KIRTLEY-COLE ASSOCIATES LLC

2820 Oakes Avenue, Suite B, Everett, WA 98201 (425) 609-0400

SUBCONTRACT

THIS AGREEMENT is made and entered into by and between **KIRTLEY-COLE ASSOCIATES LLC, 2820 Oakes Avenue, Suite B, Everett, WA 98201, Telephone (425) 609-0400 / FAX (425) 609-0410** hereinafter called the CONTRACTOR and **SUBCONTRACTOR OF KIRTLEY COLE, Contact: CONTACT , SUBCONTRACTOR ADDRESS, Telephone: ( ) - / Mobile: ( ) - / Fax: ( ) -** hereinafter called the SUBCONTRACTOR:

The CONTRACTOR, for the full and complete and faithful performance of this subcontract, agrees to pay to the SUBCONTRACTOR, in accordance herewith, the sum of **Dollar Amount Spelled Out Dollars.**

($0.00)

JOB #**12747-** ID #**KC Phase Code**

In consideration therefore, the SUBCONTRACTOR agrees as follows:

A. To furnish all supervision, labor and materials, and to perform all work as described in Paragraph B hereof, for the construction of:

, W

hereinafter referred to as the project, for **,** **,** **,** **,** hereinafter called the OWNER, in accordance with the Contract dated this da**2** , between the OWNER and the CONTRACTOR, and the general and special conditions of said Contract, in accordance with the plans, drawings and specifications and addenda, amendments, supplements, changes or additions thereto for said construction by all of which documents in their **ENTIRETY** hereinafter referred to as the **MAIN CONTRACT.**

B. **SUBCONTRACTOR** shall perform all work necessary or incidental to complete the following described work for the project:

Subcontractor shall furnish all supervision, labor, materials and equipment to provide all **Scope**, work complete, as described in or as reasonably inferable from the Plans, Specifications, and Addenda, including but not limited to the following sections of the specifications: **Section Spec Section Number.** Includes but is not limited to providing **Scope Detail**. All debris and waste removal and disposal from the jobsite is included in this price.

It is agreed that the subcontractor will not make any request for additional compensation regarding the execution of the subcontract work unless there is a change in the scope of work. The schedule is extremely critical, any non-performance will cause severe financial impacts that are very difficult to quantify. Therefore as liquidated damages for subcontractor non-performance, the subcontractor will pay the Contractor the sum of $ per calendar day of delay. This fixed sum is agreed by the parties to be a fair, reasonable, and appropriate estimate of actual damages, and is not in any sense a penalty.

EXCLUSIONS: Sales Tax, .

☐	**Yes**	☐	**No**	**Pollution Liability Insurance Required, per paragraph #28**
☐	**Yes**	☐	**No**	**Electronic Data Liability Endorsement Required, per paragraph #28**
☐	**Yes**	☐	**No**	**Professional Liability Insurance Required, per paragraph #29**
☐	**Yes**	☐	**No**	**Bond Required, per paragraph #31**

All work shall be done by SUBCONTRACTOR in strict accordance with the Main Contract and the Subcontract.

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I HAVE READ THIS ENTIRE AGREEMENT AND MY SIGNATURE BELOW ACKNOWLEDGES ACCEPTANCE OF THE SAME.

KIRTLEY-COLE ASSOCIATES LLC	**SUBCONTRACTOR OF KIRTLEY COLE**
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Subcontractor must provide the following information:

Washington State Contractors Registration#: _____

Expiration Date: _____

Washington State UBI#/State Excise Tax Registration#: _____

If Subcontractor has employees, provide the following:

Worker's Compensation Account ID#: _____

Employment Security Dept. ES Reference#: _____

The undersigned, In his individual and personal capacity and not in his corporate or business capacity, hereby agrees to indemnify Kirtley-Cole, from any and all loss resulting from the nonperformance by SUBCONTRACTOR herein of its duties pursuant to the Subcontract and further guarantees that the Subcontract terms shall be followed and completed.

INDIVIDUAL GUARANTEE: (Please Print Name) _____

_____

Individually in his (their) individual capacity as guarantor and surety of all the SUBCONTRACTOR's obligations herein.

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1. **ASSUMPTION OF MAIN CONTRACT** The Main Contract and Contract Documents in their entirety, including all plans, drawings, specifications, general, special and supplemental conditions and provisions, supplements, addenda and amendments, are hereby incorporated herein as though fully set forth. SUBCONTRACTOR shall be bound by the Main Contract and the Contract Documents or any interpretations, rulings, decisions relating thereto by OWNER, and by any subsequent supplements, addenda and amendments thereto, if any, to the same extent as CONTRACTOR, and SUBCONTRACTOR shall comply strictly therewith. SUBCONTRACTOR understands and acknowledges that the Subcontract sum shall not be increased due to any error, omission, inconsistency, ambiguity or conflict unless such has been reported to CONTRACTOR and resolved by OWNER, in which case SUBCONTRACTOR shall receive an adjustment limited to any price or time adjustment for which the OWNER may issue a change order to the Main Contract. In case of conflict between the terms of this Subcontract and the Main Contract, this Subcontract shall control, unless the requirements of the Main Contract are deemed more stringent or burdensome by the CONTRACTOR at which time it will be the sole decision of the CONTRACTOR to determine if the Main Contract or the Subcontract requirements control and SUBCONTRACTOR agrees to be bound by the decision of the CONTRACTOR.

2. **EXAMINATION OF SITE AND MAIN CONTRACT** SUBCONTRACTOR acknowledges that it was its responsibility, prior to issuing its bid and executing this Subcontract, to investigate and familiarize itself with all factors which may affect its work, including the Main Contract, the Contract Documents and all direct and incidental project and job site conditions. The SUBCONTRACTOR hereby warrants and agrees that it has carefully investigated all such matters and familiarized itself therewith to the extent that it, in his sole discretion, deems necessary, including the nature, location and conditions of the work, the character, quantity and kind of material to be encountered, the equipment needed during the prosecution of the work and confirms, by initialing below this paragraph, that it has in fact seen and reviewed the Main Contract and all of its terms. SUBCONTRACTOR further agrees that the CONTRACTOR shall not be liable to the SUBCONTRACTOR for any claim for additional payment or time or for any claim whatsoever if such claim directly or indirectly results from SUBCONTRACTOR'S failure to investigate and familiarize itself sufficiently with the conditions under which this Subcontract is to be performed.

_____ _____

CONTRACTOR **SUBCONTRACTOR**

3. **PROGRESS OF WORK AND ORDER OF PERFORMANCE** Time is of the essence in this Subcontract. SUBCONTRACTOR shall commence work immediately upon being notified by CONTRACTOR, shall perform field work at such points as CONTRACTOR may from time to time designate, and shall continue to perform diligently to completion all work to be done hereunder to the satisfaction of CONTRACTOR and OWNER. SUBCONTRACTOR shall at all times furnish and have available sufficient and satisfactory equipment, material, supplies and workmen to perform the work in accordance with and the time durations and sequences specified in progress schedules as said schedules may be issued, revised and updated by CONTRACTOR. If CONTRACTOR shall in its discretion deem it necessary, SUBCONTRACTOR at its own expense and on demand of CONTRACTOR shall provide additional shifts, or shall expedite the furnishing of materials or equipment so as to meet applicable schedules. SUBCONTRACTOR shall at all times cooperate with CONTRACTOR and others engaged in work on the Project and shall coordinate its work with that of all others so as to facilitate the efficient and timely completion of the entire work. If the performance of any item of work by SUBCONTRACTOR is related to or dependent upon any other item of work to be performed or materials furnished by others, then SUBCONTRACTOR warrants by undertaking to perform its work that such other items are satisfactory and adequate, and waives any and all claims against CONTRACTOR for additional compensation, time extension or for damages resulting from any defects therein. CONTRACTOR shall have complete control of the premises on which the work is to be performed and shall have the absolute right to determine the times, sequence in which the various portions of the work shall be installed or completed, or the priority of the work of SUBCONTRACTOR among that of CONTRACTOR and other subcontractors and, in general, all matters respecting the timely and orderly conduct of the work of all subcontractors on the project. SUBCONTRACTOR agrees to notify CONTRACTOR in detail and in writing of its objection to or inability to comply with any such directive, notification, order, schedule or revision dealing with the time or times of its performance and to do so within twenty-four (24) hours of CONTRACTOR'S issuance thereof. In absence of such notice, SUBCONTRACTOR agrees to accept and abide by all such directives, notifications, orders, schedules or revisions. The above notice requirements relate only to directives, notifications, orders, schedules and revisions dealing with the time of performance and do not alter the other time limitations stated in this Subcontract, nor SUBCONTRACTOR'S obligation to comply therewith. CONTRACTOR shall make all schedules available for SUBCONTRACTOR'S examination upon SUBCONTRACTOR'S request, made at reasonable times, at CONTRACTOR'S job shack or such other place as CONTRACTOR may designate. SUBCONTRACTOR acknowledges and agrees to comply with such schedule review procedures and shall assert no claims against CONTRACTOR by reason of compliance therewith.

