



Jackson Dean Construction Subcontractor Prequalification Requirements

You must return the following information with your bid proposal:

- 1) Pending Certificate of Insurance (sample attached)**
 - The certificate will be activated upon tendering of Subcontract Agreement.**
- 2) Signed copy of Subcontractors Acceptance of Supplementary Conditions (attached).**
 - Supplementary Conditions sample follows the Acceptance form**

You must be able to provide the following on request:

- 1) References from previous projects of a similar size, including contractor or owner name, contact and telephone.**



CERTIFICATE OF INSURANCE REQUIREMENTS

MINIMUM INSURANCE REQUIREMENTS (see contract document for specific project requirements which may be greater):

Table with 2 columns: Insurance Type and Amount/Limit. Includes Commercial General Liability*, Excess / Umbrella Liability Insurance, Automobile Liability*, Waiver of Subrogation Endorsement, Workers Compensation, and Employers Liability/ Stop Gap*.

*Umbrella Liability may be used to Increase these to the required limits

PRIMARY ADDITIONAL INSURED – ONGOING AND COMPLETED OPERATIONS

JACKSON DEAN CONSTRUCTION, OWNER, AND ARCHITECT (and others as specified in the contract documents) must be included as Additional Insured using additional insured endorsement CG2010 (1185) or its equivalent (additional insured endorsement must apply to both ongoing and completed operations liability coverage). This coverage must be primary and non-contributory with any other insurance carried by any of the additional insured. Endorsement(s) MUST BE ATTACHED to the certificate of insurance.

CERTIFICATE HOLDER

JACKSON DEAN CONSTRUCTION
19835 SE 248th Street
Maple Valley WA 98038

CANCELLATION WORDING

JACKSON DEAN CONSTRUCTION is to be given a minimum of 30 days written notice of cancellation or intent not to renew. The words in the cancellation clause “ENDEAVOR TO” and “BUT FAILURE TO MAIL...REPRESENTATIVES” must be crossed out.



Subcontractor Acceptance of Supplementary Conditions

On behalf of _____, I am confirming that I have read the Jackson Dean Construction Supplementary Conditions and those conditions are acceptable.

Name

Title

Date

Signed

Signed and sworn before me, _____.

A Notary Public, this _____ day of _____, 20__.

My commission expires _____, 20__.

Supplemental Conditions

1.1 The SUBCONTRACTOR is bound to the CONTRACTOR by the same terms and conditions by which the CONTRACTOR is bound to the OWNER under the MAIN CONTRACT. The CONTRACT DOCUMENTS, as defined in the MAIN CONTRACT, are incorporated herein by reference. The SUBCONTRACTOR undertakes to perform all the duties and obligations of the CONTRACTOR under the CONTRACT DOCUMENTS, insofar as said duties and obligations are related to, directly or indirectly, the Work described on Exhibit 1 of this SUBCONTRACT. The SUBCONTRACTOR will not do, or fail to do, any act, if by reason of such act or failure to act, SUBCONTRACTOR shall be in breach of the MAIN CONTRACT or cause the Contractor to be in breach of the MAIN CONTRACT. In case of conflict between the terms and conditions of this SUBCONTRACT and the MAIN CONTRACT, this SUBCONTRACT shall control.

1.2 SUBCONTRACTOR acknowledges that it was the SUBCONTRACTOR'S responsibility, prior to entering into the SUBCONTRACT, to investigate and familiarize itself with all laws, ordinances, or regulations applicable to Work under this SUBCONTRACT; with the availability and adequacy of personnel, Workmen, materials, supplies, equipment, power, utilities, fuels, etc., and, with respect to each of the foregoing, the cost and suitability thereof; with the prevailing wage scale and Working conditions; with the character and content of all of the other contracts related to the Project, including such separate prime contracts as may have been awarded by the OWNER; the character and extent of purchase orders and arrangements for supplies and materials to be furnished by the CONTRACTOR for the use of the SUBCONTRACTOR; with all options, site considerations and restrictions, lease arrangements, royalties, underground conditions, prevailing weather, and climatic conditions and history; and all other factor(s) which may affect SUBCONTRACTOR'S Work under this SUBCONTRACT. SUBCONTRACTOR hereby warrants that it has investigated all such matters and is familiar therewith to the extent that SUBCONTRACTOR, in its sole discretion, deems necessary. SUBCONTRACTOR further agrees that CONTRACTOR shall not be liable to SUBCONTRACTOR for any claim for additional payment or additional time or any claim whatsoever to the extent that such claim directly or indirectly results from SUBCONTRACTOR'S failure to investigate and familiarize itself sufficiently with the conditions under which this SUBCONTRACT is to be performed, including the foregoing but with restriction thereto, or from any misunderstanding thereof on the part of the SUBCONTRACTOR.

1.3 SUBCONTRACTOR warrants that it has satisfied itself as to the nature and location of the Work, the character, kind and quantity of material to be encountered, the character, kind and quantity of the equipment needed during the prosecution of the Work, the location, conditions (including subsurface) existing at the site and at all other locations at which its Work will be performed and other matters which can in any manner affect the Work under this SUBCONTRACT Agreement, and acknowledges that SUBCONTRACTOR has had a reasonable opportunity to examine the site, all of the MAIN CONTRACT documents and anything else sufficient to so satisfy itself.

1.4 The SUBCONTRACTOR shall designate one or more persons who shall be the authorized SUBCONTRACTOR'S representative(s) (a) on site; and (b) off site. Such authorized representative(s) shall be the only person(s) with whom CONTRACTOR shall issue instructions, orders or directions, except in an emergency. SUBCONTRACTOR represents to the CONTRACTOR that it is adequately financed to perform this Work. Whenever the word "CONTRACTOR" is used in the specifications, drawings, or documents issued, this shall mean the SUBCONTRACTOR for all areas of Work covered by the SUBCONTRACT.

1.5 SUBCONTRACTOR shall submit to the CONTRACTOR, for review and approval, a listing of all sub tier Subcontractors and suppliers, if any, to be utilized by the SUBCONTRACTOR for this project. SUBCONTRACTOR shall obtain written approval from CONTRACTOR for the use of any sub tier Subcontractors PRIOR TO the commencement of any work by the SUBCONTRACTOR or sub tier Subcontractors. Failure to get written approval for use of the sub tier Subcontractors or Suppliers does not constitute approval of the CONTRACTOR for the work to be performed by the SUBCONTRACTOR or sub tier Subcontractors or Suppliers.

2.0 INSURANCE & BONDS

2.1 **Insurance.** SUBCONTRACTOR and any lower-tier subcontractors shall at their own expense maintain in effect at all times during the performance of the work not less than the insurance limits called for in the Main Contract or the following minimum coverage and limits of insurance, whichever is greater. Insurance certificates must be received by the CONTRACTOR within 10 days of contract issuance and **must be on file at the CONTRACTOR'S office prior to entering the jobsite.**

2.1.1 **Workers Compensation and Employers Liability:** Workers Compensation Insurance as required by state and federal laws in an amount required by the laws of the state in which the work is to be performed. Prior to entering the jobsite, the SUBCONTRACTOR shall forward to the CONTRACTOR the insurance registration number issued by the state where the work is to be performed. SUBCONTRACTOR agrees to keep all premium payments current. All labor as provided by the SUBCONTRACTOR is deemed to be employed by the SUBCONTRACTOR. Employer's Liability Insurance with limits of liability of not less than: \$1,000,000 each accident; \$1,000,000 disease policy limit; \$1,000,000 disease - each employee. A waiver of subrogation shall be provided in favor of the CONTRACTOR and OWNER.

