
STANDARD SUBCONTRACT FORM

Subcontract No. _____

Project: Boise Centre West Refresh Phase 1

Owner: Greater Boise Auditorium District

Architect: Lombard / Conrad Architects

Effective Date: As Indicated On The Notice To Proceed (NTP)

THIS AGREEMENT ("SUBCONTRACT") WAS PREPARED TO FAIRLY ALLOCATE RESPONSIBILITIES, RISKS AND EXPENSES ARISING OUT OF THE PERFORMANCE OF THIS WORK, AND IS MADE AND ENTERED INTO BY AND BETWEEN:

Contractor: ("Contractor")

Address: ("Address")

Telephone: ###-###-####

Subcontractor: ("Subcontractor")

Address: ("Address")

Telephone: ###-###-####

Contractor, for full, complete, and faithful performance of this Subcontract, agrees to pay Subcontractor ("Contract Sum"):

Lump Sum in the amount of:

(\$ _____)

In consideration therefor, Subcontractor agrees as follows:

1. **Effective Date; Commencement of Work:** The terms and conditions of this Subcontract shall be effective in full force and binding as between the Parties as of the Effective Date stated on the first page of this Subcontract. Provided, however, Subcontractor shall not be authorized to commence any Work until both:

(a) Contractor issues Subcontractor a written Notice to Proceed with the Work; and

(b) Subcontractor submits and Contractor approves all insurance forms, bonds, submittals, and other documentation required by the Contract Documents to be submitted by Subcontractor prior to commencing Work.

In the event Subcontractor commences any portion of the Work early and prior to the occurrence of both conditions precedent set forth in this Section 1(a) and (b) above, such early Work is at Subcontractor's sole risk, expense, and liability. Contractor shall not be liable to pay or reimburse any type of compensation, fees, expenses, or otherwise, for any early Work performed without Contractor's express written consent via a written Change Order, in accordance with Article 5.

2. **Scope of Work:** The Subcontractor shall furnish and perform all labor, materials, tools, supplies, equipment, services, facilities, and supervision necessary for the complete and proper performance of the following portions of work ("Work"):

See Exhibit A – Scope of Work, Terms & Conditions

3. **Contract Documents:** The Contract Documents for this Subcontract consist of (1) this Subcontract, including the Subcontract General Conditions and any and all exhibits or addenda attached hereto; (2) the contract agreement dated **XX/XX/XXXX**, between Owner and Contractor; the terms and conditions (including the supplementary, and any special and/or other conditions, the specifications, drawings and any addenda) (“Main Contract”) and; (3) if applicable, any contract (including general and special conditions of contract) between Contractor and any entity in privity with Contractor for which Contractor performs work or assumes duties or obligations on the Project; and

4. **Other Contract Documents** include the following:

All of which documents are in their entirety hereinafter referred to as the “Contract Documents.”

Assumption of Main Contract: Subcontractor agrees to perform its Work in strict accordance with the Contract Documents including, but not limited to all terms and conditions of the Main Contract, which is hereby incorporated by reference. Subcontractor and its lower tier subcontractors (“Lower Tier Subcontractors”) acknowledge and agree that they have reviewed the terms, conditions, and procedures of the Main Contract and agree to be bound to and strictly comply with such terms, conditions, and procedures of the Main Contract and agree to be bound to and strictly comply with such terms, conditions and procedures insofar as they relate in any way, directly, or indirectly, to the Work, including but not limited provisions in the Main Contract governing insurance, payment, Change Orders, claim notice and presentation, and dispute resolution. Subcontractor agrees to incorporate the Contract Documents and Main Contract by reference into all agreements with Lower Tier Subcontractors.

5. Under provisions of Article 17 herein, a bond is not required in this Subcontract.

6. Under provisions of Articles 18 & 19 herein, the amount of insurance required for this Subcontract is:

Type of Coverage: Workers’ Compensation and Employers Liability

Policy Limits: Employer Liability Insurance limits of at least \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for injury by disease or meet the statutory requirements of the state in which the work is being performed, whichever is greater.

Type of Coverage: Minimum Required Insurance Limits (coverage on an occurrence basis) Commercial General Liability (CG 00 01 1093) or substitute form providing equivalent coverage and shall coverage liability arising from premises, operations, independent contractors, products-completed operations and personal and advertising injury.

Policy Limits: General Aggregate: \$2,000,000
 Products/Completed Operations: \$2,000,000
 Personal Injury Liability: \$1,000,000
 Each Occurrence Limit: \$1,000,000
 Per Project General Aggregate: \$2,000,000

Type of Insurance: Comprehensive Automobile Liability Insurance for all owned, non-owned, and hired vehicles

Policy Limits: Single combined limits of not less than \$1,000,000 per accident (combined bodily injury and property damage liability).

IN WITNESS WHEREOF, CONTRACTOR and SUBCONTRACTOR have executed this Subcontract, and specifically acknowledge that the terms of Article V. Indemnification have been separately negotiated and agreed to, effective the date of the last authorized signature unless otherwise agreed.

By: _____
CONTRACTOR (Authorized Signature)

Its: _____

State Registration Number

Date

SUBCONTRACTOR

By: _____
SUBCONTRACTOR (Authorized Signature)

Its: _____

License/Registration Number

Federal Tax I.D. Number

Workers' Compensation Account I.D. Number

Unemployment Insurance Reference Number

Date

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Exhibits

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Exhibit I: Idaho Addendum

Subcontract Articles

Article 1 – Obligations Responsibilities and Notice

- 1.1 This Subcontract¹ shall be considered to have been made in and shall be interpreted under the laws of the state of the Project.
- 1.2 Subcontractor acknowledges that prior to executing this Subcontract it has had the opportunity to review the Main Contract and has satisfied itself as to the requirements set forth in such Main Contract to the extent the same refers, relates, or applies to the Subcontractor's Work. It is agreed that Subcontractor shall assume toward Contractor all obligations and responsibilities which Contractor has assumed toward the Owner under the Main Contract. In case of conflict between the terms of this Subcontract and the Main Contract, this Subcontract shall control. The terms of this Subcontract take precedence over the terms of any bid, estimate, proposal or any other document provided by Subcontractor to Contractor regardless of whether such bid, estimate, proposal or other document is incorporated by reference into this Subcontract. Subcontractor shall designate in writing all Lower Tier Subcontractors to Contractor and shall not subsequently change Lower-Tier subcontractors without Contractor's written approval.
- 1.3 Subcontractor shall provide written notice to Contractor within three (3) days, or within sufficient time to allow Contractor to give notice to Owner pursuant to the terms of the Main Contract (whichever is sooner), after occurrence of any instance of interruption, extra work, additional work, delay, hindrance and/or efficiency loss of any nature whatsoever in Subcontractor's Work, believed by Subcontractor to be caused by the acts or omissions of Contractor, other subcontractors, Owner, Architect/Engineer or the employees or agents of any of them, or by any other third-party or unforeseeable event that is not within Subcontractor's control. In the event Subcontractor believes it is entitled to receive compensation and/or is entitled to an extension of time, due to such an occurrence(s), Subcontractor's shall provide Contractor a Statement of Claim (setting forth in detail the factual and contractual entitlement and basis for Subcontractor's claim with supporting data and critical path schedule analyses to support an extension of time or additional compensation), which shall be delivered to Contractor within fifteen (15) days of the Impact Notice, or within sufficient time to allow Contractor to submit Subcontractor's Statement of Claim to Owner (whichever is sooner), to meet any applicable Main Contract requirements. **FAILURE OF SUBCONTRACTOR TO PROVIDE TIMELY WRITTEN NOTICE, AS PROVIDED IN THIS PARAGRAPH, AND/OR FAILURE BY SUBCONTRACTOR TO TIMELY PROVIDE ITS STATEMENT OF CLAIM FOR AN INCREASE IN THE SUBCONTRACT AMOUNT, OR FOR AN EXTENSION OF TIME SHALL RESULT IN A WAIVER OF SUBCONTRACTOR'S CLAIM.**

Contractor does not waive the requirement for timely written notice and/or timely written submission of the Statement of Claim unless Contractor's waiver is unequivocal, explicit, and in writing and Subcontractor shall not rely on any verbal directive or instruction from Contractor or Owner that would excuse strict compliance with the written notice requirements in the above Section 1.3.

