



YOST GALLAGHER CONSTRUCTION, LLC SUBCONTRACT AGREEMENT

This agreement (hereinafter “Subcontract”) is between

YOST GALLAGHER CONSTRUCTION, LLC
1803 E. Springfield
Spokane, WA 99202

Contact: P.M. NAME
Phone: 509.535.8874
Fax: 509.535.7251

(hereinafter “Contractor”), and

SUBCONTRACTOR NAME
ADDRESS
ADDRESS

Contact: NAME
Phone: NUMBER

**(hereafter “Subcontractor”).
Contractor has entered into a contract with**

OWNER ENTITY NAME
ADDRESS
ADDRESS

**(hereafter “Owner”)
to perform certain labor and furnish materials for the construction and completion of**

PROJECT NAME
ADDRESS
ADDRESS

The documents include:

- 1) Contract between Owner and Contractor.
- 2) General, Supplementary and Special Conditions.
- 3) Project Specifications.
- 4) Project Drawings:
- 5) Addendas:

as prepared by

ARCHITECT NAME
ADDRESS
ADDRESS

**all of which documents are hereinafter referred to as the “Contract Documents ”.
In consideration therefore, Subcontractor agrees as follows:**

1. Subcontractor shall provide all supervision, materials, labor, supplies, services, equipment and all other items necessary to complete the work set forth below and which may further be described in Appendix 1 (hereafter “Subcontract Work” or “Work”):

TITLE OF SCOPE OF WORK

2. Subcontractor is to provide bond[s] for its Subcontract Work at this time (Yes _____; No X).

Contractor has the option to require this Subcontractor to obtain a 100% Performance and Payment Bond at any time during the life of this Subcontract; Subcontractor to be reimbursed for actual bond costs.

3. Subcontractor agrees to be bound by all of the terms of this Subcontract, including the General Conditions of this Subcontract Agreement, all Appendices and any other attachments to this Subcontract incorporated by this reference:

Appendix descriptions:	1 — Scope of Work	<input checked="" type="checkbox"/>
	2 — Insurance	<input checked="" type="checkbox"/>
	3 — Indemnification	<input checked="" type="checkbox"/>
	4 — Safety Requirements	<input checked="" type="checkbox"/>
	5 — Billing Procedures	<input checked="" type="checkbox"/>
	6 — Lower Tier Listing	<input checked="" type="checkbox"/>

For the full, complete and faithful performance of this Subcontract, Contractor agrees to pay Subcontractor (hereafter “Subcontract Price”):

[x] (a) a lump sum in the amount of _____ (\$ _____),

Unless otherwise stated, the Subcontract Price includes all applicable sales and use taxes.

This Subcontract must be executed below by an officer or duly authorized representative of Subcontractor without modification, and returned to Contractor within fifteen (15) days of its receipt. Original signature, copy by fax or PDF of the same, or electronic signature shall be considered legally binding. If Subcontractor elects to perform any of the Subcontract Work without first securing a fully executed Subcontract, then Subcontractor shall be deemed to have accepted this Subcontract unmodified, as issued. The effective date of this Subcontract shall be the earlier of fifteen (15) days following its receipt by Subcontractor, or the date of Subcontractor’s signature without modification. Subcontractor’s delivery to Contractor of the executed Subcontract without modification, along with suitable bonds, if required herein, and proof of insurance as required herein, are all express conditions precedent to any payment to Subcontractor. Any unauthorized modification to the Subcontract form shall constitute grounds for termination under Article R.1 of the General Conditions. The signature may be executed in counterpart facsimile and shall be relied upon as true signature of authorized representative of Contractor.

IN WITNESS WHEREOF, Contractor and Subcontractor have executed this Agreement.

Yost Gallagher Construction, LLC

SUBCONTRACTOR NAME

By _____
CONTRACTOR (Authorized Signature)

By _____
SUBCONTRACTOR (Authorized Signature)

YOSTGGC845DZ
Registration Number

Printed Name & Title

Date

Registration Number

Unified Business Identifier Number

Federal Tax I.D. Number

Workers’ Compensation Account I.D. Number

Date

Yost Gallagher Construction, LLC

General Conditions of Subcontract Agreement

A. GENERAL RESPONSIBILITIES

1. The term "Contract Documents" as used herein refers to all the General, Supplementary, and Special Conditions, all Construction Documents including drawings and specifications, any amendments, modifications and all other documents forming or by reference made a part of the Contract between the Contractor and Owner. All of the aforesaid shall be considered a part of this Subcontract by reference thereto and the Subcontractor agrees to be bound to the Contractor and Owner by the terms and provisions thereof, so far as they apply to the Work hereinafter described. The Work to be performed hereunder is subject to all of the applicable terms and provisions, including the provisions for modification, of the Contract Documents.

2. Subcontractor assumes toward Contractor all obligations and responsibilities that the Contractor assumes toward the Owner and others, as set forth in the Contract Documents, insofar as applicable, generally or specifically, to Subcontractor's Work. Subcontractor agrees that Contractor shall have the same rights and remedies as against the Subcontractor as Owner under the terms and provisions of the Contract Documents has against Contractor, with the same force and effect as though every such right and remedy were set forth herein in full. The terms and provisions of this Subcontract are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the Contract Documents. The provisions of this Subcontract and the Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. Barring other direction from Contractor, the interpretation that is more costly to or which imposes the greater duty upon the Subcontractor shall control, and if that guideline does not resolve the conflict, then the terms of this Subcontract shall control.

Subcontractor acknowledges and represents that it has been provided with, has reviewed, and understands the terms and conditions of the "Contract Documents" as defined in Section A.1. Subcontractor expressly agrees to the terms and conditions of Section A.1 and A.2 above.



Subcontractor Initials

3. Subcontractor acknowledges the Subcontract Work may or may not be entirely contained in specification sections or plan sheets in the Contract Documents where such work is customarily found. Subcontractor shall perform any work

reasonably inferred from the description of Subcontract Work that may be located outside of its customary location in the Contract Documents.

4. Subcontractor understands that Contractor may have entered into labor agreements with labor unions and Subcontractor hereby represents that it has made its own independent investigation of the terms of those agreements. Subcontractor agrees to comply with all of the terms and conditions of those agreements applicable to the work herein undertaken to be performed by Subcontractor.

5. Subcontractor agrees not to delay or permit the delay of work on account of any labor disputes or difficulties and to indemnify and hold Contractor harmless from any loss, damage, expense or delay, including attorney fees, occasioned by any labor disputes or labor difficulties of whatever nature or cause. In the event of any threatened strike, picket or labor activities that might delay the progress of the work because of any labor disputes or action or inaction by the Subcontractor, Contractor shall have the recourses available to it under Article R of this Agreement.

6. Contractor has implemented a Safety Program (hereafter "Program") which shall apply to the Project. Subcontractor agrees that it, its employees and its lower tier subcontractors and their employees shall be bound by and shall comply with the Program including but not limited to the terms of Appendix 4, Safety Requirements and any other program implemented by Contractor to benefit the health, safety and welfare of persons or property, including, but not limited to, any workplace drug-free programs required by state or federal law. However, nothing contained herein shall relieve Subcontractor of its obligations of implementing its own safety program and of its responsibilities towards its employees, and lower tier contractors. Subcontractor shall review and become knowledgeable about the program which has been made and remains available to Subcontractor for review. Subcontractor shall include the provisions of this paragraph in every lower tier subcontract, and shall require its subcontractors to include it in their subcontracts so that such provisions will be binding upon each subcontractor and its employees, at every tier. In the event of Subcontractor's noncompliance, this Subcontract may be canceled, terminated, or suspended, in whole or in part, at the Contractor's sole election. A complete copy of the Program will be made available by Contractor upon request.

7. Subcontractor shall furnish all tools, equipment, scaffolding, hoisting equipment, apparatus, ways, machinery and plant necessary to perform the Subcontract Work.

8. Subcontractor shall timely provide and pay for all engineering, testing, surveying, special inspections and

instrumentalities as may be required by Owner or Contractor in connection with the performance of this Subcontract. Should Subcontractor fail to accomplish the foregoing on a timely basis, Contractor may perform said task and charge the account of Subcontractor for same.

9. Subcontractor shall employ no person whose employment on or in connection with this Project may be objectionable to Contractor, and shall discharge any such person when objected to by Contractor, provided that this shall not require Subcontractor to violate any law, governmental regulation or collective bargaining agreement.

10. Subcontractor consents to Contractor's assignment of this Subcontract at any time. In the event of such assignment, Subcontractor shall perform all of its obligations under this Subcontract for the assignee and Contractor shall have no further obligation to Subcontractor for matters arising out of future performance thereof.

11. Subcontractor shall provide continuous supervision utilizing a field supervisor competent and knowledgeable about the specific nature of this throughout the duration of the Subcontract Work. Contractor reserves the right of approval of Subcontractor's supervisory staffing assignments and revisions thereto. Subcontractor shall notify Contractor (10) days in advance of any proposed supervisory staffing revisions.

12. Subcontractor shall be present at and participate in all scheduled project meetings and any additional meetings deemed necessary by Contractor to properly coordinate the Project.

13. Subcontractor shall not assign the whole nor any part of this Agreement and/or Subcontractor's Work without prior written approval of Contractor.

