

Kerr Contractors Oregon, Inc. P.O. Box 1060, Woodburn, OR 97071

SUBCONTRACT TERMS AND CONDITIONS

ARTICLE 1 - THE WORK

1.1. Subcontractor's Work. Contractor employs Subcontractor, as an independent contractor, to perform Subcontractor's Work. Subcontractor shall perform such Work under the general direction of Contractor and in accordance with this Subcontract and the Contract Documents.

1.2. Contract Documents. The contract between Contractor and Subcontractor consists of the Subcontract Agreement ("Subcontract"), including these Terms and Conditions and the Subcontract Documents, any attached Riders, and the signature page of the Subcontract, and the terms written on the face thereof, and the contract documents by and between Contractor and Owner for the Project ("Prime Contract"), including general, special, technical and detail specifications and drawings, all of which (including the Subcontract) are collectively referred to herein as "Contract Documents".

1.3. Conflicts. Copies of the parts of the Contract Documents that relate directly to Subcontractor's Work shall be furnished to Subcontractor upon request. In the event of a conflict between this Subcontract and other portions of the Contract Documents, this Subcontract shall govern. In the event of a conflict between these printed Subcontract Terms and Conditions and the terms written on the signature page of the Subcontract, the latter written terms shall govern.

ARTICLE 2 - SCHEDULE

2.1. Time is of the Essence. Both parties mutually agree to perform their respective work and the work of their subcontractors so that the Project will be completed in accordance with the Contract Documents and the work schedule. Subcontractor's timing of performance is critical to Contractor's timely performance. Contractor shall prepare the schedule of work and revise the schedule as needed as the work progresses. **TIME IS OF THE ESSENCE FOR THIS SUBCONTRACT.**

2.2. Damages for Failure to Meet Schedule. Subcontractor expressly recognizes that failure to meet the schedule will cause Contractor substantial damage, including, but not limited to, payment of liquidated damages as provided in these terms and conditions.

2.3. Schedule Changes. Subcontractor recognizes that changes will be made in the schedule of Work and agrees to comply with such changes without any increase in the Subcontract Price.

2.4. Priority of Work. Contractor has the right to decide the time or order in which the various portions of the Work will be installed or the priority of the Work and all matters representing the timely and orderly conduct of Subcontractor's Work.

ARTICLE 3 - PRICE

Contractor agrees to pay to Subcontractor for the satisfactory performance of Subcontractor's Work the Subcontract Price in accordance with Article 4, and subject to additions or deductions as provided for herein. The Subcontract Price includes all taxes, licenses, and fees of any nature which may be imposed upon or charged by any governmental authority upon the labor, material, or other things used in the performance of the Work or upon the transaction between Contractor and Subcontractor.

ARTICLE 4 - PAYMENT

4.1. General Provisions for Payment.

4.1.1. Schedule of Values. Subcontractor shall provide a schedule of values satisfactory to Contractor no more than fifteen (15) days from the date of execution of this Subcontract.

4.1.2. Payment Use Restriction. Subcontractor expressly receives payment from Contractor in trust for those furnishing labor, equipment or materials to the Project. No payment received by Subcontractor shall be used to satisfy or secure any indebtedness other than one owed by Subcontractor to a person or entity furnishing labor, equipment or materials to the Project. This restriction shall continue until Subcontractor's Work is completed and all indebtedness associated therewith has been paid in full.

4.1.3. Payment Use Verification. Contractor shall have the right at all times to contact Subcontractor's subcontractors and suppliers in order to ensure that they are being paid by Subcontractor for work performed or materials furnished to the Project. Subcontractor hereby waives any and all recourse against Contractor for exercising its right to contact Subcontractor's subcontractors and suppliers.

4.1.4. Affidavit of Wages. Subcontractor shall furnish to Contractor a weekly affidavit with supporting detailed exhibits in a form to be prescribed by Contractor, and in a form that complies with the certified statement requirements of Davis Bacon or ORS 279C.845, whichever is applicable, if the Project is a public works project, certifying wages paid and to whom during each proceeding weekly payroll period. If the Project is a public works project and Subcontractor has failed to timely submit a required certified statement, Contractor, pursuant to ORS 279C.845(8) shall withhold twenty-five percent (25%) from any amount owed to Subcontractor until Subcontractor provides the required certified statement.

4.1.5. Interim Lien/Claim Waivers and Affidavits. As a prerequisite for payment, Subcontractor shall provide, on the form provided by Contractor (attached as Schedule C), conditional interim lien/claim waivers and affidavits from Subcontractor, and its sub-subcontractors and suppliers for the completed Subcontractor's Work being tendered for payment and unconditional interim lien/claim waivers and affidavits from Subcontractor, and its sub-subcontractors and suppliers for the completed Subcontractor's Work previously paid.

4.1.6. Payment by Subcontractor. Subcontractor shall ensure that all of its subcontractors, employees, and suppliers, at all times, are paid all amounts due in connection with the performance of this Subcontract and Subcontractor shall earmark all payments received in connection with the Project, from Contractor or otherwise, to such persons and for such purpose. Within fourteen (14) days after the execution hereof by Subcontractor, Subcontractor shall provide Contractor with written notice of the subcontractors and suppliers which Subcontractor intends to employ on the Project, and thereafter shall keep Contractor informed of additional or changed subcontractors or suppliers. Contractor shall have the right at all times to contact said persons in order to ensure that the same are being paid by Subcontractor for Work performed or materials furnished on the Project. Subcontractor hereby waives any and all recourse against Contractor for exercising its right to contact Subcontractor's subcontractors and suppliers. Contractor shall have the right to withhold any payment(s) due under this Subcontract until Subcontractor submits evidence satisfactory to Contractor, in its sole discretion, that amounts owed by Subcontractor in connection with performance of this Subcontract have been paid. Further, Subcontractor agrees that Contractor may, by joint check, direct check, or otherwise, pay all persons or entities who have not been paid the monies due them in connection with this Subcontract whether or not a lien or claim has been filed and Subcontractor shall, to the extent that Contractor has not recovered said amounts pursuant to withholding, pay said amounts to Contractor upon demand. Subcontractor hereby waives any and all recourse against Contractor for exercising its right to pay, by joint check, direct check or otherwise, persons or entities who have not been paid the monies due them in connection with this Subcontract. If the Project is a public works project, Subcontractor further agrees that the Owner,

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pursuant to ORS 279C.515(1), may directly pay all persons or entities who have not been paid the monies due them by Subcontractor in connection with this Subcontract, and Contractor may pass through any such payments against Subcontractor. However, no payment by Contractor to any subcontractor or supplier of Subcontractor shall be deemed to confer upon said subcontractor or supplier any third party right or benefit. Subcontractor shall also immediately reimburse Contractor for any amounts paid under Contractor's payment and/or performance bond, if any, in connection with this Subcontract and indemnified by Contractor. In the event Contractor is required to pay or indemnify any person as a result of any act or omission to act required of Subcontractor hereunder, Subcontractor shall immediately reimburse Contractor for the full cost thereof, including attorneys' fees.

4.1.7. Payment not Acceptance. Payment to Subcontractor shall not constitute or imply acceptance by Contractor or Owner of any portion of Subcontractor's Work.

4.2. Progress Payments.

4.2.1. Application. Progress payments for the value of Subcontractor's Work performed in the preceding payment period, less the retainage prescribed in Subarticle 4.2.3, shall be made per Subcontractor's application or estimate prepared in accordance with the direction from Contractor, on the form attached hereto as Schedule G and approved by Contractor. All material and Work covered by partial payments shall become the property of Contractor, or, if the Contract Documents so provide, the property of Owner; however, this provision shall not relieve Subcontractor from sole responsibility and liability for all Work and materials upon which payments have been made until final acceptance thereof by Owner.

4.2.2 Invoice. Whenever Subcontractor requests a progress payment, final payment, or full or partial release of retainage from Contractor, Subcontractor shall certify to Contractor and Owner that Subcontractor is entitled to payment of such amount. The form of such certification shall be as follows (or as specified in the Prime Contract):

"The undersigned for THE SUBCONTRACTOR AND FOR THEMSELVES PERSONALLY further state and warrant that there are no other contracts for said Work outstanding; that there are no claims made or to be made by and that there is nothing due or to become due to any person for material, labor, or other work of any kind done or to be done upon or in connection with said Work other than above stated; that all waivers are true, correct, and genuine and delivered unconditionally; and that there is no claim either legal or equitable to defeat the validity of any releases and waivers that have been signed on this project or are being signed contemporaneously herewith."

[sign and have notarized]

4.2.3 Retainage. If Subcontractor provides a performance and payment bond or other security to the satisfaction of Contractor, the rate of retainage shall not exceed the percentage allowed to be retained from Contractor's payment by Owner for Subcontractor's Work, or if no retainage is withheld by Owner from Contractor, five percent (5%).

4.2.3.1 When the Contract Documents provide for reduction of retainage at a specified percentage of completion, Subcontractor's retainage shall also be reduced when Subcontractor's Work has attained the same percentage of completion and Contractor's retainage for Subcontractor's Work has actually been so reduced by Owner.