4. **PRIOR TO STARTING WORK** SUBCONTRACTOR agrees to provide the following at least seven (7) days prior to starting work: (1) all of SUBCONTRACTOR'S license numbers; (ii) SUBCONTRACTOR'S performance bond number, the amount of the bond, the name of the bonding company and a copy of the bond; (iii) SUBCONTRACTOR'S Washington State Labor and Industries account number; (iv) a copy of SUBCONTRACTOR'S certificate of current status, demonstrating that all license fees and other requirements have been paid and/or met, allowing the SUBCONTRACTOR to do business in the State of Washington as a SUBCONTRACTOR and that the SUBCONTRACTOR is duly licensed; (v) all necessary and required proof of compliance concerning IRS, FICA, Employment Security, union benefits and Labor and Industries withholdings as the same relates to SUBCONTRACTOR; (vi) a complete list of all subcontractors, suppliers and materialmen to SUBCONTRACTOR, and, to the extent necessary, third party independent contractors, that will be involved with the Project and indicating the nature and extent of the involvement of each such person, firm or individual, and also indicating the company name, addresses, telephone number and contact person at each firm; and (vii) a certificate of SUBCONTRACTOR'S insurance showing compliance with paragraph 28 and if applicable, paragraph 29. If the Project is a state public works project, SUBCONTRACTOR shall comply with all requirements of RCW 39.06.020 and shall insert a similar requirement in all contracts that SUBCONTRACTOR enters into with its subcontractors or suppliers at any tier.

5. **SUPERVISION AND CONSTRUCTION PROCEDURES** SUBCONTRACTOR shall perform its work using its best efforts, skills and attention. SUBCONTRACTOR shall keep a competent resident superintendent at the site of the work continuously during the progress of its work. Within ten (10) days of the execution of this Subcontract, SUBCONTRACTOR shall designate in writing who such superintendent shall be. Said superintendent shall not be replaced without the prior written consent of CONTRACTOR. The superintendent shall be experienced, capable of understanding and familiar with the work, and able to properly supervise performance of the work. The superintendent shall be SUBCONTRACTOR'S representative and shall have authority to act on behalf of and bind SUBCONTRACTOR with respect to this Subcontract. Communications or notices directed or given to the superintendent shall be fully binding on SUBCONTRACTOR. The superintendent shall fully complete CONTRACTOR'S form entitled "Subcontractor Daily Labor Report" in detailed fashion on each day that SUBCONTRACTOR performs any work pursuant to this Subcontract and shall deliver the same to Contractor's jobsite office on each such day, and SUBCONTRACTOR agrees that these records will accurately document the actual man-hours expended by SUBCONTRACTOR. The "Subcontractor Daily Labor Reports" referenced hereunder shall be considered part of SUBCONTRACTOR'S job cost records under Paragraph 12 of this Subcontract.

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6. **LAYOUT RESPONSIBILITIES AND LEVELS** CONTRACTOR shall establish the principal axis lines of the building and site 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 others by reason of SUBCONTRACTOR'S failure to set out or perform its work correctly. SUBCONTRACTOR shall exercise prudence so that final conditions and details shall result in exact alignment of all elements and finish surfaces.

7. **PAYMENT** SUBCONTRACTOR shall submit to the CONTRACTOR applications for payment at such reasonable times as to enable the CONTRACTOR to timely apply for and obtain payment from OWNER. Each application for payment shall include appropriate waivers and releases from SUBCONTRACTOR and from its subcontractor's, materialmen, suppliers and third party independent contractors, if any, for the period concerning which the SUBCONTRACTOR is requesting payment. SUBCONTRACTOR agrees to complete and submit to CONTRACTOR waivers and releases for progress payments and for final payment on a form acceptable to CONTRACTOR. The SUBCONTRACTOR further agrees that if the materialmen, suppliers and third party independent contractors do not sign the required waivers and releases, then to provide, at CONTRACTOR'S option, the original invoices or statements to CONTRACTOR in order to facilitate issuance by CONTRACTOR of joint checks to the SUBCONTRACTOR and any appropriate third parties. SUBCONTRACTOR agrees that CONTRACTOR may, at its sole option and in its sole discretion, make any payments to the SUBCONTRACTOR otherwise due and owing under the terms of the Subcontract by way of joint check or by direct payment to third parties or otherwise. In no event, however, shall the CONTRACTOR be obligated to enter into any joint check agreement. CONTRACTOR agrees to waive the joint check requirement provided the SUBCONTRACTOR supplies unconditional waivers from its subcontractors, materialmen, suppliers, and third-party independent contractors, if any, for the immediately preceding billing period prior to payment of the current billing. This waiver does not apply if the sum of the conditional waivers is greater than the amount being invoiced, or it is the final contract billing to 100% completion. Joint checks will be issued for all conditional waivers from sub-tier vendors on the final contract billing to 100% completion. CONTRACTOR shall withhold retainage from SUBCONTRACTOR in the amount of five percent (5%) or as permitted by law. SUBCONTRACTOR shall be paid for work to the date of CONTRACTOR'S last progress billing date, as approved by the ARCHITECT or ENGINEER and received by CONTRACTOR. It is expressly agreed that [illegible]ment by OWNER to CONTRACTOR shall be a condition precedent to CONTRACTOR'S payment to SUBCONTRACTOR of any progress or final payment.

Final Payment for work under this SUBCONTRACT shall be made within ten (10) days after the CON[illegible]TOR [illegible]received final or complete payment from the Owner, provided SUBCONTRACTOR has completed its work and fulfilled each of its obligation[illegible]r the SU[illegible]ONTRACT. CONTRACTOR and SUBCONTRACTOR agree that the Final Payment amount shall be at least 10% of the final adjusted Subco[illegible]t Price[illegible] that Final Payment shall not be due until after the following conditions precedent have occurred: (1) submission of all required Project close document[illegible] from the SUBCONTRACTOR, including but not limited to all as-built drawings and warranty documentation to the satisfaction of [illegible]TRACTOR and OWN[illegible]; (2) issuance of a certificate of Substantial Completion by the OWNER; (3) completion of any and all punch list work items as identifie[illegible]CONTRACTO[illegible]or OWNER within 15 days following issuance of Substantial Completion; and (4) Final Payment has been received from the Owner[illegible]inal Pay[illegible]t shall b[illegible]flected on the SUBCONTRACTOR's agreed upon schedule of values as the last item, entitled Final Close Out and Punchlist.

If the contract between OWNER and CONTRACTOR permits payment for m[illegible]ls deli[illegible]d to the job site, or to satisfactory storage facilities, SUBCONTRACTOR may invoice for materials so delivered and receive payment therefor[illegible] descri[illegible]n; provided, however, that such stored materials shall be at the risk of the SUBCONTRACTOR until acceptance of the SUBCONTRACT wo[illegible] Certifi[illegible]f Insurance is required by the CONTRACTOR or OWNER as a condition precedent to the SUBCONTRACTOR'S payment, SUBCONTRA[illegible]shall fu[illegible]the same in a form acceptable to CONTRACTOR and OWNER. SUBCONTRACTOR acknowledges that all payments accepted by it o[illegible]ici[illegible]otherwise due under this SUBCONTRACT shall constitute a trust fund in favor of the laborers, materialmen, governmental authorities and [illegible]who [illegible]lega[illegible]ntitled to claim a lien against the Project or otherwise encumber the Project or CONTRACTOR'S payment rights, or file a claim against an[illegible]ges o[illegible]payment bond. Progress payments shall be deemed advances and are subject to adjustment in CONTRACTOR'S discretion at any time pr[illegible]fina[illegible]t for errors, overpayment or CONTRACTOR'S good faith determination that the remaining balance of payments may be insuffi[illegible]nt to insure co[illegible]tion o[illegible]work covered by this Subcontract in accordance with its terms, or to pay existing or anticipated lien, retention or bond claims. If th[illegible]ACTOR dete[illegible]s in good faith that the SUBCONTRACTOR is obligated to the CONTRACTOR or anyone else for labor, fringe benefits, taxes, supplies, [illegible]erial[illegible]ment, rental or other proper charges pertaining to the Project , then the amount of such obligation may be deducted or withheld by the CONTRAC[illegible]R fro[illegible]y [illegible]ent or payments made to SUBCONTRACTOR. CONTRACTOR may deduct or withhold from any payment, partial or final, otherwise due under[illegible]bcontract, such sums as CONTRACTOR reasonably may determine are necessary to secure and protect the CONTRACTOR or the OWN[illegible] claims or [illegible]that may be asserted by said third parties pertaining to SUBCONTRACTOR'S performance. Without limiting any of the above, CONTRAC[illegible]R may wi[illegible]ld pro[illegible]s or final payment and/or retainage for damages arising out of SUBCONTRACTOR'S breach of the terms and conditions of this Subco[illegible]ct. If [illegible]tract[illegible]s for work on a project governed by the State public works laws, the terms of paragraph 8 also apply.

