

## Exhibit B

### **INDEMNIFICATION PROVISION, INSURANCE REQUIREMENTS, WAIVER OF RIGHTS OF RECOVERY AND WAIVER OF SUBROGATION**

#### **I. Indemnification**

A. To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Owner and Contractor, and any other person or entity required by the Contract Documents, and their parent, subsidiary, and affiliated companies, and each of their respective officers, directors, shareholders, members, employees, and assigns, as applicable and their employees, representatives, officers, directors, stockholders, members, managers (individually, an "Indemnified Party," collectively, "Indemnified Parties") from and against any and all liabilities (including but not limited to contractual liabilities), claims (even if such claims are groundless, false or fraudulent), losses, damages, penalties, fines, settlements, costs, and/or expenses (including but not limited to court costs and reasonable attorneys' fees), attributable to injury (including but not limited to sickness, disease, or death) to any person (including but not limited to Subcontractor's employees) and/or damage to any property of whatsoever kind or nature, arising out of or relating to the execution of the Work, or preparation for the Work, or any extension, modification, or amendment to the Work by change order or otherwise, or other directives from Contractor, or the design, manufacture, delivery, installation, use, misuse, maintenance, erection, repair, operation, or failure of any part of all of the goods, materials, machinery, and/or equipment (even if such was furnished, rented, or loaned by any of the Indemnified Parties), even for, and if caused in part by, any negligent act or omission, or strict liability of an Indemnified Party.

B. In the event and to the extent that a claim is made by an employee of Subcontractor against an Indemnified Party, the intent of this Section I is that Subcontractor shall and it hereby agrees to, defend, indemnify, and hold harmless the Indemnified Party to the same extent as if the claim was made by a non-employee of Subcontractor. Accordingly, in addition to the above provisions, and in order to render the parties' intent and this indemnity agreement fully enforceable, Subcontractor, in an indemnification claim hereunder, hereby expressly and without reservation waives any defense or immunity it may have under any applicable Worker's Compensation Laws or any other statute or judicial decision disallowing or limiting such indemnification and consents to a cause of action for indemnity. This waiver and consent to indemnification is made irrespective of and specifically waiving any defense or immunity under any statute or judicial decision disallowing or limiting such indemnification.

C. Subcontractor's obligation to defend the Indemnified Parties under this Section I is in addition to Subcontractor's obligation to indemnify and hold harmless the Indemnified Parties. Subcontractor shall, at Subcontractor's expense, defend an Indemnified Party against any claim, whether asserted in a proceeding, action at law, in equity, in arbitration, or otherwise, containing any allegation(s) that may potentially give rise to Subcontractor's obligation to indemnify an Indemnified Party under Section I.A. and/or Section I.B. above. Subcontractor shall retain an attorney to represent such Indemnified Party, provided, however, that any attorney employed in such defense must be satisfactory to the Indemnified Party. Subcontractor's obligation to defend an Indemnified Party shall continue until such time as it is determined by court or arbitrator(s), through all appeals and/or the expiration of applicable appeal periods, that Subcontractor is not obligated to provide such defense.

D. If there are any damages or claims of any kind or nature encompassed by this Section I that have not been settled or discharged when the Work is finished, final settlement between Contractor and Subcontractor, final payment under the Subcontract, and acceptance of the Work shall be deferred until all such claims shall have been paid, settled, adjusted, or suitable coverage or indemnity (including but not limited to a bond) acceptable to Contractor is provided by Subcontractor or Subcontractor's insurance carrier. However, the obligations owed by Subcontractor under this Section I are continuing in nature, and shall survive the completion of Work and the issuance of final payment under the Subcontract, as well as termination of the Subcontract by any party.

E. Subcontractor shall pay for all attorneys' fees and related legal expenses incurred by Contractor to enforce Contractor's rights under this Section I.

F. Subcontractor's indemnity obligations under this Section I shall also specifically include, without limitation, all fines, penalties, damages, liability costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) imposed on, or levied against, Contractor by a governmental entity arising out of, or in connection with, any: (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that relates to or bears upon the performance of the Work by Subcontractor, its subcontractors, or any person or entity for whom either is responsible, including, but not limited to, any OSHA regulations, environmental conditions, hazardous materials, or taxes, and (ii) failure to secure and

pay for permits, fees, approvals, licenses and inspections as required under the Subcontract, or any violation of any permit or other approval of a public authority applicable to the Work by Subcontractor, its subcontractors, or any person or entity for whom either is responsible.

