

**YOST GALLAGHER CONSTRUCTION, LLC**  
Subcontractor Insurance Requirements

2/15/2024

Description	Standard Appendix 2	Pollution Liability w/mold	Professional Liability	Subsidence	Design-Build - Appendix 2A
Division 2 - Existing Conditions					
CONSTRUCTION STAKING	Yes		Yes		
ASBESTOS ABATEMENT	Yes	Yes			
DEMOLITION	Yes				
Division 3 - Concrete					
CONCRETE - STRUCTURAL	Yes				
GYPSUM UNDERLAYMENT	Yes				
Division 4 - Masonry					
MASONRY	Yes				
STONE/MASONRY VENEER	Yes				
Division 5 - Metals					
STEEL FABRICATIONS & ERECTION	Yes				
Division 6 - Wood & Plastics					
FRAMING	Yes				
TRUSSES	Yes		Yes		
Division 7 - Thermal & Moisture Protection					
WATERPROOFING	Yes	Yes			
EIFS	Yes	Yes			
INSULATION	Yes	Yes			
ROOFING & SHEETMETAL	Yes	Yes			
SIDING	Yes	Yes			
CAULKING & SEALING	Yes	Yes			
Division 8 - Openings					
DOOR & HARDWARE INSTALL	Yes				
GLASS/GLAZING/ALUM STOREFRONT	Yes	Yes			
OVERHEAD DOORS	Yes				
WINDOW INSTALLATION	Yes	Yes			
Division 9 - Finishes					
GWB & METAL FRAMING	Yes				
ACOUSTICAL CEILING TILE	Yes				
FLOORING	Yes				
PAINTING	Yes				
Division 10 - Specialties					
BATH ACCESSORIES/COMPARTMENT INSTALL	Yes				
Division 11 - Equipment					
APPLIANCES INSTALL	Yes	Yes			
TRASH COMPACTOR	Yes				
Division 12 - Furnishings					
WINDOW TREATMENTS	Yes				
CABINETS & COUNTERTOPS	Yes				
WIRE SHELVING	Yes				
Division 13 - Special Construction					
SWIMMING POOL	Yes	Yes	Yes		Yes**
Division 14 - Conveying Equipment					
ELEVATOR	Yes		Yes		
TRASH CHUTE	Yes				
Divisions 21-23 - Mechanical					
FIRE PROTECTION/SPRINKLERS	Yes	Yes	Yes		Yes
RADON MITIGATION	Yes	Yes	Yes		Yes**
PLUMBING	Yes	Yes	Yes		Yes**
HVAC	Yes	Yes	Yes		Yes**
Division 26-28 - Electrical					
ELECTRICAL	Yes		Yes		Yes**
FIRE ALARM	Yes		Yes		Yes**
Division 31000-32000					
EARTHWORK	Yes	Yes		Yes	
SHORING	Yes	Yes	Yes	Yes	Yes**
ASPHALT PAVING	Yes				
SITE CONCRETE	Yes				
FENCING	Yes				
LANDSCAPING	Yes		Yes		Yes**
RETAINING WALLS	Yes		Yes	Yes	Yes**
** if providing or paying for design of system					

## APPENDIX 2

**Project:**

**Subcontractor:**

### Insurance

*This Appendix 2 is hereby made a part of the Subcontract by and between Contractor and Subcontractor.*

Subcontractor shall comply with the following:

1. Standard Insurance Coverages: Subcontractor shall secure and maintain from the earlier of commencement of work or the effective date of the Subcontract the minimum insurance coverages and limits required by this Appendix 2 or if greater, any coverages or limits of liability specified in the Contract Documents or required by law. If Subcontractor's existing policy(s) provides higher limits than those specified below, the higher limits shall apply and the certificates of insurance provided by Subcontractor shall reflect those higher limits. Before permitting any Sub-subcontractor to perform any work under the Subcontract, the Subcontractor shall require that the Sub-subcontractor maintains insurance in like form and amounts to that required herein. Prior to commencing its performance under the Subcontract, Subcontractor shall provide Contractor (i) a certificate of insurance evidencing the coverage required by this Appendix 2 (a sample Certificate of Insurance is attached for reference purposes), and (ii) applicable endorsements required by this Appendix 2. Except for Professional Liability Insurance, claims-made policies are not acceptable unless otherwise agreed by Contractor. Required coverages are as follows:

- 1.1 Worker's Compensation and Employer's Liability: Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits under the Worker's Compensation laws of any applicable jurisdiction in which the Subcontract Work is to be performed and Employer's Liability Insurance with minimum limits of one million dollars (\$1,000,000 ) each accident, one million dollars (\$1,000,000 ) for disease, each employee and one million dollars (\$1,000,000 ) disease policy limit.

