



STANDARD SUBCONTRACT

SUBCONTRACT: (insert subcontract number)

DATED: (insert date)

THIS AGREEMENT is made on the above date, and entered into between

Name: **University Mechanical Contractors, Inc. dba UMC**
Address: 11611 49th Place West
Mukilteo, Washington 98275-4255

hereinafter the CONTRACTOR, and

Name: (insert SUBCONTRACTOR name)
Address: (insert SUBCONTRACTOR address line 1)
(insert SUBCONTRACTOR address line 2)

hereinafter the SUBCONTRACTOR.

CONTRACTOR has entered into an agreement (hereafter referred to as the "PRIME CONTRACT") with OWNER, PRIME CONTRACTOR, HIGHER TIER SUBCONTRACTOR, PRIME ENGINEER, or ARCHITECT (hereafter collectively and individually the "CUSTOMER") to provide goods and/or to perform services (hereafter referred to as the "WORK") for the following project:

Project Name: (insert project name)
Address: (insert project address line 1)
(insert project address line 2)
Customer Name(s): (insert name of prime contractor, owner, etc.)

CONTRACTOR and SUBCONTRACTOR agree that SUBCONTRACTOR shall perform the "WORK" _____ as described in Exhibits _____ in accordance with (1) UMC's Standard Terms and Conditions attached as Attachment A ("Terms and Conditions"), (2) all other exhibits attached hereto, (3) "Contract Documents" as described in Paragraph (a) of the Terms and Conditions and all laws, government regulations and orders, which are hereby made part of this AGREEMENT.

In consideration of SUBCONTRACTOR'S full, complete, and faithful performance of its WORK under this Subcontract, CONTRACTOR agrees to pay SUBCONTRACTOR: (insert written value of SUBCONTRACTOR subcontract value) Dollars & NO/100 (\$(insert numerical value)).

The following apply to this AGREEMENT:

1. In accordance with Attachment A, a performance and payment bond **IS NOT** required.
2. Per the payment terms in Attachment A, retention of **TEN** percent (**10.00%**) will be held as part of this AGREEMENT.
3. SUBCONTRACTOR acknowledges and agrees that the indemnification provisions stated in Paragraph (s) of Attachment A were mutually negotiated.
4. By checking this box , SUBCONTRACTOR agrees to a fast pay discount of **ZERO** percent (**0.00%**) per the payment terms stated in Attachment A.
5. Other attachments as specified in **Exhibit 1**.
6. Other: **Not Applicable**

IN WITNESS WHEREOF the CONTRACTOR and SUBCONTRACTOR have executed this AGREEMENT.

**UNIVERSITY MECHANICAL
CONTRACTORS, INC. dba UMC**

SUBCONTRACTOR:

(Authorized Signer)

Name/Title: Gerald D. Bush, President/CEO

Name/Title: _____

Date: _____

Date: _____

SAMPLE

Attachment A. TERMS AND CONDITIONS

The CONTRACTOR and SUBCONTRACTOR agree that:

(a) Contract Documents.

The Contract Documents which are binding on the Subcontractor include the entire Prime Contract, General Conditions, Supplemental Conditions, Special Conditions, Drawings, Specifications, Addenda, Amendments, Modifications and all other documents forming or by reference made a part of the Prime Contract. All of the aforementioned documents (hereinafter the "Contract Documents") shall be considered a part of this Subcontract and each of them are hereby incorporated into this Subcontract as if fully and particularly copied verbatim herein. Subcontractor acknowledges it has reviewed or had the opportunity to review the Contract Documents and that it has fully reviewed the Project Site and its surroundings, including conditions that are discoverable by prudent inspections. All rights and remedies reserved to the Customer under the Contract Documents shall apply to and be possessed by Contractor, with respect to Subcontractor. Subcontractor is bound to all clauses, including disputes and arbitration, of the Contract Documents, including but not limited to those relating to changes, differing site conditions, variation in quantities, extra work, default termination, convenience termination, disputes, written notice requirements and schedules. Where provisions of this Subcontract, the Prime Subcontract, and the Prime Contract conflict with provisions of the Contract Documents, the provision placing the greater burden on the Subcontractor prevails. Subcontractor shall give Contractor written notice of any claim or request for equitable adjustment so Contractor may comply with the notice requirements of the Contract Documents. Subcontractor shall be bound by all notice requirements of this Subcontract and the Contract Documents. Failure by Subcontractor to provide timely and proper notice shall result in an absolute waiver of Subcontractor's right to additional compensation or time to perform its Work.

(b) Assignment.

The Subcontractor shall not assign or sublet its Work or any portion thereof or monies due or to become due without Contractor's prior written consent.

(c) Submittals.

Subcontractor shall timely furnish shop drawings, specifications, final selection of materials, and other necessary items for approval by Contractor or Customer in accordance with the Contract Documents and so as not to delay progress of the work. Subcontractor shall provide all instruments of service in Contractor's standard Virtual Construction Services ("VCS") formats unless otherwise specified. Contractor's current standard VCS formats and instructions shall be provided upon request. No extension of time shall be allowed to Subcontractor for delay by Subcontractor in preparing shop drawings or in securing approval by the Architect or Engineer when such drawings or submittals are not properly prepared, or when Subcontractor, exercising reasonable diligence and judgment, could have anticipated and avoided the delay.

(d) Schedule/Delays.

(1) Contractor shall give Subcontractor reasonable notice of required starting time. Subcontractor shall start its Work on date named by the Contractor and Subcontractor shall complete the several portions and the whole of the Work herein subcontracted at such times and in such a manner as will enable Contractor to fully comply with the Contract Documents.

(2) Time is of the essence in this Subcontract. Subcontractor agrees to punctually and diligently perform all parts of the Subcontract in accordance with the construction schedule which may be adjusted from time to time and in a proper, efficient and workmanlike manner. Subcontractor shall prosecute the Work in a prompt and diligent manner whenever the Work, or any part of it becomes available, or at such other time or times as Contractor may direct. Subcontractor shall keep thoroughly informed as to the progress of the project, so as to prepare its workforce to meet the construction schedule. Upon notice by Contractor, that in Contractor's opinion Subcontractor has fallen behind in its Work, Subcontractor shall take such steps as may be necessary to improve and/or increase equipment, supervision, crews and/or tools being used, and to submit for approval such supplementary Subcontractor's schedule(s) as may be necessary to demonstrate the manner in which Subcontractor's rate of progress will be redeemed to meet the construction schedule. Subcontractor shall reimburse Contractor for any and all liquidated, actual and/or consequential damages that may be assessed by the Customer against Contractor which are attributable to or caused by Subcontractor or caused by Subcontractor's failure to perform the Work within the time fixed or in the manner provided for in this Agreement. Subcontractor shall also be liable for any increased costs or other damages Contractor may sustain by reason of such delay by Subcontractor whether or not liquidated, consequential, or actual damages are assessed by the Customer, and Subcontractor authorizes Contractor to withhold such costs and damages from payments which would otherwise be due Subcontractor.

(3) Any float-time between the scheduled early completion of a construction activity and the scheduled completion date shall belong to Contractor exclusively and may be used by Contractor in determining if additional work days are to be awarded for changes in the Subcontract or for delays to the Subcontractor caused by Contractor. The Subcontractor will not be entitled to any adjustment in the Subcontract time, the construction schedule or the Subcontract price or to any additional payment from any source by reason of Contractor's use of float-time.

(4) Other contractors, suppliers, subcontractors or sub-tier subcontractors may be working on the project in the same area during Subcontractor's performance of the Work, and such concurrent activities may interfere with Subcontractor's work. Coordination of its work activities shall be the responsibility of Subcontractor with the ultimate resolution and discretion concerning such conflicts, or coordination, remaining with Contractor. Subcontractor is required to avoid interference. Avoidance of interference includes coordination of the work sequences relative to Subcontractor's Work and that of other contractors, subcontractors, sub-tier subcontractors, suppliers, and Contractor. Contractor will make final determinations as to sequence and location in the event of conflict. Subcontractor shall fully cooperate with such other subcontractors, sub-tier subcontractors and suppliers to avoid any delay or hindrance of the project.

