

This Agreement ("Subcontract" or "Agreement") made and effective as of the date first stated on the Declaration Page by and between PDG Construction Services, Inc. ("CONTRACTOR" or "PDG") and Subcontractor, as named on the Declaration Page ("Subcontractor"). This Subcontract is based on CONTRACTOR's relationship with Subcontractor and the special trust and confidence that CONTRACTOR places in Subcontractor's judgment. CONTRACTOR is relying on Subcontractor's sound exercise of judgment and discretion in connection with Subcontractor's management and performance of the Work.

ARTICLE 1. THE WORK

PDG has entered into and/or will enter into an agreement for construction work with the owner as named in the Declaration Page ("Owner") (hereinafter referred to as the "Principal Contract" or "Prime Contract"). Subcontractor agrees to undertake performance of part of the work under the Principal Contract on the terms and conditions herein and in accordance with the provisions of the Principal Contract. Subcontractor acknowledges and agrees that its performance and its skill, expertise, exercise of independent judgment and exercise of discretion in connection with the Work are being relied upon by Contractor and Owner, and that Subcontractor's independent judgment and its performance are expressly intended to benefit the economic interests of Contractor and Owner.

- 1.1. Subcontractor shall provide and pay for all labor, materials, supplies, equipment, tools, scaffolds, hoisting, supervision and other services or things necessary to perform the following work ("the Work"), and shall warrant and guarantee that Work in all respects as is required of PDG and in accordance with the provisions of the Principal Contract. The WORK is described in Exhibit B, plus all changes, additions or modifications under this Agreement.
- 1.2. The "Contract Documents" for this Subcontract consist of: (1) the "Subcontract Agreement-Declaration Page"; the Subcontract Terms and Conditions; , together with the **Exhibits** as listed on the Declaration Page and attached hereto; and (2) the Principal Contract, including without limitation the plans, drawings, specifications, addenda, general, special and supplementary conditions, shop drawings and all other documents thereof, and all amendments, modifications issued in connection therewith, all of which are incorporated by reference into this Agreement. Subcontractor acknowledges that it is fully familiar with the Principal Contract documents and the Project site. A copy of the Principal Contract is available for review at PDG's home office, and a copy may be obtained upon request at Subcontractor's expense (excluding price and terms).

The scope of the Contract Work shall consist of all work necessary or incidental to complete the above work for the Project in accordance with and reasonably inferable from the Contract Documents as being necessary to produce the intended results and as more particularly, though not exclusively, as specified in the Contract Documents. Subcontractor shall exercise independent judgment, make decisions and exercise Subcontractor's discretion so that the Work is properly performed, for the benefit of Contractor and Owner. Subcontractor has the authority and responsibility to make decisions regarding correct performance of Work; Contractor and Owner are relying on Subcontractor to exercise that authority and responsibility for the benefit of Contractor, the Owner and the Project that is the subject of this Subcontract.

- 1.3. Unless otherwise provided in the Principal Contract, Subcontractor shall obtain and pay for all licenses, inspections and trade/specialty permits required by any public authority, and shall comply with all applicable laws, regulations and/or codes, in connection with Subcontractor's work.
- 1.4. If the Owner requires that the Owner, Design Professional, PDG and Subcontractor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner Design Professional and PDG shall agree in ConsensusDocs 200.2 or a written protocol governing all exchanges. Subcontractor shall provide whatever input is needed to assist PDG in developing the protocol and shall be bound by the requirements of the written protocol. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol.

ARTICLE 2. PRICE

Subcontractor agrees to accept as full compensation for its performance, including all taxes, fees, license, permits, assessments and premiums relating to the Work as set forth in the **Declaration Page of the Agreement**, and for all risks of every description connected with the Work, payment as set forth in the Declaration Page. It is specifically understood and agreed that PDG is not an insurer or guarantor of the amount or nature of the work and that the quantities specified in this Agreement, if any, are approximate. Owner may have expressly reserved the right to add, subtract and make changes therein, and Subcontractor shall be bound to PDG thereby to the same extent PDG is bound to Owner; no payment or adjustment in prices shall be made for such work unless Owner pays PDG or adjusts said price with PDG and makes payment therefore to PDG.

ARTICLE 3. TIME OF PERFORMANCE

Time is of the essence. Subcontractor shall perform its work in accord with Contractor's schedule, as modified from time to time. The Contractor shall prepare the schedule of the work and, as may be necessary, revise such schedule from time to time as the work progresses. Subcontractor acknowledges that revisions may be made in Contractor's schedule and that such revisions might affect Subcontractor's work, and Subcontractor agrees to make no claim for additional costs as a result thereof (including without limitation claims for delay, disruption, inefficiency, re-sequencing, acceleration or other impact) by reason of such revisions, except to the extent that Contractor is able to recover therefore from Owner on account of the impact to Subcontractor's work.

Subcontractor shall be liable for any additional Cost of Work, expenses and/or damages suffered by PDG due to failure of Subcontractor to so perform, including but not limited to any liquidated damages that may be imposed by Owner upon PDG and any damages or additional expense, including overhead expense that PDG may suffer as a result of defective Work or delays by Subcontractor.

ARTICLE 4. PAYMENT

- 4.1 Progress payments. Progress payments, if any, shall be made only upon applications approved by the Owner, and receipt of such payments from Owner on account of Subcontractor's performance shall be a condition precedent to and for any payment or payment obligation therefore by PDG to Subcontractor. PDG shall be entitled to withhold five percent (5%) as retainage from all progress payments. As a condition precedent to receiving each progress payment, Subcontractor must deliver to PDG at its Gresham, Oregon office an application for payment or invoice, on PDG's (or other approved) invoice form, the completed **Exhibit**

F Lien Release form, together with (if required by PDG) all certified payroll reports to date, by the 25th of the month. Any invoice received after such due date will not become due or payable until the following pay period.

