

1. OBLIGATIONS AND RESPONSIBILITIES.

The Subcontractor will assume toward the Contractor all obligations and responsibilities which the Contractor has assumed toward the Owner under the Main Contract. In case of conflict between the terms of the obligations and the responsibilities of the parties to this Subcontract and the Main Contract, this Subcontract shall control. The Subcontractor agrees not to assign or subcontract a substantial portion of the performance of this Subcontract without the prior written consent of the Contractor.

2. DRAWINGS.

The Subcontractor will furnish drawings, specifications and final selection of materials and other specified items in the quantities required by the Main Contract for approval by Owner and Owner's agent so as not to delay progress of work.

3. SCHEDULE AND LIQUIDATED DAMAGES.

- (a) Contractor shall give Subcontractor advance notice of anticipated starting date for Subcontract work. Subcontractor shall start work on the date named by the Contractor, and shall complete the several portions and the whole of the work at such times as will enable the Contractor to fully comply with the Main Contract. Subcontractor shall cooperate with Contractor and other subcontractors. The Subcontractor will be bound by any provisions in the Main Contract for liquidated damages, and shall pay such damages for any delay to the extent caused by Subcontractor.
- (b) In addition to any such sums that Subcontractor shall be required to pay to Contractor by reason of reimbursements of liquidated damages payable to Owner, should Subcontractor fail to complete its work in a timely manner or otherwise delay the progress of the work, Subcontractor shall pay actual costs as may be incurred by Contractor (including any additional financing costs) by reason of the delay.
- (c) Subcontractor will deliver material and perform and complete all work according to Contractor's project schedule. The Subcontractor shall coordinate all material deliveries and work with Contractor's project superintendent.
- (d) The schedule is based upon durations as discussed during precontract negotiations, and revised and updated schedules are frequently circulated for planning purposes. These schedules do not set a precedent as to the start date. The actual date of commencing job site operations may vary; this does not excuse the Subcontractor from performing per durations shown.

4. PAYMENTS.

- (a) Subcontractor shall submit an itemized schedule of values equal to the Subcontract amount for approval by the Contractor prior to any payments for the work. The schedule of values may be revised during the course of the work by the Contractor if, in the Contractor's good faith determination, the remaining balance of payments is insufficient to insure the completion of the subcontract work in accordance with its terms, or to pay lien, retention, or bond claims.
- (b) The Subcontractor shall submit to the Contractor "Application for Payment", at the Contractor's business office, and properly executed, by the twenty-fourth (24th) of the month to enable the Contractor to timely apply for and obtain payment from the Owner. Subcontractor acknowledges receipt and utilization of Contractor's form titles (Exhibit C - 1/6) "Subcontractor's Application for Payment". Payments will be made, if and when paid by Owner, ten (10) days after payment has been received by Contractor. Subcontractor shall pay its own sub-subcontractors and suppliers all sums owed them within ten (10) days of receipt from or on behalf of Contractor.

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- (c) Contractor shall withhold retainage from the Subcontractor at the rate of ten percent (10.0%), unless the projects retainage is set by state statute, together with such further adjustments as may apply by virtue of Section 4(d) below. Payment for retainage shall be made within ten (10) days after receipt of retainage payment from Owner to Contractor. The Contractor's obligation to release retainage to the Subcontractor shall be subject to proof that there are no unpaid claims which would provide the basis of a lien against the premises, retainage or payment bond, or subject to (1) withholding of sufficient funds, or (2) furnishing of an adequate and sufficient payment and performance bond.
- (d) Progress payments for work performed under this agreement shall be deemed advances, and will equal the value of the work done by the Subcontractor at the agreed price, less the sum of previous payments and less a retained percentage as provided in Section 4(c) above. However, if the Subcontractor is indebted to the Contractor or anyone else for labor, fringes, taxes, supplies, materials, equipment, rental or proper charges against the work covered by this Subcontract Agreement, the amount of the indebtedness may be deducted by the Contractor. Contractor may from time to time require and Subcontractor shall promptly provide a statement in writing setting forth what amounts, if any, of the performance of the Subcontract, and the Contractor may withhold from any payment, partial or final, otherwise due under this Subcontract, such sums as the Contractor reasonably may determine are necessary to secure and protect the Contractor or the Owner from claims or liens that may be asserted by said third parties, or to correct for errors or overpayments.
- (e) If the contract between Owner and Contractor permits payment for materials delivered to the job site, or to satisfactory storage facilities, Subcontractor may invoice for materials so delivered and receive payment to the extent Contractor is paid. Subcontractor shall be responsible for material as described in Section 10, Materials.
- (f) Notwithstanding the above, it is expressly agreed that payment by Owner to Contractor shall be a condition precedent to Contractor's payment to Subcontractor of any progress or final payments.

5. WAIVER OF LIEN AND CLAIMS.

Subcontractor agrees that all payments paid to Subcontractor by Contractor via any financial instrument whatsoever shall become effective as, "an unconditional lien claim waiver", and once the financial instrument has been properly endorsed and paid by the bank upon which it was drawn, shall become effective to release pro tanto any and all claims and rights of lien which the Subcontractor has or may have on the property identified in the, "Main Contract", for labor, services, equipment, rented or supplied, materials furnished and any/all claims unconditionally for the dollar amount specified by the amount of the payment. It is furthermore agreed that Contractor reserves the right to require Subcontractor to furnish additional lien claim waivers to Contractor for Subcontractor's own work which have been identified in the body of this Subcontract as Exhibits, "C-1/6", "C-2/6", "C-5/6", and "C-6/6". Subcontractor shall, with each months pay request, provide Contractor with a lien and claim release for its own work and a contractor's form (Exhibit C-3/6) from each sub-subcontractor and/or material supplier (those who have furnished to the project labor and/or materials in excess of \$1,000.00) covering labor and/or materials in place on the project for that month. The form of the lien and claim release is attached. Receipt of fully executed lien releases consistent with this Section is a condition of payment.