(5) Contractor may, from time to time, modify the construction schedule. If Subcontractor believes it is entitled to additional compensation due to a modified construction schedule, Subcontractor shall give written notice to Contractor in accordance with the Contract Documents and not fewer than five days before the date by which Contractor is required by the Contract Documents to provide such notice to the Customer and not later than five days from the occurrence of the event giving rise to the notice. Claims for additional compensation related to changes to the construction schedule shall be waived if not submitted in accordance with this paragraph.

(6) Subcontractor shall only be entitled to additional compensation or time for delay to or interference with Subcontractor's Work, only if and to the extent Contractor is entitled to and actually receives additional time or compensation from Customer on Subcontractor's behalf for such delay or interference. If Subcontractor's Work is delayed or interfered with by any cause for which Subcontractor intends to request additional time and/or compensation, Subcontractor shall give written notice to Contractor of such delay in accordance with the Contract Documents and not fewer than five days before the date by which Contractor is required by the Contract Documents to provide such notice to the Customer and not later than five days from the occurrence giving rise to the notice. Claims for additional compensation or time due to delay to Subcontractor's Work shall be waived if not submitted in accordance with this paragraph.

(e) Payment.

(1) Subcontractor shall submit progress payment requests using Contractor's standard pay application and lien waiver forms (which shall be provided upon request) to Contractor at such reasonable times as to enable Contractor to apply for and obtain payment from the Customer. All invoices shall be emailed to Contractor's Project Manager and Contract Administrator or other email address as indicated by Contractor. Subcontractor shall receive as progress payments from Contractor the amounts allowed to Contractor by Customer on account of Subcontractor's work to the extent of the Subcontractor's interest therein, provided payment to Subcontractor shall be subject to confirmation of the progress of Subcontractor's Work. Unless otherwise specified on the signature page of this agreement or as required by RCW 60.28, ten percent (10.00%) retainage shall be withheld by Contractor from each progress payment made to Subcontractor. Subject to paragraph (e)(3) below, Contractor shall make progress payments to Subcontractor within fifteen (15) days of the date Contractor has received its payment for such progress billing. Progress payments shall be deemed advances and are subject to adjustment at any time prior to final payment for errors, overpayment or Contractor's determination that the remaining balance of payments may be insufficient to insure completion of the Subcontract work or to pay lien, bond and retainage claims or to pay Subcontractor's unpaid accounts. Subject to paragraph (e)(3) below, final payment, including all withheld retention, shall be made within fifteen (15) days after Contractor has received its final or complete payment, including retention, involving Subcontractor's portion of the Work.

(2) Subcontractor shall hold progress payments in trust for the benefit of Subcontractor's laborers and their fringe benefit trusts, the Washington State Department of Labor & Industries, lower-tier subcontractors and material suppliers and all others who are entitled to claim a lien or file a claim against any retainage or bond on the project. Subcontractor shall furnish proof of payment of all project obligations and furnish conditional and unconditional lien releases in a form satisfactory to Contractor relating to its Work when requested by Contractor. Contractor may, but shall not be required to, withhold sums from Subcontractor's billings or retention to cover any unpaid obligations or contingent liabilities of Subcontractor including any liens, claims, or unpaid accounts, in addition to Contractor's other remedies. Contractor may discharge any liens or claims, or unpaid accounts made on account of Subcontractor's Work without a legal determination as to the validity thereof and deduct the cost of doing so, including all attorneys' fees and costs incurred by Contractor. Contractor may pay or satisfy directly or by joint check Subcontractor's unpaid accounts. If Subcontractor is

in any way indebted to Contractor whether concerning this Subcontract or any other contract, Contractor may at any time withhold monies against any payment due Subcontractor under this Subcontract as an offset against other debts owed to Contractor by Subcontractor. Subcontractor shall defend, indemnify and hold harmless Contractor and Customer from any and all costs, expenses, payments or other damages associated with liens, claims or unpaid accounts.

(3) Receipt by Contractor of payment from Customer for Subcontractor's Work shall be a condition precedent to Contractor's obligation to pay Subcontractor for any request for payment including progress payment requests, request for final payment, change order requests, requests for equitable adjustment or claims of any other type. Subcontractor acknowledges and assumes all risk of non-payment by the Customer for work performed or of money owing to Subcontractor. If, for any reason, Customer fails to pay Contractor for any requests by Subcontractor, including but not limited to requests for progress payments, change order requests, claims of any type, or the request for final payment, then Contractor shall be fully discharged and released from any liability or obligation to pay Subcontractor for such request(s).

(4) Invoices not received 90 days from the date of Subcontractor's final performance of the Work or final completion of the project, whichever comes first, shall be subject to a monthly \$500 late processing fee. Requests for payment received from Subcontractor after UMC is required by the Contract Documents to submit its pay final pay applications to the Customer will not be paid.

(5) If a fast pay option has been selected by Subcontractor on the signature page of this Agreement, Contractor may, at its sole option, issue payment to Subcontractor by the 10th day of the following month and take the discount stated on the signature page. Contractor's payment, less the applicable discount, shall be considered full payment of the progress payment application. The fast pay discount will not apply to retention or the final payment.

(f) Changes.

(1) Contractor may, by written order and without notice to Subcontractor's surety, if any, change this Subcontract to provide for additions, deletions, and revisions in the Subcontract Work. All such work shall be performed under the conditions hereof and of the Contract Documents. Except in an emergency endangering life or property, no addition, deletion or revision to or from the Work shall be made without prior written direction from an officer or Project Manager of Contractor. All others, including Contractor's field personnel and superintendent, the Customer, the Customer's agents, architects, engineers, designers and inspectors do not have authority to authorize extra work or overtime on behalf of Contractor. When directed in writing by an authorized agent of Contractor, Subcontractor shall proceed promptly with its Work as changed in accordance with the then current schedule pending determination of any increase or decrease to the Subcontract price(s) on account of the change.

(2) If Subcontractor claims that any change, direction, instruction, interpretation, or determination of the drawings or specifications ("Changes") involve extra costs or additional time, Subcontractor shall give Contractor written notice thereof in accordance with the Contract Documents and not fewer than five days before the date by which Contractor is required by the Contract Documents to provide notice to the Customer and not more than five days from the event giving rise to the notice. Any adjustment to the Subcontract price or time for Subcontractor's Work on account of Changes shall be set forth in writing in a Subcontract change order. Claims for adjustment in the Subcontract price and/or time shall be documented as provided in the Contract Documents and shall at a minimum include a detailed breakdown of all labor hours, labor rates, material unit costs, equipment costs, taxes, insurance and allowable markups, and any request for time shall be supported by a detailed schedule analysis. Claims for adjustment in the Subcontract price and/or time are waived if not submitted in strict accordance with this paragraph.

(3) Payment for Changes and/or granting of a time extension, as provided herein, shall be full compensation for any change or extra work, including full payment for costs of all delays in connection with such change and including full payment for any expense for inconvenience, disruption of schedule, loss of efficiency or productivity of any nature whatsoever by Subcontractor or sub-tier subcontractors, suppliers or material suppliers.