Policy coverage terms and conditions to include: (1) USL&H – "if any" basis where applicable, (2) Jones Act – "if any" basis where applicable, (3) All states endorsement, where applicable, (4) Employers Liability/Stop Gap Liability if work is performed in the State of Washington, (5) For the attainment of Workers Compensation in monopolistic states, coverage must be secured through the state fund of that state, (6) Certificate must clearly identify that coverage applies in the State in which the Project is located.

Owner-operators are required to furnish Worker's Compensation certificates, notwithstanding any statutory exemptions. For states that do not require Worker's Compensation coverage, Owner/Operators shall elect into coverage under the Workers Compensation laws of the governing state. Owner/Operators shall file with the Industrial Insurance Commission a written declaration stating that the provisions of the Worker's Compensation laws shall apply to it and its surety.

- 1.2 Commercial General Liability Insurance: Commercial General Liability Insurance ("CGL") written on ISO form CG 0001 or equivalent and shall confer a status or contain an endorsement (Form CG 2503 or equivalent) requiring that the general aggregate limit of liability shall apply to this Project. Coverage shall be based on an occurrence form and include hazards of: (1) Premise and Operations, (2) Subcontractors and Independent Contractors, and (3) Products and Completed Operations applicable to the additional insured with Completed Operations coverage to remain in force from the date of final completion of the Subcontract Work until the expiration of the statute of repose of the State in which the Project is located or for so long as Contractor may be liable to Owner for claims or losses arising out of Subcontractor's Work, whichever is longer.

1.2.1 CGL insurance shall also include: (1) Contractual Liability coverage sufficient to meet the requirements of the Subcontract (including defense costs and attorney's fees assumed under contract, which shall be payable in addition to the limit of liability); (2) Personal Injury Liability; (3) Notice and Knowledge of Occurrence; and (4) explosion, collapse and underground coverage with no exclusion for subsidence. If Subcontractor's CGL insurance

excludes any of the coverage required by this Appendix, a separate policy and/or endorsement acceptable to Contractor must be obtained and delivered to Contractor.

CGL insurance shall have the following minimum limits of liability, aggregates shall apply on a per project basis:

EACH OCCURRENCE	\$1,000,000
PRODUCTS-COMP/OP AGG.	\$2,000,000
PERSONAL & ADV INJURY	\$1,000,000
GENERAL AGGREGATE	\$2,000,000
PER PROJECT AGGREGATE	\$2,000,000

#### 1.2.2 **Special Coverages.**

1.2.2.1 If the Work involves the rigging, hoisting, lowering, raising or moving of property or equipment, Riggers Liability coverage is required to insure against physical loss or damage to the property or equipment.

1.2.2.2 If the Work involves the use of any owned, leased chartered or hired aircraft or watercraft of any type, Aircraft Liability Insurance or Watercraft Liability Insurance, as applicable, is required in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability for bodily injury and property damage.

1.2.2.3 If the Work involves the use of any unmanned aircraft or drone of any type, Designated Unmanned Aircraft coverage or equivalent is required, by endorsement or otherwise, extending CGL protection for bodily injury, property damage, and personal/advertising injury in an amount of not less than \$1,000,000 per occurrence.

1.2.2.4 If the Work involves providing any services involving asbestos, lead paint, pollution or any other hazardous material, Asbestos Abatement/Removal and/or Pollution Liability coverage as applicable is required. Coverage for and against liability for pollution damage and pollution clean-up if project involves environmental hazards, including but not limited to Asbestos, Lead, and Mold, with limits not less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate, if applicable to Subcontractor's Work.

