

EXHIBIT A

CONTRACTOR'S INSURANCE REQUIREMENTS OF SUBCONTRACTOR

1.0 **Definitions.** For purposes of this Agreement:

- 1.1 **Contractor Parties.** "Contractor Parties" means (a) **MLN Company** ("Contractor"), (b) Prime Contractor (if any), (c) Owner, (d) Architect/Engineer, (e) any lender whose loan is secured by a lien against the Work, (f) their respective shareholders, partners, joint venturers, co-venturers, affiliates, subsidiaries, successors, and assigns, (g) any members, directors, officers, employees, or agents of such persons or entities, and (h) others as required by the Construction Documents.
- 1.2 **ISO.** "ISO" means Insurance Services Office.
- 1.3 **Subcontractor.** "Subcontractor" shall include subcontractor,, its' subcontractors, material suppliers, and service suppliers, including any firm delivering materials to the jobsite via vehicle of any tier.

2.0 **Subcontractor Insurance Representations to Contractor Parties.**

- 2.1 It is expressly understood and agreed that the insurance coverages required herein (a) represent Contractor Parties' minimum requirements and are not to be construed to void or limit Subcontractor's existing insurance limits or indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages Subcontractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by Subcontractor in support of Subcontractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of Subcontractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- 2.2 Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If Subcontractor shall fail to remedy such breach within five (5) business days after notice by Contractor, Subcontractor will be liable for any and all costs, liabilities, damages and penalties resulting to Contractor Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Subcontractor by Contractor. In the event of any failure by Subcontractor to comply with the provisions of this Agreement, Contractor may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Subcontractor, purchase such insurance, at Subcontractor's expense, provided that Contractor shall have no obligation to do so and if Contractor shall do so, Subcontractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- 2.3 The insurance requirements in this contract are independent from all other obligations of Subcontractor under this contract and apply whether or not required by any other provision of this contract.

3.0 **Conditions Affecting All Insurance Required Herein.**

- 3.1 **Cost of Insurance.** All insurance coverage shall be provided at Subcontractor's sole expense.
- 3.2 **Maintenance of Insurance.** All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement.

- 3.3 Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies authorized to do business in the State of Texas and rated no less than A-: VII in the most current edition of *A. M. Best's Key Rating Guide*.
- 3.4 Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to Contractor Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of Contractor.
- 3.5 Limits of Liability. The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- 3.6 Notice of Cancellation or Material Reduction in Coverage. All insurance coverage shall contain the following express provision:
- "In the event of cancellation or material reduction in coverage affecting a person named within the policy or an endorsement to the policy, thirty (30) days prior written notice shall be given to such person", and the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon Company, its agents or representatives" shall be deleted from any cancellation provision.
- 3.7 Waiver of Subrogation. The Subcontractor hereby agrees to waive its rights of recovery from the Contractor Parties with regard to all property and/or liability loss and shall cause a waiver of subrogation endorsement to be provided in favor of the Contractor Parties on all insurance coverage carried by the Subcontractor, whether required herein or not.
- 3.8 Deductible/Retention. Except as otherwise specified herein, no insurance required herein shall contain a deductible or self-insured retention in excess of \$25,000 without prior written approval of Contractor. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at Subcontractor's sole risk. Subcontractor shall not be reimbursed for same.
- 4.0 **Insurance Required.** The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required.
- 4.1 **Commercial General Liability Insurance**
- 4.1.1 Coverage. Such insurance shall cover liability arising out of all locations and operations of Subcontractor, including but not limited to liability assumed under this contract (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.
- 4.1.2 Form. Commercial General Liability Occurrence form (at least as broad as an unmodified ISO CG 00 01 07 98 or its equivalent) to include, but not be limited to, coverage for the Subcontractor's premises, operations (including completed operations), products, and contractual assumption of tort liability.
- 4.1.3 Amount of Insurance. Coverage shall be provided with limits of not less than:
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| Each Occurrence Limit | \$1,000,000 |
| General Aggregate Limit | \$2,000,000 |
| Product-Completed Operations Aggregate Limit | \$2,000,000 |
| Personal and Advertising Injury Limit | \$1,000,000 |

4.1.4 Required Endorsements.

- a. Additional Insured. Additional insured status shall be provided in favor of the Contractor Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 or their combined equivalent. It is the intent of the parties to this Agreement that this Additional Insured status shall include coverage for completed operations and for the Contractor Parties concurrent and sole negligence. Notwithstanding the foregoing or anything in this Exhibit "A" or the Subcontract to the contrary, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, the Additional Insured status required hereunder shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend.
- b. Designated Construction Project(s) Aggregate Limit. The aggregate limit shall apply separately to this Agreement through use of an ISO CG 25 03 03 97 endorsement, or its equivalent.
- c. Notice of Cancellation or Material Reduction in Coverage, as required in 3.6, above.
- d. Primary and Non-Contributing Liability. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Contractor Parties, with Contractor Parties' insurance being excess, secondary and non-contributing. This CGL coverage shall be endorsed to provide such primary and non-contributing liability coverage.
- e. Waiver of Subrogation, as required in 3.7, above.