(4) In the event Subcontractor discovers conditions presenting a potential safety or health hazard, Subcontractor shall immediately suspend work in that area and notify Contractor. Except in an emergency endangering life or property, Subcontractor shall not undertake any extra or remedial work without prior written direction from Contractor. If Subcontractor encounters any conditions differing materially from those shown in the Contract Documents which impact the cost or schedule of the Work and which are or may, under the Contract Documents, be grounds for additional compensation or time, Subcontractor shall provide written notice thereof to Contractor within 24 hours of discovery. Notice shall be provided in accordance with the Contract Documents and not fewer than five days before the date by which Contractor is required by the Contract Documents to provide notice to the Customer. Claims for adjustment in the Subcontract price and/or time are waived if not submitted in strict accordance with this paragraph and, pursuant to Subcontract paragraph (e)(3), to the extent Contractor does not receive payment for the same from the Customer.

(5) The only fund from which claims for changes, differing site conditions, breaches, or extra work required on account of or in relation to the Customer shall be created by the Customer's payment to Contractor. Contractor shall not be responsible or liable to Subcontractor for Customer generated orders, directions, extras, differing site conditions, or breaches beyond Customer's liability to Contractor, less appropriate Contractor markups; and pursuant to Subcontract paragraph (e)(3), Subcontractor shall not be entitled to payment therefore unless and until payment therefore has been received by Contractor.

(6) Subcontractor shall proceed with the Work pending final resolution of the dispute or any dispute arising out of this Subcontract.

(g) Independent Contractor/Employer Status.

Subcontractor warrants that it is an independent contractor in fact and also within the meaning of the United States Internal Revenue Code, Federal Social Security Regulations, unemployment insurance and workers compensation laws, and applicable collective bargaining agreements. Subcontractor has the status of an employer as defined by the Unemployment Compensation Act of the State, and all similar acts of the National Government, including all Social Security Acts. Subcontractor will withhold from its payrolls the necessary Social Security and Unemployment reserves and promptly pay the same. Contractor shall in no way be liable as an employer of or on account of any of the employees of Subcontractor. Subcontractor will, as an employer conform to Social Security and Unemployment Compensation rules and regulations, and will furnish satisfactory evidence to the Contractor that it is conforming to said laws, rules and regulations. **Subcontractor shall pay for all labor, wages and fringes, equipment, facilities, services and materials for which the Subcontractor may be liable in connection with the Work as such obligations become due. Subcontractor hereby releases and indemnifies Contractor from any and all liability under said laws.**

(h) Taxes/Licenses/Permits.

Subcontractor will pay any and all federal, state and municipal taxes and licenses, including sales taxes, if any, for which Subcontractor or its lower tier subcontractors or suppliers may be liable in connection with the Work. **Subcontractor hereby releases and indemnifies Contractor from any and all liability for federal, state and municipal taxes and licenses, including sales taxes. Subcontractor shall obtain and pay for all permits required by the Work.**

(i) Industrial Insurance.

Subcontractor shall pay industrial insurance and all other payments required under Worker's Compensation laws as they become due and furnish Contractor with satisfactory evidence that they have been paid.

(j) Materials.

Materials delivered by or on account of Subcontractor and intended to be incorporated into the construction hereunder shall remain on the job site and shall not be removed without Contractor's consent, but Subcontractor may repossess itself of any surplus remaining on completion of its Subcontract. All scaffolding, apparatus, ways, works, machinery brought to the job site by Subcontractor shall remain Subcontractor's property. But in case of completion of the work by Contractor, Contractor shall be entitled to use said scaffolding, apparatus, ways, works, machinery and plant without cost or liability for rent, depreciation or damages by use and without prejudice to Contractor's other rights or remedies for any damage or loss sustained by Contractor. It shall be Subcontractor's responsibility to store and protect its materials and its own property and Subcontractor shall bear the risk of loss thereto, except if such loss is due to Contractor's negligence.

(k) Default, Takeover and Termination for Cause and Convenience.

(1) Subcontractor shall commence and at all times carry on, perform and complete this Subcontract to the full and complete satisfaction of Contractor, and the Customer. Should Subcontractor become insolvent or fail to pay any job related obligations in the ordinary course of business, or make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its insolvency, or should Subcontractor at any time refuse or neglect to supply a sufficient number of properly skilled workers or sufficient materials of the proper quality, or if Contractor shall at any time be of the opinion that Subcontractor is not proceeding with diligence and in such a manner as to satisfactorily complete the Work in accordance with the construction schedule or to the required quality, or fail to discharge a lien as required by this Subcontract, or cause a material stoppage or interference with the work of other contractors on the job, or fail in any material way to perform any of its obligations herein contained, or fail to comply with any order given to it by Contractor in accordance with the provisions of this Subcontract, Contractor shall be entitled to remedy the default on three (3) business days' notice (or with less or no notice in case of emergency) by whatever means Contractor may deem necessary or appropriate, including, without limitation, correcting, furnishing, performing or otherwise completing the Work, or any part thereof,

by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Subcontractor) and deducting the cost thereof from any monies due or to become due to Subcontractor; procure, for the account of the Subcontractor and without terminating this Subcontract, any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to Subcontractor; or terminating this Subcontract and entering into and taking possession of the said premises and Work, materials, tools, appliances and equipment and through itself or others provide labor, equipment and materials to prosecute the Work on such terms and conditions as Contractor shall deem appropriate.

Subcontractor shall be liable to Contractor for all costs, direct, indirect or consequential, which Contractor incurs as a result of Subcontractor's failure to perform in accordance with any term of this Subcontract. 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 bonding company (if any) shall include all direct, indirect, actual and consequential damages caused by the failure including, but not limited to, (1) damages for delay as described in Paragraph d(2) above; (2) Contractor's increased costs of performance, such as extended overhead and other costs resulting from Subcontractor-caused delays or improper or defective Subcontractor work; (3) warranty and rework costs; (4) liability to third parties; (5) costs to complete Subcontractor's work; and (6) attorney's fees and litigation costs as provided in Paragraph (v). If the unpaid balance of the price exceeds Contractor's damages, the difference shall be paid to the Subcontractor; but if such damages exceed the balance of the price, Subcontractor shall pay the difference promptly to Contractor.

(2) If, after Contractor takes over Subcontractor's work or terminates this Subcontract, it is determined that Subcontractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Contractor under Paragraph k(3).

(3) If Contractor's work is terminated for convenience by the Customer, then an equitable settlement for Subcontractor's Work will be made as provided in the Contract Documents. Subcontractor shall not be entitled to receive any greater amount than Contractor receives on behalf of Subcontractor from Customer for such termination.

(4) Contractor may also terminate Subcontractor's work at any time in whole or in part for Contractor's convenience, in which case, Subcontractor shall suspend its work on the date and to the extent specified by Contractor, terminate all agreements relating to that portion of its work being terminated and, if requested by Contractor, assign to Contractor, Subcontractor's rights therein, provide lien and bond claim releases from subcontractors, suppliers and laborers affected by the termination, and deliver to Contractor all documents and property which, if Subcontractor had completed its work, Subcontractor would be required to deliver. If Subcontractor's work is terminated for convenience, in whole or in part under this Paragraph, k(4), Subcontractor shall be entitled to payment at the subcontract price(s) (not in quasi contract or quantum merit) for only that portion of its Work which it performed, less applicable back charges due Contractor. Subcontractor shall not be entitled to payment for work which was not performed or to overhead allocable or profit anticipated on that portion of its work not performed.

(5) The rights and remedies of Contractor in this paragraph (k) shall survive termination or takeover of this Subcontract and are in addition to any and all other rights provided under this Subcontract or by law.

(l) Rejected Work.

Subcontractor immediately after receiving written notice from Contractor shall proceed to remove or take down from the grounds or buildings all materials rejected or condemned by the Customer or by others having a right to approve or reject work or materials, whether worked or not, as unsound or improper, or as in any way failing to conform to the Contract Documents.

(m) Job Damage.

Job damage caused by Subcontractor to work other than its own shall be reported immediately to Contractor, and Subcontractor shall be responsible for its repair. Job damage caused by Contractor to work of Subcontractor shall be reported immediately by Subcontractor to Contractor and Contractor shall be responsible for its repair.