4.1.1 ***Notwithstanding any portion of any provision in this agreement to the contrary, payments shall be made in compliance with Oregon's Prompt Pay Act statutes to the extent applicable to the Work of this Subcontract. Ref. ORS Ch. 701 (private works); ORS 279.435 -.445 (Public works).***

- 4.2 **Final payment.** Final payment, including any retainage, shall not become due until 30 days after the Project has been completed and accepted by the Owner, and retainage has been released to PDG. Partial or final payment shall not be due until Subcontractor has delivered to PDG the following completed releases: 1) **Exhibit G** – Sub-tier Lien Release providing an unconditional lien release from all sub-tier Material suppliers and Contractors; and 2) **Exhibit F** - Lien Release from Subcontractor, conditioned only on receipt of such payment; or, if applicable, releasing all claims, bond claims, liens and rights to lien arising out of or relating to this Agreement or the Work. Acceptance of final payment by Subcontractor constitutes a waiver of all claims against PDG, its surety, Owner and the premises in connection with the Work, unless specifically excepted in writing prior to such payment. It is expressly understood that payment from Owner to PDG on account of Subcontractor's performance is a condition precedent of any and all payments from PDG to Subcontractor, without regard to the reason for any delay or non-payment by Owner.
- 4.3 **Joint Checks: List Suppliers.** PDG reserves the right, but shall have no obligation, to make payment to Subcontractor and its subcontractors, laborers or suppliers via joint check. As a condition precedent to any progress payment or final payment becoming due to Subcontractor, Subcontractor shall upon request provide PDG a list of all sub-subcontractors and suppliers of any tier, including name, address, telephone, union affiliation (including the name and address and phone number of the union benefits trustee) and price of contract or purchase order.
- 4.4 **Setoff.** PDG may deduct from any moneys due or to become due to Subcontractor any sum or sums owed by Subcontractor to PDG in connection with any event, default, back charge, project, or transaction. In the event of any breach by Subcontractor of any provision or obligation of this Subcontract, or in the event of the assertion by any entity of any claim or lien against PDG (including without limitation a statutory withholding notice or claim against retainage), its surety, the Owner or the Project arising out of or relating to Subcontractor's work hereunder, PDG shall also have the right to retain out of any sums due or to become due to Subcontractor hereunder an amount sufficient to completely protect PDG from any and all loss, cost, damage or expense, including without limitation attorney fees.
- 4.5 **Damages Caused By Delays.** If Subcontractor should default in performance of the work described herein or should otherwise commit any act which causes delay to the Project or the work, including delays due to required corrections of defective work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default. Further, whether or not damages are so assessed, Subcontractor agrees to pay to Contractor such other additional damages as the Contractor may sustain by reason of any such delay directly or indirectly attributable to or caused by Subcontractor, including, but not limited to, recovery of Contractor's overhead and expenses related to managing and supervising the Project during or equal to any period of time resulting from such delay of Subcontractor; and Subcontractor further agrees that neither the payment of such damages nor any liability incurred for the payment of such damages shall release the Subcontractor from his obligation to otherwise fully perform this Agreement.
- 4.6 **Subcontractor's Payments: Indemnity.** Subcontractor shall timely pay its financial obligations to third parties in connection with the Work. No moneys shall be deemed as earned or owing until Subcontractor has paid all obligations incurred for labor, materials, equipment, supplies and any other obligation (including taxes, premiums, fees and other assessments) incurred in connection with the prosecution of its work which might be asserted as a claim against Owner, PDG or PDG's surety, or a lien against the property or improvement. Any moneys remaining unpaid, whether from monthly progress estimates or final payment, shall be considered as held by PDG as trust funds for the benefit of any laborer, material man or other creditor who may have such claim or lien until it is paid.

PDG reserves the right, but shall have no obligation, prior to making any progress payment or final payment, to secure from Subcontractor a certification under oath, together with such other evidence as PDG may require, that all obligations incurred by or on behalf of Subcontractor in connection with performance of its obligations hereunder have been paid to date, and listing any other amounts due or to become due.

Subcontractor shall defend and hold PDG and Owner harmless from any lien or claim arising out of nonpayment by Subcontractor of obligations incurred in connection with the Work covered by this Agreement. Subcontractor further agrees that if any lien(s), claim(s), or statutory withholding notice(s) shall be filed for labor, services, materials, equipment, or supplies furnished by or for Subcontractor in connection with the Work, Subcontractor shall, within five (5) days thereafter, at its own cost and expense, cause such lien(s), claim(s), or withholding notice(s) to be discharged; and Subcontractor's failure to do so shall be an event of default.

- 4.7 **Payment Not Acceptance.** Partial or final payment to Subcontractor shall not operate as an approval or acceptance of work performed or materials furnished, it being agreed that acceptance shall occur only when the work is finally accepted by formal action of Owner. All prior partial payments are subject to correction in the final payment.
- 4.8 **Condition.** It is expressly understood that payment from Owner to PDG is a condition precedent of any and all payments from PDG to Subcontractor, without regard to the reason for any delay or non-payment by Owner.

ARTICLE 5. CONTRACTOR'S RIGHTS

PDG shall at all times have access to the Work and PDG or its agent may visit the site from time to time to determine generally if the Work is proceeding in accordance with this Agreement. Notwithstanding such general observations, PDG and its agents shall not have control or charge of the Work and will not be responsible for subcontractor's construction methods, means, materials, scheduling, or for

safety of persons or property in connection with the Work, and shall not be responsible for the Subcontractor's failure to carry out the Work in accordance with this Agreement. PDG has authority to reject Work which does not conform to the requirements of this Agreement. Any review or approval by PDG of drawings, product data, samples or materials is only for conformance with the general design concept of the Work and does not extend to consideration of structural integrity, safety, compliance with the Contract Documents, or any other obligation of Subcontractor. If requested by Owner or PDG, Subcontractor shall replace any of its personnel regarding whom a good faith, written objection has been made and Subcontractor shall not engage such objectionable personnel in any other aspects of the Work for the Project

If Subcontractor fails upon twenty-four (24) hours advance written notice to correct defective work, or fails to promptly and expeditiously carry out the Work in accordance with this Agreement, PDG may, by written order, require Subcontractor to stop the Work, or any portion thereof, or may terminate this Agreement; however, PDG's right to stop the Work shall not constitute a duty upon PDG to exercise this right for the benefit of Subcontractor or any other person or entity.