G. Notwithstanding the above, to the full extent permitted by law, it is expressly agreed that Subcontractor assumes the fullest extent of all obligations to defend, indemnify and hold harmless all parties whom Contractor is obligated to defend, indemnify and hold harmless in any of the Contract Documents or under common law (whether or not such obligations may extend beyond those addressed in this Exhibit).

## II. Insurance Requirements

A. Subcontractor shall, at its own expense, procure, carry and maintain, during the progress of the Work to be performed under the Subcontract and until the performance of the Work has been completed and final payment has been issued (although the obligation to maintain Products and Completed Operations Coverage as set forth below shall remain) the minimum limits and coverage as set forth below. Additionally, Subcontractor is required to forward this Exhibit to its insurance agent/broker for their review and to confirm that Subcontractor's insurance program strictly conforms to the requirements set forth in this Exhibit.

(1) **Commercial General Liability Insurance:** covering all operations by or on behalf of Subcontractor, to include coverage for Premises, Operations, Mobile Equipment, and Independent Contractors, Broad Form Contractual Liability Coverage (including liability for injuries to Subcontractor's employees assumed under a contract), Personal and Advertising Injury Coverage, Products and Completed Operations Coverage, and Broad Form Property Damage Coverage (including Explosion, Collapse and Underground Hazards, Subsidence or Earth Movement if Work involves such risks). Coverage should be provided pursuant to form CG 00 01 issued by the Insurance Services Office ("ISO"), or its equivalent.

- (a) Occurrence form with the following limits of liability:
  - (i) General Aggregate \$2,000,000
  - (ii) Products and Completed Operations Aggregate \$2,000,000
  - (iii) Each Occurrence \$1,000,000
  - (iv) Personal and Advertising Injury \$1,000,000
- (b) The limits for General Aggregate must apply on a per project basis.
- (c) Products and Completed Operations Coverage shall be maintained for a period of at least three (3) years after Final Payment for the Work.
- (d) The policy cannot contain exclusion for injury to employees, contractors, sub-contractors or limitation or removal of employer's liability exception found in the CG 00 01 policy form, including, but not limited to, ISO endorsements CG 24 26, CG 21 39, or any other endorsement that limits, or seeks to limit or change, the definition of "insured contract" as set forth in CG 00 01.
- (e) Coverage for mold/fungus (no mold/fungus exclusion), or in the alternative, and upon review and written approval by Contractor, coverage for mold/fungus can be provided by Contractor's Pollution Liability Policy.
- (f) A separate Primary and Noncontributory endorsement stating that Subcontractor's insurance shall apply as primary, and that any other insurance carried by any of the Additional Insureds (as defined below) will be excess only and will not contribute with Subcontractor's insurance. The form of the Primary and Noncontributory endorsement shall be ISO CG 20 01 or an unmodified equivalent.
- (g) The policy shall not contain a virus exclusion, including, but not limited to, an exclusion that applies to COVID-19.

(2) **Automobile Liability Insurance:**

- (a) Coverage form at least as broad as ISO CA 00 01 to include:
  - (i) All Owned, Leased, Hired and Non-Owned Vehicles
  - (ii) Contractual Liability Coverage (including liability for injuries to Subcontractor's employees assumed under a contract)
- (b) Per Accident Combined Single Limit: \$1,000,000

- (c) If Subcontractor is subject to the Motor Carrier Act of 1980, it must provide a MCS-90 endorsement with a primary limit of \$1,000,000 for each accident.

(3) **Umbrella or Excess Liability Insurance:** policy should provide coverage as least as broad as that provided in the underlying policies, and shall apply excess of the Commercial General Liability Insurance, Automobile Liability Insurance and Employer's Liability policies.

- (a) Occurrence form with the following limits of liability:
  - (i) General Aggregate \$5,000,000
  - (ii) Products and Completed Operations Aggregate \$5,000,000
  - (iii) Each Occurrence \$5,000,000
  - (iv) Personal and Advertising Injury \$5,000,000
- (b) Products and Completed Operations Coverage shall be maintained for a period of at least three (3) years after Final Payment for the Work.

