: (1) furnish sworn statements showing all parties who furnished labor or materials with reference to the Work, together with their names and addresses and the amount due or to become due each party; like statements may be required from any subcontractors of the Subcontractor and/or the Subcontractor; (2) furnish Contractor with evidence or documentation satisfactory to Contractor (including but not limited to original affidavits, receipts, releases, and/or lien waivers in a form and quantity acceptable to Contractor and Owner) that Subcontractor has paid in full for all labor, materials and supplies used in the Work through the date of the payment request, whether the request is for interim or final payment; and (3) furnish Contractor a sworn statement of account documenting amounts received and amounts due or to become due under this Subcontract.

(c) The Subcontractor shall pay all persons or parties who have furnished labor or material for use in and about the Work covered by this Subcontract; provided, however, the Contractor reserves the right to pay any part or all of any payment or payments otherwise due Subcontractor by checks made payable jointly to Subcontractor and any person or party supplying labor or materials or services to Subcontractor or solely to any such person or party. Any such joint or sole payment(s) shall reduce any amount otherwise due or owed Subcontractor under this Subcontract. Subcontractor shall not acquire any right, title or interest in or to the amount(s) so paid, and the amount(s) so paid shall not be property of any estate pursuant to any provisions of any state or federal bankruptcy statute.

(d) It is imperative that you use AIA documents G702 and G703 (attached) when submitting your Application for Payment. If not, your pay application will not be processed.

Section 6: Subcontractor's Payment Issues

(a) Subcontractor covenants and agrees to defend, indemnify, exonerate, and hold harmless the Owner, Contractor, and Contractor's surety with respect to (1) every claim or action for breach of contract or otherwise filed or presented by the Owner or other person, firm or entity arising out of, or related to any work or operation performed by, for, or on behalf of, the Subcontractor, (2) every lien notice, lien affidavit and lien suit filed or presented by any material man, laborer or subcontractor of Subcontractor, in connection with the Subcontract Work, (3) every other claim or action of any kind whatsoever, filed or presented by any material man, laborer, or subcontractor of Subcontractor, in connection with the Subcontract Work, and (4) every garnishment, attachment or other levy made by a creditor of a Subcontractor against the assets or funds of Subcontractor in the hands or custody of the Owner or the Contractor. It is agreed that the Subcontract price as stated in Section 2 above, shall be offset or reduced by the amount necessary and proper to defend, indemnify, exonerate and hold harmless the Contractor and the Owner with respect to any of the foregoing described claims, notices, affidavits, actions, garnishments, attachments and levies. This indemnity shall include all payments made by the Contractor and all reasonable expenses, attorney's fees, and other costs incurred by Contractor in connection therewith. Subcontractor agrees to give Contractor notice and furnish it copies of any claim, action or lien within three (3) days of receipt of same by Subcontractor.

(b) The Subcontractor warrants that title to all Work, material and equipment covered by any application for payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Subcontractor, whichever occurs first, free and clear of all liens, claims, security interest or other encumbrances.

Section 7: Performance of Work

Subcontractor represents that he/she has examined and taken into consideration in pricing his/her work all conditions which could adversely affect the cost or difficulty of performing the Subcontract including, without limitation, location of the work, accessibilities and character of the site, quality and quantity of surface and subsurface water, materials, obstacles or other subsurface conditions which may be encountered, the character and extent of existing work within or adjacent thereto, other work being performed thereto, transportation, disposal, handling and storage of materials, availability of labor, labor wage scales, likelihood of wage increases, locations and availability of utilities and access roads, the character of equipment and facilities needed for the prosecution of the Work and weather conditions at the site. Any failure by Subcontractor to acquaint him/herself with all the information concerning the items listed above and any other items or conditions that would affect the difficulty of performance or the cost of the Work will not relieve Subcontractor from fully performing all of the Work without increase in or extension of time.