14. Subcontractor certifies that it now maintains and at all times during performance of this Subcontract shall maintain (1) a valid certificate of registration in compliance with Title 18 RCW; (2) a current unified business identifier number; (3) state industrial insurance coverage as required in Title 51 RCW; (4) an employment security department number as required by Title 50 RCW; and (5) a State excise tax registration number as required in Title 82 RCW.

15. If bidding on a public works project, Subcontractor certifies that it has not been found out of compliance for working apprentices out of ratio without appropriate supervision or outside their approved work process and as outlined in Titles 39 and 49 RCW. Subcontractor further certifies that it has received training on the requirements related to public works and prevailing wage as outlined in Titles 39 RCW, unless Subcontractor is otherwise exempt. Subcontractor certifies that it has never been disqualified from bidding or performing work because of a lack of a valid certificate of registration or prevailing wage violation within

the last 5 years. Subcontractor shall verify and cause compliance by any lower tier subcontractor with the requirements of this paragraph.

16. When the Contract Documents require design-build services for performance of the Subcontract Work, Subcontractor shall provide design services through a licensed design professional so that the Subcontract Work is in strict accordance with the requirements of the Contract Documents. Subcontractor shall coordinate its design services and construction work with the requirements of Owner and Contractor and the work of other subcontractors 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 accordance with the requirements of the Contract Documents. The standard of care for architectural and engineering services performed under this Subcontract 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.

B. LAWS AND REGULATIONS

1. Subcontractor shall comply with all applicable federal, state, county, municipal and local laws, codes, ordinances, rules, regulations, standards, orders, notices and requirements, including those relating to OSHA, WISHA, or other safety requirements, hazard notification, HIPAA regulations, fair employment practices, prevailing wage, equal opportunity, and discrimination on the basis of race, religion, sex or national origin (hereinafter "Laws"), without additional expense to Contractor. Subcontractor shall correct, at its own cost and expense, any violations thereof. Subcontractor shall require its suppliers and lower tier subcontractors to also comply with this requirement, and shall furnish such proof as Contractor may request to demonstrate compliance with such Laws.

2. Within 24 hours of receipt of any citation, fine, penalty related to violation of any Laws or Regulations enumerated in Article B.1 herein, Subcontractor shall report the same in writing to Contractor. With respect thereto, Subcontractor agrees to defend, indemnify and save Contractor, its surety, if any, and Owner harmless from and against any and all such claims, loss, fines, penalties, damages, expense, and attorney's fees and costs, including but not limited to any fines or penalties assessed against Contractor arising out of Subcontractor's failure to fully comply with any Laws, Regulations or provisions of this Agreement including but not limited to (i) those for serious, repeat, or other violations, (ii) those based upon Contractor's *Stute* obligation (or equivalent relating to project site safety), and/or (iii) those in which vicarious liability is imposed upon Contractor for Subcontractor's acts or omissions. Subcontractor shall not settle or otherwise resolve any matters tendered to Subcontractor by Contractor, without the express written consent of Contractor.

3. All work, labor, services and materials to be furnished by Subcontractor must strictly comply with all applicable Laws now in force and hereafter placed in effect without any additional compensation.

4. Subcontractor shall pay all royalties and licensee fees, and further agrees to defend all suits or claims for infringement of any patent rights involved in the Subcontract Work, and further agrees to hold Contractor harmless from loss, cost or expense, including attorney's fees, on account of such use or infringement by Subcontractor.

C. INSURANCE AND BOND

1. Subcontractor shall provide all insurance which strictly complies with the requirements of Appendix 2 prior to work starting.

2. If paragraph 2, on page 2 of the Subcontract Agreement, requires Subcontractor to supply bonds for this Project, then Subcontractor shall at its own expense furnish Contractor, within ten (10) days of receipt of this Subcontract, performance and payment bonds in a form and from a surety acceptable to Contractor in amounts equal to the sum of the Subcontract Price, approved change orders and applicable tax. The bonds shall be conditioned upon the full and faithful performance of all terms, provisions, and conditions of this Subcontract, and specifically upon payment for all labor, materials, equipment and supplies used in the prosecution of the Subcontract Work. If paragraph 2 does not require bonding, then Subcontractor shall only be required to provide the bonds described above within ten (10) days of receipt of a request therefore, and Contractor shall reimburse Subcontractor for reasonable bond premiums that result. The terms of this Subcontract Agreement are expressly incorporated into the terms of the bond(s). The provisions of such bond shall not conflict with the express terms and rights of the Contractor under this Subcontract and any such conflicting or inconsistent bond terms are hereby superseded by the terms of this Subcontract.

3. Should Contractor be required to post a release of retainage bond to obtain early release of Subcontractor's retainage, Subcontractor shall reimburse Contractor for Subcontractor's portion of Contractor's bond premium expense, based upon the number of subcontractors requesting early release of retainage.

D. SUBMITTALS, O&M MANUAL, AS BUILTS

1. Subcontractor agrees to furnish Contractor complete and accurate shop drawings, specifications, final selection of materials, and other specified items in quantities required by Contractor for approval by Owner or Owner's agents sufficiently early so as to prevent delay to the progress of the Project.

2. Subcontractor agrees to furnish Contractor complete operation and maintenance manuals, as built, and spare parts in such quantities and format as may be required by the Contract Documents or the Contractor. Delivery to Contractor shall be prior to Subcontractor's substantial completion, and sufficiently early so as to prevent delay to the completion of the Project.

3. Notwithstanding the dimensions in the Contract Documents it shall be the obligation and responsibility of Subcontractor to take such measurements as will ensure the proper matching and fitting of the Subcontract Work with all contiguous work. Should Subcontractor request or leave it to Contractor to take such measurements, the ultimate responsibility for the accuracy of these measurements shall be borne by Subcontractor.

E. LOWER TIER CONTRACTORS

Prior to commencing performance of any obligation herein, Subcontractor shall list, in writing to Contractor, all lower tier subcontractors and suppliers it intends to use, subject to Contractor's approval, which approval shall not be unreasonably withheld, and it shall not subsequently change such lower tier subcontractors without Contractor's prior written approval. Subcontractor shall bind all lower tier subcontractors and suppliers to Subcontractor in the same manner as Subcontractor is bound to Contractor, and as Contractor is bound to Owner.

F. NATURE OF WORK

1. Subcontractor has carefully examined and understands the Contract Documents; has satisfied itself as to the nature and location of the Subcontract Work, the character, quantity and kind of conditions to be encountered, and the character, kind and quality of the equipment needed to prosecute the Subcontract Work; has visited and familiarized itself with the location, conditions and other matters visible at the job site which can in any manner affect the Subcontract Work; and here acknowledges it has had reasonable opportunity to complete same. Subcontractor accepts this Subcontract on the basis of the foregoing, and not in reliance upon any opinion or representation by Contractor or others.

2. Prior to commencing, Subcontractor shall notify Contractor in writing of any conditions which might adversely affect its work; failure to do so shall constitute a waiver of entitlement to any additional compensation or contract time arising out of such conditions.

3. Subcontractor shall regularly check the correctness of all work installed by others which may affect Subcontractor's Work. Subcontractor's failure to promptly detect or report discrepancies to Contractor before proceeding shall preclude Subcontractor from recovery for any resulting cost, expense or damage.

G. SCHEDULING/TIME OF COMPLETION

1. Time is of the essence in this Subcontract.

2. Subcontractor acknowledges and is bound to the substantial completion date, as well as the final completion date for the entire Project in accordance with the Contract Documents, Contractor's schedule, and Appendix 1. Subcontractor agrees that all necessary costs to meet these required completion dates are included in the Subcontract Price and that no time extensions will be granted under any circumstances except as may be granted by the Owner.

3. Subcontractor shall promptly provide Contractor with any requested scheduling information, including periodic projections of its anticipated progress on the Subcontract Work and anticipated delivery dates for materials or equipment that may be in the course of preparation or manufacture. Contractor shall accept input from Subcontractor regarding developing and updating the construction schedule, but retains the right to decide the time, order and priority in which the various portions of the Project shall be performed. Contractor reserves the right to modify the sequence of Subcontractor's activities as the process warrants with no additional compensation to Subcontractor. Contractor shall make the schedule and any revisions thereto available to Subcontractor for review.

4. Subcontractor is responsible for review of original schedule and periodic updates to confirm that duration and sequencing is reasonable and attainable. Failure to notify Contractor within five (5) days of Subcontractor's receipt of original and updated schedules constitutes acceptance of the current schedule.

5. Contractor shall give Subcontractor advance notice of the anticipated starting date for Subcontract Work. Subcontractor shall start the Subcontract Work on the date established by Contractor, and shall complete it at such times as may be scheduled or rescheduled by Contractor.

6. Subcontractor shall perform the Subcontract Work as directed by Contractor in a manner that, in Contractor's opinion, benefits the overall Project schedule. Subcontractor agrees to cooperate with and coordinate its efforts with Contractor and other subcontractors whose work may interfere with the Subcontract Work. Subcontractor shall participate in the preparation of coordination drawings and work schedules as may be required by Contractor in areas of congestion, specifically advising Contractor in writing of any interference by others within twenty-four (24) hours of discovery. Should Subcontractor fall behind, it shall take necessary action to meet and maintain job progress without additional compensation, and shall be liable to and reimburse Contractor for damages resulting from or related to any delay, including, but not limited to, overtime and off-hour supervisory costs incurred by Contractor and by any of its other Subcontractors resulting from or relating to such delay.