6. IDENTIFICATION OF MAJOR SUBCONTRACTORS AND SUPPLIERS.

Subcontractor shall, within ten (10) days of execution of this Contract, provide Contractor with contractor's form (Exhibit B) a list of sub-subcontractors and suppliers who will furnish to the project labor, equipment and/or material with a value of \$1,000.00 or greater, and shall not subsequently change them without Contractor's prior approval. This list shall include sub-subcontractor's and supplier's name, address, telephone number and identify whether labor only, equipment only, materials only, or labor, equipment and materials, or any combination there of, will be furnished. This identification obligation shall be a continuing one and, in the event of a change in this information, Subcontractor shall advise Contractor in writing.

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7. **CHANGE ORDERS.**

The Contractor may, 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 shall be adjusted as agreed. All such work shall be executed under the conditions of this Subcontract and the Main Contract, except that any claims for extension of time must be agreed upon at the time of ordering the change. The Subcontractor shall make no claims for extras unless the same shall be agreed upon in writing by the Contractor's Project Manager prior to the performance of the extra work. Payment for same shall be made within the ten (10) days of receipt of payment from Owner to Contractor. In case of any disputes over the adjustment of the cost, Subcontractor shall proceed with the work and the dispute shall be resolved in accordance with the procedures set forth in the Main Contract to the extent that the Contractor is bound by such procedures, otherwise by the procedures set forth in Section 28. Subcontractor acknowledges that, unless expressly stated otherwise within a written change order, any change in the contract price and time effected through a written change order shall constitute full payment and accord and satisfaction for all cost incurred, labor performed, material and equipment furnished, and any delay, acceleration, or loss of efficiency associated with the change in the work.

8. **SUBCONTRACTOR EMPLOYER.**

Subcontractor has the status of an employer as defined by the Industrial Insurance, Workmen's Compensation Act, Social Security, and other similar acts of the federal, state and local Governments. Subcontractor will withhold from its payroll the applicable Social Security taxes, Workmen's Compensation, Unemployment Compensation contributions and withholding taxes and pay the same. The Contractor shall in no way be liable as an employer to or on account of any of the employees of the Subcontractor. Before final payment is made upon this Subcontract, Subcontractor shall furnish satisfactory evidence to the Contractor that he has conformed to the laws, rules and regulations, and the Subcontractor agrees to indemnify the Contractor for any and all liability under such laws arising from the work performed under this Subcontract Agreement.

9. **PERMITS, TAXES, TEMPORARY FUNCTIONS.**

Subcontractor shall secure and pay for all permits, fees and licenses necessary for the performance of the Subcontract. Subcontractor shall pay any and all federal, state and municipal taxes, including sales taxes, if any, for which the Subcontractor may be liable in carrying out the Subcontract. Subcontractor shall be responsible for all temporary functions associated with its work, including but not limited to, lighting, wiring, protection, hoisting, scaffolding, rigging, flagman, drinking water, storage, ventilation and heat.

10. **MATERIALS.**

Materials delivered by or for the Subcontractor and intended to be incorporated into the construction shall remain on the job site and shall become the property of the Owner upon delivery; but the Subcontractor may repossess any surplus remaining at the completion of a lump sum contract. All scaffolding, apparatus, ways, works, machinery, and plants brought upon the premises by the Subcontractor shall remain its property. In case of inability to perform and the work is completed by the Contractor, the Contractor, shall be entitled to use the scaffolding, apparatus, ways, works, machinery, and plants 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 the inability. It shall be the Subcontractor's responsibility to unload, store, and protect its materials. The Subcontractor shall bear the risk of loss, and shall protect its material against loss until actually incorporated into the work and accepted, even though title may previously have passed to the Owner under the preceding provisions.

11. **TAKEOVER.**

- (a) If in the opinion of the Contractor, Subcontractor shall at any time: (1) refuse or fail to provide a sufficient number of properly skilled workmen or a sufficient quantity of suitable materials or adequate equipment; (2) fail to diligently prosecute the work in the order and sequence directed and/or according to then current Contractor's schedule; (3) cause, by any act or omission, the stoppage or delay of or interference with the work of Contractor or of any other builder or subcontractor including, but not limited to, acts or omissions arising out of or relating to any picketing, strikes or other labor conditions; (4) fail to correct or replace any damaged or defective work or materials; (5) fail to comply with all safety obligations imposed by the law and this Subcontract; (6) fail to comply with all provisions of the Subcontract or the Main Contract Documents; (7) be adjudged bankrupt, or make a general assignment for the benefit of its creditors; (8) have a receiver appointed; (9) become insolvent or a debtor in reorganization proceedings, or (10) refuses or fails to make prompt payment to lower tier subcontractors or suppliers of labor, materials, or services, then Contractor shall have the rights described in the remainder of this Section 11.