(n) Clean-Up.

Subcontractor shall keep all portions of the project site clean of debris resulting from its Work. Upon completion of any unit of its Work, upon request by Contractor, and upon substantial and final completion of its Work, Subcontractor shall clean up all refuse and rubbish caused by the Subcontractor, and shall promptly remove all excess material, tools, structures, etc., which may have been

brought on the premises or erected by the Subcontractor, and if Subcontractor fails to do, the Contractor may, after notice to Subcontractor not exceeding 24 hours, clean up the premises Subcontractor's cost and expense..

(o) Labor Agreements.

Subcontractor shall comply with and be bound by any labor agreements executed by Contractor or on Contractor's behalf and applicable to the Project. Failure at any time to comply with any of the provisions of such agreements shall, at the option of Contractor, be cause for default termination of this Subcontract or takeover of Subcontractor's Work. Subcontractor agrees to include this entire paragraph in all lower-tier subcontracts and supply agreements issued in connection with this Subcontract.

(p) Employee Wages/Conditions.

Subcontractor shall employ its workers in accordance with the wage rates, terms, and conditions required of the Contractor for like workers.

(q) Bond.

Subcontractor shall furnish to Contractor, unless waived in writing by the Contractor, a performance and payment surety bond acceptable to the Contractor in an amount equal to the Subcontract price, conditioned on and covering the faithful performance of, and compliance with, all the terms, provisions, and conditions of this Subcontract and payment for all labor, materials, equipment, services and supplies used in the prosecution of its Work. Subcontractor shall furnish such bond within ten (10) days of the execution of this Subcontract or upon written request of Contractor.

(r) Insurance.

- (1) Subcontractor shall maintain, at its own expense and without interruption, insurance covering claims arising out of the performance of its Work under this Agreement. Subcontractor shall maintain this insurance in force during the performance of the Work and after the completion of its Work for the duration of the statute of limitations.
- (2) Subcontractor shall maintain the insurance required by the Contract Documents and shall maintain the following minimum limits of insurance:
- | | |
|--|---------------|
| (3) Workers Compensation | statutory |
| (4) Longshore and Harbor Workers Compensation (USL&H) | as applicable |
| (5) General Liability/Bodily Injury/Property Damage (per occurrence) | \$2,000,000 |
| (6) General Aggregate/Products & Completed Operations | \$2,000,000 |
| (7) Personal Injury & Advertising Injury | \$1,000,000 |
| (8) Automobile Combined Single Limit | \$1,000,000 |
| (9) Employers Liability (including Stop Gap coverage) | \$1,000,000 |
| (10) Excess/Umbrella Liability | \$5,000,000 |
| (11) Cyber Liability (*if required below) | \$2,000,000 |
| (12) Professional Liability (*if required below) | \$2,000,000 |
| (13) Pollution Liability (*if required below) | \$2,000,000 |
- (14) If the Contract Documents or the law requires higher limits of insurance, then the higher minimum limits of insurance shall apply. The above limits requirements are minimum requirements. Subcontractor agrees that the amount of insurance available to Contractor and Customer shall be for the full amount of the loss up to Subcontractor policy limits of liability

and shall not be limited to the minimum requirements of this Agreement.

- (15) General Liability insurance limits shall be written on a per project, occurrence basis, comprehensive form. General Liability coverage shall include contractual liability for liability assumed under this Agreement.
- (16) General Liability insurance may be arranged under a single policy for the full limits required, or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.
- (17) Professional Liability and/or Errors and Omissions insurance shall be provided by Subcontractor if Subcontractor's Work requires any professional services, including but not limited to any design, engineering, surveying, testing or other professional services. Insurance shall cover claims arising out of the professional services under this Agreement caused by errors, omissions or negligent acts for which Subcontractor is liable.
- (18) Cyber Liability insurance is required if any products and/or services related to Subcontractor's performance of the Work include accessing and/or modifying Contractor or Customer networks, providing and/or modifying computer hardware and/or software, or if Subcontractor is storing any Confidential Information on its networks. Insurance shall provide coverage for any claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of Confidential Information, alteration of electronic information, extortion, and network security.
- (19) Pollution Liability shall be provided if a) Subcontractor's performance of the Work involves handling hazardous materials or substances, asbestos abatement, lead or lead abatement, handling of pollutants, or b) Subcontractor's performance of the Work could lead to growth of mold and fungi. Insurance shall provide coverage for bodily injury, property damage, cleanup costs, remediation expenses, legal costs, defense costs, and disposal costs.
- (20) Subcontractor is responsible for insuring its own tools and equipment. Subcontractor is further responsible for insuring materials supplied or installed by Subcontractor. Such coverage can be provided by an Installation Floater. Subcontractor shall be responsible for the deductible on such policies.
- (21) To the extent damages are covered by property insurance during construction, Contractor and Subcontractor waive all rights against each other and against Customer, except for such rights as they may have to the proceeds of such insurance as governed by the Contract Documents.
- (22) All insurance coverage shall be provided by insurance carrier(s) that are licensed and admitted in the state where the work is performed and that carry an A.M. Best rating of A-VII or better.
- (23) Contractor and Customer shall be named as additional insureds on all policies except for Workers Compensation. Additional insured endorsement will be CG 20 10 11-85 or equivalent.
- (24) Insurance policies shall provide an endorsement to add Contractor and Customer as an additional insured on a primary and non-contributory basis. Additional insured endorsement shall include both ongoing operations and completed operations.
- (25) All insurance policies, except for Workers Compensation, shall provide for a waiver of subrogation against Contractor and Customer.
- (26) Insurance policies will have a maximum deductible of \$25,000, unless agreed to in writing by Contractor.
- (27) Subcontractor shall furnish to Contractor certificates of insurance evidencing the required coverage of this Agreement within ten (10) days of signing this Agreement or before performing any work for the project (whichever comes first). Certificates shall contain provisions that at least thirty (30) days prior written notice will be given to Contractor in the event of cancellation, reduction in material change in, or non-renewal of the insurance.

(s) Indemnification.

(1) Subcontractor agrees to defend, indemnify and hold Contractor harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this Subcontract by Subcontractor or Subcontractor's agents or employees to the fullest extent permitted by law, subject only to the limitations provided below. Subcontractor's duty to indemnify Contractor shall not apply to liability for damages arising out of bodily injury to persons or

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

(2) Subcontractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, or any other applicable Workers Compensation act. 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 workers' compensation acts, disability benefit acts, or other employee benefits acts.

(3) Subcontractor's duty to defend, indemnify and hold Contractor harmless shall include, as to all claims, demands, losses and liability to which it applies, Contractor's personnel-related costs, reasonable attorneys' fees, court costs, fees for collection, and all other claim-related expenses.

(4) *Provided* Subcontractor's waiver of immunity by the provisions of this Agreement extends only to claims against Subcontractor by Contractor, and does not include, or extend to, any claims by Subcontractor's employees directly against Subcontractor.

(5) Subcontractor's duty to indemnify and defend for any claims under this section shall survive termination of this Agreement.

(6) THE UNDERSIGNED HEREBY CERTIFIES THIS INDEMNITY AGREEMENT WAS MUTUALLY NEGOTIATED.

Initials _____

(t) Safety and Safety Indemnification.

(1) Contractor will withhold payment until Subcontractor has submitted its written Safety Plan in accordance with the requirements of this Agreement. Contractor may withhold payment for violation of Contractor's "Safety Program."