1.2.3 **Prohibited Endorsements.** The following endorsements/exclusions are prohibited: (1) Any Form, including Form CG 2294 (10-01) or its equivalent, which purports to remove the Subcontractor exception to the Damage to Your Work Exclusion is not acceptable; (2) Commercial General Liability Insurance shall not contain an endorsement or exclusion excluding injury or damage (a) arising from explosion, collapse, underground property damage or work performed by subcontractors; or (b) arising from a prior occurrence causing continuous or progressively deteriorating injury or damage; (3) For work which involves assisted living or residential construction, Commercial General Liability Insurance shall not contain an endorsement or exclusion excluding assisted living/residential construction; (4) For work which involves an exterior insulation and finish system, Commercial General Liability Insurance shall not contain an endorsement or exclusion excluding damage or injury caused directly, indirectly, in whole or in part by the exterior insulation and finish system or by the design, installation, construction or manufacture thereof; (5) CGL insurance shall not include any provision which requires that only Subcontractor may pay any deductible or self-insured retention as a condition precedent to coverage under said policy; Contractor shall be expressly permitted, but not required, to do so; and (6) CGL insurance shall not include any provision allowing for reimbursement of defense costs to the insurance carrier from the additional insured in the event of a later determination of non-coverage of all or part of any claim(s).

- 1.3 **Commercial Auto Liability Insurance:** Commercial Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Subcontract Work with limits of \$1,000,000 combined single limit per accident for bodily injury and property damage. The policy must include coverage for bodily injury, death and property damage arising out of ownership, maintenance or use of any motorized vehicle on or off the site of the Project, and contractual Liability coverage. If hauling of hazardous waste is part of the Subcontract Work, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles, and include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile). If CGL 12/04 or later edition is provided, the CA0051 1204: Mobile Equipment Subject to Motor Vehicles Laws shall also be provided. This additional endorsement is not required if the 2006 ISO Auto form is provided.

- 1.4 Commercial Umbrella/Excess Liability Insurance: Commercial Umbrella Liability Insurance for bodily injury and property damage liability over Subcontractor's primary Employer's Liability, Commercial General Liability, and Commercial Automobile Liability with Limits available to the Project in the amount of \$2,000,000 each occurrence and aggregate. All coverage and terms required under the Commercial General Liability, Automobile Liability and Employers Liability (sections 1.1, 1.2, and 1.3 above) must be included on the Umbrella Liability policy. Subcontractor's Umbrella Liability Policy shall evidence, through a policy endorsement, that it will provide liability coverage in excess of all available underlying coverage before any primary or excess coverage held by an Additional Insured or Indemnified Party is utilized. Umbrella/Excess Insurance shall confer a status or contain an endorsement that such insurance shall be primary and non-contributory to any insurance maintained by Contractor and Owner and any other parties as required by Owner Contract, all of which shall be stated on the Certificate of Insurance provided by the Subcontractor.
- 1.5 Leased Employee Liability: If Subcontractor leases one or more employees through the use of a payroll, employee management or other company, Subcontractor must either (i) directly procure workers compensation insurance. (The insurance shall be written on a "Minimum Premium" or "If Any" policy form and will be in addition to the workers compensation coverage provided to and for the leased employees by the payroll, employee management or other company), or (ii) obtain an Endorsement to Subcontractor's CGL policy providing Coverage For Injury To Leased Workers, form CG 04 24 10 93 or equivalent. In addition, the workers compensation/employer's liability coverage provided to and for the leased employees by the payroll, employee management or other company must be evidenced and include an Alternate Employer/Leased Employee Endorsement, naming Subcontractor as the alternate employer. The employer's liability must be scheduled under a \$2,000,000 umbrella (except in states where employer's liability is unlimited). Subcontractor shall further indemnify, defend and hold Contractor harmless from any claim by the leased employee or any government agency related to or arising out of non-compliance with any law governing wage, fringe or other benefit's including but not limited to reporting requirements therein.
- 1.6 Property Insurance: Subcontractor shall provide Property Insurance coverage for tools and equipment owned, leased or used by the Subcontractor in the performance of the Subcontract Work, which shall extend to equipment, materials and supplies stored off the Project site or in transit to the Project site to be furnished as part of the Subcontract Work and incorporated into the Project. If Builder's Risk or other property insurance is provided by Contractor or others, Contractor and Subcontractor waive all rights against each other and Owner, and agents or employees of any of them, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance. Any insurance required by this paragraph to be maintained by the Subcontractor shall include a waiver of subrogation from Subcontractor's insurer(s) in favor of the Contractor and Owner. Subcontractor shall be responsible for that portion of the Builder's Risk deductible which is proportionate to the loss or damage resulting from acts or omissions attributable to the Subcontractor.