8. **PAYMENT TERMS FOR PUBLIC WORK[illegible]PROJECTS** Upon receipt of payment by CONTRACTOR from OWNER, CONTRACTOR shall pay to SUBCONTRACTOR not later than[illegible]days after receipt of payment, the amount allowed to CONTRACTOR on account of work performed by SUBCONTRACTOR to the extent of SUBCONTRACTOR'S interest therein. In the event of a good faith dispute concerning an amount of payment to SUBCONTRACTOR, then CONTRACTOR may withhold up to 150% of the disputed amount. This Subcontract is intended to be in full compliance with Chapters 39.04 and 39.76 RCW, as amended, and to the extent that any provisions or clauses of this Subcontract are inconsistent with said statutes, such provision or clause shall be modified or stricken so that this Subcontract shall be consistent with said statutes.

9. **CHANGE ORDERS** CONTRACTOR may, without invalidating this Subcontract, order in writing without notice to surety, extra work or make changes by altering, adding to, or deducting from the work; and SUBCONTRACTOR shall proceed with the work as directed. All such work shall be executed under the conditions hereof and of the MAIN CONTRACT, except that any claims for extension of time caused thereby must be agreed upon at the time of ordering such change. SUBCONTRACTOR shall make no claims for extra work or time unless the same shall be agreed upon in writing by the CONTRACTOR prior to the performance of any such extra work. No claim for additional compensation or time, by change order or otherwise, shall be allowed by CONTRACTOR in favor of SUBCONTRACTOR unless within five (5) calendar days of the occurrence of the event giving rise to such a claim SUBCONTRACTOR gives written notice of such claim consistent with the terms of this Subcontract, including but not limited to Paragraph 11 below. SUBCONTRACTOR agrees that a failure to fully, properly, and timely comply with the claim and notice provisions of this Subcontract shall be a waiver of any and all rights to make a claim against the CONTRACTOR or the PROJECT. SUBCONTRACTOR shall only be entitled to time extensions and additional compensation, if any, that are consistent with any duration or amount in which the OWNER may issue a change order to the Main Contract. No dispute or controversy surrounding any change order shall interfere with the progress of construction, and SUBCONTRACTOR shall proceed with its work without interruption, deficiency or delay.

10. **NO DELAY BY SUBCONTRACTOR** Notwithstanding the fact that a dispute, controversy or question shall have arisen in the interpretation of any provision of the Main Contract, the Contract Documents, this Subcontract, the performance of any work, the delivery of any material, the payment of any monies to

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SUBCONTRACTOR, or otherwise pertaining to this Subcontract, SUBCONTRACTOR agrees that it will not directly or indirectly stop or delay any work on its part required to be performed, or stop or delay the delivery of any materials, supplies or equipment on its part required to be furnished hereunder, pending the determination of such dispute or controversy, regardless of whether such controversy, dispute or question is subject to mediation, arbitration or litigation.

11. **CLAIM & WRITTEN NOTICE REQUIREMENTS** Except as otherwise provided in this Subcontract, SUBCONTRACTOR agrees to give CONTRACTOR each and every notice, statement, notice of completion, and claim for damages or additional compensation or time based on alleged extra work, delay, acceleration, changed conditions or any other ground, in the same manner and form as required by the Main Contract, except that the time for furnishing said notices, statements or claims by SUBCONTRACTOR to CONTRACTOR shall not be greater than five (5) calendar days from the occurrence of the event giving rise to the claim in order to allow a reasonable time for CONTRACTOR to analyze and transmit the same to OWNER. SUBCONTRACTOR'S failure to provide such notice, statement or claim to CONTRACTOR in conformance herewith and by the deadlines set forth above shall limit and/or bar SUBCONTRACTOR from any and all recovery against CONTRACTOR or the PROJECT. No interruption, cessation, postponement or delay in the commencement of the work or in the progress thereof from any cause whatsoever, including disputes, shall relieve the SUBCONTRACTOR of its duty to perform. If the SUBCONTRACTOR encounters work which it considers unsatisfactory and which affects its work, or if SUBCONTRACTOR encounters any condition whatsoever upon which it may base a claim for extra compensation or time, or any other type of claim, it shall be its duty to give written notice to CONTRACTOR prior to commencing any work involving said conditions in order to allow CONTRACTOR to inspect said conditions and to make such arrangements and take such steps as CONTRACTOR deems necessary. NOTWITHSTANDING ANYTHING TO THE CONTRARY in the Main Contract, SUBCONTRACTOR must transmit any and all notices, statements or claims hereunder in writing and by registered or certified mail to CONTRACTOR within the time periods specified above. Such notices, statements or claims must identify in concise detail and in writing the basis for the claim and provide SUBCONTRACTOR'S best estimate of the increase of the contract time or contract sum which will be claimed. SUBCONTRACTOR must promptly provide a concise detailed written breakdown of all elements and sub-elements of the claim after the work is performed for which the increase in contract time or contract sum is sought. No act, omission, or knowledge, actual or constructive, of CONTRACTOR shall be deemed to be a waiver of the requirement for such written notice and transmission thereof unless CONTRACTOR provides SUBCONTRACTOR with an explicit, unequivocal written waiver of written notice or the transmission thereof. In the absence of timely and proper written notice of any claims to the CONTRACTOR by SUBCONTRACTOR as required herein, SUBCONTRACTOR shall be fully and solely responsible and liable for any and all expense, loss or damage resulting from said condition, and agrees that all claims for additional time and compensation not timely and properly submitted in writing are waived and that CONTRACTOR shall be relieved of all liability in connection therewith. No dispute or controversy surrounding any claim or potential or purported claim shall interfere with the progress of construction, and SUBCONTRACTOR shall proceed with its work without interruption, deficiency or delay. SUBCONTRACTOR understands and acknowledges that with regard to any claims based on the responsibility or liability of the OWNER, in no event shall SUBCONTRACTOR receive any price or time adjustment in excess of that for which the OWNER may issue a change order to the Main Contract.

12. **SUBCONTRACTOR RECORDS/AUDIT** SUBCONTRACTOR shall maintain accurate contemporaneous complete job costs records which show, at a minimum, the work hours of each of its employees for each day on the Project, the daily tasks performed by each such employee, the type and cost of equipment and the hours and days such equipment is used, and the identification and costs of materials. Separate accurate contemporaneous and complete cost records shall be maintained pertaining to all work and impacts which SUBCONTRACTOR contends is extra or differing conditions, including but not limited to, delays, acceleration, supervision, general conditions, overhead and profit, changed or differing conditions, time extensions, inefficiency, ripple effects, or other costs or items relating to such work or impacts. The failure to maintain the above form of records supporting such claims shall preclude SUBCONTRACTOR from recovery for such claims. SUBCONTRACTOR'S obligation to keep records under this clause is in addition to any other record-keeping obligations imposed by other terms of this Subcontract or the Contract Documents. SUBCONTRACTOR agrees that CONTRACTOR can review and audit SUBCONTRACTOR'S cost records whenever SUBCONTRACTOR submits a claim or a request for time or money.

13. **CLAIM ENTITLEMENT** In the event that SUBCONTRACTOR'S performance is delayed or interfered with or otherwise affected or impacted, SUBCONTRACTOR may request an extension of time for its performance as herein provided, but shall not be entitled to any increase in the Subcontract price or to damages or additional compensation as a consequence of such delay, interference or impact, unless SUBCONTRACTOR has strictly complied with all applicable claim and notice provisions and then only to the extent that the Main Contract entitles SUBCONTRACTOR to compensation for such delays, interference or impacts, and then only to the extent of any amounts that CONTRACTOR may recover on behalf of SUBCONTRACTOR, or which SUBCONTRACTOR may recover on a pass-through basis from the OWNER.

14. **OPEN SHOP** CONTRACTOR is an open shop contractor and, as such, will have non-union employees of various trades working on the Project at the same time and, in some instances, with SUBCONTRACTOR'S employees. Accordingly, it will be the total responsibility of the SUBCONTRACTOR to staff the project with employees who are willing to work with CONTRACTOR'S non-union employees and other trades regardless of their union status. Union pickets, work rules, interference, harassment, or intimidation of any kind or nature will not relieve SUBCONTRACTOR of its obligation to staff the project and to adhere to performance schedules.