(2) Subcontractor and Subcontractor's sub-tier subcontractors shall take all reasonable and necessary safety precautions pertaining to their work performance, and are required to comply with RCW 49.17 and any other applicable laws, ordinances, regulations and orders issued by public authority, whether federal, state, local, OSHA, WISHA, or other State or Federal regulatory agency, and any safety measure requested in good faith by Contractor, all without additional cost to Contractor. Subcontractor shall at all times be responsible for providing a safe job site and shall be responsible for the work performance and safety of all employees, personnel, equipment and materials within Subcontractor's or its sub-tier subcontractors' care, custody or control. Subcontractor and Subcontractor's sub-tier subcontractors shall furnish all required safety equipment for its (their) work and ensure that all of its (their) employees have and wear personal protective equipment in compliance with applicable OSHA, WISHA, or other State or Federal regulatory agency regulations and Contractor's safety rules. Subcontractor shall promptly provide Contractor with written notice of any safety hazards or violations found on the job site and any injury which occurs on the job site.

(3) Subcontractor certifies that Subcontractor and Subcontractor's sub-tier subcontractors are registered contractors and maintain a written Accident Prevention Plan and a job site specific safety plan in compliance with applicable OSHA, WISHA, or other State or Federal regulatory agency regulations. Subcontractor's Accident Prevention Plan must address Subcontractor's role and responsibilities pertaining to safety on the job site, training and corrective action and be tailored to safety and health requirements for the work involved. Subcontractor shall have and enforce a disciplinary action schedule in the event any safety violations are discovered, which schedule shall vary depending upon severity of violation. When requested by Contractor, Subcontractor shall provide information regarding any and all safety measures.

(4) Contractor may, at its sole discretion, direct Subcontractor to remove employees failing to strictly adhere to applicable safety standards and Contractor's Safety Program. In the event Subcontractor does not promptly correct any safety violation or violation of Contractor's Safety Program, Contractor may order Subcontractor to stop work until the violation is corrected. Contractor may correct Subcontractor's violation and charge all costs of compliance to Subcontractor, and Contractor may, in Contractor's sole discretion, exercise all rights and remedies provided Contractor under the terms of this Subcontract and law.

(5) Subcontractor agrees to defend, indemnify and hold Contractor harmless from all OSHA, WISHA, or other State or Federal regulatory agency claims, demands, proceedings, violations, penalties, assessments or fines that arise out of or are related to Subcontractor's or its lower tier subcontractors' or suppliers' failure to comply with any safety-related laws, ordinances, rules,

regulations, orders, or obligations hereunder. This indemnity obligation includes all costs, expenses and the actual attorney's fees incurred by Contractor and all costs incurred to enforce rights under this provision.

(6) To enhance Contractor's efforts to provide a safe, accident-free workplace, Contractor's policy is to provide its employees and other personnel at the jobsite an environment free from the influence of drugs and/or alcohol as set forth in Contractor's "Safety Program." Subcontractor agrees to test their employees prior to or immediately after the employee reports at the jobsite, after any accident, and any employee that Contractor has a reasonable suspicion to be under the influence of illegal drugs, marijuana, and/or alcohol. Should the test indicate the presence of one or more illegal drugs, marijuana, and/or alcohol, the Subcontractor shall immediately remove the employee from the job site. The employee shall not be allowed back on the site until the applicable protocol (including, but not limited to: jobsite protocol, union agreement, or company protocol) is followed and completed satisfactorily, including a confirmed negative test result.

(7) Contractor's Site Specific Safety Plan requirements for all subcontractors are as follows:

- (a) The principal objective is to adopt a suitable and beneficial Site Specific Safety Plan (SSSP) for all subcontractors and sub-tier subcontractors and their suppliers to comply with the safety rules, policies and regulations contained within this document as set forth by Contractor. The Subcontractor SSSP, including any additions and/or modifications that may be required specifically for or during this project, will assist in preventing accident and injuries, and managing risk. This Program is to be used in conjunction with the Subcontractor's own programs and all applicable client, federal, state and local safety codes and regulations.
- (b) Subcontractor, including all lower tiers, shall fully comply with federal, state and client safety regulations relating to job site safety. Upon award of this Agreement, Subcontractor shall prepare and submit to Contractor a project safety plan addressing all the general and site specific safety hazards anticipated to arise as a result of its scope of work. Contractor expects the full cooperation of Subcontractor and its sub-tier subcontractors and their suppliers in monitoring, supervising and enforcing project safety and its related programs. It is mandatory that all personnel engaged in work on this project comply with all client, federal, state and local safety codes and regulations for the duration of their work on this project.
- (c) Subcontractor shall designate a Safety Representative for this project. This person's requirements and responsibilities include, but are not limited to, the following duties in relation to their employees:
 - a. Assist Contractor's site supervision in hazard recognition and hazard abatement.
 - b. Detect and abate potential safety hazards caused by interaction between contractors by means of weekly safety inspection.
 - c. Document employee attendance to weekly safety meetings.
 - d. Document site specific safety orientations for new employees.
 - e. Train employees in pre-planning, recognition and abatement of hazards.
 - f. Enforce disciplinary procedures.
 - g. Conduct accident investigations for employees involved in injuries, and comply with project accident reporting requirements.
- (d) Subcontractor's employee requirements:
 - a. Perform all work in a manner to prevent injury or accident to self, fellow workers and/or property.
 - b. Immediately inform supervisors of dangerous situations, unsafe tools and/or equipment.
 - c. Comply with the Contractor safety requirements as well as client, federal, state and local codes and regulations.
 - d. Immediately notify a supervisor of any and all accidents or injuries.
- (e) Subcontractor shall provide and maintain the following safety documentation:
 - a. Subcontractor Questionnaire: Subcontractor shall complete a subcontractor questionnaire and submit it to Contractor prior to the start of work and annually thereafter.
 - b. Weekly Safety Inspections: Subcontractor's designated safety representative shall complete a weekly *walk around safety inspection* detecting hazardous situations and issues of noncompliance to applicable federal, state and job specific rules and regulations. Corrective action shall be addressed and an abatement procedure and schedule shall be established for any noncompliance and/or safety hazard issues that exist. This information shall then be maintained by Subcontractor and available upon request by Contractor.
 - c. Accident/Incident Reporting: Subcontractor shall investigate and report all safety accidents, incidents, or other occurrences that disrupt the normal work process to Contractor. Subcontractor must submit completed copies of an Incident and/or Near Miss Report to Contractor within 24 hours of such occurrences.