ARTICLE 6. SUBCONTRACTOR'S OBLIGATIONS

Subcontractor shall supervise and direct the Work, using its best skill and attention, and shall be solely responsible for all construction means, methods, procedures, materials furnished as part of the Work and for coordinating its Work with any work of Owner, PDG and other contractors, subcontractors and suppliers in connection with the Project. The Work shall be performed according to the highest trade practices and standards by careful, competent and efficient workers who shall be satisfactory to PDG, and in accord with all applicable Contract Documents and all applicable codes, laws, ordinances and regulations. Subcontractor shall exercise independent judgment in performing the subcontract Work and in integrating that Work correctly with the other portions of the project for the benefit of Contractor and Owner. Subcontractor shall make decisions and exercise Subcontractor's discretion so that the subcontract Work is properly performed and correctly integrated with the other portions of the work for the benefit of Contractor and Owner.

6.1 Warranty. Subcontractor warrants to PDG that all materials, appliances and equipment incorporated into the Work will be new and that all work, materials, appliances and equipment will be of good quality, free from faults and defects and in conformance with this Agreement. All work not conforming to these requirements may be considered defective and shall be replaced immediately by Subcontractor at Subcontractor's sole expense. Subcontractor shall promptly correct any work found to be defective or nonconforming within the later of PDG's warranty period set forth in the prime contract or one year (or two years if required by statute) from the date of final completion and acceptance of the Project by Owner. For corrected or replaced portions of the Work, Subcontractor's warranty shall extend one year following such correction or replacement, if later than otherwise provided herein.

6.2 Notices; Compliance; Permits. Subcontractor shall give all notices and comply with all laws, ordinances, codes, rules, regulations and lawful orders of any public authority bearing on the performance of the Work, and shall promptly notify PDG if requirements of this Agreement are at variance therewith. Subcontractor shall secure and pay for all necessary trade/specialty permits, approvals, assessments, and charges required by any public authority in connection with the Work.

6.3 Cleanup. Subcontractor at all times shall continuously keep the premises free from accumulation of waste materials or rubbish, and both daily and at completion of the Work shall remove, at its expense (unless a drop box is clarified otherwise in the Scope of Work, **Exhibit B**), all his waste materials and rubbish from and about the Project.

If the Subcontractor fails to comply with this paragraph, the Contractor may without giving notice, perform such necessary clean-up and invoice the Subcontractor for the costs of such clean up, and/or deduct such costs plus supervision and 15% fee from any money then due or to become due the Subcontractor.

6.4 Patents; Indemnity. Subcontractor shall pay all royalties and license fees, and shall defend and indemnify PDG and the Owner from any claim or liability in connection with actual or alleged infringement of any patent rights, or on account of the use of any patented or unpatented invention, or any process or trade secret in connection with performance of the Work.

6.5 Site Investigation; Risk. Subcontractor acknowledges that it has satisfied itself as to the nature and location of the Work and Project, the general and local conditions thereof, including but not limited to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, and roads, and uncertainties of weather, river stages, or similar physical conditions at the Work and Project site, the conformation of the ground, existing facilities and improvements, the character of equipment, and facilities needed preliminary to and during the prosecution of the Work, and Subcontractor assumes the risk thereof; and has further satisfied itself as to the hazards likely to arise from weather conditions and those inherent in the Work, and assumes the risk thereof. Subcontractor represents that it has inspected the Project and has made all investigations essential to a full understanding of the difficulties that it might encounter in performing the Subcontract Work. Subcontractor further represents that it has carefully reviewed and examined the Contract Documents.

6.6 Supervision; Performance. Subcontractor has the authority and responsibility to make decisions regarding correct prosecution and performance of the subcontract Work; Contractor and owner are relying on Subcontractor to exercise that authority and responsibility for the benefit of Contractor, the Owner and the Project. Subcontractor shall provide adequate supervision for the Work and shall employ a competent superintendent or foreman at the site of the Work, with authority to act for and bind Subcontractor. In the event Subcontractor's superintendent or foreman is not satisfactory to PDG, he or she shall be replaced at PDG's request. Subcontractor shall exercise independent judgment in performing the subcontract Work and in integrating that Work correctly with the other portions of the project in accord with PDG's project schedule (as adjusted from time to time by PDG) for the benefit of Contractor and Owner. Subcontractor shall take no direction from architects, engineers, Owner, Owner's agents or consultants, or anyone other than an authorized representative of PDG. PDG's authorized representatives are the Site Superintendent or Project Manager.

ARTICLE 7. PROJECT COORDINATION

7.1 PDG and Owner reserve the right to perform work related to the Project personally or with other forces, and to award separate contracts in connection with other portions of the Project. Subcontractor shall permit PDG and others reasonable opportunity

for the introduction and storage of materials and equipment, and for performance of their work on the Project and shall connect and coordinate its Work with theirs. Subcontractor acknowledges that delays, disruption and interference may occur as a result of performance of work or delivery of materials by PDG or others, and by coordination of the Work with others, and Subcontractor agrees that its sole remedy for such delay, disruption or interference shall be an extension of the contract time, and there shall be no additional compensation except to the extent PDG is able to recover costs or damages on behalf of Subcontractor from any third party(s) who caused the delay, disruption or interference, all as set forth in section 11.4 of this Agreement.