To the fullest extent permitted by applicable law, Subcontractor acknowledges and agrees that it shall not be entitled to damages of any type due to delays and agrees that its sole and exclusive remedy for any delay shall be an extension of time; provided, however, if Contractor recovers delay damages from Owner under the Main Contract on Subcontractor's behalf. Subcontractor may be entitled to an equitable adjustment to the Subcontract price at Contractor's sole and exclusive discretion.

¹ All capitalized terms shall have the same meaning throughout these Subcontract Articles as defined in the Subcontract.

- 1.4 **Supervision.** The Subcontractor shall supervise and be at the site at all times during the progress of Subcontractor's Work, including any Lower-Tier Subcontractor's Work, and shall not be absent without prior notice to and written consent by the Contractor.
- 1.5 **Coordination Meetings.** Subcontractor shall attend and participate in Contractor's coordination meetings including, but not limited to, those that may be required for scheduling, safety, quality control, Building Information Modeling and commissioning.
- 1.6 **Electronic Document Coordination.** Subcontractor and its Lower Tier Subcontractors shall utilize Contractor's electronic project management software to generate and distribute critical project information including updated drawings and construction documents, RFI's, submittals, change orders, requests for pricing/quotes, deficiencies, punch list items, notifications, schedule updates, and other documents as determined by Contractor. Subcontractor shall comply with Contractor's Electronic Transfer Agreement and applicable policies regarding the sharing and protection of electronic data related to the Project.

Article 2 - Drawings

- 2.1 Subcontractor agrees to furnish drawings, specifications, final selections of materials and other specified items in a timely fashion and in the quantity required by the Main Contract for approval by Owner or Owner's agent, and Contractor, so as not to delay progress of the Work.
- 2.2 Subcontractor shall furnish all samples, brochures, shop drawings, color charts, schedules, descriptive literature, as-built drawings, data and other submittals required for submission within ample time to allow for Contractor to review and to prevent any delay due to lack of approval. Subcontractor shall submit any such submittals as required by the Exhibit A – Scope of Work, Terms & Conditions as incorporated herein. Subcontractor shall furnish all copies of approved and corrected submittals required for distribution. As part of Subcontractor's Work, Subcontractor shall thoroughly review the submittals of its own vendors and Lower Tier Subcontractors. All such submittals shall be approved by Subcontractor prior to transmittal to Contractor, and Contractor shall have the right to rely upon Subcontractor's approval as constituting compliance with the Contract Documents. Approval by the Project Architect or engineer of any submittals furnished by Subcontractor does not relieve Subcontractor of responsibility for compliance with all requirements of the Main Contract and this Subcontract.

Article 3 – Scheduling

- 3.1 Time is of the essence for Subcontractor's Work. Subcontractor shall complete all Work as required to meet any milestone date set forth in the Contract Documents and in Contractor's Project Schedule ("Project Schedule"). Contractor reserves the right to modify the Project Schedule and Subcontractor will perform in accordance with such modified schedule. Contractor shall give Subcontractor 48-hour advance written notice of anticipated starting dates for the Work. Subcontractor shall start Work on the date named by Contractor and shall complete the several portions and the whole of the Work herein described at such times as will enable Contractor to timely comply with the Main Contract. Subcontractor shall cooperate with Contractor and other subcontractors. Subcontractor will be bound by any provisions in the Main Contract for liquidated damages and, if liquidated damages are assessed against Contractor by Owner, shall pay such damages to the extent caused by Subcontractor. The preceding language shall not be construed to limit or deprive Contractor of any right to recover separate or additional actual and consequential damages for delay to the extent caused by Subcontractor, and Contractor expressly reserves all rights to recover such damages under this Subcontract, applicable law, and in equity.
- 3.2 Should Subcontractor fail in any respect to prosecute the Work with promptness and diligence and in such manner so as not to delay Contractor or the progress of the Project, or if the progress of the Work is such that in the Contractor's sole opinion the completion of the Work or any part thereof within the Project Schedule is doubtful and Contractor gives Subcontractor written notice thereof, Subcontractor agrees to take all action necessary to recover from the delay to ensure the completion of the Work or any part thereof within the time specified in the Project Schedule, including but not limited to any or all of the following: increase construction manpower in critical quantities and crafts; increase the number of working hours per shift; increase the number of shifts per working day; increase the number of working days per week; increase the amount of construction equipment; or, perform any combination of the foregoing actions. Subcontractor agrees that it shall have no claim for any adjustment in the Subcontract price, or extension of time, or reimbursement because of extra expenses occasioned by compliance with this Section 3.2. Compliance with this Section 3.2 shall not release or relieve Subcontractor from any other obligation or liability assumed under this Subcontract or imposed by applicable laws.
- 3.3 Should Subcontractor, or any Lower-Tier Subcontractor fail to meet any milestone date set forth in the Contract Documents and in the Project Schedule, and they fail to take necessary action as described in 3.1 within 24 hours, Contractor can supplement the Subcontractor's construction workforce, construction equipment or any combination thereof to ensure the completion of the Work or any part thereof within the time specified, at the sole expense of the Subcontractor. Subcontractor agrees that it shall have no claim for

any adjustment in the Subcontract price or extension of time, or reimbursement because of extra expenses occasioned by compliance with this Section or the Subcontract.

- 3.4 Contractor shall have the right, but not the obligation, to decide the time, order and priority in which the various portions of the Project shall be performed. Subcontractor agrees to take all action necessary to ensure the completion of the Work within the Project Schedule.
- 3.5 Subcontractor shall: (a) cooperate with Contractor and all others whose work may interfere with Subcontractor's Work; (b) specifically note and immediately advise Contractor in writing of any such interference with Subcontractor's Work; and (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.
- 3.6 Should the progress of the Work or the Project be delayed by any act or omission of Subcontractor, any Lower-Tier Subcontractor, or any of their respective officers, agents, employees, subcontractors, or suppliers Subcontractor shall be liable to Contractor for any additional costs, expenses and damages incurred by Contractor or Owner.