15. **SAFETY** SUBCONTRACTOR shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to workplace and occupational safety and health, accident prevention and the safety programs of the OWNER and CONTRACTOR. SUBCONTRACTOR and all of its lower tier Subcontractors shall take all necessary safety precautions pertaining to their work and the performance of their work, including but not limited to full and complete compliance with applicable laws, ordinances, rules, regulations and orders issued by a public authority or governmental body, whether federal, state, local or other, the federal Occupation Safety and Health Act, the Washington Industrial Safety and Health Act, and any safety measures required by CONTRACTOR or OWNER. SUBCONTRACTOR shall be at all times responsible for the safety of its employees and for providing a safe worksite, including responsibility for the safety of SUBCONTRACTOR'S employees and all personnel, equipment within SUBCONTRACTOR'S care, custody or control, whether or not in common work areas. SUBCONTRACTOR shall promptly provide CONTRACTOR with written notice of any unsafe conditions, safety hazards or violations found anywhere on or adjacent to the construction site. CONTRACTOR'S Supervisor may direct SUBCONTRACTOR'S Superintendent to remove employees not in compliance with the requirements of this Agreement. In the event SUBCONTRACTOR does not promptly correct its safety violation, CONTRACTOR may order SUBCONTRACTOR to stop work until the violation is corrected, and may correct the violation and charge all costs of compliance to the SUBCONTRACTOR.

SUBCONTRACTOR and its lower tier Subcontractors shall provide to their employees all safety equipment required to perform the work and ensure that all employees, at all times, comply with OSHA/WISHA rules and regulations pertaining to their work and CONTRACTOR'S and OWNER'S safety rules. SUBCONTRACTOR certifies that it and its sub-subcontractors are registered and licensed contractors with the state of Washington. The SUBCONTRACTOR maintains and agrees to maintain a written Accident Prevention Plan and develop and implement a written Site Specific Safety Plan in full compliance with all federal, state, OSHA/WISHA rules and regulations. SUBCONTRACTOR acknowledges that its Accident Prevention Plan defines its role and responsibilities pertaining to safety, including all necessary training and correction action and is tailored to the safety and health requirements of the operations and work that may be involved.

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SUBCONTRACTOR'S Site Specific Safety Plan shall identify anticipated hazards and the means that will be used to address each of such hazards with respect to the work involved. SUBCONTRACTOR shall have and enforce a disciplinary action schedule conditioned upon the occurrence of any safety violations being discovered, which schedule should vary depending upon the severity of the violations.

SUBCONTRACTOR shall regularly and periodically conduct inspections to determine that safe working conditions and equipment exist for its employees and the employees of its SUBCONTRACTOR'S and suppliers and for the adequacy of and required use of all safety equipment. SUBCONTRACTOR shall either attend the safety meetings of CONTRACTOR or timely furnish CONTRACTOR with minutes of weekly safety meetings conducted by SUBCONTRACTOR. In the event that SUBCONTRACTOR commits any safety violation, CONTRACTOR may issue a written notice of such violation generally describing the violation and demanding that SUBCONTRACTOR comply with any applicable safety requirements. SUBCONTRACTOR agrees and consents as herein described given CONTRACTOR'S overall responsibility to coordinate safety matters for the Project. If SUBCONTRACTOR fails to immediately comply with such Notice issued by CONTRACTOR or if SUBCONTRACTOR fails to immediately comply with any safety obligations or directives following the issuance of a citation, warning or directive by any governmental agency, CONTRACTOR may at its option, but not as a requirement, allow SUBCONTRACTOR twenty-four (24) hours to correct any safety violation described in a Notice. In addition to the above, CONTRACTOR may, at its option, impose a charge of $500 against SUBCONTRACTOR upon the giving of each Notice, which charge shall cover CONTRACTOR'S administrative costs of inspection and issuance of the Notice. To the fullest extent permitted by law, SUBCONTRACTOR shall indemnify, defend and save harmless CONTRACTOR from any claim, citation, suit, penalty, damage, liability, loss, cost or expense, including reasonable costs and attorneys' fees, arising from any failure or alleged failure of SUBCONTRACTOR to comply with any law, order, citation, rule, regulation, standard or statute in any way relating to occupational health or safety. Any noncompliance by SUBCONTRACTOR or its subcontractors or suppliers following a citation, penalty, fine or enforcement action by public agency or following the issuance of a Notice by CONTRACTOR as described above may be deemed a material breach of this Agreement.

16. **SUBCONTRACTOR'S LIMITED AUTHORITY TO OBLIGATE CONTRACTOR OR OWNER REGARDING LIENS OR BOND CLAIMS** SUBCONTRACTOR agrees not to assign or sublet any portions of this Subcontract without CONTRACTOR'S prior written consent. SUBCONTRACTOR shall designate in writing all of its subcontractors and suppliers to CONTRACTOR upon CONTRACTOR'S request and shall not subsequently change such subcontractors or suppliers without CONTRACTOR'S prior written approval. As part of its designation of all subcontractors and suppliers, SUBCONTRACTOR shall submit to CONTRACTOR a complete list of all labor to be performed and all items to be purchased from the same. As soon as available, copies of all subcontracts, purchase orders and invoices shall be furnished to CONTRACTOR. Based upon this information, CONTRACTOR shall delegate authority to SUBCONTRACTOR to incur a certain dollar amount of indebtedness that may form the basis for a potential lien or bond claim. If SUBCONTRACTOR exceeds such dollar amount without prior written consent of CONTRACTOR, SUBCONTRACTOR shall be acting outside the scope of its authority. SUBCONTRACTOR'S failure to so designate all subcontractors and suppliers or to change subcontractors or suppliers without CONTRACTOR'S prior written approval shall constitute a material breach of the Subcontract and an express breach of SUBCONTRACTOR'S authority hereunder. SUBCONTRACTOR shall, as often as required by CONTRACTOR, furnish a sworn statement showing all parties who furnish labor or materials to SUBCONTRACTOR, and their names and addresses and the amount due or to become due to each. Like statements may be required from any subcontractors or suppliers of the SUBCONTRACTOR.

17. **DEFENSE OF LIENS** SUBCONTRACTOR shall promptly pay or discharge in full and provide adequate security for the payment of all claims of any persons, firms or corporations furnishing or claiming to have furnished labor, materials, equipment, supplies or incidentals used in, upon or for the work, whether or not as to any such claim a lien or right of enforcement is established or attempted to be established upon or against the work. SUBCONTRACTOR shall, if requested by CONTRACTOR, defend any such suit at its own expense, and in any event shall indemnify CONTRACTOR for all expenses incurred by CONTRACTOR, OWNER, and any upper-tier contractor with whom CONTRACTOR has contracted investigating, resisting, or settling such liens or claims, including attorneys' fees incurred by CONTRACTOR, OWNER and any upper-tier contractor. SUBCONTRACTOR agrees to defend, indemnify, and hold CONTRACTOR, OWNER, and any upper-tier contractor harmless from any claims of lien, any claims against any contractor's bond or retainage, or any claims against any other contractor's bond or retainage resulting from the performance of this Subcontract. Subject to the payment provisions of this Subcontract, CONTRACTOR may as a condition precedent to any payment to SUBCONTRACTOR hereunder require SUBCONTRACTOR to submit satisfactory evidence of payment and to provide lien/claim waivers and releases in favor of OWNER, CONTRACTOR and their affiliates of any and all claims of any such persons, firms or corporations in a form acceptable to CONTRACTOR. Such evidence, releases or waivers must be submitted covering all such liens and claims as a condition precedent to the final payment.

18. **RESPONSIBILITY FOR THE WORK** SUBCONTRACTOR shall be responsible for, and shall bear any and all risks of loss or damage to the work and materials, tools, equipment, or incidentals until final acceptance thereof and release of responsibility therefor by OWNER. SUBCONTRACTOR shall protect the materials, tools, equipment and property of OWNER, CONTRACTOR and others on the project against injury or damages in any way arising out of or connected with the operations conducted by SUBCONTRACTOR hereunder or anyone acting under its direction or control, or on its behalf. SUBCONTRACTOR waives all rights it might have against CONTRACTOR for any damage to SUBCONTRACTOR'S work, property or materials, unless said loss or damage is caused by the sole negligence of the CONTRACTOR.

19. **SUBCONTRACTOR EMPLOYER** SUBCONTRACTOR has the status of an employer as defined by the Industrial Insurance, Workman's Compensation and Unemployment Compensation Act, Social Security, and other similar acts of the federal, state and local Government. SUBCONTRACTOR will withhold from its payroll the applicable Social Security taxes, Workmen's Compensation, Unemployment Compensation contributions and withholding taxes, and pay the same, and the CONTRACTOR shall in no way be liable as an employer to or on account of any of the employees of the SUBCONTRACTOR. Before final payment is made upon this Subcontract, SUBCONTRACTOR shall furnish satisfactory evidence to the CONTRACTOR, that it has conformed to said laws, rules and regulations. SUBCONTRACTOR shall pay to its employees all wages, fringe benefits, travel and incidental payments which may be required under any union contract agreement between the SUBCONTRACTOR and any trade union. This Subcontract shall be subject to requirements of any applicable union contract with respect to enforcement of SUBCONTRACTOR'S obligations to pay contributions for fringe benefits.