- 7.2 Subcontractor's work shall include any ordinary or special cleaning, finishing and preparation of other portions of the work on the project which may be necessary for proper performance of subcontractor's Work. Subcontractor shall notify PDG in writing, prior to commencement of the Work or any relevant portion thereof, of any defect, deficiency, or incompatibility of any work performed by others in connection with the Project, which defect, deficiency, or incompatibility would in any manner affect the performance or quality of Subcontractor's Work. The failure to so notify PDG shall constitute Subcontractor's acceptance of such other work, and shall preclude Subcontractor from any claim, which otherwise may have been available under this Agreement, for additional compensation, damages or any extension of time relating to affected work.
- 7.3 It is understood and agreed that the Work may require complete integration and coordination with other work to be performed at the Project site by PDG or other contractors, subcontractors, or suppliers, as to time, location, and schedule, and Subcontractor agrees to cooperate fully with PDG and any other contractor, subcontractor, or supplier in such integration and coordination, and to not interfere with any of their operations. Subcontractor acknowledges that it may be necessary for the Work to be commenced and prosecuted prior to or in conjunction with other work to be performed at the Project site and that it is vital and necessary that Subcontractor perform the Work diligently and expeditiously so that PDG and others will not be delayed in the performance of their work, and Subcontractor binds itself accordingly to so perform the Work. Subcontractor shall diligently continue in such performance and shall fully complete all of the Work to the satisfaction of PDG and Owner.
- 7.4 It is understood and agreed that Owner or PDG may occupy or use the Project premises, or a portion thereof, before the Work is completed and accepted by Owner, and Subcontractor shall not be entitled to any additional compensation or time extension on account of such occupancy or use. Beneficial use or occupancy is not acceptance of the Work.
- 7.5 Subcontractor has the authority and responsibility to make decisions regarding correct prosecution and performance of the subcontract Work. Contractor and owner are relying on Subcontractor to exercise that authority and responsibility for the benefit of Contractor, the Owner and the Project.

ARTICLE 8. MISCELLANEOUS; SAFETY

- 8.1 Time of Essence. All time limits stated herein are of the essence of this Agreement.
- 8.2 Risk of Loss. Until acceptance of the Project by Owner, the Subcontractor will be responsible for any loss, damage, spoilage or waste to its Work, materials, materials furnished by PDG to Subcontractor, equipment or supplies, due to any cause, except when, by the terms of the Principal Contract, Owner bears the risk, or by the terms of this Agreement, PDG bears the risk. Upon completion, Subcontractor shall promptly return to PDG all materials furnished by Owner or PDG which were not used for the Project.
- 8.3 Compliance with Laws; Safety. Subcontractor shall carry on its Work in a safe manner, and shall comply with all applicable federal, state and local laws, regulations, standards, and recognized trade practices for the protection and safety of its employees and other persons about its Work, including without limitation those governing labor, safety, health, sanitation, and protection of the environment.
- 8.3.1 PDG requires a copy of each Subcontractor's written safety program, which needs to meet all applicable local, State, and Federal safety, health and environmental requirements. Site specific Material Safety Data Sheets (MSDS) in legible copy (or electronic versions thereof) are required prior to commencement of Subcontractor's scope of work.
- 8.3.2 Drug Control and Testing. Possession or use of alcohol or any other controlled substance shall be cause for immediate expulsion from the job site. Upon PDG's request, at any time prior to commencement of work and at anytime during the progression of Subcontractor's Work, Subcontractor shall provide and pay for drug testing/drug screening of its employees working on the job site. PDG shall have no duty to request or require such drug testing, but may make that request at any time, in its sole discretion, and such testing shall thereupon be performed for Subcontractor's workers entering the job site not later than one business day (24 work-week hours) after Woodburn gives written notice requiring drug testing. The protocol and results of such drug testing shall be made immediately and fully available to PDG. Subcontractor shall have its own existing, written and operational Drug Control Testing Policy at all times while working under this Subcontract. In addition, Subcontractor shall abide by the PDG Drug Control Policy and Drug Testing Policy (if any are in existence) at all times while working on the job site; A copy of any such PDG Drug Testing or Drug Control Policies may be reviewed at PDG's home office. The exercise or failure to exercise of any of PDG's rights under this Subcontract will not relieve Subcontractor of any of its Safety Obligations, or of its obligations for drug control and testing, nor will it make PDG or the Owner responsible for any of Subcontractor's safety obligations in any respect.
- 8.4 Safety; Indemnity. Subcontractor is solely responsible for protection and safety of its employees, for final selection of safety methods and means, and for establishing, supervising, inspecting and enforcing its safety obligations in accord with this Agreement and applicable law. Subcontractor shall promptly comply with any directives of PDG relating to safety. Failure by PDG to stop unsafe practices shall not relieve Subcontractor of any of its responsibilities, nor shall any exercise of PDG's rights hereunder make PDG responsible for any of Subcontractor's safety obligations.
- Subcontractor shall defend and indemnify PDG, its agents and employees from all claims arising out of or relating to Subcontractor's obligations under sections 8.3 and 8.4, regardless of whether PDG has assisted or advised Subcontractor in fulfilling such responsibilities.
- 8.5 Precedence.

- (a) The terms of this Agreement shall apply in the event of conflict between its terms and those of the Principal Contract, except that if the Principal Contract provision imposes a greater obligation on Subcontractor, Subcontractor shall comply with the greater obligation.

At the sole option of PDG, all Principal Contract provisions regarding dispute resolution procedures shall control over any directly conflicting provision in this Subcontract.

- (b) This Subcontract incorporates by reference all portions of the Principal Contract documents relevant to this Agreement, including without limitation General, Special and Supplementary Conditions (including general and administrative provisions, and dispute resolution provisions (at the sole option of PDG)), Plans and Specifications, and attachments. In the event of conflict among the Contract Documents, then subject to section 8.5(a), the following order of precedence shall apply:
1. This Subcontract Agreement, as modified and/or amended by Change Order
 2. Addenda (in reverse chronological order)
 3. (a) Specifications
(b) Drawings Applicable to the Work
(c) In the case of inconsistency between Drawings and Specifications or within either Document not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Project Architect's or Engineer's interpretation.
 4. All other Principal Contract Documents

8.6 Applicable Law; Venue. For projects located in the State of Oregon, or in any state other than Washington, the laws of the State of Oregon shall govern as to all matters arising out of or relating to this Agreement, or its breach, and any action or agreed arbitration hereunder shall be brought and maintained in Multnomah County, Oregon, and in either state or federal court, as appropriate; provided, however, that if the Principal Contract prescribes a different venue, then any action or agreed arbitration hereunder may be transferred and consolidated with a proceeding brought under the Principal Contract, if permitted under applicable law. For projects located in Washington, the laws of the State of Washington shall govern, and venue shall be in the county in which the project is located.