4.1.5 Prohibited Endorsements. The Subcontractor's insurance coverage is not permitted to include any of the following endorsements:

- a. Contractual Liability Limitation, CG 21 39 or its equivalent
- b. Amendment Of Insured Contract Definition, CG 24 26 or its equivalent
- c. Exclusion–Damage To Work Performed By Subcontractors On Your Behalf, CG 22 94 or CG 22 95 or its equivalent
- d. Exclusion–Explosion, Collapse And Underground Property Damage Hazard, CG 21 42 or CG 21 43 or its equivalent
- e. Limitation of Coverage To Designated Premises or Project, CG 21 44 or its equivalent
- f. Any type of Classification or Business Description Limitation endorsement
- g. Any type of Construction Defect Completed Operations exclusion endorsement
- h. Any type of Habitational/Residential Exposure exclusion if the Contractor is engaged in any type of habitational/residential-related work.
- i. Any type of Punitive, Exemplary or Multiplied Damages exclusion
- j. Any type of Subsidence exclusion if the Contractor is engaged in any type of structural, underground or earth movement work, including but not limited to compaction, fill, or installation of storm or sewer drains, plumbing, foundations, or steel erection.

4.1.6 Continuing Commercial General Liability Insurance. Subcontractor shall maintain such insurance in identical coverage, form and amount, including required endorsements until each party's statutory liability has ceased.

4.2 Auto Liability Insurance

4.2.1 Coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

- 4.2.2 Form. Business Auto form (at least as broad as an unmodified ISO CA 0001 or its equivalent).
- 4.2.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000.
- 4.2.4 Required Endorsements.
- a. Notice of Cancellation or Material Reduction in Coverage, as required in 3.6, above.
 - b. Waiver of Subrogation, as required in 3.7, above; .
 - c. Primary and Non-Contributory Liability; and
 - d. Additional insured, provided, however, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, the Additional Insured status required hereunder shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend.

4.3 **Workers' Compensation/Employer's Liability Insurance**

- 4.3.1 Coverage. Such insurance shall cover liability arising out of Subcontractor's employment of workers and anyone for whom Subcontractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted. USL&H and/or Maritime Coverage Endorsement must be provided where such exposure exists.
- 4.3.2 PEO or Leased Employees. Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Subcontractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall either name Subcontractor as a Named Insured or be endorsed to provide an Alternate Employer endorsement in favor of Subcontractor. Where Subcontractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Subcontractor is strictly prohibited from subletting any of its work without the express written agreement of Contractor.
- 4.3.3 Amount of Insurance. Coverage shall be provided with a limit of not less than:
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| <u>Workers' Compensation:</u> | Statutory limits. |
| <u>Employer's Liability:</u> | \$1,000,000 each accident and each disease. |

- 4.3.4 Required Endorsements.
- a. Notice of Cancellation or Material Reduction in Coverage, as required in 3.6, above.
 - b. Waiver of Subrogation, as required in 3.7, above.

4.4 **Umbrella Liability Insurance**

- 4.4.1 Coverage. Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision.
- 4.4.2 Form. This policy shall have the same inception and expiration dates as the commercial general liability insurance required above.

4.4.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000.

4.4.4 Continuing Umbrella Liability Insurance. Subcontractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, until each party's statutory liability has ceased.

4.4.5 Endorsements.

- a. Notice of Cancellation or Material Reduction in Coverage, as required in 3.6, above.
- b. Waiver of Subrogation, as required in 3.7, above
- c. Primary & Non-Contributory Liability; and
- d. Additional Insured, provided, however, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, the Additional Insured status required hereunder shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend.

4.5 **Property Insurance**

Unless otherwise provided for and confirmed in writing by Contractor, Subcontractor is required to obtain insurance in the amount of 100% of the replacement cost of all of Subcontractor's equipment and other property, including coverages for; (1) the perils of Earthquake, and Flood, (2) Business Income in an amount prescribed by Contractor, (3) labor to re-install said property if necessary, and, (4) soft costs in an amount prescribed by Contractor. The property policy must contain property coverage for Contractor Parties, and all sub-subcontractors, material suppliers, and service suppliers, and must include the language "as their interests may appear". The property policies of Subcontractor and its' subcontractors, material suppliers, and service suppliers of every tier must waive all rights of recovery against each other and Contractor Parties for all causes of loss. The waiver(s) of subrogation shall be effective as to a person or entity even though that person or entity; (1) would otherwise have a duty of indemnification, contractual or otherwise, (2) did not pay the insurance premium directly or indirectly and, (3) regardless of whether or not the person or entity had an insurable interest in the property damaged. In either case, Subcontractor, its' subcontractors, material suppliers, and service suppliers of every tier is responsible for their pro-rata share of any deductible relating to such policy.

4.6 **Other Insurance**

Subcontractor must purchase and maintain, in a form required by Contractor, any other insurance coverage that may be required, at any time, by Contractor, including but not limited to, Professional Liability, Employment Practices Liability, Riggers Liability, Fidelity, Fiduciary, and Errors and Omissions.