The Subcontractor shall at all times supply adequate tools and equipment, and shall also at all times supply and promptly pay for a sufficient number of properly skilled workmen and for a sufficient amount of materials and supplies of proper quality to prosecute the Work efficiently and promptly in accordance with the requirements of the Subcontract Documents and in accordance with AKM's current schedule. If, in AKM's opinion, Subcontractor fails to maintain the progress of his/her Work in accordance with AKM's schedule, AKM may direct Subcontractor to take such steps as AKM deems necessary to improve the rate of Subcontractor's work including without limitation, increasing Subcontractor's labor force, acceleration of performance, overtime work, work on Saturdays, Sundays and Holidays, all without additional compensation, if, in the opinion of AKM, such additional work is necessary to maintain proper progress of Subcontractor's work. Upon request of AKM, Subcontractor shall submit evidence satisfactory to AKM evidencing the Subcontractor's ability to comply with AKM's schedule.

Section 8: Changes in the Work

AKM may at any time by written order, and without notice to Subcontractor's sureties, make changes in, additions to and omissions from the Work to be performed and materials to be furnished under the Subcontract, and Subcontractor shall promptly proceed with the performance of the Subcontract as so changed. Any claim by Subcontractor for adjustment of the contract price under this section must be made in writing within five (5) days from the date such Subcontractor's work. Upon request of AKM, Subcontractor shall submit evidence satisfactory to AKM evidencing the Subcontractor's ability to comply with AKM's schedule.

Section 9: Drawings

All drawings of Subcontractor, and all samples of materials specifically called for by the Subcontract and Construction Contract, or required by AKM, must be submitted for approval of the Owner and AKM through AKM's office within thirty (30) calendar days from the date the Subcontract is signed by AKM. AKM may reject and return to Subcontractor for correction or completion any submitted drawings and samples rejected by the Owner or determined by AKM to be incomplete or in improper form.

No allowance or extension of time shall be made to Subcontractor for delay by Subcontractor in preparing drawings or in securing approval of the Owner and AKM, when such drawings are not properly prepared.

Section 10: Warranties and Covenants

AKM has awarded Subcontractor based upon Subcontractor's express representation that all of his/her design; materials, equipment and workmanship are of the highest quality.

The Subcontractor warrants that all materials and equipment furnished shall be new unless otherwise specified, and that all Work under the Subcontract shall be of the highest quality, free from faults and defects and in conformance with the Subcontract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

Subcontractor further warrants that he/she will use sound engineering and construction principles and practices in all the Work hereunder and that he/she will apply to all said Work his/her best degree of skill, care and supervision in order to assure that the work will be of the highest quality, proper and sufficient for the purpose contemplated and in accordance with the best trade and professional practices. In the event of any breach by Subcontractor of said warranty, or of deficiencies appearing in design, material or workmanship during performance of the Work or within one (1) year after the date of final approval of the Work by the Owner, or longer if required by the specifications, Subcontractor shall promptly make suitable repairs or remedy the deficiencies at his own cost.

Subcontractor agrees to observe and comply with and warrants that the Work itself will conform to all applicable local, State and Federal statutes, laws, ordinances, regulations, rules and codes applicable to the Work. Subcontractor shall indemnify and hold AKM harmless against any and all liabilities, penalties, demands, claims, causes of action, suits, losses, damages, costs and expenses which AKM may suffer, incur, be responsible for or pay out by reason of Subcontractor's failure to comply with any such statutes, laws, ordinances, codes, rules or regulations.

Section 11: Safety and Precautions

(a) Subcontractor is wholly responsible for the safety of its own employees. As to its own employees, the Subcontractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work performed or to be performed by its employees: (I) as stated in the general conditions of the General Contract, (II) as required by OSHA, and (III) as required by all applicable Federal, State and local laws. In connection with its Subcontract Work and at its work site the Subcontractor shall erect, establish and maintain, as required by existing laws, conditions, and progress of the Work, all reasonable safeguards for safety and protection, including the posting of danger signs and other warnings against hazards. Subcontractor shall promulgate safety regulations and shall notify the Owner, the Contractor, and the user of adjacent utilities or facilities of known safety hazards relating to the Work performed or to be performed by Subcontractor.

(b) Prior to commencing its Work at the job site, Subcontractor shall designate a responsible employee at the site whose duty shall be the prevention of accidents. This employee shall be the Subcontractor's job superintendent (or foreman, if there is no superintendent), unless otherwise designated in writing by the Subcontractor to the Contractor.

