



SUBCONTRACTOR SERVICES MASTER AGREEMENT

THIS AGREEMENT, made the ____ day of _____, **2015** by and between **ACE Painting, Inc.**, a Maine Corporation, having an office in South Portland, Maine, hereinafter called “**ACE**” or “**COMPANY**”, and _____, having an office at _____, _____, **Maine** _____ hereinafter called the “**SUBCONTRACTOR**”.

WITNESSETH, that ACE hereby engages the Subcontractor to perform Work on the Project (both terms being hereafter defined), which ACE has been hired by _____ as the general contractor (hereinafter “**GENERAL CONTRACTOR**”) to perform painting services for the benefit of _____, (hereinafter referred to as the “**OWNER**”). Subcontractor hereby agrees to perform painting services on the Project and all future projects as may be detailed in future Work Schedules as provided herein, in accordance with the following terms and conditions (hereinafter the “**WORK**”).

1. DESCRIPTION OF WORK.

(a) The Subcontractor, shall provide all labor, materials, equipment, supervision and other items not enumerated herein but generally included under this class of Agreement, and shall do all things necessary for the prosecution and completion of the Work, in strict accordance with Schedule "A" hereto and the Drawings, Specifications, and other Contract Documents provided to Subcontractor by ACE or its agents. The work described in or attached with Schedule "A" of this Agreement, including the Subcontract Summary Page, and all subsequent Schedules adopted by the parties (“Work Schedules”) is hereinafter referred to as the Work. As the parties execute future Work Schedules, the General Contractor, Owner, Project and Work shall be identified and memorialized therein. The terms and conditions detailed in this Subcontractor Services Master Agreement shall govern the parties’ obligations and rights as to all future Work Schedules executed by them. The Subcontractor’s execution of a Work Schedule shall confirm that it has reviewed, or has been afforded the opportunity to review, the Contract Documents related to the Project.

(b) The Subcontractor will be bound to ACE by the terms of the Contract Documents and this Agreement. In the event of disagreement between Subcontractor and ACE as to the portions of the

work required to be performed by Subcontractor, ACE will give due consideration to the contentions of all subcontractors. Nonetheless, the orders of ACE shall be followed and the decision of ACE shall be final, subject to Subcontractor's right to request a change order or make a claim as provided for herein.

(c) Subcontractor represents and warrants that, prior to entering into this Agreement and to the extent necessary to understand all of the requirements applicable to the Work, it has (a) carefully examined all Contract Documents, including plans and specifications, related to the Work; (b) physically inspected the Project premises; and (c) fully investigated the type and nature of work to be performed by it and all of the general and local conditions (both natural and artificial) and circumstances surrounding, or in any way affecting, the Work. In particular, Subcontractor represents and warrants that it has fully considered and taken into account, without limitation, the character of the site, all relevant soils, water, site access, availability of storage areas, utilities, obstructions, traffic, working restrictions, limitations imposed under permits and/or the government authorities having jurisdiction over the Work and/or Project premises, and all other matters which may affect performance of the Work or its cost under this Agreement. In the alternative, Subcontractor has waived these examinations and investigations. Subcontractor represents that it enters into this Agreement solely on the basis of its own examination, inspection, and investigation and upon its asserted knowledge and experience in performing services the same or similar to the Work in the past, and not because of, nor in reliance upon, any representation or opinion rendered by ACE, the General Contractor, or the Owner or any of their representatives, officers, employees, or agents.

2. ADDITIONAL INFORMATION & INSPECTION.

(a) Prior to performing any portion of the Subcontract Work, Subcontractor shall conduct a visual inspection of the Project site and perform a careful analysis and comparison of the drawings, specifications, and other relevant Contract Documents and information furnished by ACE, the General Contractor and/or the Owner related to the Work. Should Subcontractor discover any deficiencies, discrepancies, ambiguities, inconsistencies, or errors with respect to any such documents, Subcontractor shall report such discoveries to ACE and to the General Contractor promptly and prior to proceeding with the affected portions of the Work. If, without notice to ACE and the General Contractor, Subcontractor performs any of the Work knowing of discrepancies or errors, or knowing it to be contrary to any applicable laws, statutes, ordinances, codes, permits, rules, or regulations, Subcontractor shall assume all responsibility for such work and shall bear all associated costs, charges, fees, and expenses necessarily incurred to correct the work.

(b) If ACE shall furnish to the Subcontractor any additional information and drawings as may be prepared by the General Contractor, Owner, and/or Architect to describe further the Work to be performed by the Subcontractor, the Subcontractor shall accept such additional information and drawings as part of this Agreement, subject to Subcontractor's right to request a change order or make a claim as provided for herein.

3. INTERPRETATION.

ACE shall interpret the Drawings and Specifications. ACE's decisions in matters relating to aesthetic effect shall be final.

4. COOPERATION BETWEEN PARTIES.

The Subcontractor shall cooperate with ACE and with other subcontractors employed on the Project in order to insure first-class workmanship in every respect and the proper sequence of the Work as established by ACE and/or the General Contractor, as the case may be.

5. START AND FINISH OF THE WORK.

The Subcontractor agrees to procure and prepare its materials and manufactured products so as to be ready to begin work in the field when directed by ACE. It agrees to perform the Work in a prompt and diligent manner, commencing the several parts thereof at such times and proceeding therewith in such order as directed by ACE, and agrees to finish the several parts and the whole of the Work as provided herein, so that, in conjunction with other trades engaged thereon, it will insure the uninterrupted progress of the Project. It agrees to complete the Work as rapidly as field conditions permit, proceeding in a skillful and expeditious manner, so that the Project will be completed within the target dates established by ACE's progress schedule as updated from time to time. These dates shall be deemed of the essence of this Agreement.