If ODOT is the Owner, Owner may in its sole discretion reduce the amount of retainage. When Subcontractor has satisfactorily completed its Work, Subcontractor may request release of retainage for Subcontractor's Work from Contractor. Contractor shall request reduction of retainage in the amount withheld for the Subcontractor's Work if it is able to certify to the Owner that the Subcontractor's Work is

complete, and that all contractual requirements pertaining to Subcontractor's Work have been satisfied. If the Owner notifies Contractor of any deficiencies with Subcontractor's Work, Subcontractor shall remedy any such deficiencies. If Contractor receives from Owner verification that Subcontractor's Work complies with the Contract Documents and receives from Owner release of the retainage, Contractor shall pay Subcontractor all such released retainage within 10 calendar days of receipt, except that amounts may be withheld for latent defects or warranty. Subcontractor expressly acknowledges that the decision as to whether retainage is reduced is solely the Owners and shall not hold Contractor responsible for the Owners denial or delay in acting upon such request.

4.2.3.2 If Subcontractor does not provide a performance and payment bond or security, the rate of retainage shall be ten percent (10%), but in no event lower than the rate retained by Owner.

4.2.3.3 If Owner accepts a surety bond from Contractor in lieu of retainage, Contractor shall accept like bonds from Subcontractor if retainage has been withheld. Contractor shall reduce the amount of money retained in an amount equal to the value of the bond and pay the reduction to Subcontractor.

4.2.4 Time of Application. The signature page of this Subcontract sets forth payment application dates. Subcontractor shall submit progress payment applications to Contractor not later than the indicated day of each month for Work performed up to and including the indicated day of the month. The application shall indicate Work completed and, to the extent allowed under Subarticle 4.2.5, materials suitably stored during the preceding payment period.

4.2.5 Stored Materials. Unless otherwise provided in the Contract Documents, and if approved in advance by Owner, applications for payment may include materials and equipment not incorporated in Subcontractor's Work but delivered and suitably stored at the site and materials and equipment suitably stored at some other location agreed upon in writing. Approval of payment applications which include materials or equipment stored on or off the site shall be conditioned upon submission by Subcontractor of bills of sale, or another procedure satisfactory to Owner and Contractor, to establish Owner's title to such materials or equipment or otherwise protect Owner's and Contractor's interests therein, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

4.2.6 Time of Payment. Unless a shorter period is required by law, progress payments to Subcontractor for satisfactory performance of Subcontractor's Work shall be made no later than ten (10) calendar days after: (a) receipt by Contractor of payment from Owner for such Subcontractor's Work; and, (b) receipt of all items required from Subcontractor prior to payment. Subcontractor shall include in each of its subcontracts a payment clause conforming to the requirements of ORS 279C.580(3)&(4).

4.2.7 Late Payment Interest. If the Prime Contract is a public works contract, then: (a) if Contractor is late in paying Subcontractor, Contractor shall pay Subcontractor an interest penalty in accordance with ORS 279C.580(3)(b); and (b) Subcontractor shall include in each of its subcontracts an interest payment clause conforming to the requirements of ORS 279C.580(3)(b)&(4).

4.2.8 Owner's Payment Failure. It is the intention of the parties that the right of Subcontractor to payment under this Subcontract and the Contract shall be limited to payments from the fund consisting solely of the amounts Owner pays to Contractor on account of Subcontractor's Work under this Subcontract. Subcontractor promises to look for payment only from that fund. Subcontractor agrees that payment by Owner to Contractor on account of Subcontractor's Work is a condition precedent to Contractor's obligation

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to pay Subcontractor under this Subcontract. If Owner pays Contractor less than the full amount Contractor believes is due under the Prime Contract on account of Subcontractor's Work under this Subcontract, then Contractor shall have no obligation to pay Subcontractor more than the amount it receives from Owner on account of Subcontractor's Work, less any markups or costs incurred by Contractor and to which Contractor is otherwise entitled. Subcontractor expressly assumes the risk that Owner will not pay all or any part of the amounts due Contractor under the Prime Contract on account of Subcontractor's Work under this Subcontract.

4.3 Final Payment.

4.3.1 Application. Upon acceptance of Subcontractor's Work by Owner, Contractor, and if necessary, Owner's design professionals ("Designer"), and upon Subcontractor furnishing evidence of fulfillment of Subcontractor's obligations in accordance with the Contract Documents and Subarticle 4.3.2, Contractor shall process Subcontractor's application for final payment.

4.3.2 Requirements. Before Contractor shall be required to issue final payment, Subcontractor shall submit to Contractor: (a) an affidavit that all payrolls, bills for materials and equipment, and all other indebtedness connected with Subcontractor's Work for which Owner or its property or Contractor or Contractor's surety might in any way be liable, have been paid or otherwise satisfied; (b) consent of surety to final payment, if required; (c) other data if required by Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by Contractor or Owner; (d) a final lien/claim waiver form for the Project on the form supplied by Contractor (attached hereto as Schedule D) from Subcontractor and each sub-subcontractor and supplier; and (e) current and valid insurance certificates as required by Article 12.

4.3.3 Time of Payment. Final payment of the balance due of the Subcontract Price shall be made within ten (10) days after receipt by Contractor of final payment from Owner for such Subcontractor's Work, unless a shorter period is required by law, provided Subcontractor has satisfied the requirements of Subarticle 4.3.2 and any other precursors to final payment under the Contract Documents.

4.3.4 Effect. Acceptance of final payment shall constitute a waiver of all claims by Subcontractor relating to Subcontractor's Work, but shall in no way relieve Subcontractor of liability for the obligations assumed under any warranties required of the Contract Documents hereof, or for faulty or defective Work appearing after final payment. Without limitation, final payment does not waive Contractor's right to recoupment or setoff, nor Subcontractor's obligation to remedy unknown defective Work and non-compliance with the Contract Documents or warranties thereunder.

4.4 Recoupment and Setoff. Contractor may deduct from any amounts due or to become due Subcontractor on this Project any sum or sums owed by Subcontractor to Contractor for this Project or any sum or sums owed by Subcontractor to Contractor on any other project; and in the event of any breach by Subcontractor of any provision or obligations of this Subcontract, or in the event of the assertion by other parties of any claim or lien against Contractor or the premises arising out of Subcontractor's performance of Subcontractor's Work, or otherwise, Contractor shall have the right to retain out of any payments due or to become due to Subcontractor 150% of the amount sufficient to completely protect Contractor from any and all loss, damage or expense therefrom, until the situation has been satisfactorily remedied or adjusted by Subcontractor.

4.5 Joint Checks. Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's materials suppliers or subcontractors or any person who has any right of action against Contractor, Owner, Contractor's surety, or the premises arising from or in any way related to Subcontractor's Work under any law. Subcontractor expressly agrees that Contractor reserves the right of determination as to what manner of payment

shall be made. Any amount so paid will be charged to Subcontractor's account. Subcontractor hereby waives any and all recourse against Contractor for exercising its right to pay, by joint check, direct check or otherwise, persons or entities who have not been paid the monies due them in connection with this Subcontract.

ARTICLE 5 - CHANGES AND CLAIMS

5.1 Changes. When Contractor so orders in writing, and without nullifying this Subcontract, Subcontractor shall make any and all changes in the Work, which are within the general scope of the Subcontract. Adjustments in the Subcontract Price or Time, if any, resulting from such changes shall be set forth in a Subcontract change order to the extent, less Contractor's costs or damages, obtained by Contractor under the Prime Contract. No such adjustments shall be made for any such Work performed by Subcontractor that has not been so ordered by Contractor in writing. Subcontractor hereby waives any and all claims for additional costs or time associated with any alleged change that was not ordered in writing by Contractor.

5.2 Claims Relating to Owner. Subcontractor agrees to make, and pursue to resolution, all claims for extension of time, damages for delay or otherwise, arising out of or relating to changes directed by Owner, deficiencies in the Contract Documents, or other acts or omissions for which Owner is or may be liable to Contractor, in the manner and time provided in the Contract Documents for like claims by Contractor upon Owner; such claims must be made by Subcontractor a reasonable time before Contractor is required to make such claim against Owner, within seven (7) calendar days prior to the beginning of such Subcontractor's Work or the event or situation for which the claim is to be made, or immediately upon Subcontractor's first knowledge of the event or situation, whichever first occurs. Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner both by the terms of the Prime Contract and by any and all decisions or determinations made thereunder by the party or entity so authorized in the Prime Contract, if applicable. In the event the Prime Contract contains a provision, hereinafter called Disputes Clause, whereby claims may be resolved under an administrative procedure or by arbitration, then as to any claims of Subcontractor for or on account of acts or omissions of Owner or Designer which are not disposed of by agreement, Contractor agrees to aid and cooperate with Subcontractor and to present to Owner, in Contractor's name, all of Subcontractor's claims for additional monetary compensation or time extension that Contractor can certify in good faith to Owner; and to further invoke, on behalf of Subcontractor, those provisions in the Prime Contract for determining disputes. Contractor shall have the option to present such claims upon Subcontractor's behalf, in advance of and without Subcontractor's written request or consent. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear all expenses thereof, including all attorneys' fees. Subcontractor agrees to be bound by the procedure and final determination as to any such claims and will pursue no independent litigation with respect thereto, pending final determination under such Disputes Clause. Subcontractor shall not be entitled to receive any greater amount from Contractor than Contractor is entitled to and actually does receive from Owner on account of Subcontractor's Work, less five percent (5%) or Two Hundred Dollars (\$200.00), whichever is greater, for administration of Subcontractor's claim by Contractor, and Subcontractor agrees that it will accept such amount, if any, received by Contractor from Owner, less said administrative fee and less any recoupment or setoff that may be applicable under this Subcontract, as full satisfaction and discharge of all claims for or on account of acts or omissions of Owner or Designer.