Required  
Yes    No  
☐    ☐

1.7 Professional Liability & Errors and Omissions Insurance: Professional Liability & Errors and Omissions Insurance is required covering liability for claims that arise from the errors, omissions or acts of the Subcontractor or any entity for which the Subcontractor is legally responsible, in the provision of professional services. The policy's insuring agreement shall read: "to pay on behalf of" and shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with Subcontractor's work. The coverage shall be maintained for a period of six (6) years, or the period of time subcontractor may be held legally liable for it's work, whichever is longer, following acceptance of the project. Minimum limits are \$1,000,000 per occurrence/aggregate, unless otherwise required per the Contract Documents.

1.7.1 Coverages **shall not include** any exclusion or other limitations related to:

- The scope of Subcontractor's professional services;
- Who can notify the carrier of a claim or potential claim;
- Mold, fungus, asbestos, pollutants or other hazardous substances.

1.7.2 Limits must be specific to this Project and must not be encumbered or reduced in value during the duration of the Subcontract, except by claims or insurable events that may take place on this Project. There

shall be a 30-day written notice to Contractor and a certificate of insurance naming Contractor as a certificate holder.

Required

Yes No  
☐ ☐

**1.8 Design-Build Projects:** If the Subcontract Work requires providing Design-Build services, Subcontractor must comply with and be bound by the requirements set forth in the attached Appendix 2A, Design Build.

Required

Yes No  
☐ ☐

**1.9 Pollution Liability Insurance:** Subcontractor shall provide evidence of Pollution Liability; specifically **including coverage for mold**, covering all operations necessary or incidental to the fulfillment of all contract obligations hereunder. Such insurance shall be in an amount of not less than \$2,000,000 per occurrence and \$2,000,000 Annual Aggregate.

Such insurance shall provide coverage for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), clean-up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damages, transportation of pollutants on and off the project site, and non-owned disposal site liability if subcontractor's scope of work (or subcontractor's consultants or subcontractor's scope of work) includes the responsibility for manifesting and disposing of contaminated material or waste from its activities. Coverage shall also extend to pollution conditions arising out of the subcontractor's operations including coverage for sudden as well as gradual releases arising from subcontractor's operations, including operations of any of its subcontractor's or consultants. Additional Insured status on a Primary / Non-Contributory basis and Waiver of Subrogation shall be provided to Contractor, Owner, and any other entity required by the Contract Documents.

Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of subcontractor engagement and shall continue on a practice basis for not less than **six (6) years** after completion, or the period of time subcontractor may be held legally liable for its work, whichever is longer. The retro date of any such coverage shall be prior to the commencement of Subcontractor's work.

Required

Yes No  
☐ ☐

**1.10 Subsidence:** Subcontractor shall provide evidence of Subsidence coverage; for bodily injury or property damage liability arising from subsidence of land or earth movement, including landslides, mudflow, earth sinking, earth rising, or earth shifting.