6. INSPECTIONS AND APPROVALS.

The Work shall be subject to inspection and approval by ACE, the General Contractor, the Owner, and representatives of appropriate authorities. The Subcontractor shall be required to furnish, for the approval of ACE, such samples, shop drawings and patterns, as may be required for the Work, and all Work hereunder shall be in accordance therewith. The Subcontractor shall provide sufficient, safe, and proper facilities during the progress of the Work for its inspection by ACE, and representatives of appropriate authorities.

7. FAILURE TO PROSECUTE WORK & TERMINATION.

(a) If the Subcontractor shall at any time (1) refuse or neglect to supply a sufficient number of properly skilled workmen or sufficient materials of the proper quality, or (2) fail to prosecute the Work with promptness, or (3) cause the stoppage or delay of or interference with the work of any other subcontractors, or (4) fail in the performance of any of the covenants herein contained, or (5) be adjudged a bankrupt or shall make a General Assignment for the benefit of its creditors, or (6) have a receiver appointed for its assets, or (7) become insolvent or become a debtor in reorganization proceedings, then, after serving a three (3) days' written notice, mailed, faxed, e-mailed or delivered to the last known address of the Subcontractor, of the existence of any of the foregoing causes, and unless the cause specified in such notice shall have been eliminated within such three (3) days, ACE, at its option, may provide either itself or through others, any such labor or materials to prosecute the Work and may deduct the cost thereof from any money then due or thereafter to become due the Subcontractor under this Agreement.

(b) In any such event, after such notice and failure to eliminate such cause within the three (3) days specified, ACE, at its option, may terminate the engagement of the Subcontractor. In case of such termination of the engagement of the Subcontractor, the Subcontractor shall not be entitled to receive any further payment under the Agreement until the Work required hereunder shall be fully completed and accepted by the ACE and/or the General Contractor; and at such time, if the unpaid

balance of the contract amount for the portion of the Work performed prior to termination shall exceed the expense incurred by ACE in completing the said Work, (including ACE's attorney's fees, overhead, damages, and penalties imposed upon ACE by the Owner or General Contractor due to delay or other causes arising from Subcontractor's termination) such excess shall be paid to the Subcontractor without interest; but if such expense shall exceed such unpaid balance, then the Subcontractor shall pay the difference to ACE.

(c) Upon termination pursuant to this Section 12, ACE may, at its option, for the purpose of completing the Work, take possession of all tools, materials, appliances, supplies, and equipment on the premises belonging to Subcontractor. ACE may complete the Work itself or through others, by whatever methods ACE deem expedient. All authorized sub-subcontracts or supply agreements which Subcontractor enters into to carry out the Work shall include a provision that the sub-subcontractor or supplier agrees its contract may be assigned to ACE upon termination of Subcontractor for default. ACE shall have the right, but not the obligation, to accept assignment of any or all such contracts. In the case of termination for default, Subcontractor shall be liable to ACE for all expenses incurred by ACE in completing the Work, together with any additional costs or damages incurred in connection with any default by Subcontractor, including, but not limited to delay damages, attorneys' fees and costs, and the cost of ACE's staff employees or consultants (collectively, "Default Damages"). Subcontractor shall not be entitled to receive any further payment until the Work has been fully completed and accepted by the General Contractor and Owner. At such time, if the unpaid balance of the Subcontract Amount is less than the Default Damages, Subcontractor shall pay the difference to ACE promptly upon receipt of an invoice. If a termination for default, or any action taken pursuant to it, is determined to be wrongful, the termination shall be deemed to have been a termination for convenience as provided below, and Subcontractor's sole remedy as to ACE shall be as provided in the following paragraph. In such cases, Subcontractor shall not be entitled to recover overhead or profit on portions of the Work not executed, loss of business, or loss of profits on other projects or projects lost or foregone.

(d) ACE shall have the right at any time to terminate or suspend this Agreement without cause for any reason whatsoever. Termination or suspension for convenience may be exercised at the sole discretion of ACE, the exercise of which need not be reasonable, and regardless of whether Subcontractor is or is not in default. A termination or suspension for the convenience of ACE will be effective immediately upon Subcontractor's receipt of verbal or written notice from ACE. Subcontractor's sole and exclusive remedy for termination for convenience shall be payment of the following: (a) mobilization costs, but only to the extent they represent actually incurred and documented costs paid for the transport or setup of equipment or materials, or similar tasks necessary to the commencement of the Work; (b) for lump sum price items, other than mobilization, a percentage of the agreed lump sum price based on the reasonable value of the portion of the Work properly performed up to the time of termination; (c) for unit price items, the agreed unit price multiplied by the number of units actually and properly completed and accepted by Owner as of the time of termination; (d) reasonable and documented costs Subcontractor incurs in terminating any sub-subcontractors or rental or supply contracts in effect at the time of the termination, without any mark-up for overhead or profit. Notwithstanding the forgoing, Subcontractor agrees that in the event General Contractor terminates the First Subcontract with ACE, or any portion of it, Subcontractor expressly waives its right to any compensation beyond the amount received by ACE from General Contractor for the Work. Subcontractor acknowledges that payment from General Contractor to ACE for the Work is a condition precedent to ACE's obligation to pay Subcontractor in the event the General Contractor or Owner terminates for convenience. A termination for convenience shall not relieve Subcontractor of any responsibility it would otherwise have under this Agreement to correct work that is defective or otherwise not in conformance with the Contract Documents, including plans and specifications, or to

pay any costs arising from such defective or nonconforming work. ACE does not waive any right or claim or damage which it had under this Agreement prior to termination, and may pursue or continue to pursue any cause of action arising from actions or omissions of Subcontractor before termination. In the event of a suspension, Subcontractor shall notify ACE in writing in sufficient time to permit timely notice to the General Contractor or the Owner under the First Subcontract between ACE and the General Contractor of the effect of the suspension on the Work. The Subcontract Amount and/or the Subcontract Time shall be adjusted equitably for reasonable increases in the time or cost of performance of the Work caused by the suspension, except to the extent that performance would have been suspended by a cause for which Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which Subcontractor would have been entitled to only a time extension under this Subcontract. Notwithstanding the forgoing, Subcontractor agrees that in the event Owner suspends its Prime Contract with the General Contractor, or in the event the General Contractor suspends the First Subcontract, or any portion of either, Subcontractor expressly waives its right to any compensation beyond the amount received by ACE from General Contractor for the Work. Subcontractor acknowledges that payment from General Contractor to ACE for the Work is a condition precedent to ACE's obligation to pay Subcontractor in the event of General Contractor or Owner suspension.