5.2.1 Subcontractor shall be bound by Contractor's determination, made in good faith, as to apportionment of any amounts received from Owner on behalf of claimants, including Contractor, Subcontractor and other subcontractors or suppliers, whose work is affected by any act or omission of Owner or Designer.

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5.2.2 In consideration for Contractor's agreement to aid and cooperate in Subcontractor's claims relating to Owner, Subcontractor hereby relinquishes and waives any rights that it may have to pursue such claims under a claim on Contractor's bond, if any, pursuant to the Miller Act or any state bond claim statute.

5.2.3 If Subcontractor makes a claim for additional compensation, such claim shall conform strictly to the requirements of the Contract Documents, and shall also include a certified statement as to the validity of facts and costs in the following form unless a different form is required by the Contract Documents in which case Subcontractor shall execute that form:

"Under penalty of law for perjury or falsification, the undersigned [insert name and title of person signing] of [insert name of Subcontractor] certifies that this claim for additional compensation for work on the Subcontract is a true statement of the actual costs incurred on the Subcontract and is fully documented and supported under the Subcontract and that Subcontractor is entitled to payment of such amount."

[sign and have notarized]

5.3 Claims Relating to Contractor. All claims, disputes, and other matters in question between Contractor and Subcontractor not relating to claims included in Subarticle 5.2, shall be resolved in the manner provided in Article 13 herein. Subcontractor shall give Contractor written notice of any such claim within three (3) days of the event for which claim is made; otherwise, such claim shall be deemed waived.

5.4 Delay. If the progress of Subcontractor's Work is substantially delayed without fault or responsibility of Subcontractor, then the time for Subcontractor's Work shall be extended by change order to the extent obtained by Contractor under the Contract Documents, and the schedule of Work shall be revised accordingly. In no event shall Contractor be liable to Subcontractor for any damages or additional compensation as a consequence of delays caused by any person, entity or body unless Contractor has first recovered the same on behalf of Subcontractor from Owner. Apart from recovery by Contractor from Owner, Subcontractor's sole and exclusive remedy for delay shall be an extension in the time for performance of Subcontractor's Work. No extension of time or any other remedy for delay will be allowed unless written claim is made within five (5) calendar days from the delaying event and in time to preserve such claim for Contractor under the Prime Contract, and any failure by Subcontractor to provide such written claim timely constitutes a waiver by the Subcontractor of any extension of time or any other remedy for delay.

5.5 Liquidated Damages. If the Contract Documents provide for liquidated damages for delay beyond the completion date set forth in the contract documents, and are so assessed, then Contractor may assess same against Subcontractor in proportion to Subcontractor's share of the responsibility for such delay, regardless of cause. However, the amount of such assessment shall not exceed the amount assessed against Contractor. Nothing in this Subarticle shall be construed to limit the damages recoverable from Subcontractor by Contractor or others arising out of the Work. Such damages may include, and are not limited to, damages for delay to Contractor by Subcontractor, or its agents or employees, which delay does not give or has not given rise to a claim of damage on behalf of Owner.

ARTICLE 6 - OBLIGATIONS TO SUBCONTRACTOR

6.1 Authorized Representative. Contractor shall designate one or more persons who shall be Contractor's representatives on-site and off-site. Such authorized representative(s) shall be the only person(s) Subcontractor shall look to for instructions, orders, and/or directions.

6.2 Storage and Shake-Out Area Allocation. Adequate storage and shake-out areas, if available, shall be allocated by Contractor, at Contractor's option, for Subcontractor's materials and equipment during the course of

Subcontractor's Work. Subcontractor shall bear the risk of loss of Subcontractor's materials and equipment so stored.

6.3 Timely Communications. Contractor shall transmit, with reasonable promptness, all submittals, transmittals, and written approvals relating to Subcontractor's Work.

6.4 Non-Contracted Services. Contractor agrees, except as otherwise provided in this Subcontract, that no claim or backcharge for non-contracted construction services rendered or materials furnished shall be valid unless Contractor provides Subcontractor with written notice of such claim within five (5) days of first furnishing said services or materials except in an emergency affecting the safety of persons or property and unless written notice of the charge therefore is given by Contractor to Subcontractor not later than the 10th day of the calendar month following that in which the claim originated.

ARTICLE 7 - OBLIGATIONS OF SUBCONTRACTOR

7.1 Obligations Derivative. Except as otherwise provided in this Subcontract, Subcontractor binds itself to Contractor under this Subcontract in the same manner as Contractor is bound to Owner under the Contract Documents.

7.2 Responsibilities. Subcontractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of Subcontractor's Work. Subcontractor shall perform its Work per the terms of the Contract Documents. Subcontractor shall be responsible for: its sub-subcontractors and suppliers; tests relating to the Subcontract Work; taking of field dimensions; ordering of materials; and, all other actions as are required to meet the schedule of Work. Subcontractor shall inspect all previous work that Subcontractor will be building on, over, or in, to ensure that it is correct. Any discrepancies shall be immediately brought to the attention of Contractor in writing. Commencement of work by Subcontractor shall constitute acceptance by the Subcontractor that the base surfaces are in proper condition to receive his materials and work. After such acceptance, Subcontractor shall be liable for any and all costs for all labor and material necessary to correct the problem, including costs for removing and repairing Subcontractor's work as well as that of previous subcontractors'. Subcontractor is responsible for costs associated with constructing over existing faulty work that should have been identified by Subcontractor.

7.3 Temporary Services. Subcontractor shall furnish all temporary services and facilities as set forth in the scope of Work.

7.4 Time of Performance.

7.4.1 Time is of the Essence, Damages for delay. Subcontractor agrees, within (5) calendar days after being notified by Contractor to do so, to commence the Work at the Project at such points as Contractor may designate, and continue diligently thereafter in the performance of the Work, and to continue diligently thereafter in the performance of the Work, and to fully complete all of the Work to the satisfaction of Contractor and Owner within Contractor's approved schedule, as may from time to time be adjusted. Subcontractor shall be responsible to Contractor for any liquidated damages, including, but not limited to, general liquidated damages and lane closure liquidated damages, imposed by Owner upon Contractor and Contractor's actual damages for delay, which include, but may not be limited to, Contractor's additional costs of performance of the Project and claims for delay made by others subcontractors and suppliers or Project participants, incurred by Contractor as a result of Subcontractor's failure to perform or complete the Work within the times hereinabove provided. Subcontractor shall be entitled to additional time for compliance with schedule amendments only to the extent that Contractor is granted the same from Owner.

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7.4.2 Schedule. If requested by Contractor, Subcontractor shall submit a detailed schedule for performance of the Subcontract, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents. Subcontractor's schedule is subject to the approval of Contractor. Contractor expressly reserves the right to require revisions and modifications thereof. Once approved, Subcontractor's schedule may not be changed without the written consent and approval of Contractor.

7.4.3 Coordination. Subcontractor acknowledges that the Work may at times require the joint occupancy of the job site by Subcontractor and others who are also performing work at the site. Subcontractor shall coordinate its Work with the work of Contractor, other subcontractors, and Owner's other contractors, if any, so no delays or interference will occur in the completion of any part or the entire Project. Subcontractor shall immediately advise Contractor of any unreasonable interference by other contractors, subcontractors, or others. Unless otherwise specified, Subcontractor shall complete all daily work operations not later than 5:00 PM.

7.4.4. Damages. Subcontractor expressly agrees that in no event shall Subcontractor claim, nor be entitled to claim, from Contractor, nor shall Contractor be liable or obligated to pay to Subcontractor, any monies for damages suffered or claimed to have been suffered or sustained by Subcontractor for additional overhead, cost of labor or material, or otherwise, due to or arising out of any delays, disruptions, or suspensions in performance or completion of the Work, whether or not contemplated by the parties hereto, by reason of Contractor's or Owner's acts or omissions, weather, site conditions, or for any other reason whatsoever. If Subcontractor's performance hereunder is delayed, disrupted, or suspended by any act or omission of Contractor, Subcontractor shall be entitled to a time extension only for such delay, disruption, or suspension if Subcontractor shall have given Contractor written notice of such delay, disruption, or suspension within five (5) calendar days of the occurrence thereof. Such time extension shall be in full settlement of any claim Subcontractor may have for delay, disruption, or suspension.