7. Subcontractor shall comply with any written instructions given by Contractor, including instructions to suspend, delay or accelerate Subcontract Work.

8. Subcontractor assumes the responsibility to pay Contractor such liquidated damages as may be assessed against Contractor under the Contract Documents for delays related to Subcontractor's work. Subcontractor shall pay such damages directly or by offset to the extent any delay is caused, in whole or in part, by Subcontractor or those third parties contracting with Subcontractor, which payment shall be in addition to any other claim Contractor may have for actual damages caused by Subcontractor's delay.

9. Contractor shall establish the normal business hours on the Project. No work shall be allowed at the Project site outside of normal business hours without first securing the express written permission of Contractor. Any work permitted outside of normal working hours shall be approved via a unilateral change order only, and is subject to the following terms and conditions: (a) No work outside of normal business hours shall be performed without Contractor's supervision. Subcontractor shall compensate Contractor for Contractor's supervisor's time spent supervising Subcontractor's outside of hours performance. (b) Upon demand by Contractor, Subcontractor shall compensate Owner for any additional inspection costs incurred by Owner as a result of outside of-hours performance. (c) At the sole option of Contractor, Contractor may allocate the costs detailed in (a) and (b) above among two or more subcontractors. (d) The issuance of an outside of-hours change order is at the sole discretion of Contractor. Contractor may terminate that change order at any time. Such termination shall not create a cause of action in Subcontractor against Contractor and Subcontractor acknowledges it shall retain no right to continue to work after-hours thereafter.

10. Subcontractor shall abide by Contractor's decision as to allotment of all storage and working space on the Project.

H. MATERIALS AND EQUIPMENT

1. Materials and equipment delivered to the job site by or for Subcontractor shall remain on the job site and shall become the property of Owner upon payment therefore. It shall be Subcontractor's responsibility to unload, store and protect the materials and equipment it furnishes, and Subcontractor shall bear the risk of loss or damage thereto. Subcontractor shall protect such materials and equipment against loss until they are actually incorporated into the Project and the Project is finally accepted by Owner, even though title thereto may previously have passed to Owner, except that Subcontractor shall not bear the risk of any such loss as may be due to the sole negligence of Contractor.

2. Subcontractor shall provide all tools and equipment necessary to perform its Work, including but not limited to scaffolds, hoisting and specialty items. Subcontractor is

solely responsible for any rigging or hoisting of equipment and materials, and any property damage that arises from those operations.

3. Subcontractor may only use Contractor's tools or equipment after first obtaining prior approval from Contractor. Contractor makes no express or implied warranties with respect to the condition or fitness of said equipment and any such warranties are expressly disclaimed. Subcontractor's use shall constitute an express agreement to rent said tools or equipment at the then prevailing rate as set forth in the current Rental Rate Blue Book. Subcontractor is responsible for complying with all laws and regulations and payment of any penalties or fines resulting from the use of same.

4. In consideration of the willingness of Contractor to allow Subcontractor and its employees to use Contractor's equipment, Subcontractor, through its authorized representative, hereby agrees to assume complete responsibility for the operation of Contractor's equipment. The operators, during the period Subcontractor's use, either singly or with others, shall be deemed loaned servants of Subcontractor even though employed by Contractor or others. Subcontractor shall indemnify and hold Contractor harmless against all claims, damages, and losses (including without limitation, legal fees and disbursements) for injury to persons or damage to property arising out of or resulting from Subcontractor's use of Contractor's equipment.

5. Subcontractor shall schedule and coordinate with Contractor's on-site representative all material and equipment delivery dates and times a minimum of one week in advance of actual delivery. Deliveries not properly scheduled and coordinated are subject to refusal and all re-delivery costs shall be borne by Subcontractor.

I. PAYMENT

1. Prior to its first application for payment and as a condition of payment, Subcontractor shall submit to Contractor the following:

a. A schedule of values in sufficient detail and in a form and format acceptable to the Contractor for use in checking Subcontractor's monthly progress;

b. If this Subcontract is governed by prevailing wage laws, intent to Pay Prevailing Wages must be filed with the applicable agency. No pay requests will be processed until the completed form has been approved by the state or federal agency, where applicable;

c. A list of material suppliers, vendors for equipment rental, and subcontractors to be utilized on the Project. This list shall contain the name, address, phone and fax numbers, a description of the materials and services to be provided, and the anticipated contract amount for each subcontractor/supplier. If requested by Contractor,

Subcontractor and its lower tier subcontractors shall also provide the anticipated start date, duration, and estimated journeymen and apprentice hours for its scope of work;

d. For work in Washington State, Subcontractor shall furnish Contractor a Premium Status report issued by the Washington State Department of Labor and Industries, in respect to Subcontractor's account with the Department of Labor and Industries;

e. A certificate of insurance and endorsements in full compliance with Appendix 2 – Insurance;

f. A fully executed Subcontract Agreement.

2. For each and every application for payment, Subcontractor shall submit to Contractor the following:

a. A fully executed and approved "Application for Payment" form and approved schedule of values reflecting progress during the contractual reporting period;

b. Subcontractor's fully executed and unmodified "Lien/Claim Release" form;

c. If necessary, an updated list of Subcontractor's vendors or subcontractors if substitutions or additions are made, or costs have changed from the originally submitted form;

d. If requested by Contractor, Subcontractor shall provide Contractor's "Application for Payment" and "Lien/Claim Releases" for each of its lower tier subcontractors and suppliers.

e. If requested by Contractor, Subcontractor and its lower tier subcontractors shall provide proof that Subcontractor is current in its required payment of wages and contributions with any union, public or private trust, health and welfare plan, pension plan, state or federal prevailing wage contribution requirements or the equivalent.

f. If requested by Contractor, Subcontractor and its lower tier subcontractors shall provide proof that Subcontractor has filed a copy of its certified payroll records for the subject month in compliance with Title 39, RCW.

3. Subcontractor shall be paid for its work up to the date Contractor's last approved progress billing, provided ten days have elapsed following the date when Contractor receives its payment for such progress billing. Contractor and Subcontractor expressly agree that Subcontract's full compliance with the requirements of this Agreement is a precondition to any payment falling due.

4. Final payment to Subcontractor, subject to withholding as permitted hereunder, shall not be due until:

a. Both Subcontractor's Work and the entire Project have been accepted by Owner;

b. Ten (10) calendar days have passed following the time when Contractor has been paid in full;

c. Proof of payment, in a form satisfactory to Contractor and Owner, of all amounts owed by Subcontractor in connection with this Subcontract has been provided, including conditional lien and claim waivers, releases and affidavits;

d. All other payment prerequisites in this Subcontract and the Contract Documents have been satisfied.

5. To the extent the Contract Documents provides for early acceptance (prior to completion of the entire Project) of portions of the Work, and for release of retainage pertaining to such work at the time of such acceptance, and provided Owner elects early acceptance and makes full payment for the Subcontract Work or any portion thereof, and paragraphs 1-3 above have been satisfied, then final payment to the Subcontractor shall be similarly accelerated.

6. Subcontractor's applications for payment for work and materials incorporated into the Project shall be for such quantities as may be determined by Contractor or Owner, shall be in Contractor's home office in proper form by the twenty-fifth day of each month noted in order to be considered for that month's payment. The schedule of values shall be used for payment purposes only, and approval of an application for payment shall not relieve Subcontractor from furnishing all work and performing all other obligations required by this Subcontractor.

7. To the extent that Contractor is allowed to invoice for materials delivered to the jobsite or to satisfactory storage facilities, Subcontractor may invoice for materials so delivered and receive payment therefore as outlined herein; provided however, that all such stored materials shall be stored at the sole risk and expense of Subcontractor until final acceptance of the Subcontract Work. As a condition of payment, Subcontractor shall provide a bill of sale for such material in a form approved by Contractor and specifically identifying the material in question. Subcontractor shall segregate and label the material with identifying markings indicating the materials are held for Contractor and shall provide proof of the same upon request of Contractor. Subcontractor shall also provide proof of insurance, subject to Contractor's approval, for such materials including insurance for warehouse or bonded warehouse, and insurance in transit.

8. Subcontractor agrees that its rights to payment, if any against Contractor and its surety, are strictly governed by the terms of this Subcontract, notwithstanding any additional rights that may be granted to Subcontractor by any statute, including but not limited to the Federal Miller Act or any state bond act.

9. If required, Subcontractor shall submit certified payrolls in the form acceptable to Contractor. No pay requests will be processed until the completed forms have been approved by the state or a federal agency, where applicable.

10. Contractor may withhold retainage from Subcontractor in the same percentage as Owner withholds retainage from Contractor or in an amount not to exceed **five percent (5%)** of the money earned by the Subcontractor, whichever is greater, as a trust fund for the satisfactory completion of the Subcontract Work. Unless otherwise provided by applicable law, the retainage will not accrue interest. The retainage will be released to Subcontractor upon the later of 60 days after final completion of the Contractor's Work, final acceptance by the Owner, or Contractor's receipt of retainage from the Owner.