(e) In the event that "Subguard" or similar Contractor Default Insurance has been purchased by the General Contractor and/or Owner, ACE's legal remedies for any default by Subcontractor may be assigned to and exercised by the Insurance Carrier that issued such policy.

8. REMOVAL OF WORK CONDEMNED.

(a) The Subcontractor shall, within forty-eight (48) hours after service upon it of written notice from ACE to that effect, proceed to remove from the site all materials condemned by the General Contractor or ACE, whether worked or unworked, and shall take down all portions of the Work which the General Contractor or ACE has condemned as unsound or improper and which in any way fail to conform to the Contract Documents, and shall make good all work of other trades damaged by such removal.

(b) If the Subcontractor disputes the propriety of any such direction or decision of the General Contractor or ACE it shall file a written protest with ACE within seventy-two (72) hours but shall nevertheless, without delay, comply with the decision of ACE. In default of any such written notice, any claim arising out of such direction shall be deemed waived.

9. PERMITS, TAXES, FEES.

The Subcontractor shall obtain and pay for all permits and/or taxes pertaining to its Work. The Subcontractor agrees to comply with all laws and regulations specifically applicable to the Work in force at the time of signing this Agreement. In case of failure to do so, it shall make all the necessary alterations to its Work to conform to same, without delay, at its own expense. In the event that the Contract Documents supplied to Subcontractor by ACE provide for Work contrary to any such laws and regulations, the Subcontractor shall not be liable to ACE for the remedial costs related to the same. Under such circumstance, Subcontractor shall be entitled to additional compensation to remedy Work performed pursuant to the Contract Document which is deemed contrary to applicable laws and regulations.

10. REMOVAL OF RUBBISH.

The Subcontractor, daily or more or less frequently as ACE may require, shall gather and remove all its trash, debris and other materials to be disposed of in areas on each floor designated by ACE or in trash chutes or container designated and provided for the Project. On completion of its Work, the Subcontractor shall remove from the job site all of its tools, scaffolding, equipment and surplus materials pertaining to the Work.

11. COST OF THE WORK.

The total cost of the Work to be paid to the Subcontractor shall include all labor, scaffolding, tools, equipment, materials, supplies, transportation, superintendence, contributions to union funds and benefits, insurance, taxes and other items and costs required to complete the Work as reflected in **Schedule A**. The sum of the initial cost of the Work plus with be in **Schedule A**

12. METHOD AND TERMS OF PAYMENT.

(a) ACE shall pay the Subcontractor the amount indicated on the Subcontract Summary Page (Schedule A), subject to any and all additions and/or subtractions per the terms of this Agreement for the satisfactory completion of its performance obligations related to the Work as specified in this Agreement. The Subcontract Sum, as indicated on the Subcontract Summary Page, includes all applicable taxes which shall become due or payable arising out of the employment by Subcontractor of employees in the performance of the Work. Applications for payment submitted to ACE by the Subcontractor will be accepted by ACE on a bi-weekly basis and paid on a “work in progress” basis by ACE subject to the Subcontractor having provided ACE with all required documentation as outlined in “Schedule B” to this Agreement.

(b) Subcontractor understands and acknowledges that ACE’s standard payment terms are thirty (30) days from the receipt of payment application provided all required documents from “Exhibit B” have been received and approved by the Contractor. Requests for early payment (i.e., before thirty (30) days have passed) may be approved at ACE’s sole discretion.

(c) Subject to the mutual agreement of the parties, a fee of five percent (5%) of the requisition amount may be deducted by ACE in the event the Subcontractor desires expedited or early payment. This fee is not recoverable and will be deducted from ACE’s payment obligation to Subcontractor contained in Subcontractor’s payment application. ACE and Subcontractor may alternatively agree in writing to withhold ten percent (10%) retainage in lieu of early pay fees if they so agree in writing. Final payment by ACE, constituting the entire unpaid balance of the Subcontract Sum reflected in Schedule A and pursuant to the conditions of this Section 12, shall be made by ACE to the Subcontractor when the Subcontractor’s Work is fully performed in accordance with the requirements of the Contract Documents and this Agreement.

(d) Acceptance of final payment by ACE to Subcontractor pursuant to this Agreement shall constitute a waiver of all Subcontractor’s claims for further compensation or claims under this Agreement. ACE may withhold such payments as it may deem necessary to guarantee Subcontractor’s satisfactory performance of or compliance with any provisions of this Agreement. No progress payment shall be conclusive, and all payments shall be subject to adjustment and/or correction in the final payment. No payment shall be construed to be an acceptance of any work performed by Subcontractor, nor shall payment constitute a waiver of any rights granted to ACE in this Agreement. In addition, ACE

may also withhold payment hereunder, or may nullify the whole or a part of payment previously made, to such extent as may be necessary in ACE's sole discretion to protect it from loss for which Subcontractor is responsible, because of unsatisfactory job progress, defective construction or materials, disputed work, liens, third party claims, damage caused by Subcontractor to ACE, the General Contractor, the Owner, or another contractor, or any other breach or failure to carry out the Subcontract Work in accordance with the Subcontract Documents. Contractor may also withhold amounts sufficient to satisfy any claims ACE may have against Subcontractor arising out of the Project or other projects. This remedy of withholding payment is not exclusive. ACE will pay the Subcontractor amounts previously withheld when the above reasons for withholding payment are removed.