7.5 Authorized Representative. Subcontractor shall designate one or more persons who shall be Subcontractor's authorized representatives on-site and off-site. Subcontractor shall inform Contractor of the identity of the person(s), in writing, within five (5) days of execution of this Subcontract. Contractor shall issue instructions, orders, or directions only to the person(s) so designated. Subcontractor shall not reassign or remove any designated representative without the prior written authorization and consent of Contractor. Subcontractor shall not authorize anyone outside its organization, except its attorney, to attend meetings or negotiate Work, without prior written consent of Contractor.

7.6 Provision for Inspection. Subcontractor shall notify Contractor when portions of Subcontractor's Work are ready for inspection. Subcontractor shall furnish to Owner and Contractor and their representatives ample facilities at all times for inspection of materials at the site, at the shops, or any place where materials under this Subcontract may be in the course of preparation, process, manufacture, or treatment.

7.7 Reports by Subcontractor.

7.7.1 Weekly Progress Reports. Subcontractor shall be required to submit weekly progress reports which shall contain a status report concerning any and all of Subcontractor's Work under this Subcontract which is currently in progress, regardless of the location of such Work. Said reports shall show the progress of manufacture, preparation, and installation in such detail as may be required by Contractor, including plans, drawings, or diagrams. Subcontractor shall also include with the progress report a "construction look ahead" which specifies the work Subcontractor expects to perform in the next three (3) succeeding weeks.

7.7.2. Daily Force Reports. Each day, Subcontractor shall submit to Contractor a Daily Force Report indicating all of Subcontractor's personnel, including lower tier subcontractor's personnel, who are present on the job site. The report shall designate whether the individuals are staff or craft.

7.7.3 Other Reports. Contractor shall have the right to require Subcontractor to prepare and submit such reports and/or schedules as may be requested by Contractor. Contractor shall direct Subcontractor with regard to the information to be included in, the format of, and the timing required for, such reports. Subcontractor shall submit the required information in accordance with such directions.

7.8 Safety and Cleanup

7.8.1 Subcontractor acknowledges and agrees that it has the duty and obligation to furnish its employees, and the employees of others, a safe place to work whether on-site or off-site.

7.8.2 In the performance of the work, Subcontractor shall conform to the highest safety practice standards. To that effect, Subcontractor shall organize and vigorously maintain a comprehensive Safety Program covering all phases of the work which shall conform to all safety practices required by Contractor, Owner, and all federal, state, or local laws, rules or regulations applicable to health and safety. Subcontractor shall be solely responsible for ensuring compliance with Subcontractor's Safety Program and such laws, rules, or regulations, and may not rely on Contractor or Owner to enforce the same. In addition, Subcontractor shall promptly furnish to Contractor a written report of all health or safety inspections by governmental agencies.

7.8.3 Contractor has the authority to stop Subcontractor's Work in the event Subcontractor fails to comply with Contractor's, Owner's, or any federal, state, or local safety requirements. If Subcontractor's Work is stopped, Subcontractor shall take immediate steps to comply with such requirements. Subcontractor may resume work only after receiving Contractor's written authorization to do so.

7.8.4 Subcontractor shall furnish its agents and employees with all necessary protective clothing, protective equipment, and monitoring equipment, and shall conduct a "Safety Orientation" for all new hires.

7.8.5 Subcontractor shall designate a "Safety Representative" to implement and maintain Subcontractor's Safety Program on all shifts worked. The Safety Representative shall have the Authority to stop Subcontractor's Work in the event of unsafe or potentially unsafe conditions.

7.8.6 Within 24 hours after each occurrence, Subcontractor shall furnish to Contractor a written report of all accidental injuries to persons or damage to property. A complete accident investigation report shall be submitted at the same time. At the end of each month, Subcontractor shall submit monthly injury statistics on forms specified by Contractor or Owner. Contractor's authorized representatives shall be given access at all times to Subcontractor's records, documents, files, workplace facilities, and personnel, in order to audit, verify, and evaluate compliance with safety requirements if Contractor chooses to do so.

7.8.7 Subcontractor is required to comply with all applicable "Hazard Communication/Right to Know" laws concerning toxic or hazardous substances. Subcontractor shall maintain an index of those materials which are stored or used in the performance of the Work which contain toxic or hazardous substances. A copy of said list shall be provided to Contractor. Subcontractor shall make Material Safety Data Sheets available to all its employees. Copies of all reports made pursuant to the Material Safety Data Sheets shall be furnished to Contractor.

7.8.8 Subcontractor, and all its subcontractors, are required to maintain a drug and alcohol free working environment, consistent with the

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established policies and programs of Contractor and Owner. Subcontractor shall, without fail, conduct new hire, post accident, and reasonable cause drug and alcohol screening tests.

7.8.9 Subcontractor shall keep the Project and its premises free from debris and unsafe conditions resulting from Subcontractor's Work, and broom-clean each work area prior to discontinuing Work each day.

7.8.10 If Subcontractor fails to commence compliance with the duties of this Subarticle 7.8 within 24 hours after receipt from Contractor of written notice of non-compliance, Contractor may perform such necessary cleanup or implement safety measures without further notice and deduct the cost thereof from any amounts due or to become due Subcontractor. Abnormally frequent injury to workers or hazardous construction practices is cause for termination of the Subcontract.

7.8.11 Subcontractor shall be solely responsible for the safe handling, storage and use of any hazardous materials it brings upon the Project. Subcontractor shall fully defend and indemnify Contractor from any and all costs, including but not limited to fines and attorney fees, that Contractor incurs due to Subcontractor's handling, storage or use of any hazardous materials. If Subcontractor encounters any hazardous materials on the Project, Subcontractor shall immediately stop work and report such to Contractor. If Subcontractor fails to immediately report such discovery to Contractor or to cease work, Subcontractor shall fully defend and indemnify Contractor from any and all costs, including but not limited to fines and attorney fees, that Contractor incurs due to Subcontractor's non-reporting or disturbance of the hazardous materials.

7.9 Protection of the Work. Subcontractor shall take necessary precautions to properly protect Subcontractor's Work and the work of others from damage caused by Subcontractor's operations. Should Subcontractor cause damage to the work or property of Subcontractor, Owner, Contractor, or others, Subcontractor shall promptly remedy such damage to the satisfaction of Contractor or Contractor may so remedy and deduct the cost thereof from any amounts due or to become due Subcontractor.

7.10 Taking Possession of Subcontractor's Work. Even though the time for Subcontractor's performance has not expired, Contractor and Owner have the right to take possession of, and to use, any completed, or partially completed, portions of Subcontractor's Work. The exercise of such rights shall not be deemed a final acceptance of the Work or a waiver of any other rights of Contractor or Owner.

7.11 Permits, Fees, and Licenses. Subcontractor shall give adequate notices to authorities pertaining to Subcontractor's Work and secure and pay for all permits, fees, licenses, assessments, inspections, and taxes necessary to complete Subcontractor's Work in accordance with the Contract Documents. To the extent obtained by Contractor under the Contract Documents, and directly applicable and allowable to the Work, Subcontractor shall be compensated for additional costs resulting from laws, ordinances, rules, regulations, and taxes enacted after the date of this Subcontract.

7.12 Assignment. This Subcontract is personal to Subcontractor. Subcontractor shall not assign this Subcontract nor its proceeds nor subcontract the whole nor any part of Subcontractor's Work without prior written approval of Contractor. Any assignment without such approval shall be invalid, unenforceable, and void.

7.13 Subcontractor's Investigations and Representations. Subcontractor represents that it is fully qualified to perform the Subcontract Work, and acknowledges that, prior to the execution of this Subcontract, it has (a) by its own independent investigation ascertained (i) the Work required by this Subcontract, (ii) the conditions involved in performing the Work, and (iii) the obligations of this Subcontract and the Contract Documents, and (b) verified all information furnished by Contractor or others satisfying itself as to the correctness and accuracy thereof. Any failure by

Subcontractor to independently investigate and become fully informed will not relieve Subcontractor from its responsibilities hereunder.

7.14 Approvals.

7.14.1 Subcontractor warrants and agrees that it can and will obtain all requisite approvals from Owner and licensing agencies as to its eligibility to serve as a subcontractor and approvals of all materials and performance of the Work as required by the Contract Documents.

7.14.2 Subcontractor shall deliver to Contractor copies of shop drawings, cuts, samples, and material lists required by Contractor or the Contract Documents within sufficient time so as not to delay performance of the Project or within sufficient time for Contractor to submit the same within the time stated in the Contract Documents, whichever is earlier. Any deviation from the Contract Documents shall be clearly identified on shop drawings. Notwithstanding any general approval granted by Contractor or Owner, all Work shall be in accordance with the Contract Documents.

7.15 Meetings. Subcontractor agrees to attend weekly on-site meetings if required to do so by Contractor or Owner.

7.16 Prevailing Rate of Wage. When required of Contractor under the Prime Contract, or where required by law, Subcontractor expressly agrees to be bound by and comply with any prevailing rate of wage laws applicable to Subcontractor's Work in accordance with ORS 279C.800 et seq. The applicable prevailing wage rates from the Prime Contract are hereby expressly incorporated into this Agreement by reference. Information on BOLI Prevailing Wage Rates may be obtained at the following site: www.oregon.gov/BOLI/WHD/PWR/pwr_state.shtml. A copy of these rates may be requested by calling the Bureau of Labor and Industries directly (Bureau of Labor and Industries - (971) 673-0838). Information on the Federal Davis-Bacon Act rates may be obtained at the following site: www.oregon.gov/ODOT/HWY/SPECS/wages.shtml. Subcontractor's workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

7.17 Payment to Accident Insurance Fund. Subcontractor shall pay all contributions or amounts due the Industrial Accident Fund from the subcontractor incurred in the performance of the Subcontract.