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- (b) After giving Subcontractor forty-eight (48) hours written notice transmitted by facsimile or otherwise, unless the condition specified in the notice shall have been eliminated within such forty-eight (48) hours, Contractor, at its option and in addition to and without prejudice to any other rights afforded by this Contract or law and without notice to the sureties, may do any or all of the following: (1) take such steps as are necessary to overcome the condition, in which case the Subcontractor shall be liable to Contractor for the cost thereof; (2) terminate the Subcontract for Subcontractor default; or (3) seek specific performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor and/or Owner.
- (c) In the event of termination for default, Contractor may, at its option, do any or all of the following: (1) enter on the premises and take possession, for the purpose of completing the work, of all materials and equipment of Subcontractor; (2) require Subcontractor to assign to Contractor any or all subcontracts and purchase orders involving the Project; or (3) either itself or through other complete the work by whatever method Contractor may deem expedient.
- (d) In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the work shall be fully completed and accepted by Owner. At such time, if the unpaid balance of the price to be paid shall exceed the expenses incurred by Contractor (including Contractor's reasonable overhead, profit, and attorneys' fees), the excess shall be paid by Contractor to Subcontractor. If the amount due Contractor shall exceed the unpaid balance, the Subcontractor shall pay Contractor the difference. If for some reason, the Subcontractor is improperly terminated for default, then the termination shall be considered a termination for convenience as discussed in Section 11(e) below.
- (e) Contractor shall have the right to terminate this Subcontract for convenience and without cause, by providing Subcontractor with a written notice of termination to be effective upon receipt by Subcontractor. If Subcontractor is terminated for convenience, it shall be paid for its time, materials, and a reasonable profit for the work performed in the amount which is paid to the Contractor from the Owner for the Subcontractor's work. The Subcontractor shall only be entitled to prospective profits on unperformed work to the extent that the Contractor is able to recover such Subcontractor's profits from the Owner.
- (f) Upon receipt of Notice of Termination, Subcontractor shall: (a) suspend its Work on the Date and to the extent specified in the Notice of Termination; (b) place no further orders or subcontracts for services, equipment or materials except as are required to complete any portion of its Work not subject to the Notice of Termination; (c) terminate all purchase orders, subcontracts and other agreements relating to that portion of its Work subject to the Notice of Termination; (d) if required by Contractor, assign to Contractor all the right, title and interest of Subcontractor in purchase orders, subcontracts and/or other agreements relating to that portion of its Work subject to the Notice of Termination; (e) provide Contractor with Lien Release(s) and Bond Claim Waiver(s) in forms prescribed by Contractor for each of Subcontractor's lower tier subcontractors, suppliers and/or equipment suppliers affected by the Notice of Termination; and (f) deliver to Contractor, when and as directed by Contractor, all documents and all property which, if Subcontractor's Work has been completed, Subcontractor would be required to account for or deliver to Contractor and transfer title to such property to Contractor to the extent not already transferred.

12. **UNIT PRICE.**

In the event the Contract contains unit price items, it is understood and agreed that any quantities mentioned are approximate only and subject to change as required by the Main Contract and as ordered and directed by the Contractor.

13. **MATERIAL QUALITY.**

Materials condemned by the Contractor, Architect/Engineer or Owner as failing to conform to the Main Contract, shall upon notice from the Contractor, be immediately removed by the Subcontractor. Failure of the Contractor to immediately condemn any work or materials as installed shall not in any way waive the Contractor's right to object thereto at any subsequent time.

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14. **JOB DAMAGE.**

Job damage caused by Subcontractor or its lower-tier subcontractors or suppliers on work other than Subcontractor's own shall be reported immediately to Contractor, and Subcontractor shall be responsible for its repair. In the event of Subcontractor's failure to promptly repair (or to make adequate provision for the same) so as not to delay the progress of the work, Contractor may take such actions as are permitted under Section 11 above.

15. **HOUSEKEEPING.**

The Subcontractor will be responsible for daily and final clean up and disposal of refuse, waste and debris produced by its operation. Refuse shall not be permitted to accumulate to the extent that it interferes with free access to the work site. Compliance with all safety requirements is an essential part of Subcontractor's obligation. In the event of Subcontractor's failure after notification or refusal to meet these requirements, refuse removal may be done by Contractor and charged against the account of Subcontractor.

16. **BOND.**

The Subcontractor will furnish to the Contractor, unless waived by the Contractor, a performance and payment surety bond acceptable to the Contractor in an amount equal to this contract, price, conditioned on and covering the faithful performance of, and compliance with, all the terms, provisions, and conditions of this Contract, and payment of all labor, materials, equipment and supplies used in the prosecution of the work. Bond shall be provided before commencement of work. In the event of Subcontractor's default, Contractor shall be entitled to those remedies set forth in Section 11 above.

17. **WORKMEN'S COMPENSATION.**

The Subcontractor will furnish to Contractor evidence that it has in force Workmen's Compensation Insurance including Employer's Liability, as may be required by the jurisdiction or jurisdictions in which the work is being performed. Where applicable, this shall include United States Longshoremen's and Harbor Workers Act Insurance including Coverage B -- Employers (Maritime) with limits not less than the Bodily Injury limits required by the General Conditions of the Specification but in no event less than \$1,000,000.00 or an amount that is specified by Contractor. Such evidence of insurance must be satisfactory to Contractor and may be in the form of an Insurance Certificate issued by an insurer satisfactory to the Contractor and shall provide for not less than forty-five (45) days notice to Contractor of cancellation or reduction of coverage. In the event Subcontractor fails to maintain any insurance required by this Subcontract in force during the entire life of the Subcontract, Contractor may at his option, purchase in the name of Subcontractor and deduct the cost of same for payments due Subcontractor.