8.7 Remedies Cumulative; Nonwaiver. The remedies herein provided are cumulative and not exclusive, and PDG shall be entitled to pursue any other or additional remedies provided at law or in equity. A waiver by PDG of any breach of any provision of this Subcontract shall not constitute a waiver of any further or additional breach of such provision or of any other provision hereof.

8.8 Subletting and Assignment.

8.8.1 Subcontractor shall not sublet or assign this Agreement, or any part thereof, without the written consent of PDG, which consent may be withheld in PDG's sole discretion. This Subcontract is personal in nature and PDG has relied on Subcontractor's reputation, skill, experience, equipment, personnel, contacts and expertise in letting this Subcontract. It is expressly agreed and understood that failure to notify Contractor in writing of the identity of any sub-subcontractor at any tier and its scope of work shall constitute a material breach and grounds for termination of this Agreement.

8.8.2 Subcontractor hereby assigns to PDG all of Subcontractor's rights in any sub-subcontracts and in any labor, services, materials, or supply purchase agreements at any tier into which Subcontractor enters in connection with the Work; provided, however, such assignment shall be operative only in the event of (i) Subcontractor's default hereunder, (ii) Subcontractor's failure to promptly remedy such default after notice from PDG as herein provided, and (iii) only if PDG, in its sole discretion, elects in writing to exercise its right to assignment after such default.

8.8.3 Subcontractor agrees to incorporate the provisions of Sections 8.8.2 and 13.2 relating to the takeover of the Work and assignment of sub-subcontracts and agreements into any sub-subcontracts and agreements it executes in connection with its performance under this Agreement, but PDG's rights hereunder shall not be impaired by Subcontractor's failure so to do.

8.8.4 Agreed Assignment; Agreement to Execute Documents: Subcontractor and its surety, if any, agree that this Subcontract and any related Payment and Performance Bonds may be assigned in writing by PDG, at PDG's sole option, and that upon such assignment PDG shall have no further responsibility whatsoever to Subcontractor in connection with this Subcontract. Thereafter, the assignee shall be responsible to pay any remaining funds that may become due under this Subcontract to Subcontractor. Notice of such assignment shall promptly be delivered in writing to Subcontractor. Subcontractor shall execute any such further documents as reasonably necessary to effectuate this provision.

8.9 Independent Contractor. Subcontractor represents, warrants and understands that it is an independent contractor and employing unit, duly licensed to perform the Work (including without limitation state contractor registration), subject to all applicable Social Security, Unemployment Compensation and Workers' Compensation statutes, and shall keep records and make reports and payments of all taxes or contributions required. Subcontractor agrees to indemnify, defend and hold PDG harmless from any expenses or liability incurred under such statutes in connection with employees of Subcontractor, including without limitation a sum equal to benefits paid to Subcontractor's employees when such benefits are charged to PDG under any merit plan compensation scheme or reserve account. If any Work hereunder is performed by principals of Subcontractor who are not covered by Workers' Compensation, the principals agree that they shall have no claim against PDG, its insurers or its Workers' Compensation coverage in the event they are injured while performing such Work.

Subcontractor shall make decisions and exercise Subcontractor's discretion so that the subcontract Work is properly performed and correctly integrated with the other portions of the work for the benefit of Contractor and Owner. Subcontractor shall exercise independent judgment in performing the subcontract Work and in integrating that Work correctly with the other portions of the project for the benefit of Contractor and Owner.

8.10 Flow Down; Dispute Resolution; Claims. Subcontractor agrees to be bound by all terms of the Principal Contract, and to assume

toward PDG all of the obligations and responsibilities that PDG by those documents assumes toward Owner relevant to performance of the Work. At the sole option of PDG, Subcontractor shall be bound by any dispute resolution, mediation and arbitration provisions in the Principal Contract Documents, including without limitation applicable law, venue and forum, in the same manner and method as PDG is bound to Owner, and Principal Contract Documents provisions regarding dispute resolution procedures shall control over any directly conflicting provision in this Subcontract.

Subcontractor and its surety (if any) agree to joinder with other parties in any multi-party mediation, arbitration or litigation involving common questions of law or fact in a dispute relating to this Subcontract or the project. Any disagreement in selecting the mediator, arbitrator or arbitrators in such multi-party mediation or arbitration shall be submitted for resolution to the presiding judge in the court of general jurisdiction for the County in which the project is located.

ARTICLE 9. INDEMNITY.

- 9.1 Subcontractor shall defend and indemnify PDG, Owner and their agents and employees from and against any and all loss, cost, claim, damage penalty or liability of any kind, including without limitation attorney fees, actual or alleged (a) due to the failure of Subcontractor to fully and faithfully keep and perform every obligation hereunder and every obligation of PDG to Owner in connection with the Work, or (b) arising out of or relating to performance of the Work by Subcontractor or those for whose acts or omissions it is responsible, including without limitation injury to or death sustained by any person (including Subcontractor's employees) or damage to property of any kind (including loss of use therefrom), or contamination of or adverse affects on the environment and any clean-up costs in connection therewith, or any violation of law, governmental regulation or orders, and whether or not contributed to by any wrongful or negligent act or omission, whether active or passive, by PDG or Owner, their agents and employees. This obligation to defend and indemnify shall be enforced to the fullest extent allowed under applicable law. If this obligation is limited in part, then this provision shall nevertheless be enforceable to the greatest extent permitted.

Upon Contractor's tender of defense, Subcontractor agrees to appoint counsel of Contractor's and/or Owner's approval to defend Contractor and/or Owner against third party claim(s). Such counsel will be at the sole expense of Subcontractor. If, in the sole discretion of Contractor and/or Owner, a conflict of interest would exist with one attorney representing Contractor, Owner and/or Subcontractor, then Subcontractor must furnish and pay for separate counsel for Contractor and Owner. Contractor and the Owner may each, however, in the sole discretion of each, provide its own defense at its own expense. In the event there is a dispute between/among Subcontractor, Contractor and/or Owner as to the extent of the negligence of each, Subcontractor's duty to defend and provide counsel for Contractor and/or the Owner will not be altered. Subcontractor's duty to provide defense will continue until there is a determination by a court of competent jurisdiction that Contractor and/or Owner were negligent in whole or in part, at which time such duty will cease to the extent that a party being defended is found to have been negligent. Once a court of competent jurisdiction has determined that Contractor and/or the Owner were negligent in whole (100%) or in part (less than 100%) (the "Percentage of Own Fault"), Contractor and/or the Owner will promptly reimburse Subcontractor for the attorneys fees and costs incurred by the subcontractor in defending Contractor and/or Owner pursuant to said tender of defense multiplied by the Percentage of Own Fault, and each party will be responsible for its proportionate share of any damages awarded, as well as for 100% of its further attorneys fees or costs incurred thereafter in defending the claim.