(e) If the Owner or General Contractor fails to pay ACE, through no fault of Subcontractor, any sums due under the prime contract between ACE and General Contractor, which include sums as may be otherwise due to Subcontractor from ACE, Subcontractor acknowledges and agrees that it shall take all steps necessary to preserve and pursue its lien rights and remedies against the Owner and the Project. ACE shall make payment to the Subcontractor provided that Subcontractor has proceeded with its collection remedies described below. ACE shall in all respects reasonably cooperate with Subcontractor in the pursuit of such assigned lien rights and shall upon written request of Subcontractor, execute such other and further documents as may be necessary to permit Subcontractor to pursue such lien remedies. The exhaustion of all such lien remedies by Subcontractor shall not be a prerequisite to any direct action by Subcontractor against ACE or its surety, if any.

13. ACCEPTANCE OF WORK.

(a) No certificate given or payment made under this Agreement shall be conclusive evidence of the performance of the Work, either wholly or in part, and no payment shall be construed to be an acceptance of defective Work or improper materials. Except as otherwise agreed, in writing, entrance and use by the Owner shall not constitute acceptance of the Work.

(b) Neither final payment nor the remaining retained percentage shall become due until the Subcontractor submits to ACE (i) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied, (ii) consent of surety, if any, to final payment, (iii) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens, to the extent and in such form as may be designated by the Owner, and (iv) guarantees and warranties.

14. GUARANTEE.

The Subcontractor shall repair or replace, at its own cost and at the reasonable convenience of ACE and/or the Owner, any damage or faults resulting from defective Work including materials and equipment furnished or installed by the Subcontractor that occur during the period of twelve months from the date of final written acceptance by the Owner of the Work. Subcontractor shall furnish ACE with any specific guarantee or warranty forms which may be required by the Contract Documents or Owner.

15. SUBLETTING, TRANSFER OR ASSIGNMENT OF WORK OR MONEY DUE.

The Subcontractor shall not sublet, assign, or transfer this Agreement or any of its rights or obligations without the written consent of ACE, and the Subcontractor agrees that the provisions set forth herein shall be imposed upon, assumed and performed by each of its subcontractors and their sub-subcontractors. Any assignment made without such consent is void.

16. LIENS, THIRD PARTY CLAIMS.

If at any time there shall be filed any notice of lien or if there shall be evidence of any claim for which ACE or the Owner may become liable, and which is reasonably chargeable to the Subcontractor or its subcontractors, or when damage shall be caused by the Subcontractor to ACE's or another subcontractor's work, then ACE shall have the right to retain out of any payment then due or thereafter to become due to the Subcontractor an amount sufficient, in the opinion of ACE, to completely indemnify ACE and the Owner against any such lien or claim or damages, including bond premiums and attorneys' fees. If there shall prove to be any lien, notice or claim after all payments are made, the Subcontractor shall refund to ACE, all amounts that the latter may be or has been compelled to pay in discharging or disposing thereof. In the event a lien is filed, the same shall be discharged within fifteen (15) days by the Subcontractor at its own cost and expense by bonding the lien or by filing a valid Release or Satisfaction of Lien.

17. CHANGES IN WORK.

(a) ACE may order such extras, deletions, additions, alterations, omissions, or other modifications in the Work as it deems necessary. Such changes shall be valid only on the written order of ACE's Project Manager or President which shall set forth the additions or deletions of time, if any, to be allowed for their completion and the amount to be added to or deducted from the cost of the work or the method of determining such amounts. If required by ACE in fixing said amounts, the Subcontractor shall promptly submit its estimate of the value of such changes and of the time required for completion. Any adjustment to the contract price or to the time for the completion of the Work shall be made in accordance with the applicable provisions of the Contract, or in the absence of such provisions on an agreed or equitable basis.

(b) In the event of disagreement as to the value of such changes or as to the time required for completion, the Subcontractor shall, if so directed by ACE, proceed with the changes under the above order. Pending a final resolution, ACE shall be responsible to the Subcontractor only for the amount which is not in dispute.

(c) Notwithstanding the foregoing, ACE and/or General Contractor may require Subcontractor to perform all Work on any floor or area at different times and/or intervals, including but not limited to Work on mock up rooms and other areas out of sequence if required. In addition, Subcontractor may be required to leave out portions of its Work for temporary services, and return at a later date to complete the Work.

18. OVERTIME.

ACE may order the Subcontractor to work overtime in order to expedite execution of the Work or any part thereof. For such overtime ACE shall, subject to the payment terms of this Agreement, pay to the Subcontractor only the actual excess cost of the labor over the regular rates, plus the applicable cost of payroll taxes on such actual excess labor costs. If, however, the Subcontractor delays the progress of the Work, the Subcontractor shall, at its own expense and cost, work such overtime as may be deemed necessary to finish the Work within the time required by this Agreement. ACE shall have the right to supplement Subcontractor's workforce in the event ACE determines that Subcontractor is not adequately staffing the Project or adequately progressing the work. ACE's costs to supplement Subcontractor's forces shall be deducted from the Subcontract Amount as a back-charge.

19. VENUE, JURISDICTION AND ARBITRATION.

(a) Any action or proceeding arising from or in connection with this Agreement shall be commenced and maintained in the Maine Superior Court of competent jurisdiction in the County where the project is located and may not be commenced or maintained in any other court. Notwithstanding anything herein to the contrary, ACE, at its sole option, shall have the right to require Subcontractor to arbitrate any and all claims, disputes and other matters in question between ACE and Subcontractor arising out of or related to this Subcontract Agreement or the breach thereof.

(b) If arbitration is selected, it shall be conducted in accordance with the arbitration provision contained in the Prime Contract between General Contractor and the Owner, when there is such an arbitration provision. If there is no arbitration clause in the Prime Contract, then arbitration shall be in accordance with the Construction Industry Rules of the American Arbitration Association. Upon the demand of any party, any other party subject to this arbitration agreement shall join in and become a party to and be bound by such arbitration proceedings.

(c) Should any party refuse or neglect to appear at or participate in arbitration proceedings after due notice, the arbitrator will decide the controversy in accordance with evidence introduced by the party or parties who do appear. Rescission of this Subcontract shall not impair this arbitration agreement.