18. **INSURANCE.**

The Subcontractor will obtain and keep in force during the term of the contract public liability and property damage insurance with coverage equal to, or greater than, the minimum specified in the Main Contract and Contractor requirements. The Subcontractor shall furnish to the Contractor evidence of this insurance as in the same form as described in Section 17 above and naming the Contractor, the Owner and those identified in the Main Contract as additional insureds for ongoing and completed operations with respect to work performed by or on the primary and non-contributory to that of the additional insureds. The insurance shall include: contractual liability coverage applicable to the indemnity provisions of this Subcontract, defense costs outside of policy limits, and coverage for punitive damages, mold, E.I.F.S., subsidence, water intrusion, prior work, residential work, premises operations, elevators, products and completed operations for six (6) years after final completion of project or as required by State statute, broad form property damage, explosion, collapse and underground (XCU), and (in WA, ND, OH, WV & WY) Stop Gap. The Subcontractor shall give Contractor forty-five (45) days notice of cancellation. Evidence of this insurance shall also be accompanied by a completed and signed "Insurance Coverage Checklist and Certification" (Exhibit D) and the following policy endorsements: additional insured, primary and non-contributory, waiver of subrogation and per project aggregate. Failure to timely furnish the required insurance, or its cancellation prior to final acceptance by Owner, shall be deemed a material breach by Subcontractor entitling Contractor to immediately terminate, after seven (7) calendar days notice, this Subcontract for default. In the event of a default, Contractor shall be entitled to those remedies as set forth in Section 11 above.

SUBCONTRACTOR MINIMUM INSURANCE REQUIREMENTS (if higher limits are not specified in the Main Contract):

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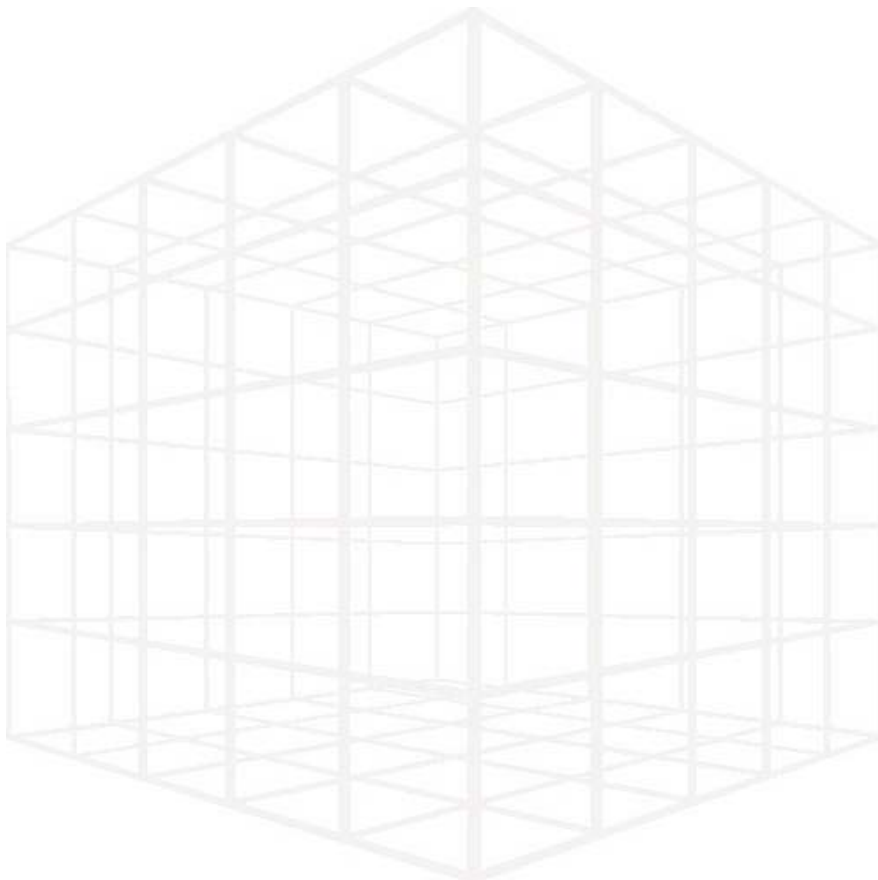


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<u>TYPE OF INSURANCE</u>	<u>LIMITS</u>	
COMMERCIAL GENERAL LIABILITY General Aggregate limit shall apply per project.	General Aggregate	\$3,000,000
	Each Occurrence	\$3,000,000
	Products – Comp/Op Agg	\$2,000,000
	Personal & Adv Injury	\$1,000,000
	Damage to Rented Premises (ea occurrence)	\$100,000
	Medical Expense (any one person)	\$10,000
AUTO LIABILITY (Note: Shall include coverage for any auto, including hired & non-owned.)	Combined Single Limit	\$1,000,000
EMPLOYERS' LIABILITY/STOP GAP COVERAGE (Note: Stop Gap coverage is required in the monopolistic states of WA, ND, OH, WV & WY. Otherwise Employers' Liability is required.)	Each Accident	\$3,000,000
	Disease - Each Employee	\$3,000,000
	Disease - Policy Limit	\$3,000,000



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19. SUB-TIER SUBCONTRACTORS/SUPPLIERS.