Article 4 - Payments

- 4.1 **Schedule of Values.** Subcontractor shall submit in writing to Contractor a complete, detailed and accurate schedule of values ("Schedule of Values") of the various parts of the Work, aggregating the total sum of this Subcontract, itemized and detailed as required by Contractor and supported by such evidence as to its completeness and correctness as Contractor may require. The Schedule of Values, when approved by Contractor, shall be used as the basis for making payments hereunder unless it is found to be in error or in conflict with the procedures or determinations of Owner regarding progress payments to Contractor. This requirement to submit a Schedule of Values to Contractor shall be in addition to any submittals required by the Contract or Owner.
- 4.2 To the extent permitted by applicable law, it is agreed that as a condition precedent to any payment obligation by Contractor to Subcontractor hereunder the Contractor must first receive a corresponding payment from the Owner for the Work of Subcontractor for which payment is sought. Subcontractor specifically agrees that it is relying upon the Owner's credit (not the Contractor's) for payment, and Subcontractor specifically accepts the risk of nonpayment by the Owner.
- 4.3 Subcontractor shall submit to Contractor applications for payment at such times as will enable Contractor to timely apply for payment from Owner in compliance with the time allowed pursuant to the Main Contract. Unless otherwise mutually agreed, Contractor shall withhold the same percentage retainage from Subcontractor as Owner retains from Contractor under the Main Contract, or as permitted by law. Contractor's obligation to release retainage to Subcontractor shall be subject to proof that there is no defective or non-conforming Work and no unpaid claims which would provide the basis of a lien against the Work or any such retainage or payment bonds. Subcontractor shall be paid pursuant to the Schedule of Values and for accepted Work as of the date of Contractor's last progress billing date and to the extent the Subcontractor's Work has been accepted, approved and paid for by the Owner. Contractor will forward Subcontractor's payment within ten (10) calendar days of receiving the same from the Owner. No progress payment to Subcontractor shall operate as approval and acceptance of work done or materials furnished under this Subcontract.
- 4.4 To the extent permitted by applicable law, it is agreed that as a condition precedent to any final payment by Contractor to Subcontractor, and upon complete performance of this Subcontract by Subcontractor and final approval and acceptance of Subcontractor's Work and materials by Owner, Contractor will make final payment to Subcontractor of the balance due under the Subcontract within ten (10) days after Contractor has received final or complete payment for Subcontractor's Work and materials have been received by Contractor from Owner. When required by Contractor, and as a condition precedent to any payment, Subcontractor shall provide in a form satisfactory to Contractor partial lien releases, claim waivers and affidavits of payment from Subcontractor, and its Lower Tier Subcontractors and suppliers of any tier, in the form provided, for the completed portion of Subcontractor's Work.
 1. Conditioned on and prior to final payment, subcontractor MUST submit to Contractor three (3) sets of complete close-out documentation (except for final certifications) upon 90% completion of contract value. Close-out documentation, when applicable, shall include the following:
 - a. all warranties
 - b. as-built drawings
 - c. as-built BIM files
 - d. operation and maintenance data
 - e. owner in-service training
 - f. test and balance reports
 - g. certifications
 - h. attic stock
 - i. etc., as required by the Project specifications

- 4.5 If the Main Contract permits payment for materials delivered to the jobsite or to satisfactory storage facilities, with appropriate documentation and insurance, Subcontractor may invoice for materials so delivered and receive payment as outlined above; provided, however, that such stored materials shall be at the risk of Subcontractor until the same are incorporated into the Project. Subcontractor acknowledges that all payments accepted by it or which are otherwise due under this Subcontract shall be held in trust in favor of its laborers, materialmen, governmental authorities, and all others who are legally entitled to: (1) payment pursuant to this Subcontract; or (2) otherwise file a claim against any retainage or payment bond. Subcontractor shall pay its own Lower Tier Subcontractors and suppliers all sums owed them within ten (10) days of receipt of payment from or on behalf of Contractor.
- 4.6 Progress payments shall be deemed advances and are subject to adjustment at any time prior to final payment for errors, overpayment or Contractor's good faith determination that the remaining balance of payment may be insufficient to insure satisfactory completion of Work covered by this Subcontract or to pay lien, retainage, or bond claims. If Contractor determines in good faith that Subcontractor is obligated to Contractor or anyone else for labor, fringe benefits, taxes, supplies, materials, equipment rental or other proper charges against the Work covered by this Subcontract, the amount of such obligation may be deducted by Contractor from any payment or payments, including retainage, made under this Subcontract. Contractor shall have the right to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage or expense therefrom, including attorney fees, until said assertion and/or claim has been remedied or adjusted to Contractor's satisfaction by Subcontractor. Provided further that Contractor may from time to time require, and Subcontractor shall promptly provide within three (3) days after written demand, a statement in writing, including supporting documents setting forth what amounts, if any, are due or payable by Subcontractor to third-parties for labor, fringe benefits, taxes, supplies, materials, equipment, or other proper charges against the Work in connection with, or arising out of the performance of, this Subcontract. In the event such statement with supporting documentation is not provided by Subcontractor, Contractor may withhold payment until such statement with supporting documentation is provided. Should Subcontractor fail to provide such statement and supporting documentation in a timely manner, Contractor may terminate this Subcontract without further notice. In case of such termination, and in addition to any other rights and remedies Contractor may have, Contractor shall have all rights due as specified in Article 11 of this Subcontract.
- 4.7 Subcontractor agrees not to subcontract any portion of the performance of this Subcontract without the prior written consent of Contractor. Subcontractor shall require any assignee, who takes an interest in the Subcontract as collateral, to agree that: (1) it shall have no right to payment unless and until all Lower Tier Subcontractors, suppliers, employees, union trust funds and taxing authorities have been paid, and any claims of Contractor have been satisfied; and (2) it will repay to Contractor immediately upon request any amount overpaid. Any assignee taking an assignment of any payment otherwise due under this Subcontract shall be bound to the terms and the limitations regarding payment contained in this Subcontract
- If some or all of the Work is performed in Idaho this section is modified by **Exhibit I**.
- 4.8 In the event Subcontractor is in default under this Subcontract, or in the event of any of portion of Subcontractor's Work is defective or non-conforming, then to the fullest extent permitted by applicable law, Contractor will have the right of offset and retain out of any payments due or to become due to Subcontractor the Project or on any other project Subcontractor is performing services for Contractor, a reasonable amount to protect Contractor from any or all loss, damage or expense including attorneys' fees until the payment failure claim, default, suspension, termination for cause or lien has been satisfied by Subcontractor.