(c) Subcontractor assumes exclusive liability and covenants and agrees to defend, indemnify and hold harmless the Owner and Contractor as to any penalties assessed against the Owner or Contractor by the United States Department of Labor for violations of the Occupational Safety and Health Act of 1970 and for violations of any applicable statute, law or ordinance which are determined by a governmental agency to have been committed by the Subcontractor or its employees.

(d) Subcontractor shall notify Contractor immediately of any accident involving injury to any employee(s) of Subcontractor and furnish all information for filing of an accident and injury report by Contractor. Subcontractor is to see that all injuries involving its employee(s) receive proper and prompt attention.

Section 12: Indemnity

To the fullest extent permitted by law, Subcontractor agrees to indemnify and hold harmless AKM, its agents, employees and/or representatives from any and all claims, demands, suits, losses, damages, expenses (including cost of defense, settlement and/or attorney's fees) or liability arising from or in connection with: (a) any alleged or actual infringement or violation of any patent or patent right, arising in connection with this Subcontract and anything done thereunder; (b) any injuries to property or persons, including death, resulting from the performance of Subcontractor's Work under the Subcontract; (c) any defect in materials or workmanship which may occur; (d) any breach or violation by Subcontractor of any of the Subcontract Documents listed in Section 1 of the Subcontract; (e) any other claims, demands, suits, losses, damages, expenses (including cost of defense, settlement, and/or attorney's fees), or liability on account of any act or omission of Subcontractor, or any of his/her officers, agents, employees or servants.

It is understood and agreed that the Work provided for in the Subcontract constitutes only a part of the work being performed for Owner by AKM and other Subcontractors. Subcontractor, therefore, agrees to perform the work called for in the Subcontract in such manner that he will not injure or damage any of the work performed by AKM or any other Subcontractor, and further agrees to pay AKM for any damage that may be caused to such other work by Subcontractor or by his/her agents or employees.

In any and all claims against AKM and/or the Owner or any of their agents or employees by any employee of Subcontractor, anyone directly or indirectly employed by him/her or anyone for whose acts he/she may be liable, the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' or workmen's compensation acts disability benefit acts or other employee benefit acts.

The Subcontractor hereby covenants and agrees to defend, hold harmless, indemnify and exonerate the Contractor, the Owner, and the Architect/Engineer (and their respective agents and employees) as to and from all liability, claims, lawsuits and demands (including all judgments and settlements made at arm's length and all reasonable attorneys' fees and litigation expenses connected therewith) for personal injury, death (including personal injury or death to the Subcontractor's own employee(s), whether or not said personal injury or death is compensable under any applicable Worker's Compensation law, the immunity protection of which Subcontractor hereby waives as to this indemnity agreement) and/or property damage arising out of any work or operation performed by, for or on behalf of the Subcontractor. The foregoing covenant and agreement shall include all such liabilities, claims, lawsuits, demands, judgments, settlements, reasonable attorneys' fees and litigation expenses, where it is charged, alleged, or proven that the Contractor, the Owner, and/or the Architect/Engineer (or its agents or employees) was/were negligent in causing or contributing to such injury, death or property damage. The Subcontractor's liability insurance policies shall each contain contractual insurance coverage which protects the Subcontractor, the Contractor, the Owner, and the Architect/Engineer (and their respective agents and employees) as to the covenants contained in this subsection. Any provision in this subsection that is or has been judicially determined to be invalid or void under the laws of the state in which this contract is to be performed shall be deemed modified to the extent necessary, or deleted if absolutely necessary so as to render the subsection valid, and so that the indemnity provision shall apply to the maximum extent permitted under said state's laws and carry out the intentions of the parties, as expressed herein, to the maximum possible extent.

Section 13: Liens

AKM may deduct from any amounts due or become due to Subcontractor any sums owing by Subcontractor to AKM or material suppliers under the Subcontract. In the event of any breach by Subcontractor of any provisions or obligations of the Subcontract or in the event of the assertion by other parties of any claim or lien against AKM, Owner, or the premises arising out of Subcontractor's performance of this Subcontract, AKM shall have the right to retain out of any payments due to or become due to Subcontractor under this Subcontract, or any other agreement then in effect between AKM and Subcontractor, any amount sufficient to completely protect AKM from any and all loss, damage, or expense therefrom, until the situation has been satisfactorily resolved or adjusted by Subcontractor.