Any sub-tier subcontractor or suppliers shall be bound to the Subcontractor to the same extent that Subcontractor is bound to Contractor and to the same extent that Contractor is bound to the Owner. Contractor has the right to pay any sub-subcontractor or supplier of material or equipment to Subcontractor directly or by two-party check (joint check). Payment directly or by two-party check to such persons by Contractor shall not create any direct contractual or other obligations owing by Contractor to such persons.

20. MODIFICATIONS.

No modification of this agreement and no waiver of rights under this agreement shall be valid or binding on the parties unless the same is in writing. Failure of the Contractor to insist upon strict performance of any term or condition of the Subcontract, or to exercise any option conferred by this Subcontract, shall not be construed to be a waiver, but the same shall be and remain in full force and effect. The partial or complete invalidity of any one or more provisions or sentences of the Subcontract shall not affect the validity or continuing force and effect of any other provision.

21. USE OF INTOXICANTS.

Subcontractor agrees that none of its employees shall use, or be under the influence of, during the time they are on or about the premises or location of the work, any alcoholic beverages, drugs, or other intoxicants. Any violation of this paragraph shall be cause for termination of Subcontractor's contract or dismissal of the employee. Subcontractor acknowledges that this provision is included and specifically bargained for in order to protect Contractor's reputation with the public for quality workmanship and to further protect both Contractor and Subcontractor from any public and/or private liability that may arise from such use.

22. AS-BUILTS.

Subcontractor shall continuously update a set of as-built drawings as the job progresses, maintain an updated set on the job site at all times, and provide final as-built drawings and operation and maintenance information when the work is substantially completed.

23. EMPLOYEES.

Subcontractor shall have a representative of Subcontractor on site at all times during its work with authority and responsibility to make immediate decisions on Subcontractor's behalf. The representative shall attend scheduled job meetings as requested by Contractor and submit daily field reports indicating manpower and work accomplished in a form acceptable to Contractor to the Contractor's site representative daily. Subcontractor agrees to remove from the job any of its employees who are unsatisfactory to the Contractor or Owner immediately upon written request by the Contractor. Subcontractor's representative shall not be replaced during the course of the job without written consent of the Contractor.

24. MATERIAL HANDLING.

Subcontractor shall be responsible for unloading, hoisting, storage and protection of all its own materials as well as materials supplied by others to be installed within the Subcontractor's scope of work.

25. SAFETY AND HAZARDOUS SUBSTANCES.

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- (a) Subcontractor shall comply with all federal, state and/or local statutes, regulations and orders which relate to safety of persons or property or their protection from damage, injury or loss. Subcontractor shall take all safety precautions necessary to comply with the provisions of such laws, regulations and orders as they pertain to its work and the conduct thereof. Subcontractor shall provide and ensure that its employees utilize all safety devices and appliances which are required for compliance with such laws, regulations and orders. Subcontractor shall maintain a written Safety/Accident Prevention Program applicable to the nature of this work which program shall include procedures authorizing Subcontractor to take disciplinary action(s) (including but not limited to written reprimands, demotions, suspensions, reduction in pay and/or termination) against employees violating any statute, regulation or order relating to safety. Subcontractor shall not be entitled to use nor shall Contractor be required to provide any safety devices and appliances required by Subcontractor to comply with such laws, regulations and orders. Subcontractor shall designate a safety representative who shall be present at the Project Site whenever necessary to ensure Subcontractor's compliance with such laws, regulations and orders and the safe performance of its work.
- (b) Subcontractor shall be bound to and comply with all provisions of Contractor's Safety/Accident Prevention Program and any Site-Specific Safety Program as well as any and all subsequent revisions to either which Contractor elects to implement for or during the Project. Subcontractor's superintendent and employees shall attend all safety meetings conducted by or on behalf of Contractor. Whenever determined to be necessary or appropriate by Subcontractor, Subcontractor shall conduct its own safety meeting(s) and training(s) for its employees at the Project Site. Subcontractor shall be responsible for providing dated minutes of such meeting(s) and training(s) with employees attendance compliance with such laws, regulations and orders, Subcontractor shall submit to Contractor a Site-Specific Safety Plan for the Project which to be necessary, Contractor may suspend Subcontractor's work until Contractor determines such work can proceed safely; and/or require Subcontractor to remove employee(s) from Subcontractors Project work force whenever considered by Contractor to be in the best interests of Project safety. This Subcontract may be terminated by Contractor pursuant to the provisions of Section 11 of Attachment "A" if Subcontractor fails to perform any of the duty(ies) set forth in this section. Subcontractor shall defend, indemnify and hold Contractor harmless from any and all fines, penalties or other costs (including attorney's fees) to which Contractor may be subjected by reason of the failure of Subcontractor to comply with applicable laws, regulations and orders and/or the provisions of this Section. Subcontractor shall include the provisions of this Section in each lower-tier Subcontract and Purchase Order and require that each lower-tier Subcontractor and/or Supplier include the provisions of this Section in each of its lower-tier Subcontracts and Purchase Orders.
- (c) Subcontractor shall comply with the requirements of the OSHA Hazard Communication Standard completed as required and shall be liable for all fines and penalties assessed against Contractor or others as a result of this Subcontractor's noncompliance. Subcontractor shall submit to Contractor's Authorized Representative Material Safety Data Sheets (MSDS) for any hazardous substances Subcontractor intends to bring to the Project Site. A hazardous substance shall not be used if the Material Safety Data Sheet for the substance has not been submitted. Subcontractor shall train its employees who are or can be exposed to hazardous substances and assist Contractor's Authorized Representative to train other personnel on the Project Site who may be exposed to these Hazardous Substances. Subcontractor shall be responsible for removal from the Project Site of all or any of Subcontractor's materials and trash which appear on any of the EPA Lists of Identified Hazardous Waste or which display a hazardous characteristic. These materials shall not be discarded in Contractor's trash piles or dumpsters. If Subcontractor fails to comply with this section, this Subcontract may be terminated by Contractor pursuant to Section 11. Subcontractor shall include the provisions of this section in each lower-tier subcontract and purchase order and require that each lower-tier subcontractor and supplier include the provisions of this section in each of its lower-tier subcontracts and purchase orders.
- (d) Subcontractor understands and agrees that he will not perform any onsite work or have any onsite work performed without onsite representation of the Contractor or designated representative thereof.