(d) No action or arbitration shall be maintained by Subcontractor on account of any claim arising out of this Subcontract Agreement unless the same shall be commenced within one (1) year after the Subcontractor's claim accrues.

20. INDEMNITY FOR PERSONAL INJURY AND PROPERTY DAMAGE.

(a) To the extent permitted by law, the Subcontractor shall (1) fully indemnify and save ACE, General Contractor, Owner, Architect, and any other person or entity as required by this Agreement or the attached General Contract Documents and their respective officers, directors, principals, agents and employees, and each of them (the "Indemnified Parties") wholly harmless from any and all claims, liabilities, liens, demands, and causes of action for or on account of any injury or death to persons, damage to property, fines, penalties' assessments, or any loss of whatever kind or nature arising out of or in consequence of the performance of the Subcontractor's Work hereunder and (2) assume, on behalf of the Indemnified Parties, the defense of any such claim, liability, lien, demand or cause of action which may be brought against the them or any of them and shall reimburse the Indemnified Parties for any attorneys' fees and expenses incurred by them with respect to any such

claim, all regardless of whether or not such claim, liability, lien, demand or cause of action is caused in part by a party indemnified hereunder. In claims against any person or entity indemnified under this paragraph by an employee of the Subcontractor, the Subcontractor's sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Subcontractor or the Subcontractor's sub-subcontractors under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

(b) To the extent permitted by law, the Subcontractor further agrees to fully indemnify, defend, and hold harmless ACE and its surety, as the case may be, from any and all claims, liabilities, liens, demands, and causes of action by any party arising out of or in consequence of the acceptability, fitness, sufficiency, performance, or non-performance of the Subcontractor's Work or materials furnished, or for payment of any labor performed or material or equipment furnished in connection with improvements to real property or related to Subcontractor's Work by any party by or through Subcontractor. Subcontractor will defend all such claims at its own cost and expense and shall reimburse ACE with respect to any such claim.

(c) To the fullest extent permitted by law, the Subcontractor shall defend, indemnify, and hold harmless ACE and its surety, the General Contractor, and the Owner for all suits for claims for infringement of any patent, copyright or other intellectual property rights arising out of the Subcontractor's Work, which may be brought against ACE, General Contractor or Owner, and shall be liable to ACE for all loss, including all costs, expenses and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process, product of a particular manufacturer on manufacturers is required by the this Agreement or the attached General Contract Documents unless the Subcontractor had reason to believe that a particular design, process or product required by these General Contract Documents may be an infringement of an intellectual property right, and failed to properly notify ACE of such concern.

(d) To the fullest extent permitted by law, the Subcontractor agrees to protect, defend, indemnify, and hold harmless ACE and its surety from the imposition of any required payments, fines and/or penalties by OSHA or any other government agency and ACE shall have the right to deduct from the next periodic payment due the Subcontractor all OSHA or other governmental payments, fines and/or penalties levied against ACE and all expenses relating thereto arising out of or in consequence of the work of the Subcontractor or any of its Sub-subcontractors.

21. **INSURANCE COVERAGE.**

(a) Before commencing Work the Subcontractor, at Subcontractor's own expense, shall procure insurance as described below from companies licensed in the State of Maine, where the Project is located, with a minimum Best's rating of "A-VIII" and approved by ACE, and shall maintain such insurance until completion and final acceptance of the Work with limits which are not less than the limits set forth below.

(b) Workmen's Compensation and Employer's Liability Insurance in accordance with Federal, State and local laws.

(c) Premises-Operations, Independent Contractors Protective, Products and Completed Operation Broad Form Property Damage including Contractual and Personal Injury. Completed

Operations and Product Liability shall be maintained for two years after final payment. Limits for such insurance shall be equal to or greater than the following:

<u>Comprehensive General Liability:</u>	<u>Limits of Insurance:</u>
General Aggregate Limit (other than Products/Completed Operations)	\$2,000,000.00
Products/Completed Operations Aggregate Limit	2,000,000.00
Personal & Advertising Injury Limit	1,000,000.00
Each Occurrence Limit	1,000,000.00
Fire Damage Limit (any one fire)	50,000.00
Medical Expense Limit (any one person)	5,000.00
<u>Automobile Liability</u> (Including owned, non-owned and hired cars and trucks):	
Property Damage Per Occurrence	1,000,000.00
Property Damage Aggregate	2,000,000.00
Bodily Injury Per Person	500,000.00
Bodily Injury Per Accident	2,000,000.00
<u>Umbrella Liability</u> (Per occurrence and aggregate):	5,000,000.00

(d) Before commencing the Work, the Subcontractor shall furnish ACE with (i) certificates from its insurance companies showing that the above insurance is in force, stating policy numbers, effective dates, expiration dates, and limits of liability thereunder; and (ii) copies of the actual endorsements which designate (1) the "additional insured" required to be added to the policies by this Subcontract, (2) the notices required to be sent to ACE prior to the termination of such policies, and (3) the "primary" nature of such insurance coverage with respect to the additional insureds. If requested by ACE at any time, Subcontractor shall also promptly furnish ACE with copies of the policies. The Subcontractor agrees that nothing contained in this paragraph shall limit or release the Subcontractor from its obligations otherwise provided for in this Agreement, including assumption of liabilities and indemnification to the Owner, General Contractor, Architect (as the case may be), ACE and other "additional insureds" listed below.

(e) The Subcontractor must provide a certificate evidencing a per project aggregate endorsement applicable to this Project for all bodily injury, property damage, and personal/advertising injury claims other than bodily injury or property damage included in the products-completed operations.

(f) The following additional insured parties shall be listed on all Subcontractor's insurance policies and insurance certificates for the Project:

"For any and all work performed for ACE Painting during the policy period, ACE Painting, the General Contractor, Owner and Architect are a primary and non-contributing additional insured for ongoing and completed operations on all liability policies, except workers compensation, when required by written contract. A waiver of subrogation applies as required by written contract."