7.18 No Liens or Claims Against Public Owners. Subcontractor shall not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished under this Subcontract.

7.19 Payment to ORD. Subcontractor shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

7.20 Demolition. If the Work involves demolition upon a public works project, Subcontractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

7.21 Lawn and Landscape Maintenance. If the Work involves lawn or landscape maintenance upon a public works project, Subcontractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

7.22 Hours/Days of Work. Subcontractor shall not employ a person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay: (a) for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday

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through Friday; and (c) for all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

7.23 Right to Overtime/Prevailing Wage Rates/Health & Pension Plan Posted. Subcontractor must post in writing in a location frequented by its employees notice of the number of hours per day and days per week that its employees may be required to work for this Project. Subcontractor must post the prevailing rates of wage in a conspicuous and accessible place in or about the Project. Subcontractor, if it provides a health and welfare plan or pension plan or both, shall post a notice describing the plan, including information on how and where to make claims and where to obtain further information, in a conspicuous and accessible place in or about the Project

7.24 Payment for Medical Care. Subcontractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Subcontractor, of all sums that the Subcontractor agrees to pay for the services and all moneys and sums that the Subcontractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

7.25 Workers Compensation. Subcontractor shall comply with ORS 656.017 or be exempt under ORS 656.126.

7.26 Steel Escalation/De-Escalation. If the Owner is ODOT, and if Contractor has elected to participate, Subcontractor, if applicable, shall comply with the requirements of the price escalation and de-escalation clause relating to steel material in such a manner as to permit Contractor to timely comply with such clause.

7.27 CCB Bond. Subcontractor shall have a public works bond filed with the Construction Contractors Board and shall provide Contractor with a copy of such bond before starting work unless Subcontractor is exempt under ORS 279C.836(4), (7), (8) or (9). Subcontractor shall include a similar provision in any lower-tier contract.

7.28 Right to CCB Claim. Unless payment is subject to a good faith dispute as defined in ORS 279C.580, if the Contractor or Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board.

ARTICLE 8 - PERFORMANCE OF WORK

8.1 Layout Responsibility. Contractor or Owner shall establish principal access lines and levels whereupon Subcontractor shall lay out and be strictly responsible for the accuracy of Subcontractor's Work and for any loss or damage to Contractor or contractors or subcontractors engaged in work on the site by reason of Subcontractor's failure to perform its Work correctly. Subcontractor shall exercise prudence so that actual final conditions and details will result in perfect alignment of finished surfaces.

8.2 Workmanship. Every part of Subcontractor's Work shall be executed in strict accordance with the Contract Documents in a sound, workmanlike, and substantial manner. All materials used in Subcontractor's Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work, and shall be new except for such materials as may be expressly provided in the Contract Documents to be otherwise.

8.3 Materials Furnished by Others. In the event the scope of Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of Subcontractor to examine the items so provided and thereupon handle, store, and install the items with such skill and care as to insure a satisfactory and proper installation. Loss or damage due to acts of Subcontractor shall be deducted from any amounts due or to become due Subcontractor.

8.4 Substitutions. No substitutions shall be made in Subcontractor's Work without first receiving all approvals required under the Contract Documents for substitutions. Subcontractor shall indemnify Contractor for any increased costs, including overhead, incurred by Contractor as a result of such substitutions, whether or not Subcontractor has obtained approval thereof and such costs may be deducted from any amounts due or to become due Subcontractor.

8.5 Use of Contractor's Equipment. Subcontractor, its agents, employees, subcontractors, or suppliers shall not use Contractor's equipment or equipment rented by Contractor without the express written permission of Contractor's designated representative. In the event that Subcontractor or any of its agents, employees, suppliers, or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts, or similar items owned, leased, or under the control of Contractor, Subcontractor shall defend, indemnify and hold harmless Contractor for any loss or damage (including personal injury or death) which may arise from such use, except if such loss or damage shall be found to have been due solely to the negligence of Contractor or Contractor's employees.

8.6 Privity. Until final completion of the Project, Subcontractor agrees not to perform any work directly for Owner or any tenants thereof, or deal directly with Owner's representatives in connection with the Project, unless otherwise directed in writing by Contractor. All work for the Project performed by Subcontractor shall be processed and handled exclusively by Contractor.

8.7 Subcontract Bonds. Unless expressly excluded, Subcontractor shall supply before the commencement of the work and maintain until completion at Subcontractor's expense a performance bond and payment bond in a form (attached hereto as Schedules E and F) and written by a surety satisfactory to Contractor in the full amount of the Subcontract Price.

8.8 Warranty. Subcontractor warrants its Work against all deficiency and defects in materials and/or workmanship. Subcontractor further warrants its Work as its Work is required to be warranted by Contractor in the Contract Documents. Subcontractor agrees to make good without cost to Owner or Contractor any and all deficiencies and defects due to faulty material and/or workmanship that appear within the guaranty or warranty period established in the Contract Documents.

8.8.1 If no such period is stipulated in the Contract Documents, then such guaranty or warranty shall be for a period of one year from the date of final completion of all or a designated portion of Subcontractor's Work or acceptance or use by Contractor or Owner of designated equipment, whichever is later.

8.8.2 Subcontractor further agrees to execute any special guaranties or warranties that are required for Subcontractor's Work prior to final payment.

ARTICLE 9 - DEFAULT

9.1 Failure of Performance

9.1.1 Notice to Cure. If Subcontractor refuses or fails to supply enough properly skilled workers, or proper materials, or maintain the schedule of work, or fails to make prompt payment to sub-subcontractors, suppliers or for materials, labor, services, or equipment, or disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is in material breach of a provision of this Subcontract, Subcontractor shall be deemed in default of this Subcontract. If Subcontractor fails within three (3) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

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9.1.1.1 Supply such number of workers and quantity of materials, equipment, and other facilities as Contractor deems necessary for the completion of Subcontractor's Work, or any part thereof which Subcontractor has failed to complete or perform after the above notice, and to charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

9.1.1.2 Contract with one or more additional contractors to perform such part of Subcontractor's Work as Contractor shall determine or provide the most expeditious completion of the Project and charge the cost thereof to Subcontractor;

9.1.1.3 Withhold payment of any monies due or to become due Subcontractor pending corrective action to the extent required and to the satisfaction of Contractor; and

9.1.1.4 In the event of an emergency, Contractor may proceed as above without notice.

9.1.2 Termination. If Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) working days after receipt by Subcontractor of the written notice issued under Subarticle 9.1.1., then Contractor may, in lieu of or in addition to Subarticle 9.1.1., issue a second written notice, by certified mail, to Subcontractor and its surety, if any, stating that if Subcontractor fails to commence and continue correction of a default within three (3) working days after receipt by Subcontractor of the second written notice, this Subcontract will be deemed terminated and Contractor may use any materials, implements, equipment, appliances, or tools furnished by or belonging to Subcontractor to complete Subcontractor's Work and furnish those materials, equipment, and/or employ said workers as Contractor deems necessary to maintain the orderly progress of the Work. All of the costs, including reasonable overhead, profit, and attorneys' fees, incurred by Contractor in so performing Subcontractor's Work shall be a charged expense against Subcontractor and Contractor shall have the right to deduct such expense from monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

9.1.3 Use of Subcontractor's Equipment. If Contractor performs work under this Article or sublets such work to be so performed, Contractor and/or the persons to whom work has been sublet shall have the right to take and use any materials, implements, equipment, appliances, or tools furnished by, belonging or delivered to Subcontractor and located at the Project.

9.2 Bankruptcy.

9.2.1 Termination Absent Cure. If Subcontractor files a petition under the Bankruptcy Code, this Subcontract shall terminate if Subcontractor or its trustee rejects this Subcontract or, if there has been a default, it is unable to give adequate assurance that it will perform as required by this Subcontract or otherwise is unable to comply with the requirements for assuming this Subcontract under the applicable provisions of the Bankruptcy Code.

9.2.2 Interim Remedies. If Subcontractor is not performing in accordance with the Schedule of Work at the time a petition in Bankruptcy is filed, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject this Subcontract or assume this Subcontract and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Subcontract as are reasonably necessary to maintain the schedule of work. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, together with Contractor's reasonable overhead and direct Project expenses incurred in

pursuing such remedies, including without limitation, its reasonable attorneys' fees, and, at Contractor's discretion, a reasonable profit. Subcontractor shall be liable for the payment of any amount by which such costs may exceed the unpaid balance of the Subcontract Price.