Article 5 – Change Orders

- 5.1 Contractor, the Owner, and Owner's Architect may, without invalidating this Subcontract, order changes in: (1) the work within the general scope of the Subcontract, including additions, deletions, or other revisions; (2) the Contract Sum; and (3) the Project Schedule. Subcontractor shall be granted additional compensation and/or time only upon the terms, conditions, and procedures of this Subcontract and only by written acceptance of such Work ("Change Order"). Any additional work and services performed by Subcontractor prior to execution of a written Change Order shall be at Subcontractor's risk.
- 5.2 In the event the Owner, or the Owner's Architect, orders changes in the Work and requires that such work be performed on an immediate or emergency basis, allowing insufficient time for the proposal procedures set forth in Article 5.3 below to be completed prior to performance of the work, Contractor shall notify Subcontractor that such order for immediate or emergency work has been received from the Owner, or the Owner's Architect, which is within the scope of this Article 5.2, and in such event Subcontractor shall accomplish the Work in the time and in the manner so ordered by the Owner or the Owner's Architect. Subcontractor shall, as soon as possible thereafter, and in all events within the time periods required by Article 5.4 below, initiate a Change Request in accordance with the procedures set forth in said Article 5.4.
- 5.3 Whenever a change in the Work is ordered by Contractor's Project Manager or Director, the Subcontractor shall, within three (3) days, and prior to commencement of such work, submit to Contractor a written cost

or credit proposal for such revised work, and a statement of the impact of such change on the Contract Sum and/or Project Schedule (“Change Request”). Such Change Request shall be accompanied by a complete material and labor breakdown and such other supporting documentation as shall be required by the Main Contract with respect to Change Order(s). Contractor shall, within three (3) days after receipt of the Change Request, estimate the cost or credit of the changes to the Work and any adjustments to the Contract Sum and/or Project Schedule, in a manner consistent with the Main Contract, and shall furnish a copy of such estimate to Subcontractor. If Subcontractor does not provide a written cost or credit proposal, and statement of impact on time for completion, within the three (3) days required by this Article 5, Contractor may, at its election, proceed to determine the cost or credit of the changes to the Work and any adjustments to the Contract Sum and/or Project Schedule, and Subcontractor shall be bound thereby. In all events, Subcontractor shall be required to accomplish the ordered change at the cost, or subject to the credit, and within the time, set forth in Contractor’s determination. Subcontractor shall be barred from challenging the Contractor’s determination unless it strictly complies with the requirements of this Article 5.3. To the extent that Subcontractor provided a timely Change Request and strictly complied with this Article 5.3, it may challenge the Contractor’s determination through the dispute resolution provisions of Article 22 herein. In no event shall the existence of any such disagreement constitute any lawful cause for delay in the performance of the Work.

1. Subcontractor’s Mark-up: To the extent that additional work is required of Subcontractor, the total cost for mark-ups to the actual cost of labor and materials forces shall be 15% of the actual direct cost of labor, materials, and equipment, unless otherwise indicated in the Main Contract.
2. All Change Requests, unless expressly waived in writing by Contractor, shall be accompanied by a complete itemization of costs including labor, materials, equipment and tiered-subcontracts. Labor, materials and equipment shall be itemized in the manner prescribed above. Where major cost items are tiered-subcontracts, they shall be itemized also. In no case will a change involving over \$500.00 be approved without such itemizations.

5.4 Subcontractor may initiate Change Requests, but no such Change Request shall become effective until approved in writing by Contractor and, if applicable, by the Owner. The parties agree as follows concerning Change Requests initiated by Subcontractor:

1. All Change Requests must be in writing, shall be submitted to Contractor, and shall include a statement of the reason for the Change Request, and the additional cost, or amount of credit to be allowed, and adjustment to the Project Schedule for completion of Subcontractor’s Work, by reason of the requested change, together with any other documentation required to be submitted in connection with Change Requests under the terms of the Main Contract.
2. Except in the following circumstances:
 - a. where the reason for the Change Request consist of a claim for extras or for compensation or damages by reason of delays or otherwise, based upon events and transactions which occurred prior to a submission of the Change Request by Subcontractor; or
 - b. where the reason for the Change Request is immediate or emergency work performed pursuant to an order given under the provisions of Article 5.2.

Any work done by Subcontractor pursuant to any Change Request, but prior to receipt of all required approvals, shall be at the sole risk of Subcontractor, and in the event all required approvals are not given, Subcontractor shall bear the cost of all work done prior to receipt of required approvals, including, but not limited to, the cost of removal and replacement of any unapproved work, if such removal and replacement is requested by Contractor or by the Owner.

2. It is mutually agreed that in order to facilitate investigation of claims, and availability of witnesses, and in order to permit maximum opportunity for mitigation of damages in proper cases, Contractor and Owner require that such claims be presented promptly after the event, occurrence, or transaction which gave rise to the claim. Accordingly, it is agreed that no Change Request shall be approved unless submitted in strict compliance with this Article 5. No formal or informal communication or notice, whether written or oral, shall be deemed to constitute a Change Request or shall operate to toll, suspend, or extend the time limitations set forth in this subparagraph.

FAILURE OF SUBCONTRACTOR TO PROVIDE TIMELY WRITTEN NOTICE IN THE FORM REQUIRED, AS PROVIDED IN THIS ARTICLE, SHALL RESULT IN A WAIVER OF SUBCONTRACTOR’S CLAIM.

- 5.5 Subcontractor shall continue to perform the Work, and Contractor shall continue to pay Subcontractor undisputed amounts owed for Subcontractor's Work (subject to Article 4.2 and Contractor's other withholding rights in Article 4), notwithstanding any dispute or disagreement regarding Change Requests, claims, or other disputes, until completion of the Work or completion of the applicable dispute resolution procedures in Article 22.
- 5.6 Subcontractor acknowledges that, unless expressly stated otherwise within a Change Order, any change in the contract price and time effected through a written change order shall constitute full payment and accord and satisfaction for all costs incurred, labor performed, material and equipment furnished, and any delay, acceleration, loss of efficiency associated with the change in the work.

Article 6 – Nature of Work

- 6.1 Subcontractor has satisfied itself as to the nature and location of the Work, the character, kind and quantity of material to be encountered, the character, kind and quantity of equipment needed, the location, conditions and other matters which can in any manner affect the Work under this Subcontract, and acknowledges that Subcontractor has had a reasonable opportunity to examine the site, all of the Main Contract documents and this Subcontract. Prior to commencing Work, Subcontractor shall examine the site and any surfaces upon which Work is to be performed, and shall notify Contractor in writing of any conditions which might adversely affect its Work; failure to do so will constitute a waiver of entitlement to any additional compensation or contract time arising out of such conditions. This clause shall not be understood to relieve Subcontractor of any additional notice requirements under this Subcontract or the Main Contract.

Article 7 – Subcontractor Employer

- 7.1 Subcontractor has the status of "employer" as defined by the Industrial Insurance, Workers' Compensation, Unemployment Compensation, Social Security, and other similar federal, state, and local statutes. Subcontractor further warrants and acknowledges the following: (a) Subcontractor is customarily engaged in an independently established business of the same nature as the Work performed under this Subcontract; (b) Subcontractor is responsible for filing a schedule of expenses with the IRS for the type of business Subcontractor is conducting; (c) Subcontractor has an account with the Department of Revenue and other appropriate state agencies for the payment of all applicable state taxes; (d) Subcontractor maintains a separate set of books or records that reflect all items of income and expenses of its business.
- 7.2 Subcontractor shall withhold from its payroll applicable Social Security taxes, Workers' Compensation and Unemployment Compensation contributions, and any other lawfully required withholding and pay the same; Contractor shall be in no way liable as an employer of, or on account of, any employees of Subcontractor. Before final payment is made under this Subcontract, Subcontractor shall furnish Contractor affidavits certifying that it has complied with these laws, rules and regulations. Subcontractor hereby agrees to defend and indemnify Contractor for any and all liability under such laws arising from the Work performed under this Subcontract.
- 7.3 Verification of Right to Work. It is the Contractor's intention to allow only individuals authorized to work in the United States to provide labor, tools or equipment to the Project. Accordingly, the Subcontractor agrees to ensure that all Subcontractor Work complies with all provisions of all local, state and federal immigration laws, statutes, rules, codes, orders and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, the Immigration and Nationality Act, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and any successor statutes, laws, rules and regulations thereto (collectively, the "Immigration Laws"). Subcontractor agrees to indemnify, defend, and hold harmless any and all Indemnified Parties from any and all liability, including fines, attorneys' fees and court costs, assessed due to noncompliance with the Immigration Laws by Subcontractor or any of its sub-subcontractors. Subcontractor shall, on a bi-annual basis during the term of the Subcontract Documents, conduct an internal I-9 audit of the I-9 Forms for its employees and shall promptly correct any defects or deficiencies which are identified as a result of such audit. Contractor shall be entitled, but has no obligation, to review Subcontractor's bi-annual I-9 audit and/or I-9 forms to evaluate Subcontractor's compliance with such Immigration Laws. Contractor may, in its sole discretion, terminate this Contract immediately if, at any time during the term, Subcontractor violates or is in breach of any provision of this paragraph, such Immigration Laws, or the USCIS determines that Subcontractor has not complied with the Immigration Laws.