- 9.2 Subcontractor shall procure, pay for and thereafter maintain such general liability, contractual liability and employer's liability insurance (including endorsements) as will insure the provisions of this Article 9 and other contractual indemnities assumed by Subcontractor in this Subcontract to the fullest extent insurable, but not less than the coverage and limits specified in Article 10, below.
- 9.3 **For Washington Projects.** Subcontractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Act, Title 51 RCW, if applicable. Further, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefits acts. THIS PROVISION WAS MUTUALLY NEGOTIATED.

(WASHINGTON PROJECTS ONLY)

INITIALED BY SUBCONTRACTOR _____

In the event this Agreement is within the purview of RCW 4.24.115, then, and only in such event, the parties hereby agree that Article 9 shall not be construed to require Subcontractor to indemnify PDG or Owner for claims for bodily injury to persons or for damage to property to the extent caused by or resulting from PDG's or Owner's sole or concurrent negligence, but shall otherwise remain in full force and effect as to the obligation of Subcontractor to indemnify PDG or Owner to the full extent of the negligence of Subcontractor and of those for whom Subcontractor may be liable at common law or under this Agreement.

- 9.4 In any claims against PDG or Owner or any of their agents or employees by any employee of Subcontractor, anyone employed by Subcontractor, or anyone whose acts the Subcontractor may be liable, the indemnification under this Article 9 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10. INSURANCE; BONDS

Prior to starting the Work, Subcontractor shall procure, pay for, deliver to PDG conforming insurance certificates therefore and thereafter maintain such insurance as will protect against claims for bodily injury or death, or for damage to property, which may arise out of operation by Subcontractor or by any sub-subcontractor or by anyone employed by any of them, or by anyone for whose acts any of them may be liable, all in accordance with the terms of **Exhibit E**.

- 10.1 **Subrogation.** PDG and Subcontractor waive all rights against each other and Owner for losses or damages covered by Builder's Risk or other property or equipment insurance applicable to the Work, to the Project or to equipment used in performance thereof, but only to the extent each loss is covered by and actually paid for by such insurance, except such rights as they may have to the proceeds of such insurance. The parties retain all other rights against each other regarding any such loss in excess of amounts paid by all policies that cover the loss. All Subcontractors' policies shall permit such waiver of subrogation rights, or Subcontractor shall cause them to be endorsed to permit waiver of subrogation if endorsement is required in order to provide for

continued coverage. This subsection shall not operate to the extent it would void coverage under any applicable policy of insurance.

- 10.2 Subcontractor shall not cancel any policies or insurance required hereunder, either before or after completion of the Work, without written consent of PDG.
- 10.3 All insurance policies shall contain a provision that coverage afforded thereunder shall not be canceled or non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to PDG. Certificates of Insurance shall be filed with PDG prior to start of Subcontractor's Work. Such Certificates of Insurance shall be in a form acceptable to PDG and shall provide satisfactory evidence that Subcontractor has complied with all insurance requirements.
- 10.4 In the event that the Subcontractor sub-subcontracts any portion of the Work the Subcontractor will require its subcontractors to conform to all the provisions of Article 10, Insurance.
- 10.5 PDG may, at its sole option, upon failure of Subcontractor to comply with this section, attempt to purchase additional insurance to aid in covering the risks as specified above, pay the premiums therefore and charge them to Subcontractor.
- 10.6 Bonds. If required by PDG in the Scope of Work (**Exhibit B**), Subcontractor shall obtain and deliver to PDG, prior to commencement of any work, performance and payment bonds in forms acceptable to PDG and executed by a corporate surety acceptable to PDG in the penal sum shall at all times be a sum that is equal to the Subcontract amount as adjusted pursuant to this Subcontract. Changes in the work and requests for extra work may be made upon Subcontractor without the necessity of securing the consent of surety, and the penal limits of the subcontract bond shall automatically adjust to the adjusted Subcontract amount without the necessity of securing the consent of surety.

ARTICLE 11. CHANGES; NOTICES; DISPUTES; DELAYS; CLAIMS.

- 11.1 Changes. Subcontractor agrees to make changes in the Work and to perform extra work as ordered by Contractor. Subcontractor shall be bound by any changes, alterations, or extra work directed by Owner under the General Contract, including changes in sequence or scheduling or the amount or character of the Work, or any part thereof, to the same extent that PDG is bound by the Principal Contract. Subcontractor's compensation and time under this Agreement shall be equitably adjusted as a result of such changes and extra work, provided that for those changes and that extra work caused or ordered by Owner. The Subcontractor shall be entitled to only such adjustments in compensation as are allowed by Owner and Owner's payment to Contractor of any such costs is an express condition precedent of Contractor's obligation to pay Subcontractor. Subcontractor shall not be entitled to additional compensation or time for changes or extra work unless authorized in writing by Contractor in advance of performing such changes or extra work.

Subcontractor shall obtain written authorization from Contractor prior to performing any work that the Subcontractor considers a change to this Subcontract. All work performed by Subcontractor will be considered as part of the Subcontract without this prior written authorization. Contractor will not pay for back charges due to delays or damage to work, unless Contractor is notified in writing the day the costs are incurred.

Subcontractor shall declare if change documents have any cost or schedule impact and submit associated pricing or schedule adjustments if appropriate within five (5) working days from date of receipt, unless otherwise directed by Contractor. Change documents include any changes resulting from RFIs; changes on submittals by Owner, Architect, or Contractor; architect change documents (e.g. Construction Change Directive (CCDs), Architect's Supplemental Instruction (ASIs), and Proposal Requests (PRs); other Supplemental Instructions; other documents that may constitute a potential change in the Contract Documents. Subcontractor shall request permission from Contractor in writing if additional time to review and submit change pricing is required.