9.3 Suspension by Owner. Should Owner suspend the Prime Contract or any part of the Prime Contract which includes Subcontractor's Work, Contractor shall so notify Subcontractor in writing and upon receipt of said notice Subcontractor shall immediately suspend Subcontractor's Work. In the event of such Owner suspension, Contractor's liability to Subcontractor is limited to the extent of Contractor's recovery on Subcontractor's behalf under the Contract Documents. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit Subcontractor to prosecute said claim, in the name of Contractor, for the use and benefit of Subcontractor or, at Contractor's sole discretion, assign the claim to Subcontractor.

9.4 Termination by Owner. Should Owner terminate the Prime Contract or any part of the Prime Contract which includes all or part of Subcontractor's Work, Contractor shall so notify Subcontractor in writing and upon receipt of said notice, this Subcontract shall also be terminated in full or in part and Subcontractor shall immediately stop the Subcontractor's Work so terminated. In the event of such Owner termination, Contractor's liability to Subcontractor is limited to the extent of Contractor's recovery on Subcontractor's behalf under the Contract Documents. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit Subcontractor to prosecute said claim, in the name of Contractor, for the use and benefit of Subcontractor or, at Contractor's sole option, to assign the claim to Subcontractor.

9.5 Termination for Convenience. Contractor has the right to order Subcontractor in writing to suspend, delay, or interrupt all or any part of Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of Contractor. In addition, Contractor has the right, at any time, to terminate all or part of this Subcontract for any cause or no cause. Subcontractor shall notify Contractor in writing within twenty (20) working days after receipt of Contractor's termination order of the effect of such order upon Subcontractor's Work, and Subcontract Price, or Subcontract time shall be adjusted by Subcontract change order for any increase in the time or cost of performance of this Subcontract caused by such termination, suspension, delay, or interruption. No claim under this Article shall be allowed for any costs incurred more than twenty (20) working days prior to Subcontractor's notice to Contractor. If this Subcontract is terminated for convenience, Subcontractor shall be entitled to be paid a portion of the Subcontract Price based on the reasonable value of Work properly performed prior to such termination plus reasonable direct close-out costs, but shall not be entitled to any payment, profit or overhead on uncompleted Work, less partial payments previously made, except that if there is also a termination for convenience of the Prime Contract, termination settlement shall be as provided in the Contract Documents. However, neither the Subcontract Price nor the Subcontract time shall be adjusted under this Article for any termination, suspension, delay or interruption to the extent that performance would have been so suspended, delayed, or interrupted by the fault or negligence of Subcontractor.

9.6 Wrongful Exercise. If Contractor wrongfully exercises any option under this Article, Contractor shall be liable to Subcontractor solely for the reasonable value of Work performed by Subcontractor prior to Contractor's wrongful action, including reasonable overhead and profit on the completed Work, and reasonable closeout costs, less prior payments made.

9.7 Subcontractor Remains Liable for Completed Work. In any termination, whether in full or in part, or for default or convenience, Subcontractor shall remain fully liable for any and all completed Work and

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Contractor shall retain any and all remedies it has under this Subcontract and at law, equity or otherwise for any delays, defects or other deficiencies in the completed Work.

ARTICLE 10 - LABOR

10.1 Collective Bargaining Agreements. Subcontractor agrees to be bound and comply with all applicable enforceable provisions of each collective bargaining agreement to which Contractor is signatory, if any, and to indemnify Contractor from any and all liability, claim, loss, cause of action, cause of suit, or damage, including standby and start-up costs suffered by Contractor, resulting in any way from Subcontractor not being signatory to, or failing to comply with, the requirements of any such agreements executed by Contractor or Subcontractor in effect during Subcontractor's performance of the Work. Subcontractor assumes the responsibility of familiarizing itself with all labor agreements that may be applicable to this Article. Failure at any time to comply with any of the provisions of such agreements will, at the option of Contractor, be cause for immediate termination of this Subcontract for default and Contractor shall have all of the rights contained in Article 9 hereof with regard to such termination.

10.2 Labor Relations. If Subcontractor employs workers who are members of the building trades unions or subject to any other collective bargaining agreement, then, before commencing the work, Subcontractor shall hold, and participate in, a "jurisdictional" meeting with all trades whose members may be involved in the work. Subcontractor shall furnish Contractor a written report of such meeting, and shall notify Contractor of any unusual or out of the ordinary jurisdictional assignments before made by Subcontractor.

10.3 Labor Harmony. If by reason of strikes, picketing, or disputes of any nature between Subcontractor and any individual, group, or organization or informational picketing of any kind, Subcontractor should for a period of three (3) consecutive days, be unable to supply enough properly skilled workers or materials or equipment to perform Subcontractor's Work, then Contractor may terminate this Subcontract for default and proceed in accordance with Article 9 hereof.

ARTICLE 11 - INDEMNITY

11.1 Indemnification Regarding Subcontractor's Performance. Subcontractor assumes responsibility for and agrees at the sole discretion of Contractor that it shall fully defend, indemnify, and hold harmless "Indemnitees", which are:

Owner, Owner or Contractor's design professionals, Contractor (including its affiliates, parents, and subsidiaries), Contractor's sureties, upper-tier contractors (if any) and any other party Contractor is obligated to defend and indemnify, and their respective directors, officers, employees, agents, successors, assignees, partners, affiliates, subsidiaries, servants and representatives,

from and against all claims, causes of action or suits, damages, liabilities, losses, penalties and/or expenses, including, but not limited to attorney fees and all costs of litigation, arising out of or resulting from the performance of Subcontractor's Work, even though such claims may prove to be false, groundless, or fraudulent, to the fullest extent permitted by law and subject to the limitations provided below. This defense and indemnity obligation of the Subcontractor anticipates complete contractual defense and indemnity of the Indemnitees, inclusive of the Indemnitees' own fault, for claims not involving personal injury and/or property damage based upon a negligence theory.

Subcontractor's duty to indemnify Indemnitees 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 Indemnitees or Indemnitees' agents or employees.

Subcontractor's duty to indemnify Indemnitees for any and all liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the Subcontractor's negligence, in whole or in part, including concurrent negligence of a) Indemnitees or Indemnitees' agents or employees, and b) Subcontractor or Subcontractor's agents, employees, lower-tier subcontractors and suppliers of any tier, shall apply only to the extent of negligence of Subcontractor or Subcontractor's agents or employees. Subcontractor bears the financial responsibility for defense of Indemnitees until negligence is legally determined.

Subcontractor's duty to defend is independent of its duty to indemnify. Subcontractor agrees to defend Indemnitees regardless of whether its duty to indemnify is disputed. If the allegations raised in the claim, lawsuit or demand for arbitration, by any party against Indemnitees, allege facts from which, alone or with further evidence, it may be reasonably inferred that the claim arose in whole or in part by actions or omissions of the Subcontractor. Subcontractor agrees to defend Indemnitees.

Subcontractor's duty to defend, indemnify and hold Indemnitees harmless shall include, but not be limited to, as to all claims, demands, losses and liabilities to which it applies, Indemnitees' personnel-related costs, reasonable attorneys' fees, court costs and all other claim-related expenses.

For the purposes of this indemnity provision only, Subcontractor specifically and expressly waives any immunity that may be granted it under the Oregon Worker's Compensation Act, including but not limited to ORS 656.018, provided such waiver shall be expressly limited to Subcontractor's indemnity obligation herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under worker's compensation acts, disability benefits acts, or other employee benefits acts.

Such obligation shall not be construed to negate or abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Article.

This indemnity obligation shall survive termination of or final payment under the Subcontract.

In the event that a court or arbitrator of competent jurisdiction determines any provision contained within this Article 11 is not enforceable and/or is null and void, such shall not affect the validity or continuing force and effect of any other provisions, and Subcontractor agrees to indemnify Indemnitees to the fullest extent permitted by law.

Subcontractor represents and warrants that this Article 11 was mutually negotiated.

11.2 Equipment Use. In the event that Subcontractor or any of its agents, employees, representatives, suppliers, or lower-tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts, or similar items belonging to or under the control of Contractor, Subcontractor shall be liable to Contractor for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely to the negligence of Contractor's employees operating Contractor-owned or Contractor-leased equipment.

11.3 No Limitation Upon Liability. Subcontractor's assumption of liability is independent from, and not limited in any manner by, Subcontractor's insurance coverage obtained pursuant to this Subcontract or otherwise. All amounts owed by Subcontractor to Contractor as a result of the liability provisions of this Subcontract shall be paid upon demand.

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11.4 Performance Failure. Subcontractor shall be liable to Contractor for all costs, direct or indirect, which Contractor or Owner incurs as a result of Subcontractor's failure to perform this Subcontract, or any part hereof, in accordance with its terms. Subcontractor's failure to perform shall include, but not be limited to, the failure of its suppliers and/or subcontractors of any tier to perform. The liability of Subcontractor and its sureties (if any) shall include, but not be limited to, (1) liquidated or actual damages and other delay costs payable by Contractor to Owner; (2) Contractor's increased costs of performance, including extended overhead and other costs resulting from Subcontractor-caused delays or improper Subcontractor Work; (3) warranty and rework costs; (4) liability to third parties, including Subcontractor's employees; (5) cost to complete Subcontractor's Work; (6) attorney fees and related costs; and (7) sums equal to benefits paid for or on behalf of Subcontractor or to Subcontractor's employees where such benefit payments are charged to Contractor under any merit plan or to Contractor's individual reserve account pursuant to any workers' or unemployment compensation insurance policy or statute.