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26. NONDISCRIMINATION COMPLIANCE.

Subcontractor agrees to comply fully with all Federal, State and Local nondiscrimination laws, regulations, directives and programs including those called for in the Main Contract and Executive Order 11246, if applicable, relating to Equal Employment Opportunity and non-segregated facilities, including timely submittal of all documents required by Owner or any government agency. This Subcontract incorporates by reference, as though fully set forth herein, 41 C.F.R. S. 60-1.4, 48 C.F.R. 52.222-26, and Executive Order 11246 to the extent that they are applicable.

27. SUBMITTALS.

Subcontractor shall be responsible for submitting all submittals to allow proper approval and/or review duration and return so as to not hinder the delivery and installation schedule sequence. Submittal package shall be 1 sepi and 6 blacklines, or as otherwise defined.

28. REQUIRED NOTICE OF CLAIM.

- (a) Subcontractor must provide Contractor with written notice of all claims for adjustment or interpretation of contract terms, payment of money, extension of time, additional cost, damages, or other relief within fifteen (15) days after occurrence of the event giving rise to the claims, or within a shorter period of time that is five (5) days less than the time specified by the Main Contract for such claims by Contractor against the Owner. The notices of claim must identify in concise detail and in writing the basis for the claim, a detailed description of all events or circumstances which led to the claim, Subcontractor's best estimate of the increase in the Contract time or Contract sum which will be claimed, and any other information as may be required under the Main Contract. Notice must be on Subcontractor's letterhead with the words "NOTICE OF CLAIM" across the top and clearly identifying the projects name and address.
- (b) If the Subcontractor encounters work which it considers unsatisfactory and which affects its work, or if Subcontractor encounters any condition whatsoever upon which it may base a claim for extra compensation, extra time, or any other type of claim, it shall give written notice to Contractor prior to commencing any work involving the conditions in order to allow Contractor to inspect the conditions and to make arrangements and take steps as Contractor deems necessary. In the event notices are not provided in accordance with the procedures specified by this paragraph, the claims shall be deemed waived by Subcontractor.
- (c) No act, omission, or knowledge, actual or constructive, of Contractor shall be deemed to be a waiver of this requirement for written notice unless Contractor provides Subcontractor with an explicit unequivocal written waiver of the written notice. In the absence of written notice to the Contractor, Subcontractor shall be fully and solely responsible and liable for any and all expense, loss or damage resulting from the condition and Contractor shall be relieved of all liability in connection with it.
- (d) Subcontractor understands and acknowledges that the Subcontract sum or time shall not be increased due to any error, omission, inconsistency, ambiguity or conflict unless such has been reported to Contractor and resolved by Owner, in which case Subcontractor shall receive an adjustment limited to any amount in which the Owner may issue a change to the Main Contract.

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29. **INDEMNIFICATION.**

Subcontractor agrees to defend, indemnify and hold Contractor harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from, or connected with services performed or to be performed under this Subcontract by Subcontractor or Subcontractor's agents or employees to the fullest extent permitted by law and subject to the limitations provided below.

Subcontractor's duty to indemnify Contractor shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Contractor or Contractor's agent or employees.

Subcontractor's duty to indemnify Contractor for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) Contractor or Contractor's agents or employees, and (b) Subcontractor or Subcontractor's agents or employees, shall apply only to the extent of negligence of Subcontractor or Subcontractor's agents or employees.

Subcontractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount of type of damage, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefits acts; provided Subcontractor's waiver of immunity by the provisions of this paragraph extends only to claims against Subcontractor by Contractor, and does not include, or extend to, any claims by Subcontractor's employees directly against Subcontractor.

Subcontractor's duty to defend, indemnify and hold Contractor harmless shall include, as to all claims, demand, losses and liability to which it applies, Contractor's personnel-related costs, reasonable attorney's fees, court costs and all other claim-related expenses.

THE UNDERSIGNED HEREBY CERTIFY THAT PARAGRAPH 29 WAS MUTUALLY NEGOTIATED.

30. **QUALIFICATIONS.**

By acceptance of this contract, the Subcontractor establishes it is qualified to supply the materials required and to complete the installation of these materials to meet the Contractor's schedule, and Subcontractor is familiar with the scope of the project and the specific logistical implications related to the completion of this work.