Section 14: Bonds

AKM reserves the right to cancel this Subcontract without further notice unless a Payment and Performance Bond in the amount of 100% of the Subcontract Price, and executed by a Surety Company acceptable to AKM, is furnished by Subcontractor on a date specified by AKM. Each such bond shall contain a provision that changes in the Work and/or Modifications to the Contract shall in no way relieve the surety of its obligations.

Section 15: Insurance

Subcontractor shall purchase and maintain such insurance as is required by the Construction Contract or as directed by AKM with respect to the Work hereunder. Before commencing the Work, Subcontractor shall furnish AKM satisfactory evidence that Subcontractor has complied with the requirements of this Section.

The insurance required by this Section shall be written for not less than any limits of liability required by the Construction Contract, AKM, or law, whichever is greatest.

(a) Subcontractor's Insurance: The Subcontractor will maintain such insurance as will insure it from claims under Workmen's Compensation Acts and it, the Contractor, and the Owner from any other claims for property damage and claims for personal injury, including death, which may arise from operations under this Subcontract, whether such operations be by itself or any of its subcontractors or anyone directly or indirectly employed by either of them, with minimum limits of liability as follows:

(b) Workmen's Compensation Limits:

Statutory as required by applicable State or Federal Law

Employer's Liability Limits:

Each accident \$ 1,000,000.00

Disease Policy Limit	\$ 1,000,000.00
Disease Each Employee	\$ 1,000,000.00

(c) Commercial General Liability-Bodily Injury and Property Damage Limits:

Each Occurrence	\$ 1,000,000.00
Personal and Advertising Injury	\$ 1,000,000.00
General Aggregate	\$ 2,000,000.00
Products/Completed Operations Aggregate	\$ 2,000,000.00

(d) Automobile Liability-Bodily Injury and Property Damage Limit:

Combined Single Limit	\$ 1,000,000.00
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(e) Umbrella (excess insurance on all above liability insurance) limits:

Each Occurrence	\$2,000,000.00
Aggregate	\$2,000,000.00

(f) Equipment Floater Insurance insuring equipment used by the Subcontractor on the Project at its full replacement value.

(g) The Subcontractor’s commercial general liability and automobile liability insurance shall be written to provide the following coverage’s: (1) the general liability coverage shall include the following coverage’s: premises/operations including blasting, collapse and underground, products liability, ongoing and completed operations, independent contractors, broad-form property damage, personal injury, and contractual liability insurance coverage, the latter being as contemplated in Section 12 of this Subcontract, and (2) the automobile liability coverage shall include the following coverage’s: all owned autos, hired autos, and non-owned autos. Limits of liability under commercial general liability and automobile liability insurance coverage shall be written on a per project basis and on an occurrence basis for both bodily injury liability and property damage liability. If the Work of the Subcontractor involves anything that is subject to Pollution Exclusion(s) in any of the above policies, the Subcontractor shall purchase insurance that will insure the pollution risks and exposures in an amount and with an insurance company (ies) acceptable to Contractor.

Certificate of Insurance

The Contractor and the Owner (and if required by the General Contract, the Architect and/or Engineer, and others as the case may be) shall be named as additional insured’s on the Subcontractor’s policies (except the Workmen’s Compensation) for this Project, and the Subcontractor’s policies shall be endorsed (a copy of this endorsement to be provided to Contractor upon request) to specify that Contractor and Owner (and if required by the General Contract, the Architect and/or Engineer, and others, as the case may be) have been named as additional insured’s. Subcontractor waives all rights against the Owner, Contractor and Architect/Engineer for any loss or damage covered by any insurance acquired or maintained by Subcontractor for its benefit, including all rights that might otherwise accrue to any subrogee. The limits and coverages set forth in this Section 14 are the minimum limits and coverages required by this Subcontract and are not an indication of the type of coverage and limits the Subcontractor might need to protect the Subcontractor. All Subcontractors’ insurance policies shall be written with insurance companies that are acceptable to Contractor. Completed operations insurance shall be maintained for at least one year after completion of the Subcontractor’s Work pursuant to this Subcontract. Umbrella coverage can be used to satisfy the limits of basic general liability and automobile liability limits.