Article 8 – Permits & Taxes

- 8.1 Subcontractor shall obtain and pay for all permits, fees, and licenses necessary for the performance of this Subcontract and shall pay any and all federal, state, and local taxes, applicable to the Work to be performed under this Subcontract. Owner or Contractor shall obtain and pay for the initial building permit applicable to the Main Contract.

Article 9 - Materials

- 9.1 Materials delivered by or for Subcontractor and intended to be incorporated into the construction hereunder shall remain on the jobsite and shall become property of Owner upon payment, but Subcontractor may repossess any surplus materials remaining at the completion of the Subcontract except for extra stock required by the Main Contract or this Subcontract. All scaffolding, apparatus, ways, works, machinery, and plants brought upon the premises by Subcontractor shall remain Subcontractor's property. It shall be Subcontractor's responsibility to unload, store, and protect its materials, to bear the risk of loss thereof and to protect such material against loss until actually incorporated into the Work, and until 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 that portion of such loss to the extent it arose out of the sole fault of Contractor or its employees. Loss or damage due to acts of Subcontractor shall be deducted from any amounts due or to become due Subcontractor.
- 9.2 In the event the scope of Subcontractor's Work includes the reliance on the work or installation of materials or equipment furnished by others, Subcontractor shall, make full inspection as to the physical condition and suitability of the work, material, or equipment, and shall immediately notify Contractor in writing of any defect or nonconformity in the same. If Subcontractor fails to provide such written notice within forty-eight (48) hours of discovery of each defect or nonconformity, then Subcontractor shall have accepted the work, materials, or equipment of others as being satisfactory and it shall be fully responsible thereafter for the satisfactory performance of Subcontractor's Work, regardless of the defective work of others.

Article 10 – Submittals

- 10.1 Within one (1) week of being awarded the Subcontract, Subcontractor shall provide a submittal schedule and a list of products requiring the Architect's review or approval which must include the following information:
1. Specification reference;
 2. Intended submission date;
 3. Required order release date; and
 4. Lead times for fabrication and delivery
- 10.2 Unless otherwise indicated, submittals will be submitted electronically.
- 10.3 Submittals are required to include the following:
1. Submittal cover sheet indicating the specification reference. Each specification section is to have a separate submittal cover sheet completed or it will be rejected and require resubmittal using the proper format.
 2. Corresponding product data for the specification reference with the pertinent data highlighted or indicated.
- 10.4 Contractor to review submittals for proper information and format. If submittals are not provided in strict accordance with this Article 10, Contractor shall have the right, but not the obligation, to identify the variance and return submittals back to Subcontractor for resubmittal prior to forwarding to Owner or Architect/Engineer. If it is determined by Contractor that the schedule does not permit resubmittal by the Subcontractor the Contractor will make the proper adjustments and may back charge Subcontractor for such service.
- 10.5 Subcontractor, at its own expense, shall promptly prepare or obtain and submit to Contractor all shop and erection drawings, samples, product data, catalogue cuts, laboratory and inspection reports, engineering calculations, electronically or magnetically stored data, submittals, or other information however described ("Submittals") required by the Contract Documents or as may be necessary or appropriate to describe the details of the Work. All submittals shall be submitted so as to permit the Work to be performed in accordance with the Project Schedule, allowing a reasonable time for review and return of Submittals and, if needed, repeated Submittals.
- 10.6 Neither review of, nor approval of, Submittals by Contractor, Owner or Architect/Engineer shall relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents or its responsibility for the proper matching and fit of the Work to contiguous work. Subcontractor shall identify each and every variance between any Submittal and the requirements of the Contract Documents at the time of transmission either prominently on the Submittal or specifically in a transmittal letter accompanying the Submittal. No modification, revision or other notation on a Submittal that changes or modifies the Contract Documents shall be valid (even if the drawing or Submittal is approved) unless there is a Change Order issued approving the modification or revision.

Article 11 – Takeover

- 11.1 **Termination/Suspension by Owner.** In the event Contractor's Work under the Main Contract is terminated, other than for Contractor's default, prior to Project completion, an equitable adjustment to the Contract Sum prior to such termination will be made as provided for in the Main Contract; if no such provision exists, then by mutual agreement; or, failing either of these methods, by arbitration as provided

for in the Article 22. Subcontractor shall be entitled to its expected profits on unperformed Work to the extent Contractor is actually recovers such the same from Owner.

- 11.2 Contractor may order Subcontractor to suspend Work under this Subcontract. Subcontractor shall not be entitled to any additional compensation or damages for such suspensions, except, and only to the same extent and as a condition precedent to, Contractor receives additional compensation from Owner for Subcontract Work.
- 11.3 **Termination/Suspension for Convenience.** Upon three (3) calendar day's written notice to Subcontractor, Contractor may terminate this Subcontract in whole or in part for Contractor's convenience. Subcontractor's sole and exclusive remedy for such termination is limited to payment for Work properly performed prior to termination, as determined in Contractor's sole discretion.
- 11.4 **Termination for Default.** If Subcontractor refuses or fails to supply enough properly-skilled workers or materials to maintain the Project Schedule, refuses or fails to make prompt payment to Lower Tier Subcontractors or suppliers of labor, materials or services, fails to correct, replace, or re-execute faulty or non-conforming Work, disregards the law, ordinances, rules, regulations or orders of any public authority having jurisdiction, files for bankruptcy, or is guilty of a breach of this Subcontract, and fails to correct the default and maintain the corrected condition within not less than forty-eight (48) hours of receipt of written notice of the default, then Contractor, without prejudice to any rights or remedies otherwise available to it, shall have the right to any or all of the following remedies:
1. Supply such numbers of workers and quantity of materials, equipment, and other facilities as Contractor deems necessary for the completion of Subcontractor's Work, or any part thereof, , and to charge the cost thereof to Subcontractor who shall be liable for such damages including reasonable overhead and profit.
 2. Perform or contract with one or more additional Lower Tier Subcontractors to perform such part of Subcontractor's Work as Contractor shall determine to provide prompt completion of the Project and charge the cost thereof to Subcontractor.
 3. Withhold payment of any monies due or to become due Subcontractor pending corrective action to the extent required and to the satisfaction of Contractor.
 4. Terminate this Subcontract, use any materials, implements, equipment, appliances, or tools furnished or belonging to Subcontractor to complete Subcontractor's Work and furnish those materials, equipment, and/or employ such workers as Contractor deems necessary to maintain the orderly progress of the Work. All of the costs, including reasonable overhead, profit, costs, and attorneys' fees, incurred by Contractor in arranging to and performing Subcontractor's Work shall be charged to Subcontractor and Contractor shall have the right to deduct such expenses from monies due or to become due to Subcontractor. Subcontractor shall be liable for the payment of any costs, expenses, or other actual or consequential damages incurred by Contractor that are in excess of the unpaid balance of the Subcontract Price.

