

AGREEMENT OF SUBCONTRACT

Project: [Insert brief project description] within or upon the premises located at _____, County of _____, State of _____ (the "Site").

Work: The work (hereinafter, the "Work") shall include (a) [insert more specific work details]; (b) [insert more specific work details]; and (c) [insert more specific work details].

For and in consideration of the sum to be paid by Ground/Water Treatment & Technology, LLC ("GWTT"), on the contractual basis hereinafter provided, _____ (the "Subcontractor" and, collectively with GWTT, the "Parties") will furnish all labor, equipment and materials and perform the Work in accordance with all Applicable Law (as defined in the Terms and Conditions annexed hereto), including, but not limited to, the (a) the preparation of all required work plans, health and safety plans and permit applications, (b) filing of all required documents and notices, (c) obtaining of all required permits, authorizations or licenses, (d) posting of all required signs or notices, and (e) arranging for any inspections and regulatory sign-offs that are customary and/or necessary with respect to the Work and paying for any fees associated with same.

This Subcontract, as well as the annexed Terms and Conditions, incorporated herein by reference, shall hereinafter be referred to as the "Subcontract."

Contract Basis: The sum of \$ _____ (the "Contract Price") to be paid pursuant to the annexed Terms and Conditions.

[INSERT NAME OF SUB IN BOLD CAPS]

GROUND/WATER TREATMENT & TECHNOLOGY, LLC

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

Terms and Conditions

1. **PERMITS AND INSPECTIONS:** Subcontractor shall secure any and all permits and/or inspections, approvals, permissions and provide all notices and post all signs required by all applicable federal, state and local codes, rules, regulations, ordinances and statutes (“Applicable Law”). Additionally, and at all times, Subcontractor shall comply with any and all Applicable Laws.

2. **EXAMINATION OF THE PREMISES:** By signing this Subcontract Subcontractor represents that it is familiar with the Site, is satisfied as to all matters necessary for carrying out the Work, including the completeness of this Subcontract, and the character of the Site has been taken into account in submitting this Subcontract. No allowance or extra payment shall be permitted on account of any costs, expenses, delays or other matters incurred in connection with the character of the Site or occasioned by Subcontractor’s failure to become familiar with the Site or on account of any error or oversight on Subcontractor’s part.

3. **SITE SAFETY/CONTROL OF SITE:** The Subcontractor shall, during the performance of the Work (a) take all appropriate measures to ensure that no “unauthorized person,” as such term is defined by Applicable Law, shall enter the work area at the Site and that all persons entering any work area shall wear and/or use proper personal protection equipment and safety devices; and (b) ensure that all such persons are properly fitted for the use of such equipment and are trained in the use of such equipment. To that end, the Subcontractor shall be responsible for ensuring that all safety procedures, training, fit tests, and medical certifications, as necessary, are proper, as required by Applicable Law. The Subcontractor shall adhere strictly to all precautions necessary to ensure, and shall be responsible for ensuring, the health, safety and welfare of all persons present in the Site in accordance with provisions of the Contract and Applicable Law, whichever imposes the most stringent standard. The provisions of this paragraph shall include but not be limited to the Subcontractor's responsibility for the health, safety and welfare of the Subcontractor's employees and any sub-subcontractors' employees on the Site. The Subcontractor shall provide all necessary temporary enclosures, covers, guard rails, barricades, safety devices, and all other precautions, whether or not required by Applicable Law or by current industry standards, necessary to protect all workers and the public from possible injury due to the various processes required to accomplish the Work. GWTT shall not be responsible for providing a safe working place for the Subcontractor, the sub-subcontractors, or their employees, or any individual responsible to them for the Work. Notwithstanding anything herein to the contrary, Subcontractor shall remain responsible for creating and maintaining a safe and secure work site.

4. **INSURANCE:** Subcontractor, at its own expense, shall carry the following insurance, or such additional coverage or higher limits as required by Applicable Law, and require sub-subcontractors and materialmen to carry similar insurance with a company or companies and in a form reasonably satisfactory to GWTT during the entire period of this Subcontract: (a) Commercial General Liability Insurance with a minimum combined single limit of bodily injury and property damage of \$2,000,000 per occurrence, \$4,000,000 aggregate per job (there shall be no “Action Over” or “Bodily Injury to Independent Contractors” or similar restrictions, endorsements or limitations as part of the Commercial General Liability policy); (b) Automobile liability limits of \$1,000,000 combined single limit for bodily injury and property damage including all owned, hired, and non-owned automobiles; (c) Worker’s Compensation Insurance including occupational disease and with employer’s legal liability insurance minimum limits of \$500,000. GWTT, the owner of the Site, and their respective principals, officers, members, shareholders, directors, agents, servants and employees shall be named as additional insureds on the above policies, except with respect to the Worker’s Compensation Insurance coverage. Each such

Subcontractor Initials: _____

GWTT Initials: _____

policy shall be purchased from and maintained in a company or companies lawfully authorized to do business in the State where the Work is being performed and reasonably acceptable to GWTT. Coverages shall be maintained without interruption from the date of commencement of the Work until one (1) year following final payment. All such insurance shall be primary and non-contributory. Prior to beginning any work or receiving any payments, a certificate of insurance must be presented to GWTT, in form and content satisfactory to GWTT. GWTT must be notified in writing of any cancellation or material change to any of the Subcontractor's policies, or warning or notice thereof from the insurance company, within two (2) days. If additional insurance provisions are annexed hereto as an exhibit, then the annexed insurance provisions shall supplement the foregoing insurance provisions of this § 4; any insurance provisions annexed hereto as an exhibit shall control in any conflict between such provisions and those contained in this § 4 as such conflicts may pertain to types of coverage and limits.