(h) Certificates of Insurance: The Subcontractor will submit to the Contractor Certificates of Insurance certifying the type and the amount of coverage and that the insurance policies carried by it were in force before the Work started and certifying that these policies will not be canceled or materially changed during the period of construction by an endorsement added to the policies and certificates reading substantially as follows: “The policy herein referred to is not cancelable or subject to a reduction of coverage by the Insurer during the 30 day period after Adkins & Kimbrough Mechanical LLC., has received written notice (as evidenced by return receipt of registered letter) of the Insurer’s intention to cancel or reduce the coverage.” The certificate shall indicate the coverage above as specified, shall state that the Contractor and Owner (and if required by the General Contract, the Architect and/or Engineer, and others, as the case may be) are additional insured’s' for both ongoing and completed operations on a primary/non-contributory bases (With an A rated carrier) using the ISO 2010 11/85 or its equivalent form and waiver of subrogation applies in favor of the certificate holder.

All insurance shall be procured by Subcontractor at Subcontractor's expense, shall name Adkins and Kimbrough Mechanical, LLC as an additional insured, and shall contain an agreement to the effect that the insurer will notify AKM thirty (30) days in advance should these policies be canceled for any cause prior to the expiration date indicated in the insurance policy.

AKM shall not be liable for any loss or casualty incurred or caused by Subcontractor. Subcontractor assumes all risks of loss for all of its work which is not covered by insurance, regardless of whether Subcontractor has been paid for such work.

Subcontractor shall not sublet or subcontract any portion of the Work as otherwise provided in the Subcontract without requiring from such other subcontractors, suppliers or others the insurance required by this Section.

Section 16: Termination

If, in the opinion of AKM, Subcontractor shall at any time be guilty of a material default under the Subcontract, AKM, at its option, with or without notice to the Subcontractor's surety (a) may, without voiding other provisions of the Subcontract, take such measures as may be necessary in AKM's opinion to cure the default, in which case Subcontractor shall be liable to AKM for all costs incurred in curing such default; (b) terminate the Subcontractor, or (c) seek specific performance of Subcontractor's obligations hereunder, it being expressly agreed by Subcontractor that specific performance may be a remedy necessary to avoid irreparable harm to AKM and/or the Owner in the event of default.

In the event of termination for default, AKM may, at its option, enter on the premises and take possession of construction equipment and machinery and finish the work by whatever means AKM may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the Work shall be fully completed and accepted by Owner; Subcontractor shall, as required by AKM, assign to AKM any or all sub-subcontracts or purchase order relating to Subcontractor's work.

Any of the following shall constitute a material default by Subcontractor: (a) failure to commence work within three (3) days after written notice to proceed; (b) failure to provide bond(s) as required by the Subcontract; (c) failure to provide any policy of insurance required by the Subcontract; (d) failure or inability to furnish materials, equipment and workmanship of the highest quality; (e) failure to initiate appropriate measures for the correction of faulty work within three (3) days after written notice from AKM to do so; (f) failure to maintain the construction schedule formulated by AKM and failure to initiate appropriate measures to cure delays associated with Subcontractor's work within three (3) days of notice from AKM to do so; (g) any action taken by one or more employees of Subcontractor, or by any person or labor organization claiming, purporting or attempting to represent

any employee of Subcontractor which prevents or hinders AKM or any other Subcontractor from proceeding with the Work; and (h) material failure to perform any other obligation of Subcontractor under the Subcontract.

Further, AKM may, by written notice to Subcontractor, terminate the whole or any part of the Subcontract at its convenience. Such termination shall be effective upon Subcontractor's receipt of such notice. Upon any such termination under this subparagraph, Subcontractor, as his/her sole and exclusive remedy, shall be entitled to be paid a portion of the Subcontract Sum, calculated on the basis of the actual value of the Work, for the work properly completed on the site by Subcontractor prior to termination, together with the direct close-out costs incurred by Subcontractor as a result of termination, less previous payments to Subcontractor on account of work performed.