- d. Safety Data Sheets (SDS): Subcontractor shall maintain an SDS onsite for all material to be used/stored on the jobsite. These documents shall be provided to Contractor upon request.
 - e. Site Specific Safety Plan (SSSP): Subcontractor shall provide Contractor with a copy of Subcontractor's Site Specific Safety Plan. This plan must address all hazards anticipated on the project and measures used to abate these hazards and comply with all federal, state and job specific rules. At a minimum, Subcontractor's safety program shall incorporate all the basic requirements of the Contractor's SSSP. Subcontractor's SSSP shall be submitted prior to the project's first day of work.
 - f. New Hire Safety Orientation: Subcontractor shall maintain documentation of all job specific new hire safety orientation training and provide to Contractor upon request.
 - g. First Aid/CPR Certification: Subcontractor shall provide a copy of current First Aid certification for supervisors, and other applicable persons, responsible for work crews to Contractor.
- (f) Site Specific Safety Plan Requirements. This section outlines the basic requirements for SSSPs for subcontractors while working on projects for Contractor. The SSSP must, at a minimum, meet Contractor, federal, state and client regulations. Subcontractor shall submit its SSSP to Contractor before starting Work.
- a. Fall Protection. Fall protection refers to a system that prevents workers from falling, such as a railing, and/or protects workers from injury when they do fall, such as a personal fall arrest system.
 - i. Fall protection is required when a worker could potentially fall more than 4 feet to a lower level from a walking or working surface, a guardrail system, personal fall arrest system or hole covers must be in place (this rule does not apply to ladders or scaffolds).
 - ii. Check to see that runways, ramps, and other walkways that are 4 feet or more above a lower level, have guardrails in place.
 - iii. Be sure that elevated walking/working surfaces have the strength and structural integrity to support the full weight and force of workers, equipment and materials that may be placed on them.
 - iv. Railings are required when there is a potential to fall 4 feet or more.
 - v. When railings are used, the follow are required:
 - 1. The top edge of railings must be 42" ± 3" above the walking/working surface.
 - 2. Intermediate rails must be in place.
 - 3. Toeboards must be installed to keep tools and materials from falling to a lower level.
 - 4. The railing system must be able to withstand 200 pounds of force in all outward and downward directions.
 - 5. If part of the guard rail system has to be removed to facilitate materials handling, and a fall potential results, a personal fall arrest system must be used.
 - vi. Use hole covers on holes in floors, roofs and other walking/working surfaces. Make sure the hole covers can safely support twice the aggregate weight of the workers, equipment, and materials that could be placed on them.
 - vii. If a hole is too big to be safely covered, use a barrier system to prevent falls.
 - viii. Personal Fall Arrest Systems are comprised of the following elements:
 - 1. An anchorage point capable of supporting at least 5000 pounds of force.
 - 2. Connectors.
 - 3. Full body harness.
 - 4. Lanyard.
 - 5. Deceleration device.
 - 6. Lifeline.
 - ix. Use any suitable combination of the Personal Fall Arrest elements.
 - x. When using a Personal Fall Arrest System, use only snaphooks or carabineers. Do not use shackles. Use only domestic hardware.
 - xi. Get the proper training before using any Personal Fall Arrest System.
 - xii. When a fall hazard of more than 10 feet is identified, a fall protection work plan must be in place to:
 - 1. Identify all fall hazards in work area;
 - 2. Describe the method of fall arrest or fall restraint to be used;
 - 3. Describe the correct procedures for assembly, maintenance, inspection and disassembly or the fall protection system to be used;
 - 4. Describe the correct procedures for handling, storage, and securing of tools and materials;
 - 5. Describe the method for providing overhead protection for workers who may be in the area below the worksite.

- xiii. When using ladders: When a worker's feet are six feet or more above the floor grade or lower level, a Personal Fall Arrest System must be used (if tie-off is infeasible or causes greater hazard, workers must discuss it with their supervisor and note extra precautions on the pre-task plan).
- b. Confined Spaces. If Subcontractor is required to perform work in a confined space, Subcontractor shall develop a site specific confined space program. Subcontractor shall assure that their employees recognize and avoid entering a confined space without proper training and approval. Subcontractor shall provide a copy of their entry permit and calibration record to Contractor prior to entering a permit required confined space.
 - i. The program shall include the following information:
 - 1. Work to be performed in the space.
 - 2. Training of employees (entrants and attendants).
 - 3. Air monitoring results/oxygen level.
 - 4. Personal protective equipment.
 - 5. Lockout/Tagout procedures.
 - 6. Type of ventilation to be used.
 - 7. Emergency/rescue procedure.
 - ii. Subcontractor shall recognize the following areas as a confined space:
 - 1. An area that has restricted or limited openings for entry.
 - 2. An area that is large enough for an employee to enter and perform work.
 - 3. An area not normally intended for employee occupancy.
- c. Respiratory Protection. Subcontractor shall develop a site specific respiratory program if any of their employees are required to wear a respirator or perform work in hazardous atmospheres.
 - i. The program must contain at a minimum, the following information:
 - 1. Fit testing requirements and records, including:
 - a. Employee medical screening records.
 - b. Employee training records.
 - c. Type(s) of respirators to be used.
 - d. Area where work will be performed.
 - e. Potential hazards of atmosphere in work area.
 - f. Air sampling and monitoring data.
 - 2. All work in areas with a hazardous, or potentially hazardous atmosphere shall be coordinated with Contractor's project superintendent, or project site specific Safety Representative.
- d. Industrial Truck/Lift Safety. Subcontractor shall provide training documentation for personnel using the following equipment: Industrial Trucks (Forklifts), Aerial or Boom Lifts, Scissors Lifts and Boom Trucks. This training shall be in accordance with federal, state and client regulations. The documentation shall be submitted to Contractor prior to the start of work or prior to using any of the aforementioned equipment.
- e. Scaffolding Safety. Scaffolding training for affected employees shall be documented. The documentation shall be submitted to Contractor prior to working with any scaffolding on this job.
- f. Ground Fault Circuit Interrupter. All 120-volt, single-phase, 15-ampere and 20-ampere receptacle outlets on construction sites, which are not a part of the permanent wiring of the building or structure and which are in use by employees, shall use approved ground-fault circuit interrupters. These are approved devices that are found in "spider boxes", welding machines, generators and specially made extension cords. Please check to see if these devices do in fact contain ground-fault circuit interrupters.
 - i. Subcontractors shall use ground-fault circuit interrupters to achieve assured grounding safety for the following equipment:
 - 1. Electrical cords;
 - 2. Receptacles which are not a part of the permanent wiring of the building or structure; and
 - 3. Electrical tools connected by cord.
- g. Fire Protection. To reduce the possibility of fire damage and associated losses incurred during construction on the project, all subcontractors and their subcontractors are required to comply with Contractor's Fire Protection Program. The following information is a guide for Subcontractors to develop a site specific fire protection program. This program shall be used as an aid in preventing losses by fires and/or gasses associated with combustion.

- i. During welding and/or cutting operations, a fire extinguisher shall be within reasonable distance for immediate use. It shall be the responsibility of Subcontractor performing this scope of work to follow the Fire Protection and Hot Work Program.
 - ii. All gas bottles not in use shall be tied down and capped.
 - iii. Oxygen cylinders shall be stored at least twenty (20) feet from acetylene cylinders.
 - iv. All fuel and solvent containers shall be placed on drip pans and be returned to their appropriate storage location at the end of the shift.
 - v. All heating equipment shall have the necessary safety devices and be wired/piped and operated according to all applicable codes, rules and regulations.
 - vi. Work areas shall be picked up on a regular basis to prevent accumulation of debris.
 - vii. Temporary electric power shall be maintained in accordance with all existing codes. Subcontractors shall use either an Assured Grounding Program or Ground Fault Circuit Interrupters for all electrical cords and equipment.
 - viii. Dry shack, tool sheds, etc.:
 - 1. These structures shall be constructed of fire-resistant materials and heated with approved fire safe heating devices.
 - 2. These structures shall be constructed at least twenty-five (25) feet from materials that present extraordinary fire hazards such as a substantial fuel storage area.
 - 3. These structures shall be equipped with a minimum of one twenty (20) pound ABC fire extinguisher each.
 - 4. These structures shall not be used for the purpose of storing oily rags, oily clothes or fuels.
 - 5. These structures shall be constructed such that a shed fire will not spread to adjacent areas.
 - 6. Trash and debris shall not be permitted to accumulate. Trash and debris shall be collected daily in compliance with good housekeeping procedures.
- h. Hot Work. Subcontractor shall develop a plan to prevent the potential of fire due to hot work operations. Any work that could be a potential ignition source, such as torch cutting or welding, shall be addressed in the site specific hot work fire prevention plan included in the SSSP.
 - i. To reduce possible ignition sources Subcontractor shall ensure good housekeeping in its work areas. Combustible materials shall be gathered immediately and stored in appropriate areas away from ignition sources.
 - ii. A minimum of one twenty (20) pound fully charged ABC fire extinguisher shall be within immediate access to any hot work being conducted.
 - iii. Emergency fire procedures and medical facility locations shall be posted in Contractor's site office (if Contractor maintains a site office). A copy of this information shall be distributed to all subcontractors.
- i. Cell Phones and Vehicle Use. Subcontractor shall have a written safety requirement that bans employees from texting while driving. Subcontractor's employees shall follow all state and federal laws regarding the use of cell phones while driving.
- j. Hazard Communication. Subcontractor shall ensure employees are made aware of chemical hazards found in their workplace. This information shall be distributed by means of a site specific hazard communication program included in the SSSP. The program shall address container labeling, safety data sheets (SDS), and employee training. A Subcontractor representative shall survey the project periodically to identify all known hazardous materials in use by their employees. An updated list of these chemicals and copies of Safety Data Sheets (SDS) (formerly known as Material Safety Data Sheets or MSDS) shall be provided to Contractor's site supervision.
- k. Safety Data Sheets (SDS). Contractor's superintendent shall be responsible for obtaining all SDS forms supplied by Subcontractor. **All hazardous materials must have an SDS when arriving on site.**
 - i. The Hazard Communication Standard (HCS) requires chemical manufacturers, distributors, or importers to provide SDS to communicate the hazards of hazardous chemical products. SDS shall be in a uniform format, and include the section numbers, the headings, and associated information under the headings below:
 - 1. Section 1: Identification includes product identifier; manufacturer or distributor name, address, phone number; emergency phone number; recommended use; restrictions on use.
 - 2. Section 2: Hazard(s) identification includes all hazards regarding the chemical; required label elements.