11. Signature by Subcontractor on periodic lien and claim waivers constitutes an agreement by Subcontractor to indemnify, defend, and hold Contractor, its surety, the Owner, and the Project harmless from any claim which arises out of or is related to labor, services, material or equipment covered by the applicable lien and claim waiver and which is asserted by Subcontractor or by a lower tier supplier, vendor, laborer, subcontractor, or other person who may have rights to assert a claim against Contractor's bond or a lien against the property.

12. Subcontractor shall indemnify, defend and hold Contractor harmless from any claims, demands, damages, expenses, losses, fines, penalties or liabilities (including but not limited to all attorney's fees incurred by Contractor and for which Contractor may be liable) related to or arising out of any alleged or actual (i) non-compliance by Subcontractor or any lower tier subcontractor with any Law governing wage, fringe or other benefit's including but not limited to reporting requirements therein, and/or (ii) non-payment of wage, fringe or other benefit payments or contributions to its or any lower tier subcontractor's employees or to a third party on the employee's behalf.

13. Owner's payment to Contractor for the Subcontractor's account is an absolute condition precedent to Contractor's obligations to make progress or final payment to the Subcontractor under this Subcontract. Subcontractor expressly agrees to bear the risk of the Owner's non-payment. Subcontractor is relying on the credit of Owner, rather than Contractor, for payment of its efforts.

14. Subcontractor, its officers, directors and owners shall act as a fiduciary for Contractor and Subcontractor's employees, lower tier subcontractors, and suppliers on the Project and all progress payments shall be considered trust funds intended to be held in trust to pay those parties all sums owing to them for work, materials, equipment, labor or other obligations of Subcontractor related to the Project, before paying itself any remaining funds. Subcontractor hereby grants Contractor a security interest in Subcontractor's accounts receivables to secure Subcontractor's obligations hereunder.

15. If it appears Subcontractor is not promptly paying its bills in this fashion, if Subcontractor assigns or otherwise factors its accounts receivables, or if Contractor has any other grounds for concern, Contractor may take such steps as it deems necessary to ensure that progress and final payments are utilized to pay such bills, including but not limited to the issuance of third party or two party checks.

16. Progress payments are advances subject to adjustment at any time for errors, overpayment, faulty or defective work or material, or Contractor's good faith determination that the remaining balance of payments may be insufficient to ensure completion of the Subcontract Work in accordance with its terms. Should the remaining unpaid Subcontract balance become insufficient to cover completion costs at any time, Subcontractor and its sureties, if any, shall promptly reimburse Contractor for such overpayment.

17. Contractor may withhold amounts otherwise due under this Subcontract, or under any other arrangement between the parties, as an offset to cover 150% of Contractor's reasonable estimate of any liability Contractor has incurred or may incur for which Subcontractor may be responsible under this Subcontract, or under any other agreement between the parties. This offset shall be subject to adjustment when the exact amounts of liability are determined, but in no event shall the amounts withheld bear interest.

18. Contractor may withhold as disputed all sums owed Subcontractor if Subcontractor or any lower tier subcontractor does not timely provide the information required under Article I.1.c of this Subcontract. In no event shall the amounts withheld bear interest.

19. Subcontractor shall notify Contractor in writing of any intention to assign the proceeds of this Subcontract prior to such assignment, and Subcontractor shall provide Contractor with the written acceptance by Assignee of the terms of this Subcontract, and of the obligations for adjustment and offset, before such assignment shall occur or be honored. It is agreed that the assignee of funds due or to become due under the Subcontract shall take such assignment subject to the trust fund obligations of Subcontractor and all other obligations of Subcontractor to Contractor, with respect not only to the Subcontractor's work under this Subcontract, but also with respect to any other Subcontract Work performed by Subcontractor for Contractor on other Projects.

J. UNIT PRICE

In the event this Subcontract contains unit price items, it is understood and agreed that any quantities mentioned are approximate only, are based upon information furnished by Owner, and are subject to change as required by the Contract Documents and as ordered and directed by Owner or Contractor. Price adjustments, if any, for variations in quantity are available to Subcontractor only if they are available to Contractor under the provisions of the Contract

Documents, and then only proportionate to any adjustment actually obtained by Contractor from the Owner.

K. CHANGES IN THE SUBCONTRACT WORK

1. Contractor shall have the right by written order, to direct changes, additions, deletions, or alterations to the Subcontract Work or the time of performance. Contractor shall have this right without notice to Subcontractor's surety, if any. Should Subcontractor claim any such order or any act by Contractor or others would cause additional costs, or if Subcontractor otherwise believes it is entitled for any reason to an adjustment in the Subcontract Price or Subcontract time, Subcontractor shall submit written notice to Contractor within seven (7) calendar days of said claim arising, and prior to commencing such work; otherwise, such claim shall be deemed waived, and Subcontractor shall have no right to maintain an action in court or arbitration to recover for extra work. In no event shall Subcontractor be entitled to a change order or an equitable adjustment unless authorized in writing by Contractor. Should the parties be unable to agree as to the value of any work to be added, deleted or altered, Subcontractor shall proceed with the work promptly, but only upon written order of Contractor, and the amount due for the disputed work shall be resolved as provided, in this Article and pursuant to Article T.

2. The value of any work added, deleted or altered from the Subcontract Work shall be determined by one or more of the following methods, or combinations thereof, as Contractor may elect: (1) mutual acceptance of a lump sum with properly itemized costs; (2) unit prices established in this Subcontract or subsequently agreed upon (unit prices shall be deemed to include an allowance for all of Subcontractor's direct or indirect costs, including, without limitation, office and shop expense, overhead, profit taxes, insurance, and bond); or (3) the actual field costs necessarily incurred in the proper performance of the work. "Actual field costs" are defined as actual wages paid for labor in the direct employ of subcontractor plus actual payroll markup to cover all overhead items; the net cost of all subcontracts, materials, supplies or equipment; third party rental charges; plus an allowance for overhead and profit as defined in paragraph K.3 below.

3. Subcontractor's markup for overhead and profit shall be limited to the allowable markups as stated in the Contract Documents. If such markups are not addressed in the Contract Documents, Subcontractor's total markup for overhead and profit on extra work properly authorized and performed shall not exceed 5% for work performed by lower tier subcontractors and 10% for work of Subcontractor. This markup for overhead and profit shall compensate Subcontractor for all costs of any kind attributable to direct and indirect delay, acceleration, or impact and for all non-craft labor, temporary construction facilities, engineering, estimating and home office costs, insurance, B&O taxes, or additional overhead because of extended time and any other cost incidental to the change in the work.

4. Contractor shall not be liable to Subcontractor for any damages or additional compensation as a consequence of delays caused by any person not a party to this Subcontract unless Contractor has first recovered the same on behalf of Subcontractor from said person, it being understood and agreed by Subcontractor that apart from such a recovery from said third party, Subcontractor's sole and exclusive remedy for delay shall be an extension of the Subcontract time.

5. Subcontractor acknowledges that, unless expressly stated otherwise within a written change order, any change in the Subcontract Price and time affected through a written change order shall constitute full payment and accord and satisfaction for all costs incurred, labor performed, material and equipment furnished, and any delay, acceleration, or loss of efficiency associated with the change in the work, as well as for any schedule extensions that might be warranted.

6. Contractor shall have the right to inspect, copy and audit the books and records of Subcontractor or any lower tier subcontractor or supplier making claim for reimbursement for actual costs in order to verify the claim accuracy and to determine if costs claimed will be allowed.

7. Throughout the course of the project, the architects/engineers may issue various revisions and/or clarifications to the work. These will typically be in one of the following forms: Architect's/Engineer's response to a Request for Information; Clarification Drawing(s) or Documents(s); Request for Proposal; or a Field Directive. The Contractor will forward to the Subcontractor the revision/clarification documents(s) that could affect their work. In the event the revision/clarification document(s) has a cost or time impact to the Subcontractor's work, the Subcontractor has seven (7) calendar days from receipt to provide written notification to the Contractor. Failure to provide the written notification within the seven (7) calendar days, or in the time frame required by the Owner, whichever is less, shall constitute a waiver of all claims for additional time or additional costs. In the event this Subcontractor fails to respond, in writing, to this notification in the time frame indicated, Contractor retains the right to determine if there is a cost and/or time impact, and the magnitude of each. Subcontractor agrees to this, and foregoes the right to claim monies or time in excess of what Contractor may have determined, even if Contractor's determination is no additional time or monetary compensation. Notwithstanding any other provision contained in the Contract Documents, or any other document, this clause shall prevail.

L. PERMITS/TAXES

1. The Subcontract Price includes, and Subcontractor accepts exclusive responsibility for securing and paying for: (1) all permits, fees and licenses necessary for the performance of the Subcontract Work; (2) all federal, state, county, municipal and other taxes, including without limitation business and occupation taxes, personal property taxes, sales taxes, use

taxes, penalties and interest, based upon labor, services, goods, equipment or other items acquired, performed, furnished or used in connection with the Subcontract Work; (3) paying any contributions, taxes or premiums, including penalties and interest, measured upon Subcontractor's payroll or required to be withheld from Subcontractor's employees; and (4) paying any pension, welfare, vacation, annuity and other benefit contributions owed in connection with labor agreements or applicable law.

2. Subcontractor shall apply for all required permits within ten (10) days of execution of this Subcontract. Subcontractor shall submit evidence of permit issuance to Contractor prior to the first payment to Subcontractor being considered due and payable.