5. INDEMNIFICATION/VIOLATIONS: To the fullest extent permitted by law, Subcontractor shall defend, indemnify, save and hold harmless GWTT, the owner of the Site, the owner's lenders, and their respective principals, officers, members, shareholders, directors, agents, servants and employees (collectively, the "Indemnified Parties") from and against claims, damages, losses, violations and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom, but only to the extent caused in whole or in part by the intentional acts, negligent acts or omissions to act of Subcontractor, a sub-subcontractor, at any tier, anyone directly or indirectly employed by Subcontractor, or by any such sub-subcontractor, or anyone for whose acts Subcontractor, or any such sub-subcontractor, may be liable; *provided, however*, that Subcontractor shall, without regard to fault, defend, indemnify, save and hold harmless the Indemnified Parties from and against any liability arising from or out of the use of sheeting, shoring, struts, stringers, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes or other such devices. Subcontractor shall defend, indemnify, save and hold harmless the Indemnified Parties from and against any assertion of claims for mechanics' liens by any sub-subcontractor, or material supplier and any assertion of security interests by any supplier of goods or materials. Subcontractor shall make all payments in connection with and shall fully satisfy and discharge of record and shall be required to defend, indemnify, save and hold harmless the Indemnified Parties for any loss, claim, damage or expense, including, but not limited to, reasonable attorneys' fees and disbursements, in connection with any fines, penalties, notices of violation and/or violations issued by or demands made by any agency asserting jurisdiction with respect to the Work. Such obligations shall not be construed to negate, to abridge, or to reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Paragraph. In claims against any person or entity indemnified pursuant to this Paragraph by an employee of Subcontractor, a sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation pursuant to this Paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Subcontractor or a sub-subcontractor pursuant to workers' compensation acts, disability benefit acts or other employee benefit acts. Subcontractor's obligations pursuant to this Paragraph shall not be deemed waived, limited or discharged by the procurement of any insurance for liability for damages, including the insurance required to be obtained pursuant to the "INSURANCE" provisions of these Terms and Conditions.

6. WORKMANSHIP AND GUARANTEES: Subcontractor warrants that the performance of the Work will be in accordance with (a) good construction practice, (b) this Subcontract and (c) Applicable Law. Subcontractor further warrants that the Work shall remain free from defects for a period of two (2) years from the date of Final Completion.

Subcontractor Initials: _____

GWTT Initials: _____

7. **TERMS OF PAYMENT:** Subcontractor is to submit an invoice to GWTT for all work completed but in no even more often than once per month. GWTT shall pay Subcontractor within ten (10) calendar days of GWTT's receipt of payment from the owner of the Site for the portion of the Work that was invoiced by Subcontractor to GWTT. GWTT reserves the right to make payments to Subcontractor in the form of checks payable jointly to the Subcontractor and to any of its sub-subcontractors or suppliers that may have the right to assert a claim of mechanics' lien.

8. **TAXES:** Subcontractor shall pay all sales, consumer, use and similar taxes for the Work, or portions thereof provided by Subcontractor, which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Subcontractor shall accept exclusive liability and defend, indemnify, save and hold GWTT harmless from and against any claim, damage, loss or expense arising out of or in connection with any such excise and gross receipts taxes, sales and use taxes, Social Security taxes, and unemployment insurance, fringe benefits, or other taxes measured by wages of employees attributable or pertaining to the Work described herein.

9. **DEVIATIONS FROM PROPOSAL:** Any and all deviations from this Subcontract must be agreed to in writing and signed by GWTT, including changes in Work and/or Contract Price.

10. **TERMINATION BY GWTT:** (a) **Termination for Cause.** If Subcontractor should neglect or refuse or fail to supply enough properly skilled workers or proper material, fail in any respect to diligently prosecute the Work as set forth in this Subcontract, fail to make payments to sub-subcontractors, materialmen or laborers, disregard Applicable Law, the instructions of GWTT, or otherwise be guilty of a material breach of any of the provisions of this Subcontract, or if GWTT shall be terminated by the person or entity that retained GWTT, then GWTT may, without prejudice to any of its other rights or remedies, after giving Subcontractor seven (7) calendar days written notice, terminate the Work. In the event that GWTT shall terminate the Work of this Subcontract, it shall have the right to employ any other person or persons necessary to finish the Work either on a fixed sum contract basis or percentage basis or a combination of the two. Subcontractor shall be paid for such portions of the Work as have been completed and for materials which have been provided, fabricated, or delivered up to the date of termination, no allowance being made for anticipated profit on that portion of the Work not completed. Subcontractor shall be liable for all direct and consequential damages and expenses as a result of the termination of this Subcontract. The Subcontractor must notify GWTT in the event that inclement weather prevents the Subcontractor from carrying out the Subcontractor's obligations under this Subcontract on any day.