2.1.2 **Commercial General and Auto Liability Insurance:** The SUBCONTRACTOR shall effect, maintain and require any lower-tier subcontractors to effect and maintain during the life of this Agreement, and as otherwise provided, the following types of coverage and limits:

Commercial General Liability with limits of at least:

\$1,000,000 Each Occurrence
\$1,000,000 Personal Injury
\$2,000,000 Products/ Completed Operations
\$2,000,000 General Aggregate

Coverage to include Premises & Operations Liability; Independent Contractors; Contractual Liability; Products / Completed Operations; Stop Gap Liability; Explosion/Underground and Collapse Liability; Aggregate Limit Per Project Endorsement; Transfer of Rights of Recovery Endorsement (Waiver of Subrogation Endorsement); Cross Liability or Severability of Insurance Clause and acceptable additional insured endorsements (see 2.3).

Auto Liability covering all owned, non-owned and hired auto's with limits of at least: \$1,000,000 Each Accident.

Coverage must be written on an occurrence form with an insurance company having an A.M. Best's rating of A VII or better. The SUBCONTRACTOR must maintain Products/Completed Operations Liability for a period of two (2) years after final payment.

2.1.3 **Excess Liability Insurance** to provide excess general, auto and employer's liability coverage with a limit of at least \$1,000,000 or per Main Contract requirements.

2.1.4 **Aircraft and/or Watercraft Liability Insurance** for both owned and non-owned crafts with limits approved by CONTRACTOR if an exposure exists. Additional Insurance Endorsements and Waiver of Subrogation Endorsements must be provided in favor of both the CONTRACTOR and OWNER.

2.1.5 **Professional Liability Insurance** covering the performance of any professional services including but not limited to architectural or engineering services of any kind with minimum limits of not less than \$1,000,000 to be maintained for two (2) years after final payment.

2.1.6 **If required by CONTRACTOR OR OWNER, Pollution Liability Insurance** covering the project site with a minimum limit of \$1,000,000 per occurrence. Coverage may be written on a claims made basis.

2.2 **Notice of Cancellation.** All policies of SUBCONTRACTOR and its lower tier subcontractors shall contain an endorsement providing that written notice shall be given to the CERTIFICATE HOLDER at least (30) days prior to termination, cancellation or reduction of coverage in the policy. Before termination, cancellation or reduction SUBCONTRACTOR or any lower-tier subcontractors shall provide new policies that will meet the above requirements and the requirements of the Main Contract. Failure to provide new policies shall be cause to invoke the provisions of paragraph 6.1 by the CONTRACTOR.

Certificate Holder is: Jackson Dean Construction, Inc.
19835 SE 248th St

Supplemental Conditions

Maple Valley, WA 98038
Fax# 206-832-3400

2.3 Additional Insured Endorsements. The CONTRACTOR, OWNER, OWNER'S Architect, Engineer, Designer, Lender and any other individual or entity required by the Main Contract are to be named additional insured's using additional insured endorsement CG2010 (1185) or its equivalent (additional insured endorsement must apply to both ongoing and completed operations liability coverage through statute). This coverage must and shall be primary and non-contributory with any other insurance carried by any of the additional insured.

2.4 Insurance Certificates. Prior to execution of this subcontract and prior to entering the jobsite, SUBCONTRACTOR and its lower-tier subcontracts shall provide insurance certificates signed by an authorized representative of the insurers showing the required coverage's and limits. The additional insured endorsement and Transfer of Rights of Recovery endorsement must be attached to the insurance certificate. SUBCONTRACTOR agrees to furnish certified copies of their insurance policy (ies) at the request of the CONTRACTOR.

2.5 Bond Requirements. If required by OWNER or CONTRACTOR, SUBCONTRACTOR shall furnish to CONTRACTOR a performance and payment bond or bonds acceptable to CONTRACTOR in an amount equal to the Subcontract Price (Form 12.7). SUBCONTRACTOR shall furnish such bond(s) within ten (10) days of the date of this Agreement. SUBCONTRACTOR'S failure to provide the bond(s) within ten (10) days by an acceptable surety will put the SUBCONTRACTOR in material breach of this contract. The premium charged for such bond(s) shall be a reimbursable expense and may be included in SUBCONTRACTOR'S first payment request. Retainage bonding is addressed at paragraphs 3.3.3 and 3.4.3 herein.

3.0 PAYMENT

3.1 Conditions Precedent to Payment to SUBCONTRACTOR. In addition to the requirements listed in paragraphs 3.2 and 3.3, SUBCONTRACTOR'S right to receive payment for Work performed under this Subcontract is expressly conditioned upon the following:

3.1.1 Submission of Required Documentation. SUBCONTRACTOR agrees, as a condition precedent to its right to any payments hereunder, to provide the CONTRACTOR with: a breakdown of the Subcontract amount (schedule of values), acceptable to CONTRACTOR; all required certificates of insurance as stated in paragraph 2.4 in a form acceptable to the CONTRACTOR; SUBCONTRACTOR'S Site Specific Safety Plan as described in Exhibit 2A; and performance and payment bonds, if required, on forms acceptable to the CONTRACTOR; and to identify to CONTRACTOR, in writing, all material suppliers and second tier Subcontractors and, as to each, the value of the material to be supplied or Work to be performed on the project.

3.1.2 Approval and Payment by OWNER. OWNER'S approval of the Work performed by SUBCONTRACTOR and receipt of funds from OWNER for Work performed by SUBCONTRACTOR are conditions precedent to CONTRACTOR'S obligation to pay SUBCONTRACTOR for Work performed by SUBCONTRACTOR, regardless of the reason for OWNER'S nonpayment. Accordingly, SUBCONTRACTOR shall not be paid by CONTRACTOR unless and until CONTRACTOR has been paid by OWNER for the amounts covered by SUBCONTRACTOR'S application for payment. If these conditions precedent are satisfied, SUBCONTRACTOR will be paid within twenty (20) days after payment from OWNER is received by CONTRACTOR. If OWNER fails for any reason whatsoever to make full payment to CONTRACTOR within a reasonable time after completion and final acceptance of the Project or if the Main Contract is terminated for any reason prior to completion and final acceptance of the Project due to no fault of the SUBCONTRACTOR, then SUBCONTRACTOR'S rights and remedies against CONTRACTOR shall be limited as follows:

3.1.2.1 CONTRACTOR shall, at its own expense, assert, commence and prosecute an action to recover payment from OWNER by means of a lien foreclosure action or other action at CONTRACTOR'S sole discretion. CONTRACTOR shall include in the action for SUBCONTRACTOR'S benefit all amounts reasonably claimed by SUBCONTRACTOR for the Work. Any such claim by SUBCONTRACTOR shall be treated as a pass-through claim.

3.1.2.2 SUBCONTRACTOR waives, in perpetuity, any claim against CONTRACTOR and will take no action against the CONTRACTOR for any unpaid subcontract balance, and will dismiss any action commenced in violation thereof, provided, however, that SUBCONTRACTOR shall not be barred from joining in any action filed by CONTRACTOR against OWNER.

3.2 Progress Payments. Progress payments shall be considered advances and are subject to adjustment at any time prior to final disbursement for errors, overpayment, claims, or disputes which CONTRACTOR has against SUBCONTRACTOR on CONTRACTOR'S good faith determination that the unpaid balance of the Subcontract Price may be insufficient to ensure completion of the Work or to pay lien, retention or bond claims. In the event the CONTRACTOR determines that the balance of the Subcontract Price is insufficient to ensure completion of the Work, to remedy any deficiency or to pay any lien or bond claims, the SUBCONTRACTOR shall, on demand by the CONTRACTOR, pay the amount of the insufficiency.

3.2.1 Form and Timing of Progress Payment Request. Progress payment requests shall be made on CONTRACTOR'S Application for Payment Form (Form 12.1). To receive consideration for inclusion in invoicing in the following month, CONTRACTOR must receive SUBCONTRACTOR'S application for payment no later than the 20th day of the month. Billing shall reflect Work through the end of the month. Invoices shall reflect the actual man-hours and material spent since the previous pay request. No faxed copies will be accepted - NO EXCEPTIONS. Billing for any and all change orders must be done separately.