31. **RESOLUTION OF DISPUTES.**

(a) This Subcontract shall be governed by the laws of the state in which Contractor is incorporated. Contractor shall have the exclusive and unilateral right, at its option, to require that the venue for any legal action under this Subcontract be in the state of its incorporation Superior Court of its choosing, or in the county that the Project is located, and Subcontractor expressly agrees to Contractor's exercise of such option.

(b) In addition, Contractor shall have the exclusive and unilateral right, at its option, to require that any dispute arising under this Subcontract shall be resolved in the alternative dispute resolution forum of its choosing, or that Subcontractor be made a party to any other litigation or arbitration which relates to the Project, provided the said forum is an independent forum and impartial to the parties. Contractor may also require that a mediation occur as a prerequisite to the commencement or maintenance of any litigation or arbitration. This provision is for the unilateral exercise of Contractor only and cannot be invoked by Subcontractor without Contractor's consent.

Subcontractor Initial_____

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- (c) In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves the work performed or to be performed by Subcontractor, or in the event of any dispute or claim between Contractor and Subcontractor caused by or arising out of conduct for which Owner may be responsible, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Main Contract and by any and all procedures and resulting decisions, findings, determinations, or awards made thereunder by the person so authorized in the Main Contract, or by an administrative agency, board, court of competent jurisdiction or arbitration. If any dispute or claim of Subcontractor is prosecuted or defended by Contractor, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses, and other information required by Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorney's fees incurred in connection therewith, to the extent of Subcontractor's interest in such claim or dispute.
- (d) Subcontractor agrees to be bound by the procedure and final determinations as specified in the Main Contract and agrees that it will not take, or will suspend, any other action or actions with respect to any such claims and will pursue no independent litigation with respect thereto, pending final determination of any dispute resolution procedure between Owner and Contractor. It is expressly understood and agreed that as to any and all claims asserted by Subcontractor in connection with this project arising from the actions or fault of Owner, Contractor shall not be liable to Subcontractor for any greater amount than Owner is liable to Contractor, less any mark-ups or costs incurred by Contractor. As to any claims asserted by Subcontractor for or on account of acts or omissions of Owner or its agents or design professionals, at the sole option of Contractor, Subcontractor agrees to prosecute such claims in Contractor's name. For any amount recovered or collected (whether through proceedings or settlement) by Subcontractor, Contractor shall be entitled to ten (10) percent of such amount received or collected as its mark-up for such claims. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear expenses thereof including attorney's fees.
- (e) In any litigation between the Contractor and Subcontractor, should the Contractor prevail in such litigation Subcontractor shall pay to Contractor, Contractor's reasonable costs, expenses and attorney's fees included.

32. **SUBCONTRACTOR RECORDS/AUDIT.**

Subcontractor shall maintain accurate and complete job costs records which show, at a minimum, the hours each of Subcontractor's employees worked on the project each day, the daily tasks each of its employees performed, the type of equipment and hours and days such equipment was used and the costs of materials. Separate cost records shall be maintained for all work which Subcontractor claims is extra work, including but not limited to, extra work attributable to delays, acceleration, changed conditions or changes in the work. The failure to maintain such records shall preclude recovery for claims not so documented. Subcontractor's obligation to keep records under this clause is in addition to any other record-keeping obligation imposed by other terms of this Subcontract or the Contract Documents. Subcontractor agrees that Contractor can review and audit Subcontractor's cost records whenever Subcontractor submits a claim or a request for time extension.

33. **PRODUCT SUBSTITUTIONS.**

Before making requests for substitutions, the Subcontractor, to the best of its knowledge at the time the request is made: (A) represents that it has personally investigated the proposed substitute product and determined that it is equal to or superior in all respects to that specified; (B) represents that he will provide the same warranty for the substitutions that he would for the specified product; (C) certifies that the cost data presented is complete and includes all related costs under this contract, but excludes costs under separate contracts, and excludes the Architect's redesign costs and waives all claims for additional costs related to the substitution which subsequently become apparent; and (D) will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

Subcontractor Initial _____

34. DESIGN CLARIFICATION.

If this Agreement is for a "Design-Build" installation and includes the design and preparation of working drawings and specifications, coordination will be required between the architect/engineer, any and all subcontractor(s) and/or tradesmen, the Owner, Contractor and the local governing authorities. All work shall be designed and installed in accordance with good industry practice, and applicable codes, ordinances and regulations. This Agreement is for a complete working installation.

- (a) With respect to design, the Subcontractor shall:
1. provide schematic design studies consisting of drawings and other documents to fix and describe the size and character of the entire project as to all systems and material.
 2. provide construction documents consisting of job specific drawings and specifications for the construction of the entire project.
 3. verify the accuracy of drawings or other information furnished by the Owner and/or architect.
 4. provide assistance in the utilization of any equipment or system, such as initial startup or testing, adjusting or balancing.
 5. pay all fees required by governmental authorities having jurisdiction to produce the services as contracted for, except as noted under exclusions.
 6. provide clarification drawings as needed during construction.
 7. defend, indemnify and save harmless the Owner, the architect, and the Contractor from and against any liability arising out of the performance of the design of this project.
 8. provide all completed drawings with a stamp of an engineer licensed in the state in which project is located.
 9. provide complete drawings and specifications which meet the mutual approval of the Owner, architect, Contractor and Subcontractor.
- (b) With respect to Insurance, in addition to previous requirements, the Subcontractor, shall provide and be fully responsible and liable to the project for professional liability insurance, as follows:
1. Limits: \$1,000,000 each claim and annual aggregate, project specific.
 2. Coverages:
 - a. Insured's interest in joint ventures, if applicable.
 - b. Punitive damages coverage (where not prohibited by law).
 - c. Limited contractual liability.
 - d. Retroactive date prior to work.
 - e. Extended reporting period of 72 months.