3. Section 3: Composition/information on ingredients includes information on chemical ingredients; trade secret claims.
 4. Section 4: First-aid measures includes important symptoms/ effects, acute, delayed; required treatment.
 5. Section 5: Fire-fighting measures lists suitable extinguishing techniques, equipment; chemical hazards from fire.
 6. Section 6: Accidental release measures lists emergency procedures; protective equipment; proper methods of containment and cleanup.
 7. Section 7: Handling and storage lists precautions for safe handling and storage, including incompatibilities.
 8. Section 8: Exposure controls/personal protection lists OSHA's Permissible Exposure Limits (PELs); Threshold Limit Values (TLVs); appropriate engineering controls; personal protective equipment (PPE).
 9. Section 9: Physical and chemical properties lists the chemical's characteristics.
 10. Section 10: Stability and reactivity lists chemical stability and possibility of hazardous reactions.
 11. Section 11: Toxicological information includes routes of exposure; related symptoms, acute and chronic effects; numerical measures of toxicity.
 12. Section 12: Ecological information.
 13. Section 13: Disposal considerations.
 14. Section 14: Transport information.
 15. Section 15: Regulatory information.
 16. Section 16: Other information, includes the date of preparation or last revision.
- ii. The exchange of SDS on a multi-employer project shall take place at the regular safety meetings. This information is to be shared willingly and regularly. All contractors shall keep their hazardous materials list current.

I. Project Safety Requirements.

- i. Pre-plan all work to minimize risk of injury or damage to employees, the public and equipment.
- ii. Provide employees with all required personal protective equipment & tools and enforce their use as required by the Site Specific Safety Plan, federal, state and client regulations.
- iii. Have a scheduled maintenance and inspection program for all tools & equipment.
- iv. Each subcontractor shall have at least one (1) person present on the job site who is certified in first aid when work is in progress.
- v. Each subcontractor's job trailer (job shack) shall be equipped with a minimum of one (1) fully charged ABC 20 pound fire extinguisher and a WISHA approved first aid kit. If gang boxes are used in lieu of trailers, the above mentioned equipment may be stored there.
- vi. Each subcontractor shall enforce the wearing of hard hats, unless otherwise stipulated, and protective eyewear for the duration of the project, and shall remove from the project anyone that does not comply with this requirement.
- vii. The building and/or work area during demolition work and new system installation shall be clearly marked as a *construction area*. Personnel working in fall hazard areas must comply with the Subcontractor's fall protection plan. Any personnel removing guardrails shall replace them immediately after completion of their task. In no case will any guardrail be left down at the end of the shift.
- viii. All work areas shall be kept free of debris and excess materials. Subcontractors are responsible for cleaning their work areas. All major traffic ways will be kept free of debris, materials, and slip/trip hazards at all times. If Subcontractor fails to maintain a reasonably clean work area, Contractor shall clean-up that work area and back charge Subcontractor for the cost of doing so.
- ix. All personnel shall wear shirts with a minimum three-inch sleeve, long trousers, and well maintained hard sole leather work boots. Shorts, tank tops, shirts with cut off sleeves and tennis shoes are not permitted.
- x. All ladders shall be maintained in good condition. Access ladders must over extend landings by at least three (3) feet and be properly secured. In no case shall a step ladder be used as a straight ladder. All damaged ladders shall be tagged "*DO NOT USE*" and removed from the job site as soon as possible.
- xi. Subcontractor is responsible for its lower tier subcontractors and their supplier's compliance with SSSP, federal, state and Customer safety regulations.
- xii. Any person not directly involved with the onsite construction of this project shall not enter the site without first checking with Contractor's site supervision.
- xiii. All equipment used on this project shall conform to applicable federal, state, client and industry standards and regulations. Equipment shall be operated in a safe manner.

- xiv. Portable music or other electronic devices with earphones are not allowed on Contractor's projects during work.
 - xv. Alcoholic beverages, marijuana, and illegal drugs are prohibited on this project. All subcontractors not having a substance abuse policy shall comply with Contractor's substance abuse policy.
 - xvi. Subcontractor is responsible for instructing its employees in the recognition and abatement of unsafe conditions and their applicable corresponding safety regulations.
 - xvii. Subcontractor shall comply with the Contractor's SSSP in addition to its own SSSP.
- m. Reporting Requirements.
- i. Subcontractor and its lower tier subcontractors shall make provisions for immediate and proper first aid/medical treatment for work related injuries.
 - ii. Contractor's site supervision shall be notified immediately and receive the foreman's accident report before the end of the shift.
 - iii. Provide Contractor one (1) copy of all workers' compensation accident reports involving Subcontractor and its employees.
- n. Disciplinary Program. The *Disciplinary Program* has been developed to assist in creating a greater individual awareness and responsibility for safety on Contractor's projects. All project employees are subject to this program. Individuals violating project safety rules may be subject to disciplinary action. Contractor's Project Manager or Superintendent shall sign notice of safety violations. Employees may report an unsafe condition or act to their immediate supervisor or project superintendent at any time. Immediate action shall be taken for serious safety hazards. Employees shall notify their foreman and other employees of observed hazards immediately. If no corrective action is taken, the project manager shall be immediately notified.
- i. Guidelines for Disciplinary Action:
 1. Verbal Warnings. *Documented* verbal warnings are appropriate for minor offenses related to items that would not cause serious injury. Verbal warnings **MUST** be documented.
 2. Written Warnings. Written warnings shall be issued for any violation that may result in serious injury. Serious injury is defined as those that could cause a time loss injury, modified work-type injury or fatality. All written warnings shall be given to the worker's employer with a copy going to the worker.
 3. Suspension/Termination from Work. If an employee of Subcontractor is involved in or responsible for a serious safety violation, or conduct that threatens the safety of persons or property, the employee may, at Contractor's sole discretion, be suspended for a period of time or dismissed from the job site for the project duration..
 4. Zero Tolerance Violations. Zero tolerance violations will result in a minimum **three day** suspension, up to termination. These violations include:
 - a. Failure to use lockout/tagout in situations where it is needed.
 - b. Fall protection violation in situations of imminent danger.
 - c. Failure to adhere to Contractor's designated operator rules.
 - d. Failing to adhere to confined space requirements.
- o. Forms. This section includes forms that shall be used in accordance with the Contractors Site Specific Safety Plan. If Subcontractor has similar forms that include the same information as any of the following, they may be substituted, with the exception of the Subcontractor Safety Questionnaire. All forms are upon request. Additional forms may be utilized to document safety related issues as they occur during the natural course of work. The following forms shall be used in accordance with Contractors Site Specific Safety Plan:
- i. Subcontractor Questionnaire
 - ii. Incident Report
 - iii. Near Miss Report
 - iv. Qualitative Fit Test Report
 - v. Hot Work Permit
 - vi. Fall Prevention/Protection Work Plan
 - vii. Confined Space Entry Permit
 - viii. Disciplinary Action Form

(u) Subcontract Binding on Lower-Tiers.