3.2.2 Waivers and Lien/Claim Releases. In addition to Form 12.1, SUBCONTRACTOR shall complete the conditional release section of Form 12.2 (for the current payment request), as well as the unconditional release for the previous month (for the amounts paid under the previous progress payment requests). SUBCONTRACTOR shall also furnish with each application for payment conditional and unconditional release forms for each lower-tier subcontractor and/or supplier for whom payment is requested during that month. The lien/claim waivers must be notarized. The receipt of completed Form 12.2(s) is a condition precedent to any consideration or payment of SUBCONTRACTOR'S Application for Payment.

3.2.2.1 Each progress payment as submitted by the SUBCONTRACTOR must be accompanied by a Lien/Claim waiver with releases (notarized form 12.2) executed by each sub-subcontractor and / or material supplier for whom payment is released with your monthly pay request. SUBCONTRACTOR shall also comply with paragraph 11.12. Joint checks or direct payment on behalf of the SUBCONTRACTOR will be issued to the SUBCONTRACTOR'S sub-tiers and/or suppliers at the sole discretion of CONTRACTOR.

3.2.3 Retention. Unless a Retainage Bond is procured by SUBCONTRACTOR at no cost to the Project, OWNER or CONTRACTOR, all progress payments shall be subject to withholding of a 5% retention that is not payable until Final Payment is due except as provided by Paragraph 3.4.3 herein and in compliance with applicable law. SUBCONTRACTOR shall incorporate into all its agreements with lower-tier subcontractors a provision requiring retention of five percent (5%) of each progress payment and shall retain such amounts until there is full compliance with Section 3.4 herein. SUBCONTRACTOR shall be solely responsible for ensuring its lower-tier subcontractors timely and fully comply with Section 3.4 and all statutory requirements.

3.2.4 Amount of Payment. Progress payments for Work performed under this Subcontract shall be a percentage of the Subcontract Price equal to the percentage of Work completed by SUBCONTRACTOR (as determined by the agreed-upon Schedule of Values), less the sum of previous payments and retention and assuming CONTRACTOR has been paid by the OWNER for Work performed by SUBCONTRACTOR.

3.3 Payment for Unit Priced Work. If the terms of this SUBCONTRACT or any Change Order issued hereunder provide for the payment of Work performed on a unit price basis, the unit of measure for payment shall be one for which certified verification of weights or quantities can be furnished by the SUBCONTRACTOR at the time of delivery or readily mutually agreed upon in writing. In the event the parties fail to agree on the actual quantity performed, CONTRACTOR shall have the right to measure the quantity of Work in place and make final settlement on the basis of such measurement. SUBCONTRACTOR'S failure to provide certified verification when it would have been possible to maintain the same or contemporaneously produce such verification shall waive any SUBCONTRACTOR claims in excess of CONTRACTOR'S foregoing measurement.

3.4 Final Payment. If the Work covered by this SUBCONTRACT has been fully accepted by OWNER, payment shall be made to SUBCONTRACTOR as provided herein.

3.4.1 Final Billing. SUBCONTRACTOR shall submit a final billing for the Work within thirty (30) days after completion of SUBCONTRACTOR'S Work and compliance with all aspects of this Subcontract (including but not limited to paragraph 11.12) or the Project, whichever is earlier. Any billings for additional costs in excess of the Subcontract price shall not be considered and shall be deemed waived and barred if submitted after the foregoing 30-day time period has expired. Nothing in this section shall be deemed to alter any other notice provision imposed on SUBCONTRACTOR by this Subcontract or the Main Contract.

Supplemental Conditions

3.4.2 Final Release and Guarantee. Upon completion of the Work, the final retention amount due to SUBCONTRACTOR shall not be paid unless SUBCONTRACTOR has furnished an/a fully executed final release form (12.3) and guaranties/warranties for itself and all subcontractors and suppliers in forms acceptable to CONTRACTOR and OWNER. SUBCONTRACTOR shall also provide, prior to final disbursement, proof satisfactory to CONTRACTOR of payment by SUBCONTRACTOR of all quarterly payroll and other taxes applicable to the Work, any union benefits due that could adversely impact the Project; and proof of compliance will all applicable prevailing wage project requirements. Upon final payment, SUBCONTRACTOR shall complete and mail the original Form 12.3.1 (Unconditional Final Lien Release).

3.4.3 Release of Retention. In accordance with applicable law, and assuming SUBCONTRACTOR has not provided a Retainage Bond (the cost of which is NOT an allowable or reimbursable Project Cost), release of retention may be granted after receipt of written notice from SUBCONTRACTOR that all of its work on the Project is fully complete and CONTRACTOR has received payment of such retention from OWNER. CONTRACTOR'S obligation to release retention to SUBCONTRACTOR shall be subject to not only the foregoing, but also: (a) satisfactory completion and acceptance of all of the requesting SUBCONTRACTOR'S work by the OWNER, CONTRACTOR and ARCHITECT (including punch list work), sign-off on all inspections associated with such work, receipt of any approvals from the authority having jurisdiction to the extent required for any associated work, and receipt and acceptance of all required close-out documents specific to the individual scope of work, including certificates of insurance for completed operations (if required) and final lien releases as well as other conditions or requirement of SUBCONTRACTOR required by its Subcontract; (b) proof by SUBCONTRACTOR that there are no liens/stop notices and no unpaid claims or amounts that would provide the basis for a lien or claim against the Project; (c) that there are no claims for liens/stop notices against retention or any payment bond; (d) the SUBCONTRACTOR submitting evidence of compliance with workers' compensation legislation, including any payments or contributions required; and (e) all deficiencies in the work of the SUBCONTRACTOR have been remedied. If any lien or claim exists, CONTRACTOR shall not be obligated to release any retention unless SUBCONTRACTOR agrees to CONTRACTOR'S withholding of sufficient funds from the retention to cover such claims or liens or SUBCONTRACTOR obtains a release of lien bond for all such claims for liens. Release of retention shall not represent a waiver of defects in the work nor affect the warranty obligations of SUBCONTRACTOR.

4.0 CHANGES

4.1 Change Orders. CONTRACTOR may, without notice to SUBCONTRACTOR'S surety, if any, and without invalidating this Subcontract, order in writing extra Work or make changes by altering, adding to or deducting from the Work and the Subcontract Price and/or time shall be adjusted as mutually agreed. The SUBCONTRACTOR shall have no claims for additional payment for extras or changes unless the extra or changed Work, and any time extension requested in connection with the change, have been approved in writing by both CONTRACTOR and SUBCONTRACTOR prior to the extra or changed Work being performed. This provision shall be strictly enforced. SUBCONTRACTOR shall ensure that all its personnel involved in the Work and all lower-tier subcontractors and suppliers understand and are bound to the procedures and requirements of this Paragraph.

4.2 Notice of Change or Claim. In case of any dispute regarding the existence of or the adjustment for any change to SUBCONTRACTOR'S Work, SUBCONTRACTOR shall give CONTRACTOR written notice of its intent to make claim whether for an extension of time or adjustment in Subcontract Price. The notice shall describe with particularity and detail: (a) the occurrence(s) giving rise to the SUBCONTRACTOR'S claim; (b) the portion(s) of the SUBCONTRACTOR'S Work known to be affected, and the cost and time ramifications thereof, including all backup and information necessary for CONTRACTOR to independently evaluate the claim. Such notice shall be given in writing within five (5) calendar days of the initial occurrence(s) upon which the SUBCONTRACTOR'S claim is based, or a shorter period if such period is set forth in the Main Contract. The giving and content of notices required by this Section shall be an absolute condition precedent to the SUBCONTRACTOR'S right to make any claim, whether against OWNER, CONTRACTOR, or otherwise and any failure shall waive and be a complete bar to any claim or other adjustment to this Subcontract.