11.5 Compliance With Laws. Subcontractor agrees to be bound by, and at its own cost to comply with, all federal, state, and local laws, ordinances, and regulations (hereinafter collectively referred to as "laws") applicable to Subcontractor's Work, including, but not limited to, equal employment opportunity laws, Minority and Disadvantaged and Women Business Enterprise laws, the Occupational Safety and Health Act in its federal and state versions, tax laws, environmental and hazardous substance laws, and all other laws with which Contractor must comply according to the Contract Documents. Subcontractor shall be liable to Indemnitees as provided in the indemnification obligation under this Article for all loss, cost, and expense (including, but not limited to, attorney, consultant and expert fees) attributable to any acts of commission or omission by Subcontractor, its employees, or agents resulting from the failure to comply with such laws, whether the same arise during or after completion of Subcontractor's Work, including, but not limited to, any fines, penalties, damages, judgments, claims, decreases in value of real property, or corrective measures. For example, and not limiting the forgoing or any other provision of this Subcontract, Contractor may charge against sums due or to become due Subcontractor the amount of any fines, and the fees, costs, and expenses incurred by Contractor in the defense of DEQ, OSHA, WISHA, OROSHA or any other governmental citations and/or fines arising from or relating to Subcontractor's failure to comply with provisions of this Subcontract.

11.6 Responsibility for Work. Subcontractor assumes the entire responsibility and liability for all Work, supervision, labor, and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies, and all other things provided by Subcontractor until final acceptance of the Work by Owner. In the event of any loss, damage, or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild, and make good said loss, damage or destruction at Subcontractor's cost.

11.7 Patents. Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented, trademarked, or copyrighted materials in Subcontractor's Work. Subcontractor shall defend all suits for claims for infringements of any patent, trademark, or copyright rights arising out of Subcontractor's Work, which may be brought against Contractor or Owner, and shall be liable to Contractor and Owner for all loss, including all costs, expenses, and attorney fees.

11.8 Contractor's Damages. Subcontractor's liability for costs incurred by Contractor under this Subcontract shall include a 10% markup. This markup is not a penalty but is established as liquidated damages to compensate Contractor for its administrative costs and/or to allow Contractor a reasonable profit on work which Contractor must perform, or

costs which Contractor must incur as a result of Subcontractor's failure to properly perform.

ARTICLE 12 - INSURANCE

12.1 Subcontractor's Insurance. Prior to the start of Subcontractor's Work, Subcontractor shall procure for Subcontractor's Work and maintain in force the following minimum insurance coverage and limits of liability unless the Prime Contract requires higher limits and/or additional coverage in which case the higher limits and/or additional coverage shall be procured:

Workers' Compensation	Statutory Limits
Employer's Liability Insurance	\$1,000,000 each occurrence
Commercial or Comprehensive General Liability Insurance:	
Each Occurrence Limit	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed	\$2,000,000
Operations Aggregate	
Personal and Advertising	\$1,000,000
Injury Limit	
Comprehensive Automobile Liability Insurance:	
Combined Single Limit	\$1,000,000 each occurrence
Bodily Injury & Property Damage	\$1,000,000 aggregate
	or
Bodily Injury	\$1,000,000 each Person
	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence

Commercial General Liability insurance required under this Subarticle shall include, but not be limited to, coverage for Products/Completed Operations, Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion deleted, Blanket XCU, Incidental Malpractice, Host Liquor Liability, and Blanket Contractual Liability insurance applicable to Subcontractor's indemnity obligations and other contractual indemnities assumed by Subcontractor under the Contract Documents. The Comprehensive General Liability and Commercial General Liability insurance policies shall provide aggregate limits per project. Comprehensive Automobile Liability insurance required under this Subarticle shall also include coverage for all owned, hired, leased, and non-owned automobiles.

If Subcontractor, in performing the Work, will be required to employ workers who are required to be covered under the Federal Longshore and Harbor Worker's Act, then Subcontractor shall obtain such coverage.

If Subcontractor's Work involves the use of watercraft, Subcontractor shall procure and maintain Protection and Indemnity insurance coverage (which coverage shall apply to all of the crew members as well as passengers) with limits of \$5,000,000 or the value of the watercraft, whichever is greater.

If Subcontractor's Work involves the use of aircraft, Subcontractor shall procure and maintain aircraft liability coverage on an occurrence basis for owned and non-owned aircraft, with limits of \$1,000,000 per passenger or \$5,000,000, whichever is greater.

Subcontractor shall maintain in effect all insurance coverage required under this Article, or by the other Contract Documents, at Subcontractor's sole expense and with insurance companies acceptable to Contractor. Contractor expressly reserves the right to disapprove of any insurance company(ies) proposed to be used by Subcontractor and to require that Subcontractor's policies be written by an acceptable company. Contractor may not, however, arbitrarily or unreasonably withhold its acceptance of a

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proposed insurance company. In the event Subcontractor fails to obtain or maintain any insurance coverage required under this Subcontract, Contractor may purchase such coverage and charge the expense thereof to Subcontractor. Contractor's approval, purchase, or maintenance of any insurance under this Subcontract shall not constitute a limitation on Subcontractor's liability.

Subcontractor's insurance policies must be written on an occurrence basis, with no "sunset" clauses, and shall not contain coverage exclusions for explosion, building collapse, or damage to underground facilities. Subcontractor's insurance policies which insure against claims for damages to or destruction of property must also insure against claims for the loss of use of such property. In addition, insurance policies provided by Subcontractor shall contain an endorsement which specifically provides primary coverage for the benefit of Contractor when it is alleged that Contractor has "borrowed" a servant from Subcontractor, or from Subcontractor's subcontractors, and Contractor is allegedly liable because of the "Borrowed Servant Doctrine".

Any deductible amount applied to any loss payable under Builders Risk Insurance shall be borne by the insured's interest whose Work is damaged in direct proportion as their individual losses shall bear to the total loss, regardless of whether such loss is to work installed and completed, to materials stored on or off site, or to materials in transit. Contractor and Owner neither represent nor assume responsibility for the adequacy of their Builders Risk Insurance to protect the interests of Subcontractor. It shall be the obligation of Subcontractor to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Work.

12.2 Additional Insureds. Except for Worker's Compensation insurance policies, Subcontractor shall endorse all policies, primary and excess, to the full policy limit thereof, to name Contractor (including its affiliates, parents, and subsidiaries), Contractor's surety, Owner, Designer (only if the Designer is required to be named as additional insured by the Prime Contract), upper-tier contractors (if any), and any persons or entities so required in the Contract or Contract Documents as additional insureds with respect to liability arising out of ((a) operations and completed operations performed for Contractor or Owner by Subcontractor, (b) acts or omissions of Contractor or Owner in connection with general supervision of Subcontractor's operations, and (c) claims for bodily injury or death brought against Contractor or Owner by Subcontractor's employees, or employees of Subcontractor's subcontractors of any tier, however caused, related to the performance of operations under the Contract Documents. Such insurance afforded to additional insureds as the additional insureds under Subcontractor's policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by additional insureds. Subcontractor's insurance shall protect additional insureds for any and all liability arising out of Subcontractor's work in process and completed work throughout the applicable statute of repose period.

If owners of Subcontractor perform work on or in connection with the Project, they shall each elect coverage for themselves under the applicable worker's compensation law and insurance policies.

12.3 Required Certificates of Insurance and Endorsement Forms.

Prior to commencement of the Work, or within five (5) days from the date of execution of this Subcontract, whichever is sooner, and as a condition precedent to payment for the Work, Subcontractor shall provide Contractor with Certificates of Insurance in a form acceptable to Contractor which shall provide satisfactory evidence that Subcontractor has complied with all insurance requirements of this Subcontract and the Prime Contract. At Contractor's sole option, it may require, in addition to Certificates of Insurance, properly completed and executed insurance endorsement forms, in a form acceptable to Contractor, evidencing the required insurance coverage and/or certified copies of policies. Such Certificates of Insurance and/or endorsement forms shall include a provision that the coverages afforded thereunder shall not be cancelled, nor non-renewed, nor restrictive

modifications added, unless at least thirty (30) days' prior written notice is given to Contractor, unless a longer period is specifically required by the Contract Documents, in which case the longer period shall apply. If the Certificate of Insurance includes language to the effect that - "This certificate is issued as a matter of information only and confers no rights upon the certificate holder" - such language shall be deleted. The endorsements required for compliance with 12.2 above are the ISO GC 2010 1001 and the CG2037 1001 together, or endorsement forms providing equivalent coverage to the additional insureds under Subcontractor's policies.

Required Certificates of Insurance and Endorsement Forms shall be maintained for two years following completion under this Subcontract or for such longer period as the Contract Documents may require.

12.4 Waiver of Rights. Contractor and Subcontractor waive all rights against each other and Owner, Designer, separate contractors, and all other subcontractors for loss or damage to the extent covered by builder's risk or completed operations or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance; provided, however, that such waiver shall not extend to the acts of Designer.