Section 17: Independent Contractor Status

Subcontractor shall be an Independent Contractor in the performance of the Work, maintaining complete control of its workmen and operations. Subcontractor shall be an employing unit subject as an employer, to all applicable Unemployment and Worker's Compensation Statutes so as to relieve AKM of any responsibility or liability for treating Subcontractor's employees as employees of AKM for the purpose of keeping records, making reports and payment of taxes, contributions or benefits pursuant to the Unemployment or Worker's Compensation statutes. Subcontractor agrees to indemnify and hold AKM harmless and reimburse him/her for any expense or liability incurred under said Statutes in connection with employees of Subcontractor.

Section 18: Laws, Permits, Fees and Notices

The Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Subcontract. The Subcontractor shall secure and pay for all permits and government fees, licenses and inspections necessary for the proper execution and completion of Subcontractor's Work.

Section 19: Taxes

Subcontractor shall pay all applicable excise, sales, consumer, use, service, occupation, privilege or other similar taxes required by law (including interest and penalties, if any) without reimbursement by AKM, unless otherwise specifically set forth in the Subcontract. Subcontractor shall pay all Federal income and all other Federal Taxes and all State and local income and personal property taxes, if any, arising in connection with the Work without reimbursement by AKM.

Section 20: Assignment of Subcontract

Subcontractor shall not assign or sublet this Subcontract or any part thereof, including payments, without the written consent of AKM.

Section 21: Occupancy

Whenever it may be useful or necessary to AKM to do so, AKM shall be permitted to occupy and/or use any portion of the Work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by the Owner, but such use and/or occupation shall not relieve Subcontractor of his/her guarantee of said Work and materials nor of his/her obligation to make good at his/her own expense any defect in materials and workmanship which may occur or develop prior to AKM's release from responsibility to the Owner. Provided, however, Subcontractor shall not be responsible for any damage thereto that is due to or caused solely by the negligence of AKM during such period of use.

Section 22: Clean-up

Subcontractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his/her employees or work. At the completion of the Work, Subcontractor shall remove all his/her rubbish from and about the building, and all his/her tools, scaffolding and surplus materials and shall leave his/her work "broom clean" or its equivalent, unless more exactly specified. In case of dispute, AKM may remove the rubbish and charge the cost to Subcontractor.

Section 23: No Waiver

No action or failure to act, delay or omission by AKM to exercise any right or remedy under the Subcontract shall impair such right or remedy or be construed as a waiver of any default or acquiescence therein.

Section 24: Notices

All notices, consents, requests, or other communications hereunder shall be in writing, unless otherwise expressly provided to the contrary and shall be deemed to have been made or given when mailed, delivered or telegraphed to the other party at the address noted in the Subcontract. Either party may designate a different address by notice given to the other.

Section 25: Conflicts with Law

If any clause or provision of the Subcontract should be determined to be illegal, invalid or unenforceable under present or future laws effective during the term of the Subcontract, then it is the express intention of the parties hereto that the remainder of the Subcontract shall not be affected thereby and it is also the express intention of the parties that in lieu of the clause or provision of the Subcontract which may be determined to be illegal, invalid or unenforceable, there may be added as part of the Subcontract a clause or provision as similar in terms of such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 26: Litigation

It is agreed that this Subcontract is accepted by AKM or Subcontractor as the case may be in Birmingham, Alabama, and of the State of Alabama. Should any litigation arise out of or occur because of breach of this subcontract, both parties agree to submit to the jurisdiction of any judicial court in Jefferson County, Alabama, empowered to hear and determine such dispute with any non-resident party, hereby agreeing that service of process upon the Alabama Secretary of State as its agent for the sole purpose of accepting service of process and notifying any non-resident of suit through registered mail shall be sufficient to establish person jurisdiction.

Section 27: Entire Agreement

The Subcontract Documents referred to in Section 1 constitute the entire agreement of the parties and supersede all prior negotiation, representations and agreements, either written or oral, with respect to the subject matter hereof. The Subcontract may be amended only by an instrument in writing executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract by their proper officers of duly authorized agents, on the day and year above written.

Subcontractor:

Contractor:

Adkins and Kimbrough Mechanical, LLC

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Witness: _____

Witness: _____

Subcontractor: Please Complete

Alabama Contractors License No.: _____

_____ Proprietorship

_____ Partnership

_____ Corporation

_____ Limited Liability Corporation

Federal Identification Number if not a Corporation: _____