4.3 Delays. In the event SUBCONTRACTOR'S performance of the Work is delayed or interfered with by acts of the OWNER, CONTRACTOR or other subcontractors, SUBCONTRACTOR may request an extension of time as provided in Paragraph 4.2, but shall not be entitled to any damages or additional compensation as a consequence of such delays or interference except to the extent that CONTRACTOR, on behalf of SUBCONTRACTOR, recovers from OWNER under the Main Contract for such delays either in a settlement or a dispute resolution proceeding.

5.0 DISPUTES

5.1 Duty to Proceed. In the event of any claim or dispute by and between SUBCONTRACTOR and any other party, SUBCONTRACTOR shall continue to perform its Work in accordance with the Contract Documents and the Project Schedule.

5.2 Notice. SUBCONTRACTOR shall give CONTRACTOR written notice of its intent to make claim whether for an extension of time or an adjustment in the Subcontract Price. The notice shall describe with particularity and detail: (a) the occurrence(s) giving rise to SUBCONTRACTOR'S claim; and (b) the portion(s) of SUBCONTRACTOR'S Work known to be affected and the cost and time ramifications thereof, including all backup and information necessary for CONTRACTOR to independently evaluate the claim. Such notice shall be given in writing within five (5) calendar days of the occurrence(s) upon which SUBCONTRACTOR'S claim is based. In addition, within fifteen (15) calendar days of the initial occurrence(s) upon which SUBCONTRACTOR'S claim is based, Subcontract shall give CONTRACTOR written notice of the recovery plan which SUBCONTRACTOR believes will mitigate and/or eliminate the impact of the occurrence(s) on SUBCONTRACTOR'S Work. The giving and content of the notices required by this Section shall be an absolute condition precedent to SUBCONTRACTOR'S right to make claim, whether against OWNER or CONTRACTOR and failure to strictly comply with the notice, content or timing requirements of this Section shall waive and be a complete bar to any claim or other adjustment to this Subcontract.

5.3 Statement of Claim. Prior to the time required by the Main Contract in the case of a SUBCONTRACTOR claim against OWNER pursuant to Section 5.4 or no later than thirty (30) calendar days after providing notice pursuant to 4.2 or 5.2, SUBCONTRACTOR shall provide CONTRACTOR with a further detailed Statement of its Claim(s) ("Statement"). This Statement shall include: (a) a specific detailed identification of all factual information upon which SUBCONTRACTOR'S claim entitlement is based; (b) the Contract Document(s), specific provision(s) and legal authorities upon which SUBCONTRACTOR'S claim entitlement is based; (c) all calculations upon which the quantum of the SUBCONTRACTOR'S claim is based; (d) all documents pertinent to both entitlement and quantum of SUBCONTRACTOR'S claim; (e) identification of all person(s) having knowledge of facts upon which SUBCONTRACTOR'S claim entitlement is based and the method and manner by which the claim quantum is calculated; and (f) certification under oath by an officer of a principal of SUBCONTRACTOR that, "The claim is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Subcontract adjustment for which SUBCONTRACTOR believes CONTRACTOR or OWNER is liable." Submission of this Statement containing all of the foregoing elements within the time periods set out in this section shall be an absolute condition precedent to SUBCONTRACTOR'S right to prosecute any claim. If the Statement is not provided by SUBCONTRACTOR in strict compliance with the content and time periods set out in this Section, SUBCONTRACTOR'S Claim(s) shall be deemed to have been released, barred and otherwise waived.

5.4 Claims or Disputes Relating to OWNER. In the case of any claim by SUBCONTRACTOR resulting from the acts or omissions of OWNER, SUBCONTRACTOR agrees to be bound to CONTRACTOR to the same extent that CONTRACTOR is bound to OWNER by both the terms of the Main Contract and by any and all decisions or determinations made thereunder or thereto. If the Main Contract contains a "Disputes Clause," such clause is incorporated herein by reference as though fully set forth and SUBCONTRACTOR consents to consolidation and joinder.

5.4.1 As to any claims asserted by SUBCONTRACTOR for or on account of acts or omissions of OWNER or its representative(s), or any claims made by OWNER for which SUBCONTRACTOR is alleged to be responsible, which claims are not disposed of by agreement, SUBCONTRACTOR shall prosecute or defend such claims in CONTRACTOR'S name, in accordance with said Disputes Clause, if applicable. CONTRACTOR and SUBCONTRACTOR shall cooperate in prosecuting or defending all claims relating to OWNER. SUBCONTRACTOR shall have full responsibility for preparation and presentation of such claims and shall bear all expenses thereof, including attorneys' and consultants' fees and all other associated costs. In any such claim (s) against the OWNER, the SUBCONTRACTOR shall include an amount for CONTRACTOR'S administrative overhead. This amount (CONTRACTOR'S administrative overhead) shall be equal to fifteen percent (15%) of the total amount(s) of the claim(s) and CONTRACTOR shall be entitled to receive fifteen percent (15%) of any amount(s) awarded to SUBCONTRACTOR for such claim(s).

5.4.2 SUBCONTRACTOR shall be bound by the procedure and final determinations as specified in any such Disputes Clause, and shall not take any other action or actions with respect to any such claims and shall pursue no independent litigation or arbitration with respect thereto. SUBCONTRACTOR shall not be entitled to receive any greater amount from CONTRACTOR than CONTRACTOR receives from the OWNER on account of SUBCONTRACTOR'S claim(s), less any markups or costs incurred by CONTRACTOR and to which CONTRACTOR is otherwise entitled, and SUBCONTRACTOR shall accept such amount, if any, received by CONTRACTOR from OWNER as a full accord and satisfaction of all such claims for or on account of acts or omissions of OWNER or its representatives.

Supplemental Conditions

5.4.3 If SUBCONTRACTOR fails to prosecute claims relating to acts or omissions of OWNER or its representative(s) through the procedures of such Disputes Clause, it shall waive and be barred from asserting such claims against CONTRACTOR in all other proceedings. If SUBCONTRACTOR fails to prosecute claims resulting from acts or omissions of OWNER or OWNER'S Representative(s) or fails to defend claims by OWNER relating to SUBCONTRACTOR'S Work, CONTRACTOR shall have the right to prosecute such claims at SUBCONTRACTOR'S sole expense.

5.5 **Claims or Disputes Relating to CONTRACTOR.** Any claim, controversy or dispute arising under or relating to this Subcontract which is not controlled or determined by Section 5.4 of this Subcontract, shall be settled by litigation unless CONTRACTOR and SUBCONTRACTOR mutually agree to arbitration, which in such case shall be administered under the American Arbitration Association's Construction Industry Arbitration Rules if no other procedure is agreed upon.

5.5.1 **Choice of Law.** This Subcontract and all questions regarding the execution, validity and performance of this Subcontract shall be interpreted, construed and enforced in accordance with the laws of the State of Washington, except for its conflict of laws provisions.

5.5.2 **Choice of Forum.** The venue and forum for any arbitration proceeding and/or any litigation which relates in any way to, or arises in any way from, this Subcontract, shall be King County, Washington. The SUBCONTRACTOR agrees to submit itself to the exclusive jurisdiction of the courts of the State of Washington, United States of America.

5.6 **Waiver.** SUBCONTRACTOR'S failure to give the required notices of claims and/or failure to meet required deadlines and contents set forth in Articles 4 and 5 shall constitute an absolute and unconditional waiver, bar and release of such claims.

5.7 **Attorney Fees and Costs.** In the event that arbitration and/or litigation is instituted to enforce or contest the provisions of this SUBCONTRACT or adjudicate any question arising under this SUBCONTRACT, the prevailing party shall be entitled to all of its attorney fees and all costs of such arbitration and/or litigation, including, without limitation, consultant and expert witness fees and expenses in addition to costs otherwise taxable by law.