(g) All of the Subcontractor's insurance policies shall be endorsed to reflect that coverage afforded to Owner, ACE, General Contractor, Architect, and all other "additional insureds" listed above, shall be

primary with respect to such additional insureds, and that any policies held by any such additional insureds, if any, shall be deemed excess.

(h) All of the Subcontractor's insurance policies shall be endorsed to provide that the insurance company shall notify ACE in writing thirty (30) days prior to any cancellation of or change in the above insurance.

(i) A standard form of Fire Insurance and extended coverage with Builder's Risk endorsement may be provided by the Owner and/or others to cover the Subcontractor on the permanent construction including any materials and equipment on the site which are to be incorporated in the Work or which will be used up in connection with the Work, the value of which is included in the cost of the Work. The existence of the above insurance shall in no way relieve the Subcontractor or its subcontractors of any responsibility or liability for which they are liable in excess of any amount recovered under the insurance provided above. The Subcontractor shall be responsible for any coverage on its temporary materials, tools, equipment, scaffolds, bracing, sheds, etc.

(j) Any increase of limits of liability or any type of insurance not described above which the Subcontractor may require for its own protection or on account of statute, shall be its own responsibility and at its own expense.

(k) The Subcontractor agrees to cooperate fully with ACE, the General Contractor, the Owner and the insurance carriers in the safety and accident prevention program and claims handling procedures established for the Project.

22. GOVERNMENT TAXES.

The Subcontract Price is inclusive of all State sales and compensating use taxes, if any.

23. CLAIMS BY SUBCONTRACTOR.

(a) If the Subcontractor believes it has a claim of any nature whatsoever against ACE, the General Contractor, the Owner or Architect, it shall give ACE written notice of the amount, and nature of such claim within thirty (30) days of learning of the occurrence of the event or document upon which such claim is based. In default of such notice the claim is waived.

(b) In the event that Subcontractor is obstructed, resequenced or delayed at any time in the progress of the Work by change order in the Work or by occurrences beyond the control and without the fault or negligence of Subcontractor and which by the exercise of reasonable diligence, Subcontractor is unable to prevent or provide against, the contract time and related schedule shall be extended by change order or construction change directive for the length of time caused by such occurrence; provided, however, that such extension shall be net of any delays due to the fault or negligence of Subcontractor. The parties hereto shall, in the event of any occurrence likely to cause delay, cooperate in good faith to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

(c) Subcontractor shall not suspend or delay its work during the pendency of any dispute with respect to any claim by Subcontractor. ACE shall continue to make payments of any undisputed amounts to Subcontractor during the pendency of any such dispute.

24. SUBCONTRACTOR'S COOPERATION.

(a) The Subcontractor recognizes that the Project involves work in a facility which may be in full use during the period of construction, and Subcontractor shall cooperate with ACE and/or General Contractor and perform its Work hereunder in such a manner and at such times so as to minimize the interference with the present operation of the facility. The Subcontractor acknowledges that the progress of its Work may be adversely affected by the fact that the facility is operating and is open to the public, and Subcontractor agrees to make no claim for additional costs or damages associated with any such related delays or inefficiencies.

(b) In the event that the Owner and General Contractor conducts an audit of ACE's costs for the Project, Subcontractor agrees to cooperate with ACE and to make available for inspection, during normal business hours and on reasonable advance notice, any of its books and records as may reasonably be requested. This obligation shall survive the completion or termination of this Subcontract Agreement, and Subcontractor shall preserve its cost records for at least two (2) years after completion or termination of the Subcontract Agreement.

25. APPLICABLE LAW.

All matters relating to the validity, performance, interpretation or construction of this Agreement or the breach thereof shall be governed by the law of the State of Maine. If any provision hereof shall contravene or be invalid under such law, such contravention or invalidity shall not invalidate the entire Agreement, but the Agreement shall be construed as if not containing the provisions held to be invalid, and the rights and obligations of the parties shall be enforced accordingly.

26. OSHA AND SAFETY REQUIREMENTS.

(a) The Subcontractor shall take all reasonable precautions in the performance of the Work to protect the safety and health of the public as well as all job site personnel. All Work shall be performed in accordance with the latest revisions of the Occupational Safety and Health Administration ("OSHA") Regulations for Construction and the latest requirements of all applicable federal, state and local safety laws and regulations. All equipment which is utilized for the Subcontractor's Work must meet all such safety laws and regulations. Subcontractor agrees to abide by ACE's Hazardous Communications Program, has been offered a copy for review, and shall comply with the terms, conditions and protocols contained in Schedule C hereto.

(b) If Subcontractor becomes aware of any job site incident that involves any actual or potential injury, illness, property damage or environmental damage, Subcontractor shall provide verbal notice to ACE within one (1) hour, to be followed by written notice within twenty-four (24) hours.

(c) It is understood that any fine, or violation resulting in a fine, (including but not limited to fines or violations issued to or assessed against Owner, General Contractor and/or ACE) caused by the acts or omissions of the Subcontractor will be paid by the Subcontractor and if not so paid the amount of the fine and all related costs and attorneys' fees may be charged against and deducted from any amounts due to the Subcontractor.

(d) Whenever ACE becomes aware of any noncompliance with these safety requirements or any condition that poses a serious or imminent danger to the health and safety of the public or job site personnel, ACE shall notify the Subcontractor verbally within one (1) hour, with a written confirmation and request for corrective action to follow within twenty-four (24) hours. This notice, when delivered to

the Subcontractor or the Subcontractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that the corrective action is required. After receiving the notice, the Subcontractor shall immediately take appropriate and necessary corrective action. If the Subcontractor fails or refuses to promptly take necessary corrective action, ACE, without prejudice to any other rights it may have, may: (i) withhold all or any portion of any payments otherwise due to Subcontractor pending the completion of such corrective action, and/or (ii) issue an order stopping all or part of the Work until satisfactory corrective action has been taken and/or (iii) back-charge Subcontractor for any costs incurred by ACE on account of such failure. The Subcontractor shall not be entitled to any equitable adjustment of the Subcontract price or extension of the performance schedule on account of any stop work order issued under this article.