M. EMPLOYEE-RELATED PAYMENTS

1. Subcontractor has the status of employer as defined by Industrial Insurance, the Workers' Compensation and Unemployment Compensation Acts, Social Security, and other similar laws, rules and regulations of the federal, state and local government. Subcontractor shall withhold from its payroll applicable social security taxes, workers' compensation, and unemployment compensation contributions and withholding taxes and timely pay same, and Contractor shall in no way be liable as an employer to or on account of any of the employees of Subcontractor.

2. Before final payment is made upon this Subcontract, Subcontractor shall furnish evidence satisfactory to Contractor that it has conformed and shall conform to said laws, rules and regulations. Subcontractor hereby agrees to indemnify Contractor for any and all liability arising from the Subcontract Work related to such laws.

N. INSPECTION AND DEFECTIVE WORK

1. Subcontractor shall at all times provide sufficient, safe and proper facilities in the field, at shops, or at any other place where materials or equipment for the Subcontract Work are in the course of preparation, manufacture, treatment or storage, for inspection by Contractor or Owner or their authorized agents.

2. Within twenty-four (24) hours after receiving written notice from Contractor to that effect, Subcontractor shall proceed to take down all portions of the Subcontract Work, and remove from the jobsite all materials, whether worked or unworked, which the Owner or Contractor shall condemn as unsound, defective, or in any way failing to conform to this Subcontract or the Contract Documents. Subcontractor, at its own cost and expense, shall replace the same with proper and satisfactory work and materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof. Should Subcontractor fail to timely act on Contractor's notification,

Contractor shall have the right to remedy such defective work with all associated costs to be charged against Subcontractor's account. Such action by Contractor shall not relieve Subcontractor of any other obligations stated herein.

O. JOB DAMAGE

1. Damage caused by Subcontractor to any work or to Existing Site or Building Improvements shall be reported immediately to Contractor, and Subcontractor shall be responsible for the cost of its repair. Job damage caused by Contractor to the Subcontract Work shall be reported immediately to Contractor in writing and Contractor shall be responsible for its repair.

2. Subcontractor shall promptly and adequately protect its Work in accordance with the Contract Documents and any applicable Laws. Subcontractor shall be solely responsible for any damage resulting from its failure to do so.

P. HOUSEKEEPING AND SAFETY

1. Subcontractor shall regularly and promptly, at its own expense, remove all refuse, waste and debris produced by its operation. Subcontractor shall not permit its refuse to interfere with free access to the work site. In the event Subcontractor fails to remedy these cleanup obligations after notification of violation of these requirements, refuse removal may be done by Contractor and charged against the account of Subcontractor.

2. Subcontractor shall dispose of all non-hazardous debris into dumpster or trash receptacle provided by the Contractor onsite, on a daily basis. Should Subcontractor leave empty boxes or crating on site which are subsequently used by others for waste disposal, Subcontractor will be held responsible for disposal of the boxes and their contents. Refer to Appendix 1 for additional cleaning and debris material requirements specific to the scope of work, Appendix 1 shall take precedence if any discrepancies are found between this paragraph and Appendix 1. Contractor will not be responsible for the disposal of Subcontractor's hazardous waste. Subcontractor, at its own expense, shall legally dispose of all hazardous waste materials off site.

3. Subcontractor shall provide all necessary employee training and shall manage, accumulate, transport and dispose all regulated hazardous waste generated by Subcontractor during its work in accordance with national, regional and local requirements.

4. Subcontractor shall conduct the Subcontract Work in a safe manner, shall comply with all safety measures initiated by Contractor or required by the Contract Documents, and shall comply with all Laws relating to the safety of person or property. In addition, Subcontractor shall be responsible for the training, protection and safety of its employees, for final

selection of additional safety methods and means, and for daily inspection of its work area and safety equipment. Subcontractor agrees to defend, indemnify and save Contractor, its surety, if any, and Owner harmless from and against any and all such claims, loss, damages, expense, and attorney's fees and costs, asserted against Contractor and arising out of Subcontractor's acts, omissions, fault, or negligence relating to safety of person or property, including but not limited to those based upon Contractor's State obligation (or equivalent relating to project site safety) and/or those in which vicarious liability is imposed upon Contractor for Subcontractor's acts or omissions.

5. When so ordered, Subcontractor shall stop any part of the Subcontract Work which Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken, and the Subcontractor agrees it shall not have or make any claim for damages growing out of such stoppages. Should Subcontractor fail to take such corrective measures, Contractor may attempt to remedy the condition at the cost and expense of Subcontractor and may deduct the cost thereof from any payments due or to become due Subcontractor. Failure on the part of Contractor to stop unsafe Subcontractor practices shall in no way relieve Subcontractor of its responsibility hereunder.

6. Subcontractor shall immediately report in writing to Contractor any injury to any Subcontractor or lower tier subcontractor's employee, or any property damage at the Project Site in connection with Subcontractor's or its lower tier subcontractor's activities.

Q. WARRANTY AND INDEMNITY

1. Subcontractor shall assume all warranty obligations and responsibilities of Contractor under the Contract Documents, insofar as applicable, generally or specifically, to Subcontractor's Work. Subcontractor warrants and guarantees the Work covered by this Subcontract and agrees to make good, at its own expense, any defect in materials or workmanship which may occur or develop prior to the Contractor's release from responsibility to the Owner therefor. Subcontractor further warrants the Subcontract Work and materials furnished hereunder to Contractor and Owner on the same terms, and for the same period, as Contractor warrants the work to Owner under the Contract Documents. Without limiting the preceding sentences, this warranty shall run at least one year from the Owner's final acceptance of the Project. In no event shall Subcontractor's obligation in this regard be less than the obligation to promptly correct improper or defective Subcontract Work or materials discovered within one year from the date of final acceptance of the Project by Owner.

2. Subcontractor will exercise due care and diligence in the construction of the Work to the end that the Work shall be performed strictly in accordance with this Subcontract and the Contract Documents. All construction methods utilized by

Subcontractor in executing the Work shall be methods that are standard for the construction industry in general or that produce a better quality of construction than the standard methods used in the construction industry.

3. In addition to and without limitation to all other warranties provided herein or by operation by law, Subcontractor fully, completely and unconditionally warrants and guaranties: (i) the Work against all defects for a period of one (1) year from the date of final completion (the "Guarantee Period"), and (ii) that the Work as installed, is in accordance with and fulfills the requirements of this Subcontract and the Contract Documents. In the event any of the work proves to be non-conforming or defective during the Guarantee Period, Subcontractor shall replace it together with any other adjacent Work which may be displaced or damaged by so doing, without any expense whatsoever to Contractor and Owner. If any such defect is observed within the Guarantee Period, Contractor shall give Subcontractor written notice thereof, and Subcontractor shall within 10 days of receipt of such notice, commence and diligently make or cause to be made all necessary repairs and replacements. If Subcontractor fails so to do, Contractor may cause the same to be made by a third party and charge the cost of such repair and replacement to Subcontractor, including interest thereon at the rate of 15 percent per annum from the date of each expenditure.

4. Subcontractor shall cause its material suppliers, equipment makers and its subcontractors furnishing materials, equipment or labor for the Work to be subject to the same warranties and guarantees that are required by this Article Q and Contractor and Owner shall be intended beneficiaries of such Warranties and guarantees.

5. Subcontractor agrees to provide any special warranties required under the Contract Documents. Subcontractor agrees to indemnify and hold Contractor harmless from any claims, demands, loss or damages, including attorney fees, arising or resulting from or related to any failure of Subcontractor to strictly comply with a term of this Subcontract.

6. Should any corrective work associated with improper or defective Subcontract Work be required, the original warranty shall be extended to its full duration commencing on the date when such corrective work, in Contractor's opinion, is completed.

7. Subcontractor shall further indemnify, hold harmless and defend Contractor, Contractor's surety and Owner pursuant to Appendix 3 hereto and as required elsewhere in this Subcontract. As to any claims subject to the indemnification obligations, Subcontractor agrees to make monthly status reports to Contractor or to Contractor's designee at Subcontractor's sole cost and expense. Subcontractor grants Contractor the right, at Subcontractor's expense, to replace Subcontractor's counsel or to assume the defense, with counsel of Contractor's choosing if Contractor reasonably believes Subcontractor is not adequately defending

Contractor. Upon such an occurrence, Subcontractor agrees to bear all costs of representation by Contractor's counsel.

8. Subcontractor shall remove or cause to be removed any and all liens, bond claims or retainage claims of lower tier Subcontractors, suppliers, or laborers before any action is brought to enforce the same, or within ten (10) days after written demand by Contractor, whichever first occurs. Subcontractor agrees to indemnify, defend and hold Contractor, Contractor's surety, Owner and the Project free and harmless of all liability for any and all such liens or claims, together with attorney fees and costs and expenses related thereto. Without limitation as to any such liens or claims, upon the written request of Contractor, Subcontractor shall post the cash deposit or bond provided for in any applicable statute that permits a construction lien to be "bonded off" real property. If Subcontractor fails to remove or bond off such liens or claims, all expenses, including attorney fees and costs, so incurred by Contractor in doing so, shall be immediately due from Subcontractor to Contractor and shall bear interest at twelve percent (12%) per annum.