- 11.2 Notice of Claims. Subcontractor shall give PDG immediate written notice of any asserted change, changed condition, extra or additional work, damage or delay claim or dispute, sufficient to allow PDG to analyze and, if appropriate, take action or give instructions regarding the condition, and to timely comply with any notice requirements of the Principal Contract.

In addition, for any claim Subcontractor may have against PDG under this Agreement, as a condition precedent to any recovery Subcontractor shall give PDG written notice of any such claim not later than the earlier of (a) forty-eight (48) hours before Contractor must give notice under the Principal Contract, or (b) five (5) days after the date of the occurrence of the event causing the claim. Subcontractor's failure to give such notice, for any reason, shall constitute a waiver of such claim.

- 11.3 Disputes. Subcontractor shall be bound by any dispute resolution, mediation and arbitration provisions in the Principal Contract in the same manner and method as PDG is bound to Owner.

- 11.3.1 Meeting of Executives. In the event of a dispute between the parties arising out of or relating to this Subcontract, the parties agree to first convene a meeting of executives (Vice President or President) of each company to meet and exercise their best efforts in good faith discussions to resolve such dispute in writing. Such meeting will be protected by Federal Rule of Evidence 408 and/or its substantially equivalent and applicable state court rule of evidence.

- 11.3.2 Mediation. In the event of a dispute between the parties arising out of or relating to this Subcontract, and if the parties are unable to resolve such dispute through the meeting of executives described in Section 11.3.1 (or such resolution is not mutually agreed within 15 days after the first meeting of executives under Section 11.3.1), the parties agree to submit such dispute to a mediator agreed to by the parties as soon as practicable after the dispute arises, and preferably before commencement of litigation or arbitration. The parties agree to exercise their best efforts in good faith to resolve all disputes in mediation, including without limitation disputes involving other participants in the Project in a combined mediation.

- 11.3.3 Arbitration. If the Principal Contract contains no arbitration provision applicable to the particular dispute, then all such disputes arising out of or relating to this Subcontract unresolved by mediation may, at PDG's sole option, be decided by binding arbitration pursuant to the Construction Industry Rules of the American Arbitration Association then obtaining.

Arbitration shall be commenced by filing a Demand with the other party and with either the AAA or U.S. Arbitration & Mediation of Oregon, Inc. The option to elect arbitration shall be vested exclusively in PDG and shall exist regardless of whether it is asserting or defending the matter in dispute. PDG shall have sixty (60) days within which to make this election after receiving a Demand for Arbitration from Subcontractor. Third parties may be joined in the arbitration proceeding upon the motion of either party and, if joined, shall be fully bound by the arbitration agreement and any award. The Award in arbitration may be confirmed as a judgment in any court having jurisdiction.

Upon demand by Owner or Architect or Contractor, claims between or among the Owner and Contractor, Owner and Architect, Contractor and Architect or Contractor and its Subcontractors and suppliers shall be submitted in a single mediation or arbitration under this Article. The parties involved in such multi-party mediation or arbitration shall endeavor to agree on a single mediator or arbitrator. Any disagreement in selecting the mediator, arbitrator or arbitrators in such multi-party mediation or arbitration shall be submitted for resolution to the presiding judge of the Multnomah County, Oregon Circuit Court.

Subcontractor agrees, at PDG's option, that Subcontractor and its surety, if any, will participate in and be bound to the same extent as PDG is bound in any arbitration involving Owner and PDG that arises out of or relates to the Subcontract Work.

- 11.4 Delays; Damages. Any claim for an extension of time shall be made no later than three (3) days prior to the date PDG must request from Owner an extension of time for that work. Subcontractor shall not be entitled to any damages for delays, disruption or interference encountered in the Work by the act of Owner, PDG, other contractors, other subcontractors, or suppliers unless damages on account of Subcontractor's work are allowed and paid to PDG on account of such delay of that Work by Owner or by the third party causing the problem, which payment shall be deemed a condition precedent to any payment by PDG to Subcontractor. Otherwise, Subcontractor's sole remedy and right shall be an extension of time to complete the Work equal to the time delayed.

If Subcontractor is delayed at any time in performance of the Work by any cause not reasonably anticipated and beyond the control of and without the fault of the Subcontractor, then the contract time shall be extended by Change Order for such reasonable time as the Work as a whole is delayed. Subcontractor shall not be entitled to an extension of time for completion for any delay or suspension caused by or contributed to by the fault or negligence of the Subcontractor or anyone for whose acts it is responsible. Subcontractor will be entitled to no delay damages or additional compensation of any kind for any delay, disruption or interference except to the extent such delays are caused by a default of the Owner.

11.5 Pricing.

11.5.1 General. Subcontractor agrees to comply with all Principal Contract provisions and all federal, state and local laws, ordinances and regulations relating to cost and pricing data, audit or examination of books and records, certification of claims and pricing or cost data, and compliance with accounting and record keeping rules and requirements, to the full extent such contract provisions, laws, ordinances and regulations are applicable to PDG. This obligation is in addition to any other specific requirements otherwise applicable to Subcontractor.