35. DEFENSE OF LIENS.

Subcontractor shall promptly pay or discharge in full or provide adequate security for the payment of all claims of any persons, firms or corporations furnishing or claiming to have furnished labor, materials, tools, equipment or incidentals used in, upon or for the work, whether or not any such claim of lien or right of enforcement is established or attempted to be established upon or against the work. Subcontractor shall, if requested by Contractor, defend any such suit at its own expense and in any event shall indemnify Owner and Contractor against any loss, damage or expense, including attorney's fees incurred or suffered as a result thereof. Subject to the payment provisions of this Subcontract, Contractor may as a condition precedent to any payment to Subcontractor hereunder require Subcontractor to submit satisfactory evidence of payment and completed waivers and releases in favor of Owner, Contractor, and their sureties of any and all claims of any such persons, firms or corporations in a form acceptable to Contractor. The evidence, releases or waivers must be submitted covering all such claims as a condition precedent to the final payment.

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36. NATURE OF WORK.

Subcontractor 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 equipment needed, the location, conditions and other matters which can in any manner effect 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 this Subcontract. Prior to commencing work, Subcontractor shall examine the site and any surfaces upon which work is to be performed, and shall notify Contractor in writing of any conditions which might adversely effect its work: failure to do so will constitute a waiver of entitlement to any additional compensation or contract time arising out of such conditions. Such waiver shall not apply to latent or hidden conditions unknown to Subcontractor following a reasonable examination, unless disclosure of such conditions is required under the Main Contract. This clause shall not be understood to relieve Subcontractor of any additional notice requirements under this Subcontract or the Main Contract.

37. COMPLETE AGREEMENT.

This Subcontract contains all covenants, stipulations and provisions agreed upon by the parties and supersedes and nullifies all prior negotiations, proposals or stipulations. There are no prior or contemporaneous agreements not included or provided for in this Subcontract. Any bid or proposal submitted by Subcontractor to Contractor is not a part of this Subcontract unless specifically referenced to and included in Attachment A. No agent or representative of either party has authority to make, and the parties shall not be bound by or liable for, any statement, representation, promise or agreement not set forth in this Subcontract or in a duly authorized written modification.

38. INDEMNIFICATION.

For projects in Alaska, Section 29 is deleted and replaced with the following:

- (a) Subcontractor agrees to defend, indemnify and hold Contractor and Owner harmless from any and all claims, demands, losses, and liabilities (including, without limitation, claims, demands, losses and liabilities arising out of death, personal injury, property damage or economic loss) to or by any and all persons or entities (including, without limitation, Owner, Contractor, and any subcontractor, and their respective employees, agents, licensees, or representatives) arising out of, resulting from, or connected with work performed or to be performed under this Subcontract by Subcontractor or Subcontractor's agents or employees to the fullest extent permitted by law and subject to the limitations provided below.
- (b) Subcontractor's duty to defend and indemnify Contractor and Owner shall not apply to liability for damages caused by or resulting from the sole negligence or willful misconduct of Contractor or Contractor's agents, employees or independent contractors (other than Subcontractor) who are directly responsible to Contractor.
- (c) For purposes of this Section only, Subcontractor specifically and expressly waives any immunity that may be granted it under any workers' compensation laws or industrial insurance act. 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 benefit acts. This promise of indemnity specifically applies in the case of injuries to Subcontractor's own employees.
- (d) Subcontractor's duty to defend, indemnify, and hold Contractor and Owner harmless shall include, as to all claims, demands, losses, and liability to which it applies, Contractor's personnel related costs, reasonable attorney fees, court costs, and all other claim related expenses, including attorneys fees and other costs incurred by Contractor to enforce and establish its rights under this Section.
- (e) Notwithstanding the provisions of this Section, if Contractor's indemnity obligation to Owner is broader in any respect than the provisions of this Section, then Subcontractor agrees to afford Owner and Contractor any broader relief in addition to the relief afforded in this Section to the fullest extent permitted by law.

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Project #:

File #:

39. **RESOLUTION OF DISPUTES.**

For projects in Alaska, paragraph 31(a) is deleted and replaced with the following: This Subcontract shall be governed by the laws of the State of Alaska. Contractor shall have the exclusive and unilateral right, at its option, to require that the venue for any legal action under this Subcontract shall in a court of competent jurisdiction in the State of Alaska, Third Judicial District, or in the judicial district that the Project is located, and Subcontractor expressly agrees to Contractor's exercise of such option.

40. **PAYMENTS.**

For projects in Idaho, paragraph 4(c) is deleted and replaced with the following: Contractor shall withhold retention from the Subcontractor at the rate of five percent (5%) from each payment and in no event shall the total retention exceed five percent (5%) of the contract price. Payment of the retention shall be in accordance with Idaho Code S. 29-115.

Dated: _____	Dated: _____
Company: _____	Company: _____
Signature: _____	Signature: _____