(b) **Termination for Convenience.** GWTT shall have the right to terminate this Subcontract without cause and for its convenience on seven (7) days written notice to Subcontractor. In the event this Subcontract is terminated for convenience by GWTT, Subcontractor shall only be entitled to receive payment for Work performed (including profits earned to the effective date of such termination) prior to the date of termination and all materials delivered or stored (provided title to such materials as may be stored off site is transferred to GWTT) prior to the date of termination and reasonable demobilization costs, but not for loss of reputation, lost profits, lost investment or lost investment opportunities, and the like.

(c) If Subcontractor is terminated for cause in accordance with paragraph 10(a), and it is later determined that Subcontractor was not in breach hereof and did not fail to fulfill its obligations hereunder, then any such termination by GWTT shall be deemed to have been a termination for convenience, and in such event, the Subcontractor shall only be entitled to receive payment for Work performed (including profits earned to the effective date of such termination) prior to the date of termination and all materials

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delivered or stored (provided title to such materials as may be stored off site is transferred to GWTT) prior to the date of termination and reasonable demobilization costs, but not for loss of reputation, lost profits, lost investment or lost investment opportunities, and the like.

(d) Under any and all circumstances, GWTT shall not be responsible to Subcontractor for damages for wrongful termination in excess of the payments herein set forth, whether or not such damages are defined as direct or consequential and whether or not determined to be in tort, contract, negligence, strict liability, warranty, expressed or implied, or otherwise.

11. TIME OF COMMENCEMENT: Subcontractor shall commence work on _____.

12. TIME OF COMPLETION: Subcontractor shall execute the Work continuously and with all diligence and expediency consistent with personal and public safety, Applicable Law and with the approved schedule and completion date, time being of the essence. Subcontractor shall not be entitled to an increase in the Subcontract price or damages of any nature arising out of project delay, however caused.

13. CHOICE OF LAW AND JURISDICTION: The validity, enforcement and construction of this Proposal and the rights and liabilities of the parties with respect to this Proposal and its subject matter shall be governed by the laws of the State of New Jersey without giving effect to the State's principles of conflicts of law. Both GWTT and Subcontractor hereby submit to the jurisdiction of the Superior Courts of the State of New Jersey. If, however, and only if, the Work Site shall be within the State of New York, then the validity, enforcement and construction of this Subcontract and the rights and liabilities of the Parties to this Subcontract and its subject matter shall be governed by the laws of the State of New York without giving effect to the State's principles of conflicts of law; and in that case the Parties hereto consent to the jurisdiction of the Supreme Courts of the State of New York.

14. ARBITRATION: Except for the rights and obligations of the Parties under this Subcontract relating to claims or lawsuits by third-parties for personal injury and/or property damage, any controversy or claim arising out of or relating to this Subcontract shall be settled by arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association (although the arbitration proceeding may be presided over by any arbitrator(s) mutually and reasonably agreeable to the Parties) and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

15. INDEPENDENT CONTRACTOR: Subcontractor is, and at all times shall remain, an independent contractor in the performance of this Subcontract.

16. RISK OF LOSS: Risk of loss by theft, casualty, or for any other reason remains with the Subcontractor until the Work performed has been accepted by GWTT and the owner of the Site. Lost tools and equipment or damages to such tools and equipment supplied to the Subcontractor by GWTT are deductible from the price set forth herein.

17. ASSIGNMENT OF SUBCONTRACT: This Subcontract (including monies due or to become due hereunder) is not assignable in whole or in part without the prior written consent of GWTT. Nonetheless, this Subcontract, and the Parties' respective rights and liabilities arising hereunder, shall inure to the benefit, or liability as the case may be, of each and every successor and assign of each Party.

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GWTT Initials: _____

18. NO WAIVER: No action or failure to act by either Party shall constitute a waiver of any right or duty afforded either Party pursuant to this Subcontract; nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. SEVERABILITY: Whenever possible, each provision or portion of any provision of this Subcontract shall be interpreted in such manner as to be effective but if any provision or portion of any provision of this Subcontract is held to be invalid, illegal or unenforceable in any respect, then (except where a material failure of consideration results) such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision, and this Subcontract shall be reformed, construed and enforced as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

20. INTERPRETATION: No provision of this Subcontract shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured, drafted or dictated such provision.

21. SIGNATURES: This Subcontract may be signed in counterparts, each counterpart having the same force and effect as any other. Further, electronic and facsimile signatures shall be deemed original signatures for purposes of this Subcontract.

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GWTT Initials: _____