ARTICLE 12. TERMINATION; DEFAULT; SUSPENSION

- 12.1 Default; Termination. If the Subcontractor commits any material breach, persistently fails or neglects to carry out the Work in accordance with this Agreement, fails to perform any provision of this Agreement, fails to prosecute the Work continuously with sufficient laborers and equipment to ensure its completion within the time specified for completion, or shall be dissolved, have entered against it an order for relief in an involuntary case under the Federal Bankruptcy Laws or commence a voluntary case thereunder, make an assignment for benefit of creditors or petition to take advantage of any state or federal insolvency statute, or fail to pay its obligations as they become due, or shall by any other act or omission give PDG or Owner reasonable cause to doubt Subcontractor's ability to timely, fully, and properly execute its obligations hereunder or if for any other cause or reason whatsoever Subcontractor shall fail to fully perform its obligations hereunder, such act or omission shall constitute a default. PDG may, after forty-eight (48) hours written notice to Subcontractor of such default and without prejudice to any other remedy he may have, make good deficiencies and may deduct the cost thereof from any sums which are or may become due to the Subcontractor under this Agreement or otherwise or, at PDG's option, terminate this Agreement and finish the Work as PDG deems appropriate. No forty-eight (48) hour or other notice of default shall be required if subcontractor's failure or breach relates to maintaining a safe workplace, or to life/health/safety issues, or if Subcontractor's failure or breach is of the same or similar type as that for which a prior notice of breach has been given to Subcontractor.
- 12.2 PDG may give notice in writing of a default under Section 12.1, specifying such default, and if Subcontractor, within a period of forty-eight (48) hours after receipt of such notice, shall not remedy such default, then PDG shall have full power and authority, subject to any rights of a trustee in bankruptcy under the Federal Bankruptcy Act, without process of law and without terminating or violating this Agreement, to take the prosecution of all or any portion of the Work out of the hands of Subcontractor and complete it with its own forces or otherwise, or use such other measures as in PDG's opinion are necessary for its completion. In taking over such Work, PDG may take over the plant, property, and equipment of Subcontractor to complete the performance thereof, or may supplement Subcontractor's work forces and equipment with those of PDG's own or others, all at the expense of Subcontractor. Neither by the taking over of such Work, or any portion of such Work, nor by the completion of such Work in accordance with the terms of this provision, shall PDG forfeit its right to recover damages from Subcontractor or from Subcontractor's surety for failure to complete or for delay in such completion. Should the expense incurred by PDG in taking over and completing such Work, or any portion of such Work, be less than the sum that would have become payable for the Work if the Work had been completed by Subcontractor, then Subcontractor shall be entitled to the difference, with no interest; and should such expense exceed such sum, then Subcontractor and Subcontractor's surety shall be liable to PDG for the amount of such excess. Upon the taking over of such Work by PDG as herein provided, no further payment shall be made to Subcontractor until such Work is completed, and any moneys due or that may become due to Subcontractor for the Work shall



SUBCONTRACT TERMS AND CONDITIONS

be withheld and may be applied by PDG to payments for the prosecution of such Work. PDG's decision to take over such Work shall not constitute PDG's sole remedy or an election of remedies; rather, PDG reserves all other remedies available at law or in equity.

- 12.3 Upon determination by an arbitrator or court that any default termination by PDG of Subcontractor or its successor in interest was wrongful, such termination will be deemed converted to a termination for convenience as set forth in Section 12.4, and Subcontractor's remedy for wrongful termination shall be limited to the recovery of payments permitted for termination for convenience.
- 12.4 Termination for Convenience; Suspension. PDG may terminate this Agreement in whole or in part at any time by written notice to Subcontractor. In such event, Subcontractor shall be entitled only to recover its reasonable direct costs incurred prior to the termination plus a reasonable allowance for overhead and profit on work actually performed, but Subcontractor shall be entitled to no other costs or damages; provided, however, the total sum payable shall not exceed the adjusted Subcontract price less previous payments.
- 12.5 In the event Owner for any cause suspends or terminates all or any portion of work under the Prime Contract, PDG may order Subcontractor to suspend or terminate related Work under this Subcontract. Subcontractor shall not be entitled to any additional compensation or damage for such suspensions or terminations except to the extent PDG receives additional compensation from Owner under the provisions of the Prime Contract for work covered by this Subcontract. Subcontractor shall not be entitled to profit on its costs attributable to any suspension of work.

ARTICLE 13. DESIGN DELEGATION

If and to the extent Subcontractor's Work calls for or requires any design or engineering to be provided by or performed by Subcontractor, Subcontractor acknowledges it has full responsibility for the adequacy, accuracy and conformance of such design or engineering Work and that PDG 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. Subcontractor shall reimburse or indemnify, pursuant to the indemnification obligation herein, PDG for all costs, losses, damages, etc., caused by or resulting from any nonconformity, inadequacy, or inaccuracy in Subcontractor's design or engineering. Subcontractor shall require its design professional(s) to maintain professional liability insurance with a company reasonably satisfactory to PDG, including contractual liability insurance against the liability assumed herein, and including coverage for any professional liability caused by consultants of its design professional and conforming to **Exhibit E**.

ARTICLE 14. SAVINGS CLAUSE

If any provision of this Subcontract or any portion of a provision shall at any time be held to be invalid in whole or in part under any applicable federal or state law, ruling or regulation, or be unenforceable in whole or in part for any reason, then such provision shall remain in effect and enforceable to the fullest extent it can be validly construed under applicable law, and the remaining provisions hereof shall remain in full force and effect. In the event any provision or portion thereof of this Subcontract becomes less than fully operative, the parties expressly agree that the court or arbiter shall construe such provision to the fullest extent it can be enforced under applicable law.

ARTICLE 15. BINDING EFFECT; NOTICE

All written notices required under this Agreement shall not be effective until actually delivered to PDG's office at: 27600 SW 95th Ave., Suite 100, Wilsonville, OR 97070.

ARTICLE 16. FINAL AGREEMENT; MODIFICATION; SUCCESSORS

This Subcontract is the final and entire agreement of the parties and supersedes all prior and contemporaneous oral or written communications or agreements between the parties. There are no promises, terms, conditions or obligations other than those contained herein. This Subcontract shall not be supplemented or modified in any way except by a duly executed Work Authorization or Change Order, or in a writing signed by the party against whom the modification is asserted. This Subcontract shall bind the parties, their successors and permitted assigns as of its effective date, regardless of whether it was executed on such date.

ARTICLE 17. HEADINGS

Subcontract section headings are for organization only, and are not to be construed as a part of this Agreement.

ARTICLE 18. PREVAILING PARTY ATTORNEY FEES

The prevailing party in any litigation or arbitration relating to or arising under this Agreement shall be entitled to recover from the other party its reasonable attorney fees and costs (including expert fees and costs) incurred.

Agreed By:

Subcontractor: _____	Contractor: _____ PDG Construction Services, Inc.
Signature: _____	Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____