R. FAILURE TO PERFORM

1. If for any reason Subcontractor fails to start the Subcontract Work as requested by Contractor, or at any time refuses or fails to supply sufficient properly skilled workmen, proper material of the proper quality, or fails or becomes unable in any respect to prosecute timely or satisfactorily complete the Subcontract Work, or commits any other breach of this Subcontract, it shall be deemed in material breach of this Subcontract. In such event, the Contractor without prejudice to any other rights or remedies, may do all or any portion of the following: (a) Contractor may provide any labor and material which in Contractor's opinion are necessary to prosecute and satisfactorily complete the Subcontract Work by whatever method Contractor deems expedient, including the hiring of another subcontractor or subcontractors, and deducting the cost thereof, including Contractor's overhead, administrative expenses, and profit margin thereupon, from any payment due or thereafter to become due to Subcontractor; (b) Contractor may withhold further payments to Subcontractor until the Subcontract Work is accepted by the Owner; (c) Contractor may declare the Subcontractor to be in default of the Subcontract and terminate Subcontractor's right to proceed with the Subcontract Work or any part thereof, and prosecute the remaining work as provided above. This termination shall be effective upon three (3) calendar days' notice, without any further notice required; (d) Contractor may, for the purposes of prosecuting and completing the Subcontract Work, take possession of and use without cost all material, equipment and tools belonging to or under the control of Subcontractor. In that event, Contractor shall not be liable for the cost of depreciation nor for any damage occurring during reasonable use. (e) Contractor may pay any bills Subcontractor incurred performing Subcontract Work, and write a unilateral deductive change order therefore.

2. Subcontractor hereby assigns to Contractor, as security for Subcontractor's performance hereunder, all lower tier subcontracts and all other contracts, purchase orders, equipment leases and other agreements entered into in connection with the Project, and appoints Contractor its attorney in fact to enforce said contracts according to their terms. Such assignment shall be operative only upon notice by Contractor and only with respect to those specific agreements designated by Contractor at the time of such notice, in the event of default by, or upon the termination of, the Subcontractor under this Subcontract. All lower tier subcontracts and other such agreements shall provide that the lower tier subcontractor consents to such assignment.

3. Neither the exercise nor non-exercise of Contractor's rights under this paragraph shall excuse Subcontractor from strict compliance with this Subcontract, nor prejudice Contractor's rights to recover damages for any material breach of Subcontractor or to pursue any other remedy that may be available to Contractor.

4. Subcontractor shall be liable for all expenses, including Contractor's management, supervision, and attorney's fees arising out of Subcontractor's failure to strictly comply with terms of this Subcontract and the Contract Documents. All such charges by Contractor against the account of Subcontractor shall include a markup of 15%.

5. If after termination for default under this Article R, it is determined that the Subcontractor was not in default or that the default was excusable, the rights and obligations of the parties shall be strictly governed by Article S herein and shall be the same as if the termination had been issued for the convenience of Contractor under Article S.

S. CONVENIENCE TERMINATION

Contractor may terminate this Subcontract, or a part of the Subcontract Work, without Subcontractor being at fault, for Contractor's convenience, and require Subcontractor to stop said terminated work. Such termination shall be effective upon three (3) calendar days written notice. If there has been a termination of the Contract Documents by the Owner, the Subcontractor shall be paid the amount due from Owner to Contractor for the Subcontract Work as may be provided for in the Contract Documents, less Contractor's markup, upon such payment by the Owner to the Contractor. Otherwise, Contractor shall pay Subcontractor for that work actually performed prior to termination in an amount proportionate to the Subcontract Price. In the event of such a convenience termination, Contractor shall not be liable to Subcontractor for any other costs or amounts, including prospective profits or unabsorbed overhead on Subcontract Work not performed.

T. DISPUTES

1. All claims, disputes or other matters in question shall be resolved in strict accordance with the following provisions:

a. Pass through Claims:

In the event that a claim, cause of action, dispute, or other matter in question is asserted by Subcontractor against Contractor but which Contractor, in its sole discretion, asserts is the responsibility of the Owner, the Architect, or their agents or representatives or is asserted by Owner against Contractor but which Contractor in its sole discretion, asserts is the responsibility of Subcontractor (hereinafter "pass through claim"), Subcontractor agrees that the dispute shall be resolved in accordance with any and all dispute resolution procedures in the Contract Documents and Subcontractor shall be bound to Contractor to the same extent as Contractor is bound to those procedures and to any associated rights and remedies as provided in the Contract Documents.

b. All other matters:

All other claims, causes of action, disputes or other matters in question shall be resolved by litigation or arbitration. The selection of litigation or arbitration shall be at the sole discretion of the Contractor. The exclusive forum for and venue of such litigation shall be Spokane Superior Court, Spokane County, Washington or the Court of jurisdiction where the project is located, at the sole discretion of the Contractor. If any such litigation is within the sole jurisdiction of the United States Federal Courts, then the exclusive forum for and venue of such litigation shall be with the United States District Court for the Eastern District of Washington.

2. In the event of a dispute as to the applicable dispute procedure under paragraphs 1(a)-(b), the Contractor shall have full discretion to determine the applicable procedure or exception and that decision shall be final and binding on Subcontractor.

3. As between the parties to this Subcontract, the prevailing party in any litigation, or arbitration, shall be entitled to an award of its attorney fees and costs incurred. Contractor and Subcontractor expressly grant any arbitrator the authority to award attorney fees and costs. The parties also agree that in any action to confirm the arbitration award or in any post-arbitration court proceeding, the court shall award the prevailing party its attorney fees and costs.

4. In the event of arbitration, the arbitrator shall be chosen from the AAA's List of Neutrals residing in the State of Washington. The venue and location of all arbitration hearings shall be in Spokane, Washington. The Washington State statutes of limitations, statutes of repose, and the doctrine of laches shall apply to any Arbitration proceedings. Subcontractor agrees that Contractor at its sole election, may join other parties including, without limitation, Subcontractor's surety, if any, in said arbitration and they further agree to be bound by the findings and award of such arbitrator without recourse to any court of law other than for enforcement of the arbitrator's decision. Contractor may at its

sole election, consolidate any dispute or Arbitration governed by this agreement into any other arbitration, dispute or lawsuit in which the Contractor may engage or be engaged. Any dispute over the arbitrability of any claim or the consolidation of claims and parties shall be decided by a court of competent jurisdiction, rather than by any arbitrator.

5. In the event of a pass through claim as defined in paragraph T.1(a) or other claim, cause of action, dispute or matter in question asserted by Subcontractor against Contractor but which Contractor, in its sole discretion, asserts is the responsibility of the Owner, any other subcontractor, or supplier, or other participant of the Project ("third party"), Subcontractor agrees as follows:

a. to be bound to any findings, determinations, or awards made under the dispute resolution procedures of the Contract Documents, or by an administrative agency, board, court of competent jurisdiction, or arbitration, and to any and all appeals therefrom, whether or not Subcontractor is a party to the proceedings;

b. to cooperate fully with Contractor and to furnish all documents, statements, witnesses, and other information required by Contractor if any dispute or claim involving the Subcontract Work is prosecuted or defended by Contractor, and Subcontractor is not a party to that proceeding, and Subcontractor further agrees to pay or reimburse Contractor for all expenses and costs, including reasonable attorney fees incurred in connection therewith, to the extent of Subcontractor's interest in such claim or dispute;

c. Contractor shall not be liable to Subcontractor therefore in any greater amount than Owner or third party is liable to Contractor, less any markups or costs incurred by Contractor;

d. to not take, and to suspend and stay if already undertaken, any other action or actions with respect to any claims, and to pursue no independent litigation or arbitration with respect thereto pending final determination of any dispute between Owner or third party and Contractor; and

e. at the sole option of Contractor, to prosecute any claim in the name of Contractor that Contractor contends in whole or in part is based on or arises out of any breach, action or omission of the Owner, Owner's agents or third party and to pay Contractor fifteen percent (15%) of any amount thereby recovered or collected on behalf of Subcontractor, whether through Court, arbitration proceedings, or settlement in lieu of its standard mark-up for such claims and to take full responsibility for the preparation, presentation, appeal and final disposition of such claims, and shall pay all the expenses thereof including attorney fees.

6. Written notice of any claims whatsoever by Subcontractor shall be given to Contractor the earlier of, immediately upon Subcontractor's first knowledge of the event, or within seven

(7) calendar days of becoming aware of the event for which such claim is to be made, whichever is earlier. Otherwise, such claims shall be deemed waived. Subcontractor must serve a demand for arbitration over all such claims no later than one hundred twenty (120) days after substantial completion or the Subcontractor will be barred from bringing any action (in arbitration or in court) over those claims.

7. Subcontractor agrees to reimburse Contractor for any damages, including Contractor's attorney fees incurred by Contractor, due to Subcontractor's failure to strictly adhere to any claims or dispute resolution provisions in this Subcontract, including but not limited to any pass through claims to the Owner or other third parties but which Contractor is unable to pass through because of Subcontractor's failure to adhere to such claims provisions. Contractor shall be entitled to assert its right of reimbursement acquired hereunder as a set off to any claim of Subcontractor.

U. MISCELLANEOUS

1. No modification of this Subcontract and no waiver of any rights under this Subcontract shall be valid or binding on the parties unless the same be in writing signed by both parties.

2. This Subcontract shall be considered to have been made in and shall be interpreted, to the extent permitted by law, under the laws of the State of Washington.