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

Article 12 – Pricing

- 12.1 In the event this Subcontract contains unit price items, it is understood and agreed that any quantities mentioned are approximations only and subject to change as required by the Main Contract or as ordered and directed by Contractor.
- 12.2 All escalation of Subcontractor's costs are to be included for the duration of the Project, including, but not limited to labor, material, equipment, and fuel escalation.

Article 13 – Quality/ Warranty

- 13.1 Any non-conforming Work shall, upon notice from Contractor, be immediately removed by Subcontractor. Failure of Contractor to immediately reject any Work or materials shall not in any way waive Contractor's right to object thereto at any time.
- 13.2 Subcontractor warrants the Subcontractor's Work and materials furnished hereunder to Contractor and Owner on the same terms, and for the same period, as Contractor warrants the Work to Owner under the Main Contract. With respect to Subcontract's Work, Subcontractor shall comply with all warranty obligations and responsibilities of Contractor under the Main Contract. If an element is remedied within the initial warranty period, said warranty period for the affected element will restart to provide a full term warranty for the affected element. All Subcontract warranties shall be in addition to and not in limitation of other warranties or remedies required and/or were arising pursuant to applicable law.

Article 14 – Job Damage / Protection of the Work

- 14.1 Contractor shall not be liable or responsible for loss or damage to materials, equipment, tools, facilities, or other property owned, rented, or used by Subcontractor, or anyone for which Subcontractor is responsible; and Subcontractor shall maintain such insurance and take such protective action as it deems necessary to protect Subcontractor for such loss. Except to the extent of any proceeds received by insurance, Subcontractor agrees that Contractor shall not be responsible for any loss or damage to the Work.
- 14.2 Subcontractor shall take necessary precautions to properly protect Subcontractor's uninstalled Work and the work of others from damage caused by Subcontractor's operations. Should Subcontractor cause damage to the Work or property of others, Subcontractor shall promptly remedy such damage, or Contractor may so remedy and deduct the cost thereof from any amounts due or to become due Subcontractor.
- 14.3 Job damage caused by Subcontractor, its Lower-Tier Subcontractor or supplier of any tier, to Work other than its own shall be reported immediately to Contractor and Subcontractor shall be responsible for its repair. Job damage caused by Contractor to the Work of Subcontractor shall be reported immediately to Subcontractor and Contractor shall be responsible for its repair.

Article 15 – Safety

- 15.1 Subcontractor and its Lower Tier Subcontractors shall take all reasonably necessary safety precautions pertaining to the Work and the Work performance, including compliance with applicable laws, ordinances, regulations and orders issued by a public authority, whether federal, state, local or other, OSHA, and any safety measures requested by Contractor. Subcontractor shall at all times be responsible for providing a safe jobsite and be responsible for the Work performance and safety of all employees, personnel, equipment and materials within Subcontractor's or its Lower Tier Subcontractors' care, custody or control. Subcontractor and its Lower Tier Subcontractors shall furnish all required safety equipment for Work and ensure all of their employees and Lower Tier Subcontractors' employees have and wear personal protective equipment in compliance with applicable OSHA requirements and Contractor's safety rules, as provided in writing to Subcontractor.
- 15.2 Drugs and Alcohol. The use of illegal drugs or alcohol by any anyone on the jobsite is an intolerable offense. Any such person found in the possession or use of such items will be immediately removed from the jobsite and not allowed to return. The use of prescription medications while on the jobsite shall only be allowed under the direction of a physician, as approved in writing by the Contractor, and when taking the medication causes no impairment or judgement or adverse actions.
- 15.3 Cell Phones/Personal Electronics. Use of cell phones / personal electronic devices is permissible during work hours for company business only. Personal use of cell phones / electronic devices is only permitted during breaks and at lunch time and in designated areas. Before accepting an incoming or making an outgoing call, make sure that such activity will not compromise safety. When operating equipment, driving a vehicle on the jobsite or while performing any jobsite activity that a distraction may cause a potential safety threat, let all incoming calls go unanswered. You then may return the call when you have stopped the equipment, pulled the vehicle to a safe area or put yourself and those are you in a safe environment before returning the call. The following requirements unequivocally apply to the Subcontract Work:
1. Contractor unequivocally prohibits texting and talking on a mobile phone while operating any kind of motorized vehicle on site, including but not limited to, cars, trucks, cranes and heavy machinery. Violating this policy will result in disciplinary action up to and including removal and termination.
 2. No music including the use of radios, iPods, MP3s or ear/head phones of any kind.
- 15.4 Subcontractor certifies that it and its Lower Tier Subcontractors are registered and licensed contractors in the state having jurisdiction over the Work. Subcontractor certifies that it and its Lower Tier Subcontractors maintain a written accident prevention plan and a jobsite-specific safety plan in compliance with applicable laws and OSHA regulations. Subcontractor's Accident Prevention Plan should address subcontractor's role and responsibilities pertaining to safety on the jobsite, training and corrective action and be tailored to safety and health requirements for the Work involved. Subcontractor shall have and enforce a disciplinary action schedule in the event safety violations are discovered. When and as requested by Contractor, Subcontractor shall provide information regarding safety matters.
- 15.5 Subcontractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Subcontractor's superintendent unless otherwise designated by the Subcontractor in writing to the Contractor. This person must be on site whenever Subcontractor has employees working on site and shall remain on site until the completion of Subcontractor's Work.
- 15.6 Subcontractor shall promptly provide Contractor written notice of safety hazard(s) or violation(s) found on the jobsite or of any injury to its or its Lower Tier Subcontractors' workers incurred on the jobsite.
- 15.7 Contractor's supervisor may direct Subcontractor's superintendent to remove employees not in compliance with the requirements of this Subcontract. 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 Subcontractor.

- 15.8 The safety and security of employees and the general public are of vital importance. Therefore, Contractor has a zero tolerance for any violence or threat of violence in the workplace. Violence may include: any physical harm to another person, shoving, pushing, harassment, intimidation, coercion, brandishing weapons, and threats or talk of violence. Subcontractors shall notify Contractor, immediately in the event of any such actions or events involving their employees.
- 15.9 Subcontractor agrees to defend, indemnify and hold Contractor harmless from any claims, demands, proceedings, violations, penalties, assessments or fines that arise out of or relate to Subcontractor's failure to comply with any safety-related laws, ordinances, rules, regulations, orders or its obligations hereunder. Contractor may charge against the sums otherwise owing to Subcontractor the amount of the fine and the fees, costs and expenses incurred by Contractor any and all claims arising from or relating to the Subcontractor's Work.