20. **PERMITS, TAXES** SUBCONTRACTOR shall secure and pay for all permits, fees and licenses necessary for the performance of this Subcontract and shall pay any and all federal, state and municipal taxes, including sales taxes, if any, for which the SUBCONTRACTOR may be liable in carrying out this Subcontract.

21. **MATERIALS** Materials delivered by or for the SUBCONTRACTOR and intended to be incorporated into the construction hereunder shall remain on the jobsite and shall become property of the OWNER upon payment; but the SUBCONTRACTOR may repossess himself of any surplus remaining at the completion of the contract. All scaffolding, apparatus, ways, works, machinery and plants brought upon the premises by the SUBCONTRACTOR shall remain its property, but in case of SUBCONTRACTOR'S default or inability to perform, and the completion of the work is done by CONTRACTOR, then CONTRACTOR shall be entitled to use said scaffolding, apparatus, ways, works, machinery and plants without cost or liability for depreciation or damage by use and without prejudice to CONTRACTOR'S

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other rights or remedies for any damage or loss sustained by reason of said default or inability. It shall be the SUBCONTRACTOR'S responsibility to unload, store and protect its materials and SUBCONTRACTOR shall bear the risk of loss thereof, and shall protect such material against loss until actually incorporated in to the work and the work is accepted, even though title thereto may previously have passed to the OWNER under the preceding provisions, except that SUBCONTRACTOR shall not bear any such loss as may be due to the sole negligence of the CONTRACTOR.

22. **MATERIAL QUALITY AND MOLD PREVENTION** Materials condemned by CONTRACTOR, OWNER and/or Owner's Representatives as failing to conform to the Main Contract, installed or not, shall upon notice from CONTRACTOR be immediately removed by SUBCONTRACTOR. Failure of CONTRACTOR to condemn any work or materials as installed shall not in any way waive CONTRACTOR'S right to object thereto at any subsequent time.

    SUBCONTRACTOR warrants that all materials provided under this Subcontract shall be free of mold. Mold is defined as any permanent or transient fungus, mold, mildew or mycotoxin, or any of the spores, scents or byproducts resulting therefrom regardless of whether they are proved to cause disease, injury or damage. SUBCONTRACTOR further warrants that all workmanship under this Subcontract shall be performed in a manner and of a quality that will not expose SUBCONTRACTOR'S work or the work of others to conditions that lead to the growth of mold.

    Upon completion of work under this Subcontract, SUBCONTRACTOR agrees to provide a certification that the materials provided and the work performed hereunder comply with the requirements of paragraph 22. The certification shall be in the form attached hereto as the Mold Certification Addendum.

23. **SUBCONTRACTOR'S FAILURE TO PERFORM** If, in the opinion of the CONTRACTOR, SUBCONTRACTOR shall at any time (1) refuse or fail to provide a sufficient number of properly skilled workmen or a sufficient quantity of suitable materials or adequate equipment, (2) fail to diligently prosecute the work in the order and sequence directed and/or according to then current CONTRACTOR'S schedule, (3) cause, by any act or omission, the stoppage or delay of or interference with the work of CONTRACTOR or of any other builder or SUBCONTRACTOR including, but not limited to, acts or omissions arising out or relating to any picketing, strikes or other labor conditions, (4) fail to correct or replace any damaged or defective work or materials, (5) fail to comply with all safety obligations imposed by the law and this Subcontract, (6) fail to comply with all provisions of the SUBCONTRACT, MAIN CONTRACT and Contract Documents, (7) be adjudged bankrupt, or make a general assignment for the benefit of its creditors, (8) have a receiver appointed, or (9) become insolvent or a debtor in reorganization proceedings, then, after giving SUBCONTRACTOR forty-eight (48) hours written notice transmitted by facsimile or otherwise, unless the condition specified in such notice shall have been eliminated within such forty-eight (48) hours, CONTRACTOR, at its option and in addition to and without limiting any other rights afforded herein or by law and without notice to the sureties, may (i) take such steps as are necessary to overcome the condition, in which case the SUBCONTRACTOR shall be liable to CONTRACTOR for the cost thereof, (ii) terminate the subcontract for default, or (iii) seek specific performance of SUBCONTRACTOR'S obligations hereunder, it being agreed by SUBCONTRACTOR that specific performance may be necessary to avoid irreparable harm to CONTRACTOR and/or OWNER. In the event of termination for default, CONTRACTOR may, at its option, do any or all of the following: (a) enter on the premises and take possession, for the purpose of completing the work, of all materials and equipment of SUBCONTRACTOR; (b) require SUBCONTRACTOR to assign to CONTRACTOR any or all subcontracts or purchase orders involving the Project; or (c) either itself or through others complete the work, by whatever method CONTRACTOR may deem expedient. If terminated for default, SUBCONTRACTOR shall not be entitled to receive any further payment until the work shall be fully completed and accepted by OWNER. At such time, if the unpaid balance of the price to be paid exceeds the expense incurred by CONTRACTOR, such excess shall be paid by CONTRACTOR to SUBCONTRACTOR. If the expense incurred by CONTRACTOR exceeds the unpaid balance, SUBCONTRACTOR shall pay CONTRACTOR the difference.

24. **TERMINATION FOR CONVENIENCE** CONTRACTOR shall have the right to terminate this Subcontract for convenience and without cause, by providing SUBCONTRACTOR with a written notice of termination to be effective upon receipt by SUBCONTRACTOR. If SUBCONTRACTOR is terminated for convenience, it shall be paid the amount representing costs which are due for SUBCONTRACTOR'S work up to the effective date of the termination for convenience. However, payment by OWNER to CONTRACTOR shall be a condition precedent to CONTRACTOR'S payment to SUBCONTRACTOR.

25. **UNIT PRICE** In the event this Subcontract contains unit price items, it is understood and agreed that any quantities mentioned are approximate only and subject to change as required by the MAIN CONTRACT and as ordered or directed by the CONTRACTOR. All unit prices as outlined in the contract documents shall remain in effect for the duration of the specified contract period.

26. **HOUSEKEEPING** SUBCONTRACTOR agrees that upon completion of any particular unit of work, and upon final completion of all work, to clean up refuse and rubbish around or alongside the same made by the SUBCONTRACTOR and to promptly remove all excess material including paint, plaster and mortar, tools, structures, etc., which may have been brought on the premises or erected by the SUBCONTRACTOR, and SUBCONTRACTOR agrees that in the event of its failure to do so that CONTRACTOR may without notice to the SUBCONTRACTOR clean up the premises at the cost and expense of the SUBCONTRACTOR.

27. **WORKER'S COMPENSATION** SUBCONTRACTOR shall furnish to CONTRACTOR evidence that it has in force Worker's Compensation Insurance, as may be required by the jurisdictions in which the work is being performed, and Employer's Liability Insurance. Such evidence of insurance shall be in the form of an Insurance Certificate issued by an insurer satisfactory to the CONTRACTOR, or by a state agency responsible for providing medical and compensation benefits for work-related injuries, diseases and deaths, and shall provide for not less than ten (10) days-notice to CONTRACTOR of cancellation or reduction of coverage.

    Employers' Liability Insurance with minimum limits of:
    $1,000,000 Each Accident
    $1,000,000 Disease Each Employee
    $1,000,000 Disease Policy Limit

    Certificate must clearly identify that coverage applies in the State in which the Project is located.

    Workers' compensation coverage is required for all employees, officers, and owners of Subcontractor who enter the Project jobsite. If any employee, officer, or owner of Subcontractor is not covered by Subcontractor's workers' compensation policy, Subcontractor shall notify Contractor in writing and shall indicate the exclusion of such person(s) on the Certificate of Insurance required to be provided herein. Subcontractor shall release, defend, indemnify, and hold harmless Contractor and Owner from and against all claims and damages to such persons not covered by Subcontractor's workers' compensation policy.

    If the insurer or agency cannot provide notice as required, the SUBCONTRACTOR agrees to provide such notice. In the event SUBCONTRACTOR fails to maintain any insurance required by this SUBCONTRACT in force during the entire life of the SUBCONTRACT, CONTRACTOR may at his option purchase such insurance in the name of SUBCONTRACTOR and deduct the cost of the same from payments due SUBCONTRACTOR. SUBCONTRACTOR shall notify CONTRACTOR

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immediately of any injuries to SUBCONTRACTOR'S workers on the site or related work and also shall notify CONTRACTOR if any claim is made for Worker's Compensation benefits or by way of other legal action against SUBCONTRACTOR on account of any such injury. Nothing herein shall alter or reduce SUBCONTRACTOR'S other insurance obligations under this Subcontract.

28. **INSURANCE** Unless higher limits or additional coverages are required by the Subcontract or Main Contract, prior to the commencement of any work, Subcontractor shall secure, purchase and maintain, at its own expense, the following types of insurance coverage and limits of liability. These insurance requirements and the obligations of the indemnification that is part of this contract shall also apply to anyone hired by Subcontractor to Work under this agreement.