(4) **Worker's Compensation and Employer's Liability Insurance:**

- (a) Worker's Compensation Coverage with the following limits: as statutorily required by the state(s) where any of the Work is being performed, and shall include, where required, the Longshore and Harbor Workers' Compensation Act, and the Jones Act.
- (b) Employer's Liability Insurance with the following limits:
  - (i) Bodily Injury by Accident: \$1,000,000 Each Accident
  - (ii) Bodily Injury by Disease: \$1,000,000 Each Employee
  - (iii) Bodily Injury by Disease: \$1,000,000 Policy Limit
- (c) To the extent permitted by law, the policy shall contain a Waiver of Our Right to Recover from Others Endorsement (WC 00 0313) (or the equivalent), and shall name in the schedule for that endorsement all Additional Insureds (as defined in Section IV below).
- (d) Programs underwritten by any Self Insured Group require Contractor's prior written approval.
- (e) If Subcontractor leases employees through an employment management, PEO or other such company, evidence of insurance must be provided through an Alternate Employer/Leased Employee endorsement naming Subcontractor on the employment company's Workers' Compensation policy. The PEO or temporary leasing company and its insurers shall waive all rights of recovery against Contractor, Owner and their insurers.

(5) **Pollution Liability Insurance:** providing coverage for any pollution conditions, including mold and fungi, that may arise from the Work. The policy shall provide coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims for pollution conditions, including claims of environmental authorities for the release of pollutants caused by construction activities related to the Work, including transport and disposal of pollutants.

- (a) Occurrence form with the following limits of liability (subject to the additional requirements of (e) below):
  - (i) General Aggregate \$2,000,000
  - (ii) Each Occurrence/Claim \$1,000,000
- (b) There shall be no exclusions or limitations regarding damages/injury from the existence, removal or abatement of lead paint or asbestos.
- (c) There shall be no insured vs. insured exclusion in the policy.
- (d) The policy shall provide coverage for all defense costs, including costs, charges, and expenses incurred in the investigation, adjustment or defense of claims.
- (e) If Subcontractor or its subcontractors or suppliers of any tier are required to perform remediation of hazardous materials as those terms are defined in federal, state or local law, or if its operations involve an exposure to hazardous materials, including but not limited to asbestos, lead and mold, then limits of liability shall be \$5,000,000 per occurrence and \$5,000,000 general aggregate.
- (f) If Subcontractor or its subcontractors or suppliers haul hazardous materials, the policy must extend pollution coverage to the transportation of hazardous materials or pollutants by waste hauling vehicles. If Subcontractor is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.

(6) **Professional Liability Insurance:** required to the extent that the Work includes any professional services, performance specifications, testing, design-assist, design-build, stamped drawings or LEED certification services.

- (a) Claims made or occurrence form with the following limits of liability:
  - (i) Any one claim, and in the aggregate: \$2,000,000
- (b) Claims-made policies must have a retroactive date prior to the first date design services were performed by Subcontractor as part of the Work, and coverage must extend a minimum of five (5) years beyond Subcontractor's final completion of its Work or the end of this Subcontract, whichever is later.
- (c) If Claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policy with a retroactive date prior to the effective date of the Subcontract, Subcontractor must purchase Extended Reporting Tail coverage for a minimum of five (5) years beyond final completion of Subcontractor's Work or the end of this Subcontract, whichever is later.

(7) **Riggers Liability Insurance:** required to the extent that the Work involves moving, lifting, lowering, rigging or hoisting of property or equipment belonging to others.

- (a) Limits no less than \$1,000,000 per occurrence. Such insurance shall insure against physical loss or damage to the property or equipment. Deductibles greater than \$50,000 require Contractor's prior written approval. If Subcontractor is providing crane services, then the combined Commercial General Liability and Excess/Umbrella policy limits required are \$10,000,000 per occurrence/aggregate.

(8) **Aircraft/Helicopter (Including Drones) Liability Insurance:** required to the extent that the Work will utilize any owned, leased, chartered or hired aircraft or helicopter, or a drone in the performance of its Work.

- (a) Aircraft Liability insurance with limits no less than \$10,000,000 per occurrence, including Passenger Liability. However, if the aircraft is a drone, then the applicable liability insurance limits shall be no less than \$1,000,000 per occurrence.
- (b) Subcontractor (or its subcontractors) shall provide a Waiver of Subrogation endorsement for the Additional Insureds (as defined below) as respects physical damage to the aircraft or helicopter hull.

(9) **Marine Insurance:** required to the extent that Subcontractor will utilize vessels or barges as part of its Work.