Article 16 – Performance

- 16.1 **Authorized Representatives.** Contractor shall designate one or more persons who shall be Contractor's authorized representative(s): (1) on-site; and (2) off-site. Such authorized representative(s) shall be the only person(s) Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.
- 16.2 Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s): (1) on-site; and (2) off-site. Such authorized representative(s) shall: (a) be the only person(s) to whom Contractor shall issue instruction, orders or directions, except in an emergency, (b) be available by cell phone during working hours as well as non-working hours, (c) speak English and be able to converse and direct Subcontractor's personnel, and (d) not be replaced without Contractor's prior approval.
- 16.3 **Conduct.** Subcontractor shall be responsible for the conduct and performance of its employees, Lower Tier Subcontractors, and anyone Subcontractor brings to the Project. Subcontractor shall immediately remove from the Project any person who is considered, at Contractor's sole discretion, to be incompetent, uncooperative or disposed to be disorderly, or who, for any reason, is not satisfactory to the Contractor, and that person shall not be employed on the Work again.
- 16.4 **Workmanship.** Every part of Subcontractor's Work shall be executed in strict accordance with the Contract Documents in the most workmanlike manner in accordance with the level of care and skill exercised by such like subcontractors performing similar scopes of work in the same geographic region as the Project. All workmanship shall be as specified, and all materials used in Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work, and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.
- 16.5 **Housekeeping and Clean Up.** Subcontractor shall DAILY remove all refuse, waste and debris produced by its operation. Refuse shall not be permitted to accumulate to the extent that it interferes with free access to the jobsite or creates a safety hazard. Avoidance of safety hazards through good housekeeping is an important part of Subcontractor's obligations.
- 16.6 In the event Subcontractor or its Lower-Tier Subcontractor fails to meet these requirements within twenty-four (24) hours after receipt from Contractor of written notice of non-compliance, Contractor may remove refuse and deduct the cost thereof from any amounts due or to become due to Subcontractor. In the event Contractor determines emergency conditions exist, Contractor may proceed as above without prior notice. If Contractor performs cleanup or compliance work involving more than one of its subcontractor's, Contractor's decision on the allocation among subcontractors of the costs incurred by Contractor shall be final and binding on Subcontractor.
- 16.7 **Hazardous Material.** Subcontractor shall comply with all applicable hazardous waste regulations under federal, state or local laws. Subcontractor shall provide Contractor with all Material Safety Data Sheets for any and all hazardous substances covered under all applicable laws before commencing Work. Subcontractor shall, prior to commencing Work, inform Contractor of its intent to use any hazardous substances at the Project and shall continuously update the Contractor of any new hazardous substance brought to the Project during performance of the Work. Failure to comply with this paragraph may result in fines and damages being assessed to Subcontractor. Subcontractor shall defend, indemnify and hold Contractor harmless from any and all costs and expenses, including attorneys' fees, arising from the use or discharge of any hazardous substance by Subcontractor at or off the Project site.
- 16.8 **Substitutions.** No Substitutions shall be made in Subcontractor's Work unless permitted in writing by the Contractor and only then upon Subcontractor first receiving all approvals required under the Contract Documents. Subcontractor shall indemnify Contractor for any increased costs incurred by Contractor as a result of such substitutions.

- 16.9 **Use of Contractor's Equipment.** Subcontractor, its agents, employees, Lower Tier Subcontractors or suppliers shall not use Contractor's equipment without the express written permission of Contractor's designated representative.
- 16.10 If Subcontractor or any of its agents, employees, suppliers or Lower Tier Subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of Contractor, Subcontractor shall be liable to Contractor for any loss or damage (including personal injury or death) which may arise from such use. In the event the Subcontractor uses an operator supplied by Contractor, Subcontractor agrees that it has exclusive direction, supervision and control over that operator and will be liable for the actions or omissions of such operator.
- 16.11 **As-Builts.** Subcontractor shall continuously update a set of As-Built drawings as the Work progresses and provide As-Built drawings and operation and maintenance information when the Work is substantially complete. Current As-Built documents are a condition precedent to making any payment to Subcontractor.

Article 17 – Bond

- 17.1 If the Subcontract requires Subcontractor to supply bonds for the Project, then Subcontractor shall, as its own expense, furnish contractor, within ten (10) days of receipt of the execution of this Subcontract, performance and payment surety bonds, acceptable to Contractor and Owner, in an amount equal to the Contract Sum. The bonds shall be conditioned upon the full and faithful performance of all terms, provisions, and conditions of this Subcontract and upon payment for all labor, materials, equipment and supplies used in the prosecution of the Work described herein.
- 17.2 Contractor may issue checks payable jointly to the Subcontractor and its related suppliers and Lower-Tier Contractors to the extent it deems necessary.
- 17.3 To the extent required, no payment shall be made to Subcontractor for Work performed pursuant to this Subcontract until the required payment and performance bonds have been delivered to Contractor. Provided, in the event the Subcontractor cannot provide the Contractor with the required payment and performance bonds, Contractor may elect, at its sole discretion, without waiving any rights, to permit the Subcontractor to proceed without bonds for a period of time. If Contractor subsequently elects to insist on bonds, and Subcontractor either refuses to, or cannot provide payment and performance bonds, then Contractor shall have the right to terminate Subcontractor's right to proceed under this Subcontract.
- 17.4 In the event Subcontractor shall fail to promptly provide the requested bonds, Contractor may terminate this Subcontract and re-let the Work to another subcontractor and all Contractor's costs and expenses incurred above the remaining Contract Sum shall be paid by Subcontractor.

Article 18 – Workers Compensation

- 18.1 Subcontractor shall furnish to Contractor evidence that it has in force workers' compensation insurance including employer's liability, as may be required by the jurisdiction or jurisdictions in which the Work is being performed.
- 18.2 Where applicable, this shall include United States Longshoremen's and Harbor Workers' Insurance including Coverage B – Employer's Liability (Maritime) with limits not less than the Bodily Injury limits required of the Contractor by the Main Contract, but in no event less than \$1,000,000.

Article 19 – Insurance

- 19.1 Subcontractor shall obtain and keep in force during the term of this Subcontract, and during the applicable statute of repose, commercial general liability insurance with dollar limits and coverage equal to, or greater than the types and amounts of coverage noted at the front of this Subcontract. Such insurance shall be "occurrence-based" and shall include contractual liability coverage applicable to the indemnity provisions of this Subcontract and "completed operations" coverage. Subcontractor shall furnish to Contractor evidence of this insurance including the provision regarding notice of cancellation or reduction in coverage. Such evidence of insurance shall be in the form of an insurance certificate issued by an insurer satisfactory to Contractor and shall provide for not less than thirty (30) days prior written notice to Contractor of cancellation or reduction in coverage. 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.
- 19.2 Subcontractor's insurance shall: (1) name Contractor and Owner as additional insureds for liability arising out of the Subcontractor's work, including completed operations losses, without qualification, limitation or reservation; (2) be primary and non-contributory with any insurance maintained by Contractor or Owner; (3) not contain a "cross liability" or similar exclusion that would bar coverage for claims between or among insureds; (4) contain a severability of interest provision in favor of Contractor and Owner; and (5) contain a waiver of subrogation against Contractor and Owner. Before commencing work, Subcontractor shall provide a copy of the additional insured endorsement to Contractor as evidence of additional insured status.