Subcontractor shall bind all lower-tier subcontractors and suppliers to the provisions of this Subcontract. Contractor does not assume or undertake any obligation to Subcontractor's lower-tier subcontractors or suppliers, and those lower-tier subcontractors and suppliers shall not be deemed third party beneficiaries of this Subcontract.

(v) Dispute Resolution.

(1) In case of any disputes between Subcontractor and Contractor, Subcontractor and its lower tier subcontractors and suppliers agree to be bound to Contractor to the same extent Contractor is bound to Customer, both by the Contract Documents and decisions and determinations made thereunder by Customer or by a court or arbitrator.

(2) If the Prime Contract contains a provision, whereby claims may be resolved under an administrative procedure, by arbitration, or otherwise, then as to any claims of Subcontractor for which Customer may, in Contractor's opinion, be responsible, Subcontractor agrees after obtaining Contractor's written permission, to present to the Customer in Contractor's name, all of Subcontractor's claims for additional monetary compensation or time extension. Contractor shall have the option to present such claims on Subcontractor's behalf, in advance of and even without Subcontractor's written request. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear all expenses thereof, including attorney's fees. Subcontractor agrees to be bound by the procedure and final determinations as specified in any such Disputes clause, and agrees that it will not take, or will suspend, any other action or actions with respect to any such claims and will pursue no independent litigation with respect thereto, pending final determination 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 the Customer on account of Subcontractor's Work, less Contractor's markup of 10% and less costs incurred by Contractor, and Subcontractor agrees that it will accept such reduced amount, if any, as full satisfaction and discharge of all such claims for which Customer may have been responsible. Any claim submitted by Contractor on behalf of Subcontractor shall not be an admission by Contractor of the validity of Subcontractor's claim.

(3) Subcontractor shall be bound by Contractor's determination, made in good faith, as to apportionment of any amounts received, whether by judgment, settlement or otherwise, from Customer for claimants including Contractor and other subcontractors, whose work is affected by any act or omission of the Customer.

(4) Should a dispute as to the proper interpretation of this Subcontract, or related to or arising out of the Work or material performed or furnished hereunder, arise which concerns the parties hereto only, or Subcontractor and other subcontractors or suppliers, but not, in Contractor's opinion, the Customer, the same shall be decided in Snohomish County Superior Court.

(5) Subcontractor shall proceed diligently with the Work, pending final determination pursuant to any Disputes clause or pursuant to any other action taken with respect to a claim or claims.

(6) Any and all disputes relating to this Subcontract that do not, in Contractor's opinion, concern the Customer, shall be resolved exclusively in Snohomish County Superior Court in Everett, Washington and Washington law will govern all such disputes.

(7) In any suit or arbitration arising out of or related to this Subcontract, the substantially prevailing party (including consideration of settlement offers) shall be awarded its attorneys' fees, expert witness fees, and all costs (not just statutory costs), and including its attorneys' fees and costs on appeal.

(w) Entire Understanding.

This written Subcontract contains the entire understanding between the parties and supersedes any prior understandings, written and/or oral. There are no representations, agreements, arrangements or understandings written or oral relating to the subject matter of this Subcontract which are not fully expressed herein. Any modification of this Subcontract must be in writing and signed by the parties hereto.

(x) Paragraph Headings.

Paragraph headings used herein are for purposes of convenience of reference only and are not tendered to restrict, weigh or affect the interpretation or construction of the provisions of such section.

(y) Advertising.

Subcontractor shall not post or display signs, banners or other announcements or advertising at the project site without Contractor's prior written approval.

(z) Contractor's Equipment.

Subcontractor agrees that any tools, material or equipment of Contractor will be available to Subcontractor only with Contractor's express written permission and in accordance with Contractor's terms and conditions for such use. If Contractor allows Subcontractor to use any such equipment, Subcontractor agrees that any operator provided by Contractor shall be the agent and servant of Subcontractor, and Subcontractor shall be solely responsible for the acts of the operator during the time of Subcontractor's equipment use even though the operator is technically an employee of Contractor. Subcontractor shall, immediately upon receipt, make a thorough inspection as to the physical condition and suitability of any such tools, material or equipment and the competency of the operator, and shall immediately notify Contractor, in writing, of any defect or nonconformity in the tools, material or equipment or any incompetence of the operator. Subcontractor agrees to defend, hold harmless and indemnify Contractor to the full extent provided in Section (s) above against all claims of every nature arising from its use thereof and that this indemnification obligation has been mutually negotiated. Upon request, Subcontractor shall execute Contractor's Equipment Use Agreement and all attachments to that agreement.

(aa) Subordination of Lien Rights.

(1) To the extent required by the Contract Documents or underlying construction financing agreements, Subcontractor agrees to subordinate all contractual and statutory mechanics and materialmen's liens rights to which Subcontractor may be or may become entitled to. This clause is not intended to limit Subcontractor's statutory lien rights. This clause is intended solely to establish the priority of potential future liens.

(ab) Confidentiality and Non-Disclosure.

(1) Subcontractor shall protect and keep confidential any document marked as "Confidential," "Trade Secret," "Proprietary" or any information that Subcontractor can reasonably consider to be confidential, including, but not limited to: financial records, personal health information, Customer records or requirements, or other information Contractor or Customer desire to remain confidential.

(2) Subcontractor shall be bound by and shall execute any and all confidentiality and/or non-disclosure agreements that may be required of Contractor by the Contract Documents, and/or the Customer.

(3) Confidential Information shall not include any information that: (a) was known to Subcontractor without restriction prior to receiving the Confidential Information, (b) is publicly available through no fault of Subcontractor, (c) is rightfully received by Subcontractor from a third party without duty of confidentiality, or (d) is independently developed by Subcontractor. Subcontractor may provide Confidential Information to authorities or third parties when required by law to do so if Subcontractor provides reasonable prior notice to Contractor.

(ac) Warranty

(1) All materials and equipment furnished under this Agreement shall be new and of good quality unless the Contract Documents permit otherwise. Subcontractor warrants that the Work will be free from defects. Subcontractor agrees to provide a warranty on its goods and services in accordance with and for the period specified in the Contract Documents, or for one (1) year after the final acceptance and completion date, whichever is greater. If any defect is discovered during the warranty period, Subcontractor shall promptly make repairs to the Work. Contractor's warranty rights and remedies shall be in addition to its other rights and remedies provided elsewhere in this Agreement or under applicable law.

(ad) Miscellaneous

(1) Subcontractor shall not directly communicate with Customer unless specifically approved in writing by Contractor. Should Contractor approve communication with Customer directly, then Subcontractor shall include Contractor as a copy on all email communication, Subcontractor shall timely provide copies of all written correspondence to and from Customer, and Subcontractor shall timely keep Contractor informed of all verbal communication between Subcontractor and Customer. Contractor reserves the right to assess liquidated damages starting with \$250 for Subcontractors first failure to comply with this article and doubling in value for each of Subcontractors subsequent failures to comply. The parties agree that it is difficult or impossible to estimate accurately ahead of time the damages that Contractor will suffer if Subcontractor communicates directly with Contractor's Customer. Because of

the difficulty in estimating the actual damages which will result, the amount of liquidated damages set forth above are agreed upon as a reasonable estimate by the parties of the actual damages Contractor will suffer if Subcontractor communicates directly with Contractor's Customer. These liquidated damages are in addition to all of Contractor's other rights under this agreement, including (but not limited to) consequential damages, replacement of Subcontractor personnel, and termination for default.