Commercial General Liability

Commercial General Liability Insurance ("CGL") written on ISO form CG 00 01 occurrence form or equivalent for hazards of: (a) Construction Operation, (b) Subcontractors and Independent Contractors, (c) Products and Completed Operations

The insurance shall have the following minimum limits of liability of:

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

The general aggregate coverage limits shall be per project general aggregate and shall be evidenced on Subcontractor's Certificate of Insurance.

The insurance shall include:

- Contractual liability coverage sufficient to meet the requirements of this Subcontract Agreement including defense costs and attorney's fees assumed under the contract, which shall be payable in addition to the limit of liability.)
    - To the extent aligned with and permittable applicable law, no Contractual Liability [illegible] exclusion modifying or deleting the definition of "insured contract" from the unaltered ISO CG 00 01 Edition date 10/01 (CG 24 26 or [illegible]
- Personal Injury Liability (with contractual exclusions deleted)
- Perils of Explosion, Collapse, & Underground (XCU)
- Coverage must be primary and non-contributory with any insurance maintained by additional insured party
- No separation of insured exclusion
- The following exclusions are absolutely prohibited and shall not be included in Subcontractor's policy if applicable to the work:
    - No exclusion for "third-party action over suits" or any similar restriction of coverage applicable to claims brought against others by an employee of Subcontractor or its subcontractors.
    - No damage to Work performed by Subcontractor exclusion (CG 22 94 or similar).
    - No exclusion for subsidence, which is specifically prohibited for any work involving excavation, soil stabilization, earth retention, concrete, structural steel, landscaping, waterproofing, [illegible]tion, and plumbing.
    - No EFIS exclusion
    - If applicable, operations performed within 50 feet of railroad property
    - If applicable, operations involving residential multi-family or condominiums

Subcontractor shall maintain general liability coverage for both Products and Completed Operations Insurance and the Additional Insureds status for the statute of repose. Subcontractor shall continue to provide evidence of such coverage to Contractor on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement.

Electronic Data Liability Insurance

Required if SUBCONTRACT includes any work on [illegible]ear utilities.

The minimum limits of liability are:

$1,000,000 Each Occurrence
$1,000,000 General Aggregate

Commercial Automobile Liability

Commercial Automobile Liability Insurance covering all owned, leased and non-owned vehicles used in connection with the Scope with limits of:

$1,000,000 Combined Single Limit

The insurance shall include:

- Coverage for bodily injury, death and property damage arising out of ownership, maintenance or use of any motorized vehicle on or off the site of the Project, and Contractual Liability coverage
- If hauling of hazardous waste is part of the Scope, Automobile Liability Insurance with a $1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles and include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).
    - If CGL 12/04 or later edition is provided, the CA0051 1204: Mobile Equipment Subject to Motor Vehicles Laws shall also be provided. This additional endorsement is not required if the 2006 ISO Auto form is provided.

Excess/Umbrella Liability

Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Subcontractor's primary Employer's Liability, Commercial General Liability and Commercial Automobile Liability with limits of:

- ***$1,000,000 each occurrence and aggregate.***

All coverages and terms required under the Commercial General Liability, Automobile Liability and Employer's Liability must be included on the Excess/Umbrella Liability policy. Higher limits may be required by Contractor or Owner on a project-by-project basis. Subcontractor's Excess/Umbrella Liability Policy shall provide

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liability coverage, subject to the terms and conditions of the policy, in excess of all available underlying coverage before any primary or excess coverage held by any Additional Insured.

Leased Employee Liability
If Subcontractor leases one or more employees using a payroll, employee management or other company, and workers compensation/employer's liability coverage is not provided by the payroll, employee, management or other company, then the Subcontractor must directly procure workers compensation/employer's liability insurance. The workers' compensation and employer's liability coverage provided to and for the leased employees by the payroll, employee management or other company shall be evidenced and include an Alternate Employer/Leased Employee Endorsement, naming Subcontractor as the alternate employer. The employer's liability must be scheduled under applicable umbrella (except in state where employer's liability is unlimited). The insurance shall be written on a "minimum premium" or "if any" policy form.

Professional Liability
This Section is applicable to Subcontractor and any sub-subcontractor of any tier that is providing any professional services, including but not limited to the following:

- Providing design of any portion of the Project's scope of work. This includes any design required for a Subcontractor's means and methods to perform their work.
- Advice to the owner and design team in a "Design Assist" role
- Delegated design of final engineering

Subcontractor and all Sub-consultants providing professional services shall provide and maintain Professional Liability Insurance coverage. The policy coverage shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with the Scope.
Both Subcontractor and listed Sub-Subcontractors shall have proof of professional liability coverage in the amount of:

- ***$1,000,000 per claim with a maximum deductible of $25,000 to be paid by Subcontractor.***

The Subcontractor and Sub-consultants shall maintain for the statute of repose, following completion of the project. Any erosion of insurance limits required will be reinstated to the required amounts prior to commencing the contracted work and if during the contracted period claims are made against the design professional's policy the necessary reduction of available limits will be repurchased to the contractually required amounts.

Pollution Liability
This Section is applicable to Subcontractor and any sub-subcontractor of any tier that provides work related to, demolition, environmental services, building enclosure systems, (including but not limited to all cladding, siding, roofing, windows and doors), plumbing, heating, ventilation, air conditioning, drywall, insulation, fire suppression, building foundations and any work which involves the use of solvents, chemicals, or hazardous materials. Work which creates exposure to Microbial Matter, Mold, Fungi, or Bacteria and any work which will involve the use of hazardous materials. Work that disturbs the sub-surface such as erosion control, earthwork, paving, utilities and drilling/trenching.

Subcontractor and all applicable sub-subcontractors must provide and maintain a separate Pollution Liability Insurance policy including coverage for but not limited to claims arising out of all hazardous material and hazardous waste remediation coverage, transportation, clean-up and disposal. Pollution Liability policy must include contractual liability coverage aligned with indemnification provisions of Subcontract Agreement. Cover shall not contain exclusions for Mold, Mildew, or EIFS related work.

Additionally, the Pollution Liability Insurance policy shall name Contractor, and all other parties as required under the Prime Contract as Additional Insureds.
The policy limits shall be in the amount of:

- ***$1,000,000 each occurrence and aggregate with a maximum deductible of $25,000 to be paid by the Subcontractor.***

The Subcontractor and Sub-Subcontractor shall maintain pollution liability coverage for the statute of repose following completion of the project. Mold, mildew, and EIFS is required and shall be provided by a claims-made form, the coverage shall be maintained annually, following completion, for the statute of repose.

Builders Risk Coverage
It is the responsibility of the Subcontractor to inquire about Builders' Risk coverage
If required per Contractor contract with Owner

Contractor and Subcontractor waive all rights against (1) each other and any of their Vendors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their Subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as fiduciary. Subcontractor shall require of Subcontractor agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Installation Floater
If required by Contractor or not covered by the Builders Risk insurance, Subcontractor shall obtain an Installation Floater to cover that portion of the work to be constructed, installed, altered, or repaired by Subcontractor. If Contractor or Owner, or other party as required by the Prime Contract, have a financial interest, those parties shall be listed as a loss payee.

Equipment Floater
Subcontractor shall maintain at its sole cost and expense insurance to protect its own equipment, tools and materials against risk of loss with sufficient limits to cover the value of all the equipment, tools and materials Subcontractor may use in performance of the Work. Subcontractor is solely responsible for any deductibles, self-insured retentions or uninsured losses for any reason arising out of Subcontractor's obligations of this Section. Coverage shall include equipment leased/borrowed/rented by Subcontractor.

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Unmanned Aerial Systems Liability Insurance ("Drone" Insurance)
If, as part of the performance of the Work, Subcontractor operates any "Unmanned Aerial System" or "UAS" or hires any such operations through a vendor or sub-subcontractor, Subcontractor shall provide and maintain liability insurance for operations of the UAS. This liability insurance shall be provided by either a separate aviation policy or an endorsement to the general liability policy required hereunder, provided that the limit of liability shall be no less than $1,000,000 per occurrence. Regardless of the form of insurance provided, Contractor, Owner, and any other party as required by Contractor shall be included as additional insureds and a waiver of subrogation apply in favor of all additional insured parties. Subcontractor shall require compliance with these same terms and conditions of any subcontractor or vendor whom it engages in the use or operation of a UAS.

Subcontractor further acknowledges and agrees that it is solely responsible for the airworthiness of any such aircraft. Subcontractor also warrants, that at a minimum, all aircraft will be registered, maintained and operated in accordance with: (a) All applicable manuals inclusive but not limited to the manufacturers and operators maintenance and operations manuals; (b) Federal Aviation Regulations, Mandatory Advisory Circulars or other Airworthiness Directives issued by the FAA; (c) The manufacturer's airworthiness limitations; (d) Manufacturer or FAA mandated inspection schedules, overhaul schedules, and calendar retirement dates; and (e) Service Bulletins. For the purposes of this Section H, "UAS" includes all elements required for flight including but not limited to ground control stations, data links, dashboards, applications, survey equipment and the unmanned aerial vehicle ("UAV" or "Drone") of the subject unmanned system. UAS, UAV, and Drone are used interchangeably in this agreement.