6.0 TERMINATION.

6.1 **Termination for Default/Takeover.** SUBCONTRACTOR shall start, perform, and complete the Work to the satisfaction of CONTRACTOR and OWNER. In the event the SUBCONTRACTOR fails to comply, or becomes unable to comply, or with reasonable probability (as determined solely by the CONTRACTOR) will become unable to comply with any of the provisions of this SUBCONTRACT; or in the event SUBCONTRACTOR fails at any time to supply a sufficient number of properly skilled Workers or sufficient supplies, materials, machines, equipment or plant of proper quality or fails in any respect to prosecute the Work with promptness and diligence or causes by any action or omission a stoppage, delay in, or interference with the Work of the CONTRACTOR or other subcontractors of the CONTRACTOR; or in the event SUBCONTRACTOR abandons its Work, or any part thereof; and such failure, inability, or deficiency (as determined solely by CONTRACTOR), is not corrected within five (5) calendar days after written demand by the CONTRACTOR to the SUBCONTRACTOR, CONTRACTOR may, in addition to and without prejudice to any other right or remedy, declare the SUBCONTRACTOR to be in default of this SUBCONTRACT and may take any or all of the following actions: (1) terminate the SUBCONTRACT pursuant to this paragraph, (2) take over and complete the performance of this Subcontract deducting all amounts incurred from the balance of the Subcontract Price, all at the expense of the SUBCONTRACTOR, or (3) without taking over the Work, immediately and without notice to SUBCONTRACTOR, furnish the necessary materials and labor through itself or others, to remedy the situation, deducting all costs incurred from the balance of the Subcontract Price, all at the expense of the SUBCONTRACTOR. In the event the Subcontract Price is insufficient, the SUBCONTRACTOR shall pay the amount of the deficiency to the CONTRACTOR on demand.

6.1.1 The parties hereby further agree that any of the following shall, at the option of the CONTRACTOR, constitute inability to comply with the provisions of this subcontract for the purposes of this paragraph 6.1: (a) the filing of a petition in bankruptcy or a petition for the appointment of a receiver by or against SUBCONTRACTOR; or (b) the insolvency of the SUBCONTRACTOR or his inability to meet his debts; or (c) the establishment of a receivership or any committee of creditors involving SUBCONTRACTOR'S business or assets or the making of an assignment for the benefit of SUBCONTRACTOR'S creditors; or (d) the failure or refusal of SUBCONTRACTOR to respond by written reply, to or by satisfactory compliance with, any written order or notice duly issued by CONTRACTOR.

6.1.2 CONTRACTOR shall have access to and may take possession of the SUBCONTRACTOR'S materials, supplies, machines, tools, equipment, and plant which may be located at the site of the Work or in route to the site, as may be necessary to prosecute the Work hereunder to completion, all without liability on the part of the CONTRACTOR for any damages, wear or tear, depreciation, theft, action of the elements, acts of god, fire, flood, vandalism or any other injury or damage to such materials, tools and equipment.

6.1.3 On any action by the CONTRACTOR pursuant to Paragraph 6.1, SUBCONTRACTOR shall not be entitled to further payment on this Subcontract until the Work has been completed and accepted by the OWNER and payment therefor has been received by the CONTRACTOR from the OWNER. In the event the unpaid balance due and paid by OWNER related to SUBCONTRACTOR'S Work exceeds the expense incurred by CONTRACTOR, the difference shall be paid to SUBCONTRACTOR; but if such expense exceeds the balance due, SUBCONTRACTOR agrees to promptly pay the difference to the CONTRACTOR as hereinafter provided, and the CONTRACTOR shall have a lien upon all materials, tools, equipment and appliances of SUBCONTRACTOR to secure the payment thereof. With respect to the expenses incurred by CONTRACTOR pursuant to this Article, it is hereby agreed that the costs and expenses chargeable to SUBCONTRACTOR shall include, without restriction thereto and without limitation, the cost of materials, labor, subcontracts, purchase orders, transportation, equipment and expense thereon, supplies, services, insurance, taxes, appliances, tools, utilities, power used or consumed, supervision, administration, job overhead, travel, attorney fees, legal and accounting fees and expenses, CONTRACTOR'S general overhead as allocated to the Work and other costs and expenses incurred or sustained by CONTRACTOR, plus 10% of the actual cost of the Work performed as set forth in statements duly rendered, as well as the amount of claims against the SUBCONTRACTOR paid by CONTRACTOR or for which it deems itself liable, less any amounts still owing hereunder. SUBCONTRACTOR agrees to pay the CONTRACTOR the full amount of such excess, if any, together with interest thereon at the rate of 12% per annum until paid and in the case of any default on the part of the SUBCONTRACTOR, the CONTRACTOR may exercise any other right or remedy available to it. In no instance will any action whatsoever taken by CONTRACTOR pursuant to this SUBCONTRACT relieve or mitigate SUBCONTRACTOR'S full and absolute responsibility for any and all of the SUBCONTRACTOR'S obligation with respect to the character and time of performance, discharge of claims, guarantees, warranties and other obligations under this SUBCONTRACT.

6.1.4 In the event that a trier of fact determines that a termination by CONTRACTOR of the Subcontract is wrongful, then said termination shall be converted to a termination of convenience for purposes of determining damages. In such case, SUBCONTRACTOR'S damages shall be determined by and limited to those damages available pursuant to paragraph 6.2.

6.2 **Termination for Convenience.** CONTRACTOR may terminate performance of Work under this Subcontract in whole or in part. The CONTRACTOR shall terminate by delivering to the SUBCONTRACTOR a Notice of Termination specifying the extent of termination and the effective date.

6.2.1 After receipt of a Notice of Termination, and except as directed by the CONTRACTOR, the SUBCONTRACTOR shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this paragraph: (1) Stop Work as specified in the notice; (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the subcontract, if any; (3) Terminate all subcontracts to the extent they relate to the Work terminated; (4) as directed by CONTRACTOR, transfer title and deliver to CONTRACTOR (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated; and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, would be required and/or furnished to CONTRACTOR; and (5) complete performance of the Work not terminated.

6.2.2 In the event of such termination for convenience, the maximum payment the SUBCONTRACTOR shall be entitled to receive is the total Subcontract Price reduced by (1) the amount of progress payments previously made and (2) the price of Work terminated.

7.0 SUBMITTALS

7.1 **Submittal Requirements.** SUBCONTRACTOR shall promptly furnish drawings, specifications, product data, final selection of materials, and all other submittals to CONTRACTOR, as required by CONTRACTOR, in a timely manner so as not to delay the project.

7.2 **Drawings.** SUBCONTRACTOR shall submit one reproducible (sepia) and five blue-line copies of each shop drawing or more if required by the Main Contract. SUBCONTRACTOR shall

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submit five copies of any catalog data, brochures, materials lists, samples, colors and all other required submittals.

7.3 Reference. All submittals shall be properly referenced to contract specifications sections, plans and details of the Main Contract.

7.4 Substitutions. Any proposed substitutions or modifications must be clear and specifically set forth in writing by SUBCONTRACTOR on the "Substitution Request Form" (Form 12.6) referencing the applicable specification section and contain approval signatures of CONTRACTOR and Architect. Any substitution not so requested and approved shall not be allowed.

7.5 Titles. SUBCONTRACTOR shall conspicuously mark all drawings "For Approval" or "For Construction" as appropriate. Any changes from an approved submittal must be brought to the attention of CONTRACTOR in writing and resubmitted for approval. All approved "For Construction" shop drawings must be kept on site.

7.6 SUBCONTRACTOR Liability. Neither approval of submittals nor failure of CONTRACTOR, OWNER, or Architect to note errors, omissions or discrepancies on the submittals shall relieve SUBCONTRACTOR from full compliance with the requirements of this Subcontract and the Main Contract. It is SUBCONTRACTOR'S responsibility to field verify and ensure that all Work will fit, align with, and be compatible with the Work of other trades on the Project.

7.7 Timing. All submittals must be approved by Architect and CONTRACTOR prior to ordering and fabrication.

7.8 Coordination. SUBCONTRACTOR shall be responsible for coordination with all other trades to ensure proper interface between all systems.