5.0 **Evidence of Insurance.**

5.1 Provision of Evidence. Evidence of the insurance coverage required to be maintained by Subcontractor, represented by certificates of insurance and evidence of insurance consistent with the requirements of Chapter 1811 of the Texas Insurance Code, and endorsements issued by the insurance company or its legal agent must be furnished to Contractor prior to commencement of Work and not later than fifteen (15) days after receipt of this Agreement. New certificates of insurance, evidence of insurance, and endorsements shall be provided to Contractor prior to the termination date of the current certificates of insurance, evidence of insurance, and endorsements.

- 5.2 Form. All liability insurance required herein shall be evidenced by ACORD form 25, "Certificate of Insurance", or if such form is not filed with and approved or deemed approved by the Texas Department of Insurance, then on a form filed with and approved by or deemed approved by the Texas Department of Insurance and acceptable to Contractor.
- 5.3 Specifications. Such certificates of insurance, evidence of insurance, and endorsements shall specify the following, excluding any such specifications as may be prohibited under Chapter 1811 of the Texas Insurance Code:
- 5.3.1 Contractor as a certificate holder with correct mailing address.
 - 5.3.2 Insured's name, which must match that on this Agreement.
 - 5.3.3 Insurance companies affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of insurance company.
 - 5.3.4 Producer of the certificate with correct address and phone number listed.
 - 5.3.5 Additional insured status required herein.
 - 5.3.6 Amount of any deductibles and/or retentions.
 - 5.3.7 Cancellation and material reduction in coverage notification as required by this Agreement. A copy of such endorsement must be attached.
 - 5.3.8 Designated Construction Project Aggregate Limits required herein.
 - 5.3.9 Primary and non-contributing status required herein.
 - 5.3.10 Waivers of subrogation required herein.
 - 5.3.11 The certificate of insurance shall list all exclusions and limitations added by endorsement to the general liability insurance coverage.
- 5.4 Required Endorsements. A copy of the General Liability additional insured endorsement(s) or any other insurance documentation required by Contractor at any time shall also be provided.
- 5.5 Failure to Obtain. Failure of Contractor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Contractor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Subcontractor's obligation to maintain such insurance.
- 5.6 Certified Copies. Upon request of any Contractor Party, Subcontractor shall provide to Contractor a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, or, at a minimum, a copy of the exact coverage forms and endorsements to be issued by Subcontractor's insurance carriers for the next renewal period if necessary, shall be delivered to Contractor at least ten (10) days prior to the expiration of the previous policy.
- 5.7 Commencement of Work. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by Contractor of any rights. Contractor shall have the right, but not the obligation, of prohibiting Subcontractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by Contractor.
- 6.0 Use of Contractor Parties' or Owner's Equipment. Subcontractor, its agents, employees, sub-subcontractors or suppliers shall use Contractor Parties' equipment only with express written permission of Contractor's designated representative and in accordance with Contractor's terms and condition for such use. If Subcontractor or any of its agents, employees, sub-subcontractors or suppliers utilize any of Contractor Parties' equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of Contractor, Subcontractor shall defend, indemnify and be liable to Contractor Parties for any and all loss or damage which may arise from such use. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, this indemnity provision

shall not apply to the extent that it requires Subcontractor to defend, indemnify or hold harmless Contractor Parties against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of the Contractor Parties, its agent or employee, or any third party under the control or supervision of the Contractor Parties, other than Subcontractor or its agent, employee or subcontractor of any tier.

7.0 **Insurance Requirements of Subcontractor's Sub-Subcontractors, and Others.**

7.1 Insurance similar to that required of Subcontractor shall be provided by all sub-subcontractors (or provided by Subcontractor on behalf of sub-subcontractors), material suppliers, or service suppliers to cover operations performed under any subcontract agreement. Subcontractor shall be held responsible for any damage resulting from any modification in these insurance requirements as they apply to sub-subcontractors, material suppliers, or service suppliers. Subcontractor shall maintain current and expired certificates of insurance from all sub-subcontractors and other parties used by Subcontractor in prosecuting the work, which contain provisions equivalent to those listed herein (modified to recognize that the certificate is from sub-subcontractor, material supplier, or service supplier), including but not limited to the waivers of subrogation, additional insured status, and primary and non-contributory liability endorsements, and make them available to Contractor upon request.

7.2 Subcontractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering Subcontractor's or its sub-subcontractor's, material supplier's or service supplier's property shall be Subcontractor's and its sub-subcontractor's, material supplier's or service supplier's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, Subcontractor, its sub-subcontractors, material suppliers or service suppliers shall not be reimbursed for same.

8.0 **Release and Waiver.** Subcontractor hereby releases, and shall cause its sub-subcontractors to release, Contractor Parties from any and all claims or causes of action whatsoever which Subcontractor and/or its sub-subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by Subcontractor and/or its sub-subcontractors pursuant to this Agreement.