3. Any written notice required to be given to a party shall be hand-delivered or delivered via certified mail to the address of that party indicated above.

4. This Subcontract, as well as all other documents required hereunder including without limitation, pay applications, change orders, submittals, etc. may be executed in counterparts, and the delivery of an executed signature page via facsimile, mail, or e-mail shall have the same force and effect as the delivery of an executed original.

5. The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the balance of the provisions shall be considered reformed to reflect the intent of the parties to the greatest extent possible consistent with the law.

6. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

7. Termination shall not relieve Subcontractor from obligations in connection with work performed prior to

termination, nor shall it abrogate any provisions herein dealing with resolution of disputes.

8. Subcontractor expressly acknowledges and agrees that all of the obligations Contractor owes to Subcontractor are contained in the express written provisions of this Subcontract and that Contractor owes no implied duties or obligations to Subcontractor.

9. This Subcontract represents the final integrated understanding of the parties and shall supersede any prior proposals, offers, negotiations, revisions, unincorporated written communications or oral discussions, statements, representations or agreements.

END OF GENERAL CONDITIONS

SAMPLE

APPENDIX 1

This Appendix 1 is hereby made a part of the Subcontract between Contractor and Subcontractor. In addition to the work described in other parts of this Subcontract Agreement, the following further describes Subcontractor's scope of work:

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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 3

Project:

Subcontractor:

Indemnification

This Appendix 3 is hereby made a part of the Subcontract by and between Contractor and Subcontractor.

1. Subcontractor assumes responsibility for and agrees at the sole discretion of Contractor to defend, indemnify and hold Contractor, Contractor's surety and Owner (hereinafter "Indemnitees") harmless from any and all claims, demands, damages, expenses, losses, fines, penalties or liabilities, including loss of use, arising from, resulting in any manner directly or indirectly from or connected with or in the course of the performance of the Subcontract Work or the Subcontractor's obligations, including without limitation claims of subcontractors and suppliers contracting with Subcontractor. Subcontractor's obligation to defend, indemnify and hold Indemnitees harmless shall include, but will not be limited to, the reasonable hourly rate and expenses of Indemnitees' employees and officers spent in connection with the claim, demand fare, penalty or liability, attorney and expert fees, court costs, and all other claim-related expenses, to the fullest extent permitted by law, even though such claims may prove to be false, groundless, or fraudulent, subject only to the limitations provided below.

- (a) Subcontractor's duty to defend and indemnify shall not apply to liability for damages caused by or resulting from the sole negligence of Indemnitees, or their agents or employees.
- (b) If under the laws determined to be applicable to this paragraph, defense and indemnification of concurrent negligence is valid only to the extent of the negligence of Subcontractor, its agents or employees, then Subcontractor's duty to defend and indemnify for liability for damages caused by or resulting from the concurrent negligence of (i) Indemnitees, or their agents or employees, and (ii) Subcontractor or Subcontractor's agents or employees, shall apply only to the extent of negligence of Subcontractor or Subcontractor's agents or employees. This exception shall not apply when negligence is not a requirement of liability.

2. For the purposes of these indemnification provisions only, Subcontractor specifically and expressly waives any immunity that may be granted it under the worker's compensation laws of any state, including but not limited to, Washington State Industrial Insurance Act, Title 51 RCW; Idaho Worker's Compensation Act, Sec. 72-209; Alaska Worker's Compensation Act, Sec. 23.30.055; Montana Worker's Compensation Act, Sec. 39-71-411; California Labor Code, Sec. 3864; and Oregon Worker's Compensation Act, Sec. 656.018; provided that such waiver shall be expressly limited to Subcontractor's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under worker's compensation acts, disability benefits acts, or other employee benefits acts.

3. Subcontractor's indemnification obligations as stated herein shall extend to claims occurring after this subcontract agreement is terminated as well as while it is in force. Nothing in this Appendix 3 shall grant any third-party beneficiary rights to the Owner.

4. The partial or complete invalidity of any one or more provisions of this Appendix shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the balance of the provisions shall be considered reformed to reflect the intent of the parties to the greatest extent possible consistent with the law.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS APPENDIX WAS MUTUALLY NEGOTIATED.

Yost Gallagher Construction, LLC:

Subcontractor's Company Name

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

END OF APPENDIX 3

APPENDIX 4

Project:

Subcontractor:

Safety Requirements

This Appendix 4 is hereby made a part of the Subcontract by and between Contractor and Subcontractor.

- 1.) Safety is of primary importance on all Contractor jobsites. It is Contractor's policy not to require any laborer or mechanic employed in the performance of the contract to work in unsanitary conditions or conditions that are hazardous or dangerous to their health or safety as outlined under provisions of Title 29, Labor Chapter XIII, Bureau of Labor Standards, Department of Labor, part 1418, Safety and Health Regulations for Construction as published in the Federal Register. Contractor's Project Personnel have the authority to stop the work of any subcontractor found not in compliance with the above provisions until such time as the unsafe conditions are corrected.
- 2.) Contractor requires safety programs for this project in accordance with accident prevention programs as required by the Contract Documents and applicable federal, state and local safety regulations governing the project work. Each subcontractor is required to comply with the contract requirements, WISHA/OSHA regulations, ANSI, federal, state, regional, local, product manufacturer, industry standards, and/or any other regulating agencies safety requirements, as well as General Contractor's Accident Prevention Plan as necessary. All Subcontractor's employees are required to complete General Contractor's Safety Orientation before starting work on site.
- 3.) Subcontractor is to comply with WISHA/OSHA requirements, including providing all safety equipment required to perform the job tasks. Subcontractor is to develop an Accident Prevention Program and site specific plans consistent with WISHA/OSHA requirements.
- 4.) Subcontractor is to comply with Contractor's COVID-19 safety action plan, and recommendations for distancing and hygiene as recommended by the CDC and/or the State Health Dept(s).
- 5.) Subcontractor must take reasonable steps to ensure that it has established work rules that are designed to prevent violations of the Acts (WISHA/OSHA). To accomplish this, Subcontractor shall:
 - A. Have and implement an Accident Prevention Program which:
 - Includes its roles and responsibilities pertaining to safety;
 - Includes training and corrective action; and
 - Is tailored to the safety and health requirements of particular plants, jobsites or operations that may be Involved.
 - B. Have and implement a written site specific Safety Plan that addresses and coordinates the safety issues of all its activities at the site such as:
 - Identify anticipated hazards that will most likely be encountered in all phases of the Project; and
 - Identify the specific means that will be used to address these hazards.
 - C. Have a management commitment that confirms existence of required programs/plans, but also assures review for compliance with the Act and conformance with the Project. Also, Subcontractor shall complete a safety questionnaire attached herewith.
 - D. Make the Accident Prevention Program and all site specific safety plans available and accessible in accordance with the Act. For example, if trenching is identified as a particular phase of the project for a subcontractor, the plan must identify the specific means of protection that will be used (e.g. trench boxes,

shoring, sloping, etc.). It is not sufficient to state that the excavation codes will be followed, or that the contractor will use either trench boxes, shoring or sloping.

- E. Other considerations: In order to establish work rules that are designed to enhance safety and health and to prevent violations of the Act, Subcontractor shall:
1. Prepare agendas for job safety meetings;
 2. Require mandatory attendance of all workers at jobsite safety meetings;
 3. Promote communications;
 4. Provide a safety recognition program for employees based on actual compliance with safety rules and regulations. However, these programs may not include or be based on the rate of reported injuries; and
 5. Provide programs to encourage employees for making safety suggestions.
 6. Maintain an SDS program.
 7. Identify the jobsite person responsible for safety matters.
- 6.) Subcontractor is to submit its written site specific safety plan to Contractor prior to start of its Work. The program shall be enforced by the Subcontractor.
- 7.) Subcontractor shall designate a safety representative tasked with ensuring compliance and enforcement of safe working practices by its employees.
- 8.) Subcontractor shall maintain an SDS program for all material brought onto the project site.
- 9.) Subcontractor has reviewed the project site and has included in this Subcontract Agreement the cost associated to perform its work in a safe manner around any existing operations.
- 10.) Contractor has the authority to require the removal from the jobsite of any employee of the subcontractor for cause. Removal from the site may be for repeated failures (of two times or more) to observe safe work practices, a single blatant safety violation, or any other reason deemed significant by Contractor in its sole discretion.
- 11.) To improve the safety of the jobsite, Subcontractor shall ensure that its employees do not bring animals, including but not limited to dogs, to the job site or leave them in vehicles adjacent to the job site. Subcontractor shall, in addition, not permit its employees to maintain any means of sound amplification on the job site, including but not limited to radios, tape decks, CDs, Boom boxes or other similar devices. Employees violating these provisions shall be immediately removed from the job site at Contractor's sole discretion.
- 12.) Subcontractor acknowledges its responsibility to ensure a drug and alcohol free work place and agrees that it shall not supply personnel to Contractor's job site whose ability to work is impaired or affected in any way by drug or alcohol usage. Presence of any employee at the job site whose ability to work is impaired or in any way affected by alcohol or drug usage shall require Subcontractor to remove them from the jobsite and ensure that its employees on Contractor's job site are not under the influence of alcohol or drugs and/or that their ability to work has not been impaired or in any way affected by drug or alcohol usage. Subcontractor shall ensure that its employees shall not possess alcohol or drugs on the job site. Subcontractor agrees to comply with the requirements of Contractor's random drug screening policy which includes the right to random drug screening at Subcontractor's expense of Subcontractor's employees performing any work at the Project Site.
- 13.) The use, possession, distribution, or sale of any weapon, alcohol, marijuana, or illegal drug or controlled substance while on the Project site is strictly prohibited. Smoking and/or carrying a lighted cigarette, cigar, or pipe is prohibited at the Project Site. Employees violating these provisions shall be immediately removed from the job site at Contractor's sole discretion.