7.9 M. E. P. Coordination Drawing. HVAC, plumbing, piping, fire protection, electrical and control system subcontractors shall coordinate their Work on a set of reproducible mylars (or CAD disk). Mechanical SUBCONTRACTOR shall produce backgrounds (or receive them from Architect/Engineer) and locate his Work after consulting with the other trades. Fire protection subcontractor shall locate next after consultation, then plumbing, then piping, then electrical, then control, then ceiling system contractor. All shall be coordinated with Architectural and structural plans. These coordination drawing sets are in addition to standard required shop drawings. Mechanical SUBCONTRACTOR is responsible to set up coordination meetings with prior notice given to the CONTRACTOR.

8.0 SCHEDULE

8.1 Schedule Requirements. SUBCONTRACTOR shall begin the Work immediately upon the dates provided in the Main Contract or when given notice to proceed. SUBCONTRACTOR agrees to complete its Work, at such times as will enable the CONTRACTOR to fully comply with the Main Contract with the OWNER. SUBCONTRACTOR and all lower-tier subcontractors and suppliers shall perform the Work in strict accordance with the schedule for the Project, and all modifications to that schedule. SUBCONTRACTOR has based the contract amount on the scheduling information contained herein and agrees to be bound by the project schedule and all of its updates which will be developed after input from major subcontractors. The SUBCONTRACTOR has (5) five Working days after receipt of the revised schedule to notify the contractor in writing of any issues or concerns with the new schedule. If no response is made within this time allotment then SUBCONTRACTOR waives any right to bring a claim regarding cost or potential impact.

8.2 Time is of the Essence. Time is of the essence of this Subcontract and SUBCONTRACTOR fully understands its contractual commitment to proceed with diligence and to supply sufficient supervision labor, material, and equipment to maintain the schedule provided by the CONTRACTOR. If behind schedule on the Work, SUBCONTRACTOR shall use sufficient over time and weekend labor to regain the lost time and put subcontractors Work back on schedule per the direction of CONTRACTOR. If SUBCONTRACTOR does not proceed in a manner that will enable it to satisfactorily complete the Work within the schedule, CONTRACTOR; may invoke the termination and/or takeover provisions of this Agreement.

8.3 Damages. If the Main Contract contains a provision establishing liquidated damages, SUBCONTRACTOR agrees to be bound by such provision and shall be responsible to pay all such damages incurred due to SUBCONTRACTOR'S delay. Collection of such liquidated damages from SUBCONTRACTOR shall be in addition to all other contractual and legal rights and remedies afforded to CONTRACTOR. If SUBCONTRACTOR's failure to maintain progress per the schedule results in claims for damages from other affected subcontractors, SUBCONTRACTOR shall also be liable for those damages.

9.0 SAFETY

9.1 Safety Requirements. SUBCONTRACTOR agrees to assume all duties, obligations and responsibilities relating to the health, safety and welfare of persons performing Work for or at the direction of the SUBCONTRACTOR. SUBCONTRACTOR agrees to comply fully with all federal, state and local safety laws, ordinances and regulations applicable to the Work including but not limited to the Occupational Safety and Health Act and the any applicable Industrial Safety and Health Act(s). Any citations issued against CONTRACTOR for actions of SUBCONTRACTOR'S employees shall be deducted from the Subcontract Price.

9.2 Hazardous Material. SUBCONTRACTOR is to comply with the Hazard Communication Standard contained in WAC 296-62-054 through -05425, or, if the Work is not performed in Washington, the state codes and regulations applicable in the state in which the Work is performed. In addition, SUBCONTRACTOR is to have on file with CONTRACTOR before starting the Work all Material Safety Data Sheets for any hazardous substances covered under the referenced regulations. At the start of the Work, SUBCONTRACTOR shall inform CONTRACTOR'S project superintendent of any intent by SUBCONTRACTOR to use any hazardous substance at the Project and provide continuing updates of any new hazardous substances brought to the Project during construction. SUBCONTRACTOR'S failure to comply may result in fines or damages being assessed to it.

9.3 Injury & Illness Prevention Plan. SUBCONTRACTOR must have on file with the CONTRACTOR an "Injury and Illness Prevention Plan - Site Specific Plan" approved by the respective state in which the project is located. SUBCONTRACTOR must adhere to the plan requirements, the CONTRACTOR'S plan and all applicable laws and regulations, whichever is more restrictive. CONTRACTOR'S "IIPP" is on file at the CONTRACTOR'S main office and jobsite and is available for inspection during normal business hours. SUBCONTRACTOR'S representative must attend all scheduled weekly jobsite safety meetings. SUBCONTRACTOR shall notify CONTRACTOR'S superintendent and/or Project Manager within (24) hours of any accidents involving personal injury or property damage.

9.4 Protective Gear. Hard-hats, safety glasses, and Work boots are mandatory and must be worn at all times by all site employees and visitors.

9.5 Drug & Alcohol Testing. SUBCONTRACTOR shall comply with CONTRACTOR'S Alcohol and Drug Testing Policy and procedure, which is on file at the CONTRACTOR'S main office and the jobsite office and is available upon request.

10.0 LABOR

10.1 Labor Agreements. SUBCONTRACTOR shall, on Work covered by this Subcontract, comply with and observe all terms and provisions of any collective bargaining agreement, including interim agreements, executed by CONTRACTOR or on CONTRACTOR'S behalf, with specific reference to the terms and provisions of any such agreement regarding: The assignment of Work or the settlement of jurisdictional disputes; The adjustment of any other disputes or grievances; and The making of payments into or under health and welfare or other fringe benefit funds or plans to the extent that the terms and provisions of such agreements can legally be applied to the Work.

10.2 Subcontractors Clause. SUBCONTRACTOR agrees that in the event the CONTRACTOR is a party to a labor agreement incorporating a subcontractor clause, SUBCONTRACTOR shall be so bound and such clause or conditions are incorporated or made a part of this Agreement. Further, SUBCONTRACTOR shall employ its Workers in accordance with wage rates, terms and conditions required of the CONTRACTOR for like Workers.

10.3 Labor Disputes. In the event of a labor dispute, regardless of the parties to the dispute or the presence of pickets or observers on the Project site, SUBCONTRACTOR shall proceed with the Work without delay or slowdown and take whatever action is necessary to ensure that the Work is done on schedule. In the event a labor dispute occurs and for that reason SUBCONTRACTOR is unable to perform in a timely manner, CONTRACTOR may, on twenty-four (24) hour written notice: (a) hire another subcontractor to complete the Work; and/or (b) complete the Work with its own

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forces. CONTRACTOR shall determine whether SUBCONTRACTOR is unable to perform in a timely manner. SUBCONTRACTOR shall indemnify and hold harmless CONTRACTOR for any losses that may occur as a result of a labor disturbance or dispute. SUBCONTRACTOR shall be responsible for all costs related to such termination and/or takeover as outlined in Article 6.0.

10.4 Prevailing Wage. SUBCONTRACTOR shall comply with any and all federal, state, local and OWNER (if any) instituted prevailing wage laws and rates applicable to the Work.

10.5 Replacement of Personnel. SUBCONTRACTOR agrees to remove from the Project, on demand, any of its employees or employees of lower-tier subcontractors who CONTRACTOR and/or OWNER believe are unsatisfactory.

10.6 Equal Opportunity Employer. SUBCONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex, age, or the presence of any sensory, mental or physical handicap. SUBCONTRACTOR agrees to comply with all applicable federal, state, and local laws, ordinances, orders, and regulations regarding equal opportunity employment and non-discrimination. SUBCONTRACTOR shall take such affirmative action as is necessary to ensure that the requirements of this Paragraph are met. SUBCONTRACTOR shall comply with all ADA requirements as applicable to SUBCONTRACTOR'S scope of Work.