- (a) Hull and Machinery Insurance, with coverage equal to that provided by the American Institute Hull Clause (6117), including collision liability, with the Sistership clause unamended, with limits of liability equal to the full value of the vessel and with the navigational limitations adequate for Subcontractor to perform its Work. When Subcontractor engages in towing operations, said insurance shall include Tower's Liability with the Sistership clause unamended.
- (b) Protection and Indemnity Insurance covering injuries to or death of masters, mates, crews of vessels and Maritime employees. Coverage is to include Voluntary Removal of Wreck and/or Debris Insurance. The limits of liability of such insurance shall be equal to the value of each Vessel covered or \$10,000,000, whichever is greater.
- (c) Collision Liability Insurance, whether contained in the Hull Policy, P&I Policy or elsewhere, in an amount equal to the value of each vessel covered or \$10,000,000, whichever is greater.
- (d) Towers Liability Insurance for any subcontractor with towing operations, whether contained in the Hull Policy, P&I Policy or elsewhere, in an amount equal to the value of each vessel covered or \$5,000,000, whichever is greater.
- (e) Vessel Pollution Liability with WQIS or equivalent, with a limit of \$5,000,000 per occurrence.
- (f) Coverage as required by the Longshore and Harbor Workers' Compensation Act, the Jones Act, or other applicable laws, regulations or statutes.

(10) **Builder's Risk Insurance/Property Insurance:**

- (a) Subcontractor shall satisfy itself as to the existence and extent of Builder's Risk insurance prior to commencing Work.
- (b) If Builder's Risk insurance purchased by Owner or Contractor covers loss or damage to Subcontractor's Work, and Subcontractor is responsible for the damage, then Subcontractor will pay any applicable insurance policy deductible.
- (c) Subcontractor shall be responsible for the care and protection of their Work until its completion and final acceptance. If Owner or Contractor does not purchase Builder's Risk insurance, Subcontractor will procure appropriate property coverage (such as an Installation Floater) at its own expense. Such insurance shall also apply to Owner's or Contractor's property in the care, custody or control of Subcontractor.
- (d) Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the Work, except such rights they may have to the proceeds of such insurance.
- (e) Subcontractor is responsible for providing insurance for all of its property, tools and equipment used at or away from the jobsite.

III. **General Requirements**

A. **Carrier Financial Requirements:** All insurance companies providing coverage to Subcontractor shall have an A.M. Best Rating of "A-" or higher, an A.M. Best Financial Size Category of "Class VIII" or higher, and shall be lawfully authorized to do business on an admitted basis in the jurisdiction where the Project is located.

B. **Requirement for Work Around Railroad:** If Subcontractor or their subcontractors or suppliers performs any work or conducts any operations within fifty feet of any railroad (including light rail, fixed rail or any other rail system), Subcontractor's Commercial General Liability policy shall be endorsed to delete any exclusion, including the Contractual Liability exclusion, for work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to Contractor before work within fifty feet of the railroad commences.

C. **Limitation on Deductible/Self-Insured Retention:** Unless otherwise indicated, none of the policies of the insurance required of Subcontractor by this Exhibit shall contain deductibles or self-insured retentions in excess of \$5,000.

D. **COI Requirement:** Within seven (7) days of Subcontractor signing the Subcontract, and in no event later than the start of any Work, Subcontractor shall provide Contractor with a Certificate of Insurance, with a Project description and Job Number (if stated on Subcontract), evidencing the insurance coverage required under this Exhibit, in the form set forth in the exemplar attached to this Exhibit as Appendix 1 (the "COI"). Copies of all endorsements or other policy forms that must be attached to the COI are set forth in Appendix 2 attached to this Exhibit. No payment shall be considered due and owing under the Subcontract until Contractor has received these documents. Further, upon request of Contractor, Subcontractor shall provide full and complete copies of all policies required under this Exhibit. Subcontractor's obligation to provide the insurance set forth in this Exhibit shall not be waived by any failure to provide a COI, the failure to provide the required forms and endorsements, Contractor's acceptance of a COI showing coverage varying from these requirements, or by Contractor's direction to commence Work. Contractor reserves the right to request full and complete copies of Subcontractor's insurance policies for review.

E. **Cancellation Notice:** The policies required under this Exhibit shall not be cancelled, materially changed or non-renewed without at least thirty (30) days advance written notice provided to Contractor, unless the cancellation is for non-payment of premium, in which case the advanced written notice shall be at least ten (10) days. Each policy required under Section II shall be endorsed to require this notification. Should any insurance policy lapse or be canceled during the period that the Work is being performed, Subcontractor shall, prior to the effective expiration or cancellation date, furnish Contractor with evidence of renewal or replacement of the policy. The failure of Subcontractor to continuously satisfy the insurance requirements set forth in this Exhibit shall be deemed a material breach of the Subcontract. In addition to all other available remedies, in the event Subcontractor fails to maintain any insurance coverage required by this Exhibit, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or terminate the Subcontract.