2. **General Provisions:** Each insurer providing insurance coverage as required in this Appendix 2 shall be a licensed admitted insurer authorized to issue such coverage in each State in which any part of the Subcontract Work is performed. The insurer shall be acceptable to Contractor and shall have an AM Best rating of "A-VI" or better. The General Liability, Umbrella Liability coverage, and Completed Operations Coverage for Additional Insured's as required in this Appendix 2 shall be maintained from the commencement of the performance of the Subcontract Work until the end of the period of time Subcontractor may be held legally liable for its work, Subcontractor shall maintain policies of insurance in full force and effect, at all times during the performance of the Work, plus the statute of repose or statute of limitations applicable to the jurisdiction where the Work is performed, and Subcontractor shall maintain and deliver a current Certificate of Insurance to Contractor for this period. Contractor's right to review and approve all insurance policies will not constitute a waiver of any rights created by or provisions contained in this Appendix 2 should they differ from those contained in such policies. The insurance coverages maintained by Subcontractor shall not limit any of Subcontractor's indemnity obligations or other liabilities under the Subcontract.
3. **Additional Insureds:** Unless otherwise required by the Contract Documents, all insurance required by this Appendix 2 (excluding only Workers Compensation Insurance and Professional Liability Insurance) shall name Contractor, its affiliates, directors, officers, and employees and Owner each as an additional insured and any other parties as required by the Contract Documents, and shall be primary and non-contributory to any insurance maintained by Contractor and Owner and any other parties as required by Owner Contract, all of which shall be stated on the Certificate of Insurance provided by the Subcontractor. In the event Subcontractor and Contractor are covered by Contractor's insurance, Contractor's policy shall only apply excess of Subcontractor's policy. The Additional Insured Endorsement must be on Form CG 2010 11/85, or CG 20 10 10/01 plus CG 20 37 10/01, or equivalent, and (i) shall expressly state that coverage is provided to the additional insured for claims for bodily injury and property damage arising from the named insured's work, (ii) shall include ongoing and completed operations, (iii) shall provide coverage for bodily injury or property damage caused in whole or in part by

the Subcontractor's acts or omissions, (iv) shall not contain any restrictions, (v) shall be attached to the Certificate of Insurance, and (vi) shall remain in full force and effect until the expiration of the statute of repose of the State in which the Project is located. Coverage shall be afforded to Additional Insureds whether or not a claim is in litigation. All insurance required by this Appendix 2 (excluding only Workers Compensation Insurance and Professional Liability Insurance) shall be endorsed to provide that, inasmuch as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

4. Notices: Subcontractor shall provide Yost Gallagher Construction, LLC written notice of cancellation of any insurance policy required in Appendix 2 by facsimile and U.S. Mail within two (2) days of receipt from the insurance carrier. Notice from the Subcontractor shall be mailed to: 1803 E. Springfield, Spokane, WA 99202. For those policies containing an aggregate, as soon as incurred loss activity (paid plus reserve) depletes the aggregate by 50% or more, written notice must be sent to the Contractor by certified mail return receipt requested.
5. Deductibles/SIR/Denial of Claims: Subcontractor shall be responsible, at no additional cost to Contractor, for the payment of any deductibles or self-insured retention in connection with the insurance coverages required by this Appendix 2 both for itself and all additional insureds. Any self-insured retention or deductible in excess of \$25,000 will not be allowed unless the same is declared at the time Subcontractor submits its bid and is specifically approved by Contractor prior to execution of the Subcontract. If Subcontractor's policy has a self-insured retention (as defined in the policy), the Additional Insured endorsement attached to the Subcontractor's certificate of insurance must specify that any insured other than the first named insured with a loss or claim covered in whole or in part by this policy has the right, but not the duty, to pay part or all of any applicable self-insured retention. Subcontractor shall provide a copy of the policy upon request to ensure compliance with the requirements of this Paragraph. Subcontractor grants Contractor the right to make payment of the self-insured retention or deductible in the name of Subcontractor, if Contractor in its sole discretion so elects. Subcontractor shall be responsible for any loss arising out of a coverage or defense denial by its insurance carrier.
6. Waiver of Subrogation: To the extent permitted by applicable law and without affecting the coverage by insurance required to be maintained by this Appendix 2, Subcontractor hereby waives and releases any right to recover against Contractor, its other subcontractors, and Owner for (i) damages for injury or death to person, (ii) damage to property, (iii) damage to the Project or any part thereof, and (iv) claims arising by reason of any of the foregoing, to the extent that such damages or claims are covered (and only to the extent of such coverage) by insurance carried by Subcontractor. All insurance coverage maintained by Subcontractor shall include a waiver of any right of subrogation of the insurers thereunder against Owner, Contractor and Owner's and Contractor's other contractors and all of their respective assigns, subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise in respect to the costs of defense (paid with or without reservation of rights) and any liability of any person insured under any such policy (Workers Compensation – where permitted). Subcontractor further waives all claims and all rights of subrogation against Owner, Contractor and Owner's and Contractor's other contractors and all of their respective assigns, subsidiaries, affiliates, employees, insurers and underwriters for loss of or damage to Subcontractor's Subcontract Work of work, tools, machinery, equipment, material, supplies or any other losses within the Subcontract Work of any insurance maintained by Subcontractor.
7. Severability of Interests (Cross Liability): All Insurance required by this Appendix 2 (excluding only Workers Compensation) shall be endorsed to provide that, inasmuch as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. No cross liability exclusion will be accepted. Nor shall there be any restriction in any policies that limit coverage for a claim brought by an Additional Insured against a Named Insured.
8. Breach of Insurance Requirements: Subcontractor's failure to obtain and maintain insurance coverage as required by this Appendix 2 shall constitute a material breach of the Subcontract. In such event Contractor may at its option: (i) terminate the Subcontractor for default; or (ii) purchase coverage and back charge the premium and associated costs to Subcontractor.