ARTICLE 13 - DISPUTES

13.1 Governing Law. The law of the State of Oregon shall govern this Subcontract.

13.2 Agreement to Mediate. Except for claims for contribution or indemnity arising out of or relating to a lawsuit filed by or against any party to this Subcontract, the parties mutually agree that any dispute that may arise under this Subcontract will be submitted to a mediator agreed to by both parties as soon as reasonable after such dispute arises, but in any event prior to the commencement of arbitration or litigation. Such mediation shall take place in Portland, Oregon, and the mediation fees and mediator's expenses shall be shared equally by the parties. The parties agree to exercise their best efforts in good faith to resolve all disputes in mediation.

13.3 Arbitration. Subject to the foregoing paragraph regarding mediation, if any dispute arises between Contractor and Subcontractor pertaining in any manner to the construction or interpretation of this Subcontract, or to the rights or obligations of the parties hereunder, or to the breach hereof, Contractor shall have the exclusive option with regard to each such dispute either to have the dispute determined by court or by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Contractor shall exercise said option by commencing a court action or by commencing an arbitration proceeding. Subcontractor agrees to accept notice in writing by certified or registered letter addressed to Subcontractor of Contractor's intention to proceed with arbitration, and of any other step in connection therewith, or for enforcement thereof, with the same effect as though personally served therewith. If Subcontractor first commences a court action with respect to a dispute which Contractor desires to have determined by arbitration, or an arbitration proceeding which Contractor desires to have determined by a court action, Contractor shall have the right to have said court action or arbitration proceeding stayed if Contractor within a reasonable time shall commence the arbitration proceeding or court action desired by Contractor. If the elections afforded Contractor herein are not enforceable, then both parties shall be bound to arbitrate all disputes in which the disputed amount is less than \$50,000, and shall litigate any dispute involving a higher amount. The decision of the arbitrator(s) shall be final and binding.

13.4 Claims of Subcontractor. As to any claims asserted by Subcontractor on account of acts or omissions of others for which Contractor may have a right to claim under the Prime Contract, or for any claims made by others under the Prime Contract against Contractor for which Subcontractor is responsible, Subcontractor agrees to prosecute or defend such claims in Contractor's name and in accordance with the

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provisions of the Prime Contract for determining disputes. Contractor and Subcontractor further agree to cooperate in prosecuting or defending claims. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear the expenses thereof, including attorney fees. Subcontractor shall be bound by such determinations.

13.5 Consolidated or Joint Arbitration. If arbitration is conducted involving Owner, Contractor, or any other party concerning or in any way relating to the work required or alleged to be required herein, this Subcontract, or Subcontractor, Subcontractor expressly agrees to a consolidated or joint arbitration, if and as called for by Contractor.

13.6 Venue. If any suit or action is filed by any party to enforce this Subcontract or otherwise with respect to the subject matter of this Subcontract, this Subcontract and all Work hereunder shall be interpreted under the laws of the State of Oregon, and venue for any suit or action shall be Marion County, Oregon. By executing this Subcontract, Subcontractor hereby subjects himself to the jurisdiction of the Circuit Court of the State of Oregon in and for Marion County.

13.7 Work Continuation and Payment. Unless otherwise agreed in writing, Subcontractor shall carry on the Work and maintain the Scheduled Work pending resolution of the dispute, and, if so, Contractor shall continue to make payments in accordance with this Subcontract.

13.8 Notice of Intent to Prosecute Claim. Subcontractor expressly promises and agrees not to make any claim against Contractor's surety, or institute any suit, action, or proceeding against Contractor or its surety without giving at least ten (10) days' prior notice in writing of an intention to do so. Such notice shall include a general statement of the claim together with a specific statement of the damages alleged.

13.9 Contractor's Damages. Notwithstanding any provision to the contrary in any Article or Subarticle of this Subcontract, Subcontractor's liability for costs incurred by Contractor on Subcontractor's behalf, or on account of Subcontractor, or otherwise under any provision of this Subcontract shall include not only Contractor's direct or out-of-pocket costs but also Contractor's overhead associated with such costs. In addition, Contractor shall be entitled to a 10% markup on such direct or out-of-pocket costs. This markup is not profit nor a penalty but is established as liquidated damages to compensate Contractor for its administrative costs and/or to allow Contractor to recover its profit on work foregone as a result of Subcontractor's failure to properly perform.

ARTICLE 14 - EQUAL OPPORTUNITY

14.1 In connection with its performance under this Subcontract, Subcontractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, sex, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subcontractor agrees to post hereafter, in conspicuous places, available for employees and applicants for employment, notices, prepared by Subcontractor, and approved by the government when required, setting forth the provisions of this Article.

14.2 Subcontractor shall permit access to its books, records, and accounts by representatives of Contractor or Owner or any applicable government agency for purposes of investigation to ascertain compliance with the provisions of this Article.

14.3 In the event of Subcontractor's noncompliance with the equal opportunity provisions of this Subcontract, this Subcontract may be terminated for default.

14.4 Subcontractor shall include the provisions of this Article in every lower-tier subcontract and purchase order. The requirements of this Article shall be in addition to any equal opportunity provisions of the Contract Documents.

ARTICLE 15 - INFORMATION REQUIRED BY OWNER

In addition to the information to be provided by Subcontractor pursuant to other provisions of this Subcontract, Subcontractor hereby agrees to provide, at no additional cost to Contractor, and in a prompt and timely fashion so as not to disrupt or delay the performance of this Subcontract or the contract between Contractor and Owner, any and all additional information relating to this Subcontract which is required either by the Contract Documents or by law.

ARTICLE 16 - MISCELLANEOUS

16.1 Lower Tier Provisions. Subcontractor shall include in all of its subcontracts and purchase orders relating to the Project, and all other undertakings between it and its subcontractors and material suppliers for the Project, a payment clause that obligates such lower tier subcontractor or supplier to:

16.1.1 Pay Subcontractor's subcontractors and material suppliers for satisfactory performance on the Project within ten (10) days out of such amounts as are paid to Subcontractor by Contractor for the work of Subcontractor's subcontractors and material suppliers on the Subcontract.

16.1.2 Pay Subcontractor's subcontractors and material suppliers interest on payments not made within ten (10) days after payment by Contractor to Subcontractor for the work of Subcontractor's subcontractors and suppliers on the Subcontract for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made at the rate applicable by law.

16.1.3 Subcontractor shall include in all of its subcontracts and purchase orders relating to the Project, and all other undertakings between it and its subcontractors and material suppliers for the Project, a clause that obligates such subcontractors and material suppliers at every tier to include payment clauses and interest penalty clauses conforming to the standards of Subarticle 16.1 in each of their contracts relating to the Project at every tier.

16.2 Inconsistencies and Omissions. Should inconsistencies or omissions appear in the Contract Documents or this Subcontract, it shall be the duty of Subcontractor to so notify Contractor in writing within three (3) working days of Subcontractor's discovery thereof. Subcontractor shall comply with Contractor's instructions with respect thereto.

16.3 Severability and Waiver. The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right as respect further performance. A waiver is only effective if in writing and signed by the party to be bound.

16.4 Attorney Fees. Should either party employ an attorney to institute suit or action or demand arbitration to enforce any of the provisions hereof, to protect its interest in any matter arising under this Subcontract or to collect damages for the breach of this Subcontract, or to recover on a surety bond the obligee of which is a party to this Subcontract, the prevailing party shall be entitled to recover from the other party reasonable attorney fees, expert witness fees, costs, charges, and expenses expended or incurred therein at hearing, trial, on appeal, or otherwise in an amount to be fixed by the court or arbitrator(s). The arbitrator(s) in any arbitration proceeding shall have the right to allocate his or their fees between the parties or to charge all of such fees to one party, as the arbitrator(s) shall deem to be just.

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This clause applies, but is not limited to, proceedings in bankruptcy or otherwise.

16.5 Titles. The titles given to the Articles of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose.

16.6 Integration. This Subcontract is solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral.

16.7 Third Parties. Nothing in this Subcontract, whether express or implied, is intended to offer or confer any rights or remedies under or by reason of this Subcontract on any persons other than the parties to it, nor is anything in this Subcontract intended to relieve or discharge the obligation or liability of any third persons to any party to this Subcontract, nor shall any provision give any third persons any rights of subrogation or action over against any party to this Subcontract.

16.8 Remedies. All rights and remedies provided in this Subcontract to Contractor are cumulative and not exclusive of any other rights or remedies that may be available to Contractor, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. All rights and remedies provided in this Subcontract to Subcontractor are exclusive of any other rights or remedies that may be available to Subcontractor, whether provided by law, equity, statute, in any other agreement between the parties or otherwise.

16.9 Warranty of Action. Each signatory, by affixing his or her signature hereto, personally certifies that he or she is authorized to do so by the Charter, Articles of Incorporation, Bylaws, Operating Agreement, governing body, and/or Board of Directors of the entity for which he or she is executing this Subcontract, and that his or her signature shall cause this Subcontract to be binding upon such entity.