- 14.) Subcontractor acknowledges its responsibility to conduct work in a safe and professional manner, with special attention, planning and safety measures to address the adjacent occupied facilities.
- 15.) All Subcontractor employees must be properly trained, licensed, and certified for any tools, equipment (i.e. forklifts), vehicles, material handling, and work they may be involved in.
- 16.) Any costs incurred by the Contractor and/or Owner from safety and/or health violations generated by the Subcontractor will be passed on to the appropriate Subcontractor(s) involved.
- 17.) Protection of the Subcontractor's employees in any given work area is ultimately the sole responsibility of the subcontractor. The Subcontractor must provide or notify appropriate parties to provide all required safety protection needed before subcontractor work can begin in that area or remove workers from area until hazard is corrected.
- 18.) Subcontractor must provide all necessary tools, equipment, devices, wardrobe, rescue gear, materials, labor, supervision, etc. to safely perform their scope of work. (i.e. fall arrest equipment, dust masks, lanyards, etc.)
- 19.) The Subcontractor and its sub tier contractor(s) shall provide a current First Aid and CPR (American Heart Association, Red Cross, or equivalent) trained person on site at all times
- 20.) At all times, proper attire shall be worn including hard hats, foot protection, eye protection, high visibility vest, etc., and appropriate clothing for the general construction environment must be worn by all persons on the construction site.
- 21.) If any safety and/or health violation is observed by any Subcontractor or sub tier contractor it shall be reported to the site safety officer and project superintendent immediately.
- 22.) If Subcontractor is found in violation of safety requirements of any kind they must correct the hazard immediately upon notification and remove all workers from hazard until corrected.
- 23.) All persons must review and be familiar with the Contractor site-specific safety orientation before beginning work on the project. The Subcontractor is responsible for timely compliance with this requirement to prevent any delays to project schedule (i.e. sub will orient employees prior to their deployment to the project site). Subcontractor's foreman will provide employee signed orientation checklists to Safety Officer weekly.
- 24.) All persons must sign the code of safe practices acknowledgement form.
- 25.) Daily safety inspection of tools, equipment, materials, gear, work area, etc. are required to be performed by the Subcontractor and written reports included with Subcontractor's daily reports.
- 26.) Ongoing tailgate safety training must be held weekly by all Subcontractors and written verification provided to the Contractor. Written attendance rosters must be submitted no less than once a week and include names and subjects covered. Safety meeting topics shall be site specific to the current project status.
- 27.) All Subcontractor employees are required to be familiar with all job site safety requirements, emergency procedures, evacuation plans, and document training prior to entering the project site.
- 28.) Subcontractor is responsible for effectively enforcing and maintaining safety compliance for their work and work areas. Coordination with other trades is mandatory.
- 29.) The Contractor is not responsible or obligated in any way to provide the Subcontractor with any sort of items, materials, labor, supervision, equipment, enforcement, coordination, training, management, etc. in order for the Subcontractor to meet safety requirements. Any items provided by the Contractor may be provided as a convenience to the Subcontractor who assumes full responsibility for the use and proper care of any such equipment. Subcontractor will promptly return or replace equipment by the end of each work day.

- 30.) Subcontractor shall complete an accident report and immediately notify general contractor of incident. The accident report must comply with the requirements of applicable law and include remedial action to prevent similar accidents in the future.
- 31.) Subcontractor shall provide any additional documentation, training records, certifications, etc. which may be required for its scope of work.
- 32.) Safety violations, repeat offenses, neglect, and non-compliance to safety requirements are grounds for immediate employee removal from the jobsite.
- 33.) **Safety Pre-Qualifying Contract Documents:** The following documentation/items must be filed on site for every Subcontractor including lower tier Subcontractors, prior to any Subcontractor performing any work on site:
- Company Safety Manual – Copy of the subcontractor’s company safety manual.
 - JHA – Formal JHA (Job Hazard Analysis) and proof of training if required.
 - Competent Person Assignments – Competent Person Assignments as required by OSHA rules and regulations. Competent person must have authority to stop work if unsafe conditions are present.
 - Qualified Person Assignments – Qualified Person Assignments as required by OSHA rules and regulations. Qualified person must have authority to stop work if unsafe conditions are present
 - Operator Certifications – Operator certifications as required by OSHA rules and regulations, i.e., forklifts, cranes, etc.
 - First Aid/CPR – A first aid/CPR trained person with a current certification must be on site at all times
 - Site-Specific Plans – Written site-specific plans as required by OSHA rules and regulations, i.e., Controlled Access Zone Fall Protection plans, emergency action, HazCom, accident prevention plan, IIPP, Heath Illness prevention, etc.
 - MSDS – Compilation of MSDS pertaining to subcontractor’s work.
 - OSHA approved First Aid Equipment/Cabinet
 - Clean drinking water
- 34.) Subcontractor agrees to maintain a current “Subcontractor Safety Certification Checklist” on site and provide copies of same to Contractor’s Safety Officer. An electronic copy will be provided upon request.
- 35.) **Subcontractor must ensure all waste and debris is removed from the work area by the end of each day and disposed in provided waste receptacles and/or dumpsters.** Subcontractor must maintain a clean work area free of recognized hazards in accordance with OSHA 1926 and WAC 196-155 regulations. Any costs incurred by the contractor to remove debris left behind by the subcontractor will be billed back to the subcontractor.
- 36.) Any work done in an occupied trench must be in compliance with OSHA 1926 SubPart C – Excavations in federal OSHA states or WAC 196-155 Part N Excavation, Trenching, and Shoring – Construction in Washington State. A competent person must be on the site prior to and during any excavation that involves work in an occupied trench greater than 4 feet deep. Proper protection must be in place prior to any worker entering a trench 4 feet or deeper. A trench inspection must be completed and updated regularly as conditions change. Only workers who are properly trained in trenching safety will be allowed to work in a trench. Verification of compliance with all trenching and excavation safety regulations will be required on all sites. Work may be stopped if violations are found and suspended until all safety requirements are in place.

- 37.) Subcontractors are responsible for ensuring that all sub tier contractors receive a copy of these requirements before commencing work and will be responsible for compliance of all sub tier contractor employees.
- 38.) All roofing work requires a 100% tie off at any time a subcontractor is on a roof. Safety monitor systems will only be allowed in very limited circumstances and must be approved with the Contractor's Safety Director prior to use. If a safety monitor system is used, one violation of the proper safety procedures will result in a subcontractor losing the ability to use the safety monitor system for the duration of the project.

END OF APPENDIX 4

SAMPLE

APPENDIX 5

Project:

Subcontractor:

Billing Procedures

This Appendix 5 is hereby made a part of the Subcontract by and between Contractor and Subcontractor.

Required Billing Documents & Due Date:

- Pay application, conditional lien waiver, and schedule of values must be received by Yost Gallagher Construction, **no later than the 25th of the month.**
- Use the YGC pay application provided. See the Notes tab for instructions before completing.
- Each invoice must have a unique number.

Prior to first billing the following items must be received by the contractor:

- All compliance requirements including but not limited to the Certificate of Insurance and Site-Specific Safety Plan
- Signed Subcontract Agreement
- Schedule of Values (SOV) for Project Manager approval.

Prior to first progress payment:

- List of subcontractor's 2nd Tier subcontractors, suppliers and equipment rental vendors including the value of contracts or purchases (Appendix 6) received by Contractor.

Prior to remaining progress payments:

- Receipt of **unconditional** lien waivers from any previous payments from:
 1. Subcontractor
 2. Suppliers
 3. 2nd tier Subcontractors
 4. Equipment rental vendors
- **Updated** list of subcontractor's suppliers and equipment rental vendors including the value of contracts or purchases (Appendix 6) received by Contractor.

Prior to Final Retention Payment the following must be met:

- Punchlist complete
- Owner training complete
- Extra materials/attic stock complete
- Receipt of **final unconditional** lien waivers from:
 1. Suppliers
 2. 2nd tier Subcontractors
 3. Equipment rental vendors
- Operation and Maintenance Manuals provided
- Final Warranty provided

END OF APPENDIX 5

APPENDIX 6
LOWER TIER LISTING

PROJECT:

SUBCONTRACTOR/
SUPPLIER:

Please submit the following information for each Subcontractor/Supplier used on this project:

- 1) Name: _____
Address: _____
Phone: _____ Email: _____
Providing: _____
Est. Amount: _____
- 2) Name: _____
Address: _____
Phone: _____ Email: _____
Providing: _____
Est. Amount: _____
- 3) Name: _____
Address: _____
Phone: _____ Email: _____
Providing: _____
Est. Amount: _____
- 4) Name: _____
Address: _____
Phone: _____ Email: _____
Providing: _____
Est. Amount: _____
- 5) Name: _____
Address: _____
Phone: _____ Email: _____
Providing: _____
Est. Amount: _____