END OF APPENDIX 2

## APPENDIX 2A

### Design Build

**Project:**

**Subcontractor:**

If Subcontractor's Work requires Design-Build services, this Appendix 2A provides additional requirements and is hereby incorporated into the terms and conditions of the Contract between Contractor and Subcontractor. In the event of conflict between the terms of this Appendix 2A and the Contract General Conditions, this Appendix 2A shall prevail.

Required	
Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

#### ARTICLE 1 GENERAL PROVISIONS

1.1 Contractor has contracted with Owner to provide the services necessary for the design and construction of the Project as set forth in the General Contract. Subcontractor, through itself, Design Consultants and Sub-Subcontractors, agrees to provide all design, construction and other aspects of the Subcontract Work consistent with the Contract Documents. With respect to its scope of work, Subcontractor agrees to be bound to Contractor by each and all of the terms and provisions of the General Contract, and to assume toward Contractor all the duties, obligations and responsibilities that Contractor by the General Contract assumed toward Owner. Subcontractor agrees further that Contractor shall have the same rights and remedies as against Design Build Subcontractor as Owner under the terms and provisions of the General Contract has against Contractor, with the same force and effect as though every such right and remedy was set forth herein in full. The terms and provisions of this Agreement are intended to be and shall be in addition to and not in substitution of any of the terms and provisions of the General Contract. In the event of any conflict between a provision of this Agreement and the General Contract that cannot be read to be complementary, then the terms and conditions of the General Contract shall control. In the event of conflict between the terms of this Appendix 2A and the Subcontract General Conditions, this Appendix 2A shall prevail.

1.2 The term "Subcontract Work" includes all design services required of Subcontractor under the Contract Documents to design the designated portion of the Project in strict accordance with Owner's Program and the Contract Documents.

1.3 The term "Owner's Program" is defined as the description of the Owner's objective that may include budgetary and time criteria, space requirements and relationships, performance requirements, flexibility and expandability requirements, special equipment and systems, site requirements, or other general or specific Owner needs. The Subcontractor shall be responsible for fully understanding and preparing a complete design for the Subcontract Work which when constructed will strictly satisfy the Owner Program's requirements.

1.4 Subcontractor shall be fully licensed to provide, or shall cause to be provided by a fully licensed design professional, all design services as may be necessary to allow for performance of Subcontractor's obligations under the Contract Documents. Subcontractor shall not engage the services of any Design Consultant without first obtaining the approval of Contractor, which approval shall not be unreasonably withheld. Subcontractor agrees that each Design Consultant shall be fully bound to Subcontractor in the same manner as Subcontractor is bound to Contractor for all the requirements of the Contract Documents which are applicable to the Design Consultant's scope of services. Subcontractor shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Subcontractor's obligations under the Contract Documents.

1.5 Subcontractor shall perform its obligations consistent with reasonable skill and care and the orderly progress of the Project. The standard of care for architectural and engineering services performed under this Agreement shall be the highest degree of care and skill used by members of the architectural and engineering professions practicing under similar conditions at the same time and locality. In addition, if the General Contract contains specifically identified performance standards for aspects of the Services, Subcontractor agrees that all Services shall be performed to achieve such standards.