Riggers Liability Required:
If the scope involves the rigging, hoisting, lowering, raising or moving of property or equipment belonging to others and Riggers Liability Insurance is required to insure against physical loss or damage to the property or equipment.

Additional Insureds:
The following insurance policies shall name 1) Contractor 2) Owner 3) Any other person or organization required by the Main Contract or this Agreement as "Additional Insured":

- Commercial General Liability
- Commercial Auto Liability
- Commercial Umbrella Liability
- Pollution Liability

Coverage shall be primary and non-contributory to any insurance maintained by additional insured and other parties as required by Main Contract, all of which shall be stated on the Certificate of Insurance provided by the Subcontractor.

The General Liability Additional Insured endorsement(s) shall provide:

1) That any person or organization that Subcontractor is required to add as an Additional Insured under the contract or agreement shall be included as an Additional Insured on blanket additional insured endorsements.
2) The additional insured endorsement shall not limit the exception to the exclusion for "damage to your work"- coverage shall include coverage for damage to the work itself for completed operations performed by Sub-contractor.

The General Liability Additional Insured Endorsement must provide stated in favor of required parties including both ONGOING Operations AND COMPLETED Operations, to the fullest extent allowed by law and to the extent of risk and liabilities assumed in this Agreement providing equivalent coverage contained in the ISO forms CG2010 11/85 or CG 2010 10/01 and CG 2037 10/01. Vicarious forms of additional insured endorsements will not be accepted. Evidence, by endorsement or policy language, of additional insured and primary and non-contributory coverage must be provided with the certificate of insurance for General Liability.

Waiver of Subrogation
All insurance coverages maintained by Subcontractor shall include a waiver of any right of subrogation of the insurers thereunder in favor of Additional Insureds and all of their respective assigns, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under any such policy (Workers Compensation – where permitted). If any of the Additional Insureds is partially or wholly self-insured, then the waiver of subrogation shall apply as if they were in fact covered by their own insurance.

Notice of Cancellation
Subcontractor must certify that the Contractor will receive 30 days advance notice of any cancellation (except 10 days for non-payment)

Continuation of Coverage
Required insurance, including Additional Insured status for Completed Operations under the General Liability Policy, shall be maintained for the statute of repose following completion of the project and acceptance by the Owner.

Deductible
Subcontractor shall be responsible, at no additional cost to Contractor for the payment of any associated deductibles or self-insured retention in connection with the coverages required by this Attachment. Any self-insured retentions or deductible in excess of $25,000 must be declared at the time Subcontractor submits its bid and must be specifically approved by Contractor prior to execution of the Subcontract.

Claims-Made Policies
Except for Professional Liability Insurance all liability policies must be an occurrence form, claims-made policies are not acceptable.

No Limitation of Liability

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The required coverages and limits specified herein shall in no way affect, nor are they intended as a limitation on the liabilities and obligations assumed by Subcontractor under this Agreement. If Subcontractor maintains insurance coverage that exceeds the minimums required by above, the broadest coverage and highest limits actually afforded under the applicable policy(ies) shall be considered the coverage and limits that are required and available to the Additional Insureds.

Special Provisions
All policies shall be written through companies duly entered and authorized to transact that class of insurance in the state in which the project is located. The Insurance Companies must have an A.M. Best rating of A- or better in the most recent Best's Key Rating Guide.

Notwithstanding anything contained herein to the contrary, Contractor and Owner do not waive, and expressly reserve, any rights of subrogation, including the subrogation rights of their respective insurers, with respect to any claims, losses, damages, or expenses arising out of, resulting from, or attributable to the acts or omissions of any Subcontractor, or anyone directly or indirectly employed by a Subcontractor, or for whose acts a Subcontractor may be liable.

Approval, disapproval or failure to act by the Contractor regarding any insurance supplied by the Subcontractor shall not relieve the Subcontractor of full responsibility or liability for damages and accidents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Subcontractor from liability.

Contractor shall make no special payments for any insurance that the Subcontractor may be required to carry; all are included in the contract price and in the contract unit prices.

The Subcontractor shall require all Sub-Subcontractors to procure and maintain all insurance as set forth in this Contract.

Certificate of Insurance Certificates of Insurance, as evidence of the insurance required by this agreement, shall be furnished by SUBCONTRACTOR before any work hereunder is commenced by SUBCONTRACTOR. NO money will be issued on this Subcontract without this certificate in CONTRACTOR'S file. SUBCONTRACTOR is required to provide CONTRACTOR with written notice within 24 hours of any cancellation or reduction of the required coverages.

The insurance coverage required by this paragraph shall be considered minimum acceptable limits and shall not be construed to limit the liability of the SUBCONTRACTOR to the CONTRACTOR and/or Owner.

In the event SUBCONTRACTOR fails to maintain any and all insurance required by this SUBCONTRACT during the entire life of this SUBCONTRACT, CONTRACTOR may at its option, and without waiver of other available remedies, purchase such insurance in the name of SUBCONTRACTOR and deduct the cost of same from payments due SUBCONTRACTOR.

29. **SUBCONTRACTORS WITH DESIGN/BUILD RESPONSIBILITIES** If SUBCONTRACTOR'S work calls for or requires any design or engineering to be provided by or performed by SUBCONTRACTOR, SUBCONTRACTOR acknowledges it has responsibility for the adequacy, accuracy, and conformance of such design or engineering work, and that the CONTRACTOR is entitled to rely thereon. SUBCONTRACTOR warrants that all such design and engineering provided or performed by it shall fully comply with all contract requirements, all codes, laws and regulations, and shall be performed consistent with the highest professional standards and evidenced by SUBCONTRACTOR providing required stamped drawings. SUBCONTRACTOR shall reimburse, defend, indemnify, and hold CONTRACTOR harmless, pursuant to provisions contained in this Subcontract, from all costs, losses, damages, and expenses, caused by or resulting from any non-conformity, inadequacy, inaccuracy, or failure of SUBCONTRACTOR design or engineering.

SUBCONTRACTORS who are required by the plans or otherwise to furnish engineering drawings and calculations by a qualified licensed professional, shall require the licensed design professional to provide Errors and Omissions/Professional Liability insurance certification. The insurance must be in limits not less than one million dollars ($1,000,000) and provided by carriers satisfactory to CONTRACTOR. Coverage must extend three (3) years beyond the completion of the project, and the commencement coverage must be a date that is prior to commencing drawings and/or design work. SUBCONTRACTOR shall provide CONTRACTOR a copy of SUBCONTRACTOR'S renewal certificate confirming the Design Errors and Omissions/Professional Liability insurance has been extended for each of the three (3) years beyond completion of the Project.

30. **SUB-TIER CONTRACTORS** All sub-tier contractor shall be bound to the SUBCONTRACTOR the same as the SUBCONTRACTOR is bound to the CONTRACTOR and the same as the CONTRACTOR is bound to the OWNER. This form may be used for sub-tier contracts and when so used, the term CONTRACTOR shall mean SUBCONTRACTOR and the term SUBCONTRACTOR shall mean SUB-TIER CONTRACTOR.

31. **BONDS** SUBCONTRACTOR will furnish to CONTRACTOR, at CONTRACTOR'S request, either prior to or during construction, performance and/or labor and materials bonds in an amount not to exceed the total subcontract price as of the date of such request, written by corporate sureties authorized to issue such bonds in the State of Washington. The corporate surety and the bond form shall be subject to the approval of the CONTRACTOR. The Surety Company shall not be rated lower than A.M. Best's Rating "A" (Excellent). The Surety shall be on the Federal Register of the Department of the Treasury, Fiscal Service, as a company holding a Certificate of Authority as an acceptable Surety in the State of Washington with an underwriting limitation in excess of the bond amount. The premiums for such bonds shall be part of the subcontract price. CONTRACTOR may, at its option, consider a failure to furnish such bonds a breach of contract entitling CONTRACTOR to terminate this Subcontract and to recover damages due to SUBCONTRACTOR'S failure to perform.

32. **WARRANTIES** As set forth in Paragraph 1, SUBCONTRACTOR agrees to provide all warranties required by the Main Contract. If the Main Contract does not contain warranty requirements, SUBCONTRACTOR agrees to provide the following warranty: SUBCONTRACTOR expressly warrants to CONTRACTOR that all materials and equipment furnished under this Subcontract shall be new unless otherwise specified and of good quality, free of all faults and defects and in conformance with the requirements of this Agreement. If within one (1) year of the date of Final Completion and OWNER'S AND CONTRACTOR'S acceptance of the completed punch list items, final payment, or such longer period as may be prescribed by law or by the terms of any special warranty set forth in the Main Contract and Contract documents, any work is found to be defective or not in accordance with this Subcontract, or the Main Contract and Contract documents, SUBCONTRACTOR shall correct it promptly after receipt of notice from CONTRACTOR. If SUBCONTRACTOR, after notice, fails within seven (7) days to proceed to correct a fault or defect so as to comply with the terms of this warranty, CONTRACTOR may have the defects corrected and SUBCONTRACTOR, and its surety if any, shall be liable for all expenses incurred.