10.7 Immigration and Naturalization Compliance. SUBCONTRACTOR understands and agrees that SUBCONTRACTOR shall be solely and exclusively responsible for ensuring that, pursuant to applicable law and before commencing work, each and every person who SUBCONTRACTOR employs, retains or otherwise permits to render services under this CONTRACT has provided SUBCONTRACTOR with (i) a fully completed and signed Immigration and Naturalization Service (INS) Form I-9 and (ii) documentation that is sufficient to establish his or her identity and eligibility to work in the United States. Upon CONTRACTOR'S request, SUBCONTRACTOR shall promptly provide CONTRACTOR with true and accurate copies of the above-referenced forms and/or documents. SUBCONTRACTOR shall indemnify, defend and hold harmless CONTRACTOR from and against any and all costs, including attorneys' fees incurred in defense, and/or liabilities that arise from or otherwise relate to any claim, charge or assertion that any person who SUBCONTRACTOR has employed, retained or otherwise permitted to render services under this CONTRACT does not lawfully reside in the United States, is not lawfully authorized to work in the United States and/or is otherwise not in full and complete compliance with all applicable immigration laws.

11.0 FIELD OPERATIONS

11.1 Project Meetings. When Project meetings are held, SUBCONTRACTOR shall be required to have a qualified representative including the SUBCONTRACTOR'S Project Manager and superintendent attend those meetings. Failure to attend when requested shall result in reduction of progress payment amounts by 1% of the amount requested.

11.2 Permits, Licenses, Inspection, Fees. SUBCONTRACTOR is responsible to obtain, and assume cost of, all required permits, licenses, inspections and fees necessary to perform its contract Work in all aspects. SUBCONTRACTOR is responsible to post in the CONTRACTOR'S jobsite office copies of all necessary permits.

11.3 Verification of Conditions. SUBCONTRACTOR is required to verify substrate and installation conditions to insure that they are ready to receive subcontractors Work. SUBCONTRACTOR is responsible to field verify all necessary measurements prior to fabrication or ordering. Starting Work, fabrication or placement of material orders constitutes acceptance of the conditions and measurements as satisfactory by SUBCONTRACTOR.

11.4 Weather. SUBCONTRACTOR represents that it has taken into account in the preparation of its Subcontract amount and by execution of this Subcontract has taken into consideration normal weather patterns including its standard deviation and its effects on SUBCONTRACTOR'S ability to perform the Work during the reasonably expected time frame & duration, for this type of project. SUBCONTRACTOR has included all costs for weather effects including but not limited to equipment selection and use, weather and temporary protection, clean-up, dewatering, temporary heat and lighting, hot/cold weather operations, shifted Work hours, and safety concerns.

11.5 Protection of Work. SUBCONTRACTOR shall be responsible during installation of the Work for protecting adjacent surfaces and all Work installed by others. Any damage caused by SUBCONTRACTOR shall be reported immediately to CONTRACTOR. Any damage done by SUBCONTRACTOR to other Work or adjacent surfaces shall be replaced or repaired at SUBCONTRACTOR'S sole cost and expense. SUBCONTRACTOR shall immediately report to CONTRACTOR any damage caused to the Work by SUBCONTRACTOR.

11.6 Temporary Construction. SUBCONTRACTOR is responsible for temporary partitions and barricade sequencing of the SUBCONTRACTOR'S Work, and shall provide for the complete safety of the public and all construction personnel and shall create a minimum of interference with the normal flow of pedestrians and vehicles either on or off the site. This shall include, among other things, flagmen or traffic plates across trenches to provide uninterrupted traffic flow. SUBCONTRACTOR'S proposed method of sequencing, barricading, traffic control, temporary partitions, etc. shall be submitted to and have prior approval of the CONTRACTOR.

11.7 Material/Equipment. Materials delivered by or for SUBCONTRACTOR shall meet all Main Contract requirements.

11.7.1 SUBCONTRACTOR is responsible for and shall bear the risk of loss or damage to any of SUBCONTRACTOR'S materials during transit, delivery and unloading, job site storage, and job site handling and relocation, until installed in place by SUBCONTRACTOR and accepted by OWNER, provided, however, that SUBCONTRACTOR shall not bear any loss to materials due to the sole negligence of CONTRACTOR and/or OWNER.

11.7.2 Materials delivered by or for SUBCONTRACTOR and intended to be incorporated into construction of the Work shall remain on the job site and title of the property will pass to OWNER upon payment for those materials. Although title may previously have passed to OWNER under the preceding provisions, SUBCONTRACTOR shall remain custodian of the materials and be responsible for and bear the risk of loss or damage until the Work into which the materials were incorporated is accepted by OWNER. SUBCONTRACTOR may repossess any surplus materials that exceed quantities required by the Main Contract but only at the completion of the Work.

11.7.3 SUBCONTRACTOR shall furnish all equipment, tools, transportation and other facilities necessary to do the Work. All scaffolding, apparatus, ways, Works, machinery, and physical plant brought to the Project by SUBCONTRACTOR shall remain SUBCONTRACTOR'S property. In the event CONTRACTOR takes over the Work, CONTRACTOR shall be entitled to use the scaffolding, apparatus, ways, Works, machinery and physical plant without cost or liability for depreciation or damage by use and without prejudice to CONTRACTOR'S other rights or remedies for any damage or loss sustained by reason of SUBCONTRACTOR'S inability to perform.

11.7.4 Materials condemned by CONTRACTOR, Architect, or OWNER as failing to conform to the requirements of the Main Contract, whether Worked or not, shall upon notice from CONTRACTOR, be immediately removed by SUBCONTRACTOR at SUBCONTRACTOR'S sole cost and expense. If SUBCONTRACTOR fails to remove the condemned materials within a reasonable time, CONTRACTOR may do so at SUBCONTRACTOR'S sole cost and expense. Failure of CONTRACTOR to immediately condemn any Work or materials as installed shall not in any way waive CONTRACTOR'S right to later object to the Work or materials.

11.7.5 All SUBCONTRACTOR'S deliveries shall be coordinated with the CONTRACTOR'S project Superintendent. The SUBCONTRACTOR shall have a representative on site to accept all material deliveries. If the SUBCONTRACTOR does not have someone on site for deliveries CONTRACTOR will unload and SUBCONTRACTOR shall hold CONTRACTOR harmless notwithstanding any reason including gross negligence.

11.8 Hoisting. SUBCONTRACTOR shall be responsible for the furnishing of any and all hoisting equipment necessary to the fulfillment of obligations arising under this Subcontract and for the furnishing of all personnel necessary to operate such hoisting equipment. SUBCONTRACTOR may be allowed the use of any hoisting equipment located on the construction site by CONTRACTOR if in CONTRACTOR'S sole judgment such use would not otherwise disrupt construction. If SUBCONTRACTOR is allowed use of hoisting equipment furnished by CONTRACTOR, SUBCONTRACTOR shall reimburse CONTRACTOR at a rate equal to that which CONTRACTOR is reimbursed or obligated to pay for the use of the equipment as applicable. SUBCONTRACTOR shall be required to furnish all necessary personnel required for the operation of hoisting equipment furnished by CONTRACTOR for any period of time the hoist equipment is being used for SUBCONTRACTOR'S benefit. Such personnel shall not be considered agents or employees of CONTRACTOR.

11.9 Parking & Storage. The parking of equipment, material storage, construction and tradesmen vehicle parking at any permanent facility shall be under the supervision of the CONTRACTOR but at the SUBCONTRACTOR'S expense. Any markings on exposed concrete slabs shall be corrected by the SUBCONTRACTOR at its expense.

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11.10 Remedial Work. Cutting, patching, repairing and any other remedial Work that becomes necessary as a result of SUBCONTRACTOR'S Work shall be either performed by or paid for by the SUBCONTRACTOR whose Work necessitated such repairs. If in the opinion of the CONTRACTOR this repair is not performed timely and/or adequately, after SUBCONTRACTOR has been given reasonable notice, it shall be remedied at the SUBCONTRACTOR'S expense.