1.6 Subcontractor accepts the relationship of trust and confidence established between it and the Contractor by this Agreement. Subcontractor agrees to furnish efficient services and to use its best efforts to complete its Subcontract Work in the best, soundest, and most expeditious and economical manner consistent with the interest of the Owner and Contractor. Subcontractor also agrees to furnish its best skill and judgment and cooperate with the Contractor and Owner in a manner consistent with good design practice.

1.7 The Subcontractor shall coordinate its design within its scope of Subcontract Work with the design prepared or performed by Owner's and/or Contractor's consultants so as to provide a complete design and construction of the Project that will properly interface, will be fully compatible, and will properly function. Subcontractor shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Subcontractor and for their compliance with all applicable laws.

1.8 The Contract Price includes, and Subcontractor accepts exclusive responsibility for securing and paying for all design services as may be necessary to allow for design and construction of the Subcontract Work in strict compliance with the Contract Documents and all applicable laws.

## ARTICLE 2 DESIGN DEVELOPMENT

2.1 Subcontractor represents that it has examined the Site and the Contract Documents prior to executing this Agreement so as to reasonably ascertain the nature of the Subcontract Work and the various conditions affecting the Subcontract Work.

2.2 Subcontractor shall promptly report to Contractor any errors, inconsistencies, omissions, or violations of legal requirements Subcontractor discovers. Subcontractor shall be liable to Contractor for any damages resulting from any such errors, inconsistencies, omissions, or violations of legal requirements which Subcontractor discovers and fails to report to Contractor.

2.3 Contractor shall provide information received from Owner regarding requirements for the Project and the Work, including but not limited to Owner's design objectives, constraints and criteria and budget for the Project.

2.4 Subcontractor shall be responsible for subcontracting any specialized architectural or engineering services that may be required to satisfy the design obligations called for by the Contract Documents as the same relates to the Subcontract Work.

2.5 Subcontractor shall provide and coordinate its design services and construction work with Owner's requirements and the work of other contractors so as to provide a complete design and construction of the Subcontract Work that will properly interface, will be fully compatible, and will properly function in strict accordance with the Owner's Program.

2.6 To the extent required under the General Contract, Owner will obtain easements, zoning variances and legal authorizations regarding site utilization where essential to the execution of Owner's Program.

2.7 Subcontractor shall review Owner's Program to ascertain requirements of the Subcontract Work. Subcontractor shall provide, after consultation with Contractor and Owner, a preliminary evaluation of the Owner's Program and Work budget, and shall review with Owner and Contractor alternative approaches to design and construction of the Subcontract Work. Subcontractor shall assist Contractor regarding the selection of building systems, materials, and equipment, as well as cost, schedule, and construction feasibility assistance, for the Work. Such assistance shall include providing advice relative to, among other things, labor availability, construction costs, procurement strategies (including scheduling the procurement of items with long-lead times) related to the requirements set forth in the Contract Documents for the Subcontract Work.

2.8 In accordance with the times set forth in the Project Schedule, Subcontractor shall submit to Contractor and Owner a Proposal including Preliminary Design Documents and a proposed schedule for completion of the Work, including the Design Development Phase. Such design submissions shall be in the form and quantity called for in the Contract Documents and shall include design criteria, drawings, diagrams and specifications setting forth the Project requirements. The submissions shall also show the relationship of the Subcontract Work to the overall Project design. Contractor and Subcontractor agree that prior to the scheduled date for submitting all design submissions to Owner, Contractor, and Subcontractor will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Contractor's budget and pricing assumptions.



2.9 In addition to the interim design submissions and Construction Documents, if requested by Contractor, Subcontractor shall prepare (i) those design documents and pricing information for the Subcontract Work that may be necessary for the establishment of a GMP Exhibit or GMP Proposal and (ii) interim design submissions and Construction Documents for the Subcontract Work required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.10 Contractor's and Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents for the Subcontract Work compatible with the requirements of the Contract Documents. The review and/or approval by either Contractor or Owner of any interim design submission or the Construction Documents shall not be deemed to transfer any design liability from Subcontractor to Contractor or Owner.