F. **No Limitation of Liability:** The insurance coverage required under this Exhibit shall not be construed to be a limitation of the liability on the part of Subcontractor, or any of its subcontractors. The carrying

of the insurance required by this Exhibit shall in no way be interpreted as relieving Subcontractor of any responsibility or liability under the Subcontract.

G. **Material Breach:** The failure to carry or keep the insurance policies required under this Exhibit shall be deemed a material breach of the Subcontract.

H. **Minimum Limits Only:** The coverage limits required under this Exhibit are minimum limits only. To the extent that Subcontractor purchases policies with higher limits, each of the Additional Insureds shall be entitled to coverage up to the actual limits available under those policies.

I. **Sub-Subcontractor Requirements:** Subcontractor shall require that any Second Tier Subcontractors, truckers, trucking brokers, sub-haulers, vendors and suppliers of any tier performing Work, or supplying materials related to the Work, on its behalf comply with all of the insurance requirements set forth in this Exhibit, and shall include in its contract with all such entities a provision consistent with Section V. Subcontractor shall provide Contractor evidence of such insurance before allowing the Second Tier Subcontractors to perform any Work on the Project.

J. **Execution By Performance:** In the event that Subcontractor enters the Site, or delivers or has delivered material or equipment to the Site without first having executed the Subcontract, the requirements set forth in this Exhibit shall be deemed executed at the time of first entry to the Site as if a duly authorized representative of Subcontractor had executed the same by affixing a signature to the Subcontract.

#### IV. **Additional Insured Requirement**

Each liability policy listed in Section II (other than Automobile Insurance Liability, Worker's Compensation, Employer's Liability Insurance, and Professional Liability Insurance) shall contain coverage for additional insureds pursuant to endorsements CG 20 10 (ongoing operations), CG 20 37 (completed operations), and CG 20 32 issued by ISO (or their equivalent) (the latter endorsement is only necessary if Owner requires an architect, engineer or surveyor to be named as an additional insured in the Contract Documents), and the Automobile Liability Insurance policy shall contain coverage for additional insureds pursuant to endorsement CA 20 48 (or a broader endorsement), and shall name as additional insureds: (i) Owner, and its parent, subsidiary and affiliated companies, and each of their respective employees, directors, officers, and shareholders, as applicable, (ii) Contractor, and its parent, subsidiary and affiliated companies, and each of their respective employees, directors, officers, and shareholders, as applicable, and (iii) any other person or entity as required by the Contract Documents (individually as an "Additional Insured," all collectively as the "Additional Insureds"). The coverage for the Additional Insureds under each of the policies shall be primary and non-contributory to any other coverage maintained by the Additional Insureds available to contribute to payment of any loss. Subcontractor agrees, for the purposes of additional insurance coverage only, that the Work is being performed for all the Additional Insureds, and that the Subcontract is an agreement between Subcontractor and all the Additional Insureds to provide additional insured coverage.

#### V. **Waiver of Rights of Recovery and Waiver of Subrogation**

Subcontractor and its respective insurance carriers waive all rights of recovery against each of the Indemnified Parties for loss or damage covered by any of the insurance required to be maintained by Subcontractor pursuant to the Subcontract, and hereby waive all rights of subrogation against the Indemnified Parties for loss or damage covered by any of the policies of insurance required to be maintained by Subcontractor pursuant to the Subcontract. If any of the policies of insurance required under this Subcontract require an endorsement to provide the waiver of subrogation.



## **APPENDIX 2**

Subcontractor shall attach the following forms and endorsements to the COI:

**A. Commercial General Liability Policy**

- (1) Copy of additional insured endorsement for ongoing operations, CG 20 10, or an equivalent form
- (2) Copy of additional insured endorsement for completed operations, CG 20 37, or an equivalent form
- (3) Copy of the per project aggregate endorsement, CG 25 03, or an equivalent form
- (4) Copy of the waiver of subrogation endorsement, CG 24 04, or an equivalent form
- (5) Copy of the primary/noncontributory endorsement, CG 20 01, or an equivalent form

**B. Commercial Auto Liability Policy**

- (1) Copy of additional insured endorsement, CA 20 48, or a broader endorsement
- (2) Copy of waiver of subrogation endorsement, CA 04 44, or an equivalent endorsement

**C. Excess/Umbrella Liability Policy**

- (1) Copy of primary/non-contributory endorsement

**D. Worker's Compensation and Employer's Liability Insurance Policy**

- (1) Copy of Declaration Page noting New Jersey in Item 3.A.