SAMPLE

33. **MODIFICATIONS, WAIVERS, SEVERABILITY AND MISCELLANEOUS** The heading of paragraphs of this Subcontract are for convenience and reference only and are not to be used to interpret or define the provisions hereof. No modification of this Subcontract and no waiver of any rights under this Subcontract shall be valid or binding on the parties unless the same be in writing. Failure of the CONTRACTOR to insist upon strict performance by the SUBCONTRACTOR, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver of any such rights, remedies, or any other covenants or agreements, but the same shall be and remain in full force and effect. The partial or complete invalidity of any one or more provisions or sentences of the Subcontract shall not affect the validity or continuing force and effect of any other provision. SUBCONTRACTOR shall not assign the Subcontract or any portions of the Subcontract without the prior written consent to CONTRACTOR.

34. **ATTORNEY'S FEES** In any action between CONTRACTOR and SUBCONTRACTOR arising from or related to this Subcontract, the substantially prevailing party shall be entitled to recover from the other party its expenses of litigation or arbitration, including attorneys' fees and costs.

35. **DISPUTES**

(a) Pass-Through Claims: In the event of any dispute or claim between CONTRACTOR and OWNER which directly or indirectly involves the work performed or to be performed by SUBCONTRACTOR, or in the event of any dispute or claim between CONTRACTOR and SUBCONTRACTOR caused by or arising out of conduct for which OWNER may be responsible, SUBCONTRACTOR agrees to be bound to CONTRACTOR and CONTRACTOR agrees to be bound to SUBCONTRACTOR to the same extent that CONTRACTOR is bound to OWNER by the terms of the Main Contract and by any and all procedures and resulting decisions, findings, determinations, or awards made thereunder by the person so authorized in the Main Contract, or by any administrative agency, board, court of competent jurisdiction or arbitration. SUBCONTRACTOR agrees to be bound by the procedure and final determinations as specified in the Main Contract and agrees that it will not take, or will stay or suspend, any other action or actions including but not limited to any arbitration(s) or action(s) commenced pursuant to the Federal Miller Act, state lien statutes, Bond or Retainage Act(s) with respect to any such claims and will pursue no independent litigation with respect thereto, pending final determination of any dispute resolution procedure between OWNER and CONTRACTOR.

If any dispute or claim of SUBCONTRACTOR is prosecuted or defended by CONTRACTOR together with disputes or claims of CONTRACTOR'S own, and SUBCONTRACTOR is not directly a party, SUBCONTRACTOR agrees to cooperate fully with CONTRACTOR to furnish documents, statements, witnesses, and other information required by CONTRACTOR for such purpose and shall pay or reimburse CONTRACTOR for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of SUBCONTRACTOR'S interest in such claim or dispute. It is expressly understood and agreed that as to any and all claims asserted by SUBCONTRACTOR in connection with this project arising from the actions or fault of OWNER, CONTRACTOR shall not be liable to SUBCONTRACTOR for any greater amount than OWNER is liable to CONTRACTOR, less any markups or costs incurred by CONTRACTOR.

As to any claims asserted by SUBCONTRACTOR for or on account of acts or omissions of OWNER, its agents or design professionals, at the sole option of CONTRACTOR, SUBCONTRACTOR agrees to prosecute such claims in CONTRACTOR'S name. For any amount recovered or collected, whether through proceedings or settlement, by SUBCONTRACTOR, CONTRACTOR shall be entitled to ten percent (10%) of such amount received or collected as its markup for such claims. SUBCONTRACTOR shall have full responsibility for preparation and presentation of such claims and shall bear expenses thereof including attorneys' fees.

(b) Other Claims. For all other claims, disputes, and other matters in question between CONTRACTOR and SUBCONTRACTOR arising out of, or relating to the Main Contract or this Subcontract, CONTRACTOR shall have the exclusive and unilateral right, at its option, to require that the venue for any legal action be in the state of Washington Superior Court for Snohomish County. SUBCONTRACTOR expressly agrees to CONTRACTOR'S exercise of such option. SUBCONTRACTOR expressly agrees to waive any and all rights it may have to trial by jury. In addition, CONTRACTOR shall have the exclusive and unilateral right, at its option, and at any time, to require that any dispute between CONTRACTOR and SUBCONTRACTOR be resolved in the alternative dispute resolution forum of its choosing, including the sole right to have such dispute be joined to other alternative dispute resolution proceedings that Contractor deems related in any way, provided that said forum is an independent and impartial to the parties. CONTRACTOR may also require that SUBCONTRACTOR participate in a mediation as a prerequisite to the commencement or maintenance of any litigation. This provision is for the unilateral exercise of CONTRACTOR only and cannot be invoked by SUBCONTRACTOR without CONTRACTOR'S consent. The Subcontract shall be governed by the laws of the State of Washington.

36. **INDEMNIFICATION** SUBCONTRACTOR shall defend, indemnify and hold harmless the OWNER and CONTRACTOR and their officers, employees and agents from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of the Subcontractors work on the Project including those arising out of or resulting from injury to or death of any and all persons, or arising out of property damage of any kind, whether tangible or intangible, or loss of use resulting therefrom, or in any manner connected with the SUBCONTRACTOR'S performance under this Agreement, except for injuries and damages caused by the sole negligence of the CONTRACTOR.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the SUBCONTRACTOR and the CONTRACTOR or the Owner and their officers, employees, and agents, the SUBCONTRACTOR'S liability, including the duty and cost to defend, hereunder shall be only to the extent of the SUBCONTRACTOR'S negligence.

For purposes of the indemnity provided pursuant to this Subcontract SUBCONTRACTOR specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act (Title 51 RCW), and all other applicable Industrial Insurance or Worker's Compensation Acts or their equivalent in the applicable jurisdiction. Further, the indemnification obligations under this Subcontract shall not be limited in any way by any limitations on the amount or type of damages, compensation, or benefits payable to or for any third party under Workers' Compensation Acts, Disability Benefits Acts, or other Employee Benefit Acts; provided SUBCONTRACTOR's waiver of immunity by the provisions of this Section 36 extends only to claims against SUBCONTRACTOR by indemnitees, and does not include, or extend to, any claims by SUBCONTRACTOR's employees directly against SUBCONTRACTOR.

SUBCONTRACTOR's duty to defend, indemnify, and hold indemnitees harmless shall include, as to all claims, demands, losses, and liability to which it applies, indemnitees and indemnitees' personnel-related costs, attorneys' and experts' fees, court costs, and all other claim-related expenses.

By initialing below, CONTRACTOR and SUBCONTRACTOR certify that the waiver of immunity contained in this Section 36 was mutually negotiated, and SUBCONTRACTOR has had the opportunity to, and SUBCONTRACTOR has encouraged SUBCONTRACTOR to consult with independent counsel regarding this waiver.

SAMPLE

_____ _____

CONTRACTOR **SUBCONTRACTOR**

Defense cost recovery shall include all fees of attorneys and experts, and costs and expenses incurred in good faith. In addition, CONTRACTOR shall be entitled to recover compensation for all of its in-house expenses, including materials and labor, consumed in its defense.

37. **COMPLETE AGREEMENT** This Subcontract contains all covenants, stipulations and provisions agreed upon by the parties and supersedes and nullifies all prior negotiations, proposals or stipulations. There are no prior or contemporaneous agreements not included or provided for herein. No agent or representative of either party has authority to make, and the parties shall not be bound by or liable for, any statement, representation, promise or agreement not set forth herein or in a duly authorized written modification hereto.

38. **ADDENDA:** The Mold Certification Addendum is attached to this Subcontract.

SAMPLE

MOLD CERTIFICATION ADDENDUM
To Subcontract Agreement

RE:

SUBCONTRACTOR OF KIRTLEY COLE (hereinafter SUBCONTRACTOR) certifies that the materials and work provided under this Subcontract comply with the requirements of Paragraph 22 of the Subcontract. SUBCONTRACTOR certifies that it has inspected the material it has provided and the work it has performed, that the materials provided and the work performed meet the requirements of Paragraph 22 of the Subcontract and that SUBCONTRACTOR has no knowledge of water intrusion that will lead to mold.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS ADDENDUM WAS MUTUALLY NEGOTIATED.

Dated:_____ Dated:_____

KIRTLEY-COLE ASSOCIATES LLC **SUBCONTRACTOR OF KIRTLEY COLE**

BY:_____ BY:_____

TITLE: _____

TO BE EXECUTED AT COMPLETION OF SUBCONTRACT WORK

DRAFT
SAMPLE