2.11 Subcontractor will, at its own cost, revise any interim design submission or Construction Document it has provided to correct any errors, mistakes or omissions. Such revisions shall be performed timely and so as not to jeopardize the Project Schedule.

2.12 If Subcontractor's Preliminary Design Proposal is accepted, Subcontractor shall, in accordance with the Contract Documents and with the times set forth in the Project Schedule, submit Construction Documents to Contractor setting forth in detail drawings and specifications describing the requirements for construction of the Work, and showing the relationship of the Subcontract Work to the overall Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Subcontractor shall provide the Construction Documents in the form and quantity called for in the Contract Documents. Subcontractor shall perform agreed upon revisions and submit revised Construction Documents to Contractor for Contractor's and Owner's approval. In the event Owner and Contractor approve the same, the Subcontractor's Design Documents are hereby incorporated by reference as additional Contract Documents. In the event Owner or Contractor rejects the same for any reason, and Owner, Contractor and Subcontractor cannot reach an agreement on the rejected items, Contractor may terminate the Subcontract as provided below.

2.13 In the event Owner or Contractor does not approve the Subcontractor's Design Documents in accordance with Article 2.12, Contractor may terminate the Subcontract upon seven (7) days written notice. In the event of termination under this paragraph, Subcontractor shall not be compensated for any design services unless design services have been separately approved in the Schedule of Values as a separate pay item by Contractor and the Owner approves payment for the design services. In no event shall Subcontractor be entitled to payment for any sums for design services, unless payment has been received by Contractor from Owner. In any event, Subcontractor shall not be entitled to any additional compensation including but not limited to overhead and profit on any work not executed.

### ARTICLE 3 PROFESSIONAL LIABILITY INSURANCE

3.1 Subcontractor's work involves professional services and Professional Liability Insurance is required covering liability for claims that arise from the errors, omissions or acts of the Subcontractor or any entity for which the Subcontractor is legally responsible, in the provision of professional services. The policy's insuring agreement shall read: "to pay on behalf of" and shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with Subcontractor's work. The coverage shall be maintained for a period of six (6) years following acceptance of the Project. Minimum limits are (1) Prime Design Professional: \$1,000,000 per occurrence/aggregate; (2) Sub-Design Professional: \$1,000,000 per occurrence/aggregate. For the purpose of Professional Liability Insurance, the term "Prime Design Professional" means the architect/engineer providing architectural, engineering and/or other professional services under a contract directly with Subcontractor, and the term "Sub-Design Professional" means any architect/engineer providing architectural, engineering and/or other professional services directly or indirectly to the Prime Design Professional in connection with the Project. A Prime Design Professional is also a Subcontractor/Supplier and a Sub-Design Professional is also a Sub-Subcontractor/Sub-supplier.

3.2 Coverages shall not include any exclusion or other limitations related to:

- The scope of Consultant's professional Services;
- Who can notify the carrier of a claim or potential claim;
- Mold, fungus, asbestos, pollutants or other hazardous substances.

3.3 Limits must be specific to this Project and must not be encumbered or reduced in value during the duration of this Agreement, except by claims or insurable events that may take place on this Project. There shall be a 30-day written notice to Contractor of any reduction of coverage limits of liability for this policy.

#### ARTICLE 4 OWNERSHIP OF WORK PRODUCT

4.1 All drawings, specifications and other documents and electronic data furnished by Subcontractor to Contractor under this Agreement ("Work Product") are deemed to be instruments of service and OWNER shall retain ownership and property interests therein provided.

4.2 Subcontractor shall defend any action or proceeding brought against Owner or Contractor based on any claim that the Work, or any part thereof, or the operation or use of the Subcontract Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued.

4.3 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Subcontractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Subcontractor cannot so procure such right within a reasonable time, Subcontractor shall promptly, at Subcontractor's option and at Subcontractor's expense, (i) modify the Subcontract Work so as to avoid infringement of any patents, or copyrights, or (ii) replace said Subcontract Work with Work that does not infringe or violate any such patent or copyright.

Contractor initials           

Subcontractor initials           

END OF APPENDIX 2A