(e) The Subcontractor shall insert this article, with appropriate changes in the designation of the parties, in all lower-tier subcontracts, assuming such subcontracts are pre-approved by ACE.

(f) Subcontractor shall ensure that no employee, visitor, or other person under its control is exposed to a fall hazard of six feet or greater at any time. Where a more stringent requirement exists (OSHA, Federal, State, or Local Government, Client, Equipment Manufacturer or Supplier), the more stringent rule shall be adhered to. This requirement applies to all supervision and tradespersons, including, but not limited to, all scaffold users.

27. FAMILIARITY WITH JOBSITE.

The Subcontractor acknowledges and declares that it has visited and examined the site and that the cost of the Work reflects the job conditions.

28. EQUAL EMPLOYMENT OPPORTUNITIES.

(a) The Subcontractor and all sub-subcontractors shall comply with all requirements of the Prime Contract between Owner and General Contractor as well as all applicable state and federal requirements governing equal employment opportunity and affirmative action.

(b) At all times during the performance of its Work under this Agreement, Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or other criteria prohibited by the above requirements.

(c) The Subcontractor shall take all necessary steps to assure that none of its employees or any other person connected with or involved in the Work engages in harassment or intimidation, including sexual, racial or ethnic harassment or intimidation, of anyone on the premises. If such conduct occurs, the Subcontractor will take all necessary steps to stop it and prevent its future occurrence, including, but not limited to, the immediate dismissal or transfer of personnel. This policy will be strictly enforced.

29. NON WAIVER.

The failure by either ACE or Subcontractor to require performance of any provision or to enforce any time limit or other provision of this Subcontract Agreement shall not affect their respective right to require performance or enforce any such time limit or provision at any time thereafter, nor shall a waiver

of any breach or default of this Subcontract Agreement by either party hereto constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

30. AGREEMENT TO PERFORM.

The said parties for themselves, their successors, executors, administrators, and assigns, do hereby agree to the full performance of the covenants herein contained. In order to induce ACE, to enter into an Agreement with Subcontractor for the Work for this Project and in consideration of the making of such Agreement with Subcontractor, Subcontractor hereby guarantees all of the Work to be performed by it, including all labor and materials for this Project, from the date of final written acceptance by the Owner of the entire Project for a period of One Year, or for such longer period as may be required by the Contract Documents or otherwise mutually agreed. In case any defects of material and/or workmanship shall appear during the above mentioned period, Subcontractor hereby agrees, upon receiving written notice of such defects from ACE, to immediately correct and repair the same, at its expense, in a manner satisfactory to ACE, and in case of Subcontractor's failure to so correct and repair such defects, Subcontractor hereby agrees to pay ACE, on demand, the cost to ACE of making such corrections and repairs. Subcontractor further agrees to immediately repair, or cause to be repaired, at its expense, all damages to the buildings resulting from such defects or material or workmanship, or from the correction and repair of such defects and, in case of its failure to so repair, or cause to be repaired, such damages, Subcontractor further agrees to pay to ACE, on demand, the cost to ACE, of making such repairs.

31. REMEDIES.

All remedies in this Agreement shall be construed as being cumulative in addition to any other remedy. In the event that ACE or Subcontractor is required to enforce the provisions of this Agreement, including but not limited to, the recovery of any funds due or withheld by either party, the prevailing party in such litigation or arbitration, as the case may be, shall be entitled to its costs, expenses, and reasonable attorneys' fees.

32. ELECTRONIC SIGNATURES.

Subcontractor agrees that its electronic signature is the legal equivalent of Subcontractor's manual signature on this Agreement and on all contract documents to this Agreement, including but not limited to Work Schedules, contract change orders and payment lien waivers. By using an electronic signature on any of the aforementioned documents, Subcontractor consents to be legally bound by this Agreement's terms and conditions. Subcontractor further agrees that its use of a key pad, mouse or other device to select an item, button, icon or similar act/action regarding any agreement, acknowledgment consent terms, disclosures or conditions constitute Subcontractor's signature (hereafter referred to as "E-Signature"), acceptance and agreement as if actually signed by an authorized representative of Subcontractor in their capacity as a company representative in writing. Subcontractor also agrees that no certification authority or other third party verification is necessary to validate its E-Signature and that the lack of such certification or third party verification will not in any way affect the enforceability of the E-Signature or any resulting contract between the parties to this Agreement. Subcontractor and any signatory to this agreement in his or her individual capacity also represent that they are authorized to enter into this Agreement for the Company or individually and that they will be bound by the terms of this Agreement.

33. ENTIRE AGREEMENT.

The parties agree that this Agreement represents the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements. This Agreement cannot be modified, changed or amended except in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

ACE Painting

ATTEST:

By: _____

SIGNATURE

Title: President Date: _____

Subcontractor

ATTEST:

By: _____

SIGNATURE

Title: _____ Date: _____

By: _____, in his individual capacity

Schedule A

RE: **Project Name:** _____ (“Project”)
Owner: _____ (“Owner”)
General Contractor: _____ (“General Contractor”)

WORK SCHEDULE

The contract price of \$_____ includes all labor and materials required to complete the work for the _____ in accordance with the plans and specifications provided by ACE and/or as follows:

1. Insurance certificates shall be issued immediately in accordance with the Insurance Requirements of the Agreement or as required by the Owner and/or General Contractor.
2. Requisitions for payment must be submitted, no later than **21st of the month**, and project through the **end of the month**. A requisition review will take place thereafter with payment to the Subcontractor due within 30 days of submission.
3. For the Subcontractor performing the Work the total mark up allowed for overhead and profit is fifteen percent (**15%**). In the case of a Sub-subcontractor performing work for the Subcontractor, the Sub-subcontractor is allowed ten percent (**10%**) total mark up for overhead and profit and the Subcontractor is then allowed an additional five percent (**5%**) mark up for overhead and profit, and in no case will the total mark up exceed fifteen percent (**15%**).
4. Submit to or apply for proper notification and/or permits, to complete the work under the rules and regulations of Federal, State and City agencies.
5. The Subcontractor is to submit a proposed schedule for its Work for approval by ACE.
6. The Subcontractor is to submit a schedule of values for the various portions of its Work and update this schedule monthly.
7. Retainage on all portions of the Subcontractor’s Applications for Payment shall be withheld at the rate of ten percent (10%). Upon satisfactory completion of the Project work, including receipt of all required approvals and sign-offs, and acceptance thereof by Owner, General Contractor, ACE, and/or Architect, as the case may be, the retained percentage shall be paid to the Subcontractor; provided, however, that if the Owner consents, portions of the retained percentage may be paid to Subcontractor at an earlier date.
8. Before using on site any material that is required to be listed under any applicable state or federal so-called “Right to Know Law”, including without limitation 26 M.R.S.A, Section 1709, *et seq.*, the Subcontractor shall furnish to ACE or applicable government official any documentation or notice required under any such law.
9. The Subcontractor shall be responsible for the handling, transportation and disposal of any hazardous waste or hazardous materials (collectively referred to as “hazardous materials”) which results from its work. The Subcontractor agrees to handle, transport and dispose of any such

Initial _____

Initial _____

hazardous materials in full compliance with all applicable federal and state laws and regulations. Under no circumstances shall ACE be responsible for the handling, transportation or disposal of any such hazardous materials.

10. The contract price includes, but is not limited to, all labor and material required to furnish and install all work in accordance with the following:
 - All staging and hoisting required to execute the work.
 - All mock-ups per plans and specifications.
 - All shop drawings, submittals and samples per plans and specifications.
 - Preparation and submission of submittal, procurement and delivery schedules.
 - All record drawings and warranties per plans and specifications.
 - All clean-up.
 - All lay-out.
 - All safety required by OSHA and ACE.
 - All permits required by the state and local authorities.
 - All coordination with other trades, as applicable.
 - All cutting and patching required to execute the work.
 - All precautions required to protect personnel and visitors at the site.
 - If parking is provided it shall be in areas designated by ACE.
 - Smoking is prohibited on the Owner's property.
 - Proper clothing and shirts must be worn at all times.
 - Proper behavior and language must be maintained of all employees on site. Any form of sexual harassment or conduct construed by ACE to contribute to a hostile work environment will result in ejection from the site.

11. The contract price excludes: _____

12. The Subcontractor is specifically limited to the use of the site where the work is to be performed. The Subcontractor is prohibited from the use of the Owner's facilities or the premises outside of the area of work.

13. The Subcontractor must report any and all accidents to ACE's supervisory personnel as soon as possible after occurrence. A copy of Employer's First Report of Accident must be submitted to ACE within 48 hours of any applicable occurrence. Copies of follow-up reports, memos or other information regarding the occurrence must be sent to ACE.

14. Scope of Work – Exhibit "A" attached hereto and incorporated by reference – details the scope of work to be performed by Subcontractor on the Project and does not preclude any work as required per drawings and specifications (the "Work"). This Subcontract Agreement encompasses this Schedule "A" and the Drawings, Specifications, and other Contract Documents provided to Subcontractor by ACE or its agents, including the attachments describing the Work on the Project.

Initial _____

Initial _____

Schedule B

[insert by ACE]

Initial _____

Initial _____

Schedule C

ACE's Hazardous Communication Program is available to the Subcontractor for review. The purpose of This program is to promote the safety and health of all individuals and to make each person aware of the Hazardous materials that she or he may come in contact with, the nature of the hazard, and how to take the proper precautions while dealing with these materials. In the event Subcontractor encounters on the Project site material that might reasonably be considered to contain polychlorinated biphenyl (PCB), lead, asbestos, or other hazardous material, Subcontractor shall, upon recognizing the condition, immediately stop working in the affected area(s) and report the condition to ACE and General Contractor both verbally and in writing. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's employees or the Subcontractor's agents, the Subcontractor shall, prior to harmful exposure of any person on the site to such substance, give verbal and written notice of the chemical composition thereof to ACE and General Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, the General Contractor, and other contractors on the site.

Subcontractor must inform ACE employees of the hazards introduced by the Subcontractor's operations. All hazardous materials delivered to the job site must be clearly labeled to indicate the contents, the appropriate hazard warnings (including routes of entry and target organs) and the name and address of the manufacturer, and must be accompanied by an SDS (Safety Data Sheet, formerly 'MSDS' or Material Safety Data Sheet). The SDS shall be attached to the delivery slip and given directly to the General Contractor's Project Superintendent at the time of delivery. No payment will be made for such materials without the required SDS. Subcontractor must obtain the necessary SDS from ACE and/or General Contractor for any materials supplied by ACE and/or General Contractor to be used on the Project.

Subcontractor's personnel must be trained as required in the "Right to Know" laws for handling hazardous materials as well as Globally Harmonized Systems (GHS) (effective December 1, 2013) and document the completion of their worker training program prior to project initiation. Subcontractor must comply with all federal, state, and local rules and regulations governing the proper handling and disposal of all hazardous wastes and shall be responsible for the proper disposal of any and all wastes, hazardous or otherwise, generated by his/her work on this Project. Prior to removing any wastes from the project, Subcontractor must submit to ACE and General Contractor copies of all manifests issued as a result of the handling and disposal of hazardous materials. The Project's Owner shall be named as the Generator on all manifests unless otherwise specified by the General Contractor. The Subcontractor shall indemnify ACE and General Contractor for the cost and expense ACE or General Contractor incurs for remediation of a material or substance brought to the site and negligently handled by the Subcontractor, except to the extent that the cost and expense are due to ACE's or General Contractor's fault or negligence.

Initial _____

Initial _____

Initial _____

Initial _____