11.11 Clean-Up. SUBCONTRACTOR shall provide continuous cleanup of its materials, debris, and operations on the Project. Any cleanup caused by SUBCONTRACTOR'S failure to comply with this Paragraph shall be done at SUBCONTRACTOR'S cost and expense. CONTRACTOR will supervise a cleanup crew for undefinable debris and SUBCONTRACTOR is required to contribute personnel to this crew based on percentage of relative manpower of the project to ensure that the project site is clean, orderly and safe at all times.

11.12 As-Builts. SUBCONTRACTOR shall continually update as-built drawings throughout job progress and shall submit three copies of final as-built drawings, and operation or maintenance manuals or information at least ten (10) days prior to scheduled completion of the Project. As an absolute condition precedent to each progress payment, SUBCONTRACTOR must update the Contractor as-builts in the jobsite office. In addition to other provisions of this Subcontract regarding final payment, SUBCONTRACTOR'S final payment will be withheld until the requirements of this Paragraph are met.

11.13 Guarantees & Warranties. SUBCONTRACTOR agrees to guarantee and warrant the Work to the extent and for the period of one year or as required by the Main Contract whichever is greater and shall accomplish all required corrections, replacements, and other Work at no cost to CONTRACTOR or OWNER. The warranty period commences upon final acceptance by the OWNER of the Project. SUBCONTRACTOR agrees to submit written warranties ten (10) calendar days before scheduled completion of the Work. SUBCONTRACTOR'S progress or final payments shall be withheld until these requirements are met.

12.0 GENERAL CONDITIONS

12.1 Laws & Regulations. SUBCONTRACTOR shall be bound by all laws, government regulations, applicable building codes, and orders, as well as all provisions of the Main Contract in any way applicable to the Project or the Work.

12.2 Complete Agreement. This Subcontract supersedes all verbal and other written understandings, including any inconsistencies between this Subcontract and SUBCONTRACTOR'S proposal(s). This Subcontract constitutes a complete and final understanding between the CONTRACTOR and SUBCONTRACTOR regarding the Project.

12.3 Modifications. No modification of this Subcontract unless in the form of an Addendum or change order and no waiver of any rights under this Subcontract shall be valid or binding on the parties unless the modification is in writing and executed by CONTRACTOR and SUBCONTRACTOR. Failure of CONTRACTOR to insist on strict performance of this Subcontract or to exercise any options conferred herein shall not be construed as a waiver of any provision of this Subcontract. SUBCONTRACTOR is at all times an independent contractor under this Subcontract. SUBCONTRACTOR has the status of an employer as defined by the Industrial Insurance, Workers' Compensation, Unemployment Compensation, and Social Security Acts and any other acts of federal, state, or local governments. SUBCONTRACTOR shall withhold from its payroll and pay the applicable Social Security taxes, Workers' Compensation and Unemployment Compensation contributions, applicable union benefits and any other withholding taxes. SUBCONTRACTOR shall accrue and pay all additional taxes or assessments, employee benefits, union benefits, and other obligations based upon SUBCONTRACTOR'S payroll. CONTRACTOR shall in no way be liable as an employer to or on account of any of SUBCONTRACTOR'S employees.

12.4 Third Party Beneficiaries. Nothing in this Subcontract shall be construed or interpreted to give any rights or benefits to anyone other than CONTRACTOR and SUBCONTRACTOR.

12.5 Assignment. SUBCONTRACTOR agrees not to assign or sublet any portion of this Subcontract, including warranties, or to assign proceeds from this Subcontract without CONTRACTOR'S prior written consent. SUBCONTRACTOR hereby consents to assign this Subcontract and all of its subcontracts with lower-tier subcontractors and suppliers to CONTRACTOR in the event that CONTRACTOR takes over the Work as provided in Article 6 and to execute all documents necessary to effect such an assignment. In connection with this obligation to assign its subcontracts, SUBCONTRACTOR shall, upon request, provide CONTRACTOR with the names, addresses and telephone numbers of all its lower-tier subcontracts and suppliers so that CONTRACTOR may provide notice to all Subcontractors of the assignment. SUBCONTRACTOR shall ensure that no provision in its lower-tier subcontracts prohibits assignment to CONTRACTOR.

12.6 Lien Rights. When required of the CONTRACTOR, the lien of any construction mortgage placed for the purposes of financing the work under this subcontract shall be and at all times remain, superior to the statutory or other lien rights of the SUBCONTRACT.

12.7 Notices. SUBCONTRACTOR shall give CONTRACTOR all applicable notices in the same manner, form, and time as are required by the Main Contract and this Subcontract. All correspondence by SUBCONTRACTOR to CONTRACTOR shall be sent to CONTRACTOR'S Main office. SUBCONTRACTOR'S failure to provide notice in accordance with the Main Contract shall limit and/or bar SUBCONTRACT in the same manner as failure to provide such notice limits and/or bars CONTRACTOR under the terms of the Main Contract.

12.8 Headings. All paragraph headings in this Subcontract are for convenience and reference only and shall not affect any construction or interpretation of this Subcontract.

12.9 Severability. If any term, condition or provision of this Subcontract or the application thereof to any Project or circumstances is determined to be invalid or unenforceable to any extent, the remaining provisions of this Subcontract shall not be affected but shall instead remain valid and fully enforceable to the maximum extent possible. In addition, a new clause shall be deemed substituted which meets the intent of the original term, condition or provision as closely as possible but is valid and enforceable.

13.0 INDEMNIFICATION

13.1 Indemnification. SUBCONTRACTOR agrees to defend, indemnify and hold harmless CONTRACTOR, OWNER, its agents and employees, from and against any claim, cost, damage, loss, expense or liability (including attorney's fees), attributable to SUBCONTRACTOR'S performance or nonperformance pursuant to this Subcontract and/or for bodily injury, sickness, disease or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from or occurring in connection with the performance of the Work by SUBCONTRACTOR, its employees or agents, its lower-tier subcontractors, or their agents or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder, provided, however, that SUBCONTRACTOR'S indemnity obligation hereunder shall not arise if such injury, sickness, disease, death, damage or destruction is caused by the sole negligence of CONTRACTOR and, provided further, that in the event of the concurrent negligence of the CONTRACTOR, the amount of such indemnification, except for attorney fees and other costs, shall be limited to an amount equal to the percentage of fault of SUBCONTRACTOR, its agents, employees or lower-tier subcontractors. The SUBCONTRACTOR'S obligations hereunder shall not be limited by the provisions of any Workers' Compensation or similar Act and SUBCONTRACTOR hereby waives any immunity to suit under applicable Workers' Compensation Law. In agreeing to so defend, indemnify and save harmless CONTRACTOR, SUBCONTRACTOR specifically and expressly waives any immunity it might otherwise have pursuant to or under any industrial insurance act, and assumes liability on account of any claim, suit or action made or brought against CONTRACTOR, its officers, agents or employees for the death or injury to persons or property involving SUBCONTRACTOR its employees, agents and representatives, arising out of and in connection with or incidental to the SUBCONTRACTOR'S performance of the Subcontract, from any cause whatsoever. CONTRACTOR AND SUBCONTRACTOR EXPRESSLY AGREE THAT EACH HAS READ AND REVIEWED THIS SECTION ENTITLED INDEMNIFICATION, THAT THIS SECTION HAS BEEN THE SUBJECT OF NEGOTIATION BETWEEN THE PARTIES, AND THAT SUBCONTRACTOR AGREES TO BE BOUND BY THE TERMS THEREOF.

13.2 SUBCONTRACTOR shall hold harmless, pay the defense costs, and indemnify CONTRACTOR from and against any and all suits, claims, actions, liabilities, losses, or harm whatsoever, including reasonable attorneys' fees and expenses arising out of or incurred in connection with successfully establishing the right to indemnification hereunder.

13.3 SUBCONTRACTOR and CONTRACTOR agree that the indemnifications set forth in this Section 13.0 shall survive and shall be enforceable beyond the termination or completion of this SUBCONTRACT.