- 19.3 If Builder's risk or any other property insurance is provided, Contractor and Subcontractor waive all rights against each other and Owner, and Lower Tier Subcontractors, agents and employees each of the other, for loss or, damage to the extent covered by Builder's risk or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance. Subcontractor shall be responsible for that portion of the Builder's risk policy's deductible (or self-insured retention) which is proportionate to the loss or damage resulting from acts or omissions attributable to Subcontractor. Subcontractor shall procure and maintain, at Subcontractor's own expense, property and equipment insurance for portions of the Subcontract Work stored off the site or in transit. Contractor and Owner neither represent nor assume responsibility for the adequacy of the Builder's Risk insurance to protect the interests of Subcontractor. It shall be the obligation of Subcontractor to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Work.
- 19.4 Contractor makes no representations that the required minimum amount of insurance is adequate to protect Subcontractor. The procuring and/or carrying of insurance shall not limit Subcontractor's obligation or liability pursuant to this Subcontract or as a matter of law.

Article 20 – Lower-Tier Subcontractors

- 20.1 Any Lower Tier Subcontractor shall be bound to Subcontractor to the same extent Subcontractor is bound to Contractor and to the same extent Contractor is bound to Owner pursuant to the Main Contract. This form may be used for Lower Tier Subcontractors and when so used the term "Owner" (in the General Conditions) shall include any entity in privity with Contractor for which Contractor performs work or assumes duties and/or obligations.

Article 21 – Modifications

- 21.1 No modification to, or waiver of any rights under, this Subcontract shall be valid or binding on the parties to this Subcontract unless the same be in writing. Failure of Contractor to insist upon strict performance of any term or condition of this Subcontract, or to exercise any option herein conferred on one or more instances, shall not be construed to be a waiver of such performance or option, or of any other covenants or agreements, on subsequent occasions, but the same shall be and remain in full force and effect.

Article 22 – Disputes

- 22.1 **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 by the terms of the Main Contract and by any and all procedures and resulting decisions, findings, determinations, judgements or awards made thereunder, or by an administrative agency, board, court of competent jurisdiction or arbitration. Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses, and other information required by Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of Subcontractor's interest in such claim or dispute.

Subcontractor agrees to be bound by the procedure and final determinations as specified in the Main Contract and agrees that it will not take, or will suspend, any other action or actions (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 or other formal dispute resolution procedure with respect thereto, pending final determination of any dispute resolution procedure between Owner and Contractor. It is expressly understood and agreed that as to any and all claims asserted by Subcontractor in connection with the Project arising from the actions or fault of Owner, Contractor shall not be liable to Subcontractor for any greater amount than Owner actually pays 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 or its agents or design professionals, at the sole option of Contractor, Subcontractor agrees to prosecute such claims in Contractor's name. For any amount recovered or collected (whether through proceedings or settlement) by Subcontractor, Contractor shall be entitled to 10% of such amount received or collected as its mark-up for such claims. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear all expenses thereof including attorneys' fees.

- 22.2 **Arbitration.** 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, the breach thereof, or Work thereunder (for which a dispute resolution procedure is not otherwise provided in the Main Contract), shall be decided by arbitration at Contractor's sole and exclusive option, otherwise all disputes shall be decided by litigation. If Contractor elects arbitration as the binding dispute resolution procedure and the claims alleged in the dispute are quantified at \$1,000,000.00 or below, the same shall be heard by a single arbitrator. To the extent that the damages alleged in the dispute are quantified at more than \$1,000,000.01 then the same shall be heard by a panel of three arbiters. The arbitration proceedings will be administered by the American Arbitration Association (AAA) with arbitrators appointed from the Construction Industry

Panel under the Construction Industry Rules. Any litigation proceedings shall be in Ada County Court, Idaho. Contractor and Subcontractor agree to be bound by any findings and award of such arbitration finally and without recourse to any court of law other than for the enforcement of the arbitrator's decision. As between the parties to this Subcontract, the prevailing party in any arbitration shall be entitled to an award of its attorneys' fees, costs and expert fees incurred. Contractor and Subcontractor expressly grant the arbitrator the authority to award attorneys' fees and costs. Subcontractor further consents to joinder in any arbitration involving the Contractor and Owner.

- 22.3 **Mediation.** As a condition precedent to the hearing of any trial or arbitration, the parties to this Subcontract shall submit any and all disputes between them to non-binding mediation with the assistance of an experienced mediator. The parties shall each designate a representative with full settlement authority who will participate hours in the mediation. The parties shall bear equally all expenses, exclusive of attorneys' fees, associated with the mediation.

Article 23 – Indemnification

- 23.1 A mutually negotiated indemnification Addendum (“Indemnification Addendum”) is attached hereto and marked as Exhibit H, and is incorporated as fully as if set forth herein.
- 23.2 In the event Subcontractor contracts with Lower Tier Subcontractors to perform all or a portion of Work, Subcontractor shall submit to Contractor all required insurance endorsements for each of its Lower Tier Subcontractors.
- 23.3 Subcontractor's indemnity and defense obligations shall survive the termination and/or completion of all Work and this Subcontract.

Article 24 - Miscellaneous

- 24.1 This Subcontract shall be considered to have been made in and shall be interpreted under the laws of the State where the Work is to occur. Notwithstanding anything to the contrary, the site of any arbitration or venue of any lawsuit arising out of this Subcontract or the Work shall be at Ada County, Idaho.
- 24.2 Any written notice required to be given to a party shall be hand-delivered or delivered to the address of that party indicated above. Subcontractor shall comply with all federal, state and local laws, regulations and orders prohibiting discrimination on the basis of race, religion, sex or national origin. This Subcontract represents the final understanding of the parties and Contractor assumes no responsibility for any different understanding or any representations made by any of its officers, agents, or others prior to the execution of this Subcontract unless expressly stated herein.
- 24.3 If either party fails to perform the provisions of this Subcontract, the party at fault agrees to pay all costs incurred to enforce this Subcontract including a reasonable attorneys' fee whether or not arbitration or judicial proceedings are commenced.
- 24.4 Time is of the essence in this Subcontract.
- 24.5 In the event that the Contract Sum is greater than or equal to \$25,000, Subcontractor shall complete the Subcontractor prequalification packet (“Prequalification Packet”), and submit all documents required therein to Contractor prior to performing Work on the Project. If Subcontractor does not qualify for the Project or Work based on information provided in the Prequalification Packet this Subcontract may be voided. Contractor may withhold payment until a completed Prequalification Packet is provided. Subcontractor's company owner(s), officer(s), director(s), and the individual executing this Subcontract (hereinafter referred to as “Guarantor”) hereby personally guarantee to Contractor any and all obligations of the Subcontractor of every kind and character, irrespective of the amount of said obligations. Subcontractor hereby agrees to pay Contractor promptly on demand any sum which may become due to Contractor by the Subcontractor whenever the Subcontractor shall fail to pay the same.
- 24.6 Subcontractor agrees to comply with all Federal, State or other applicable laws or regulations relating to harassment and discrimination. Subcontractor agrees to indemnify and hold harmless Contractor and Owner from all costs, expenses (including legal and accounting fees and associated costs), fines, claims, suits, proceedings and other liabilities that Contractor or Owner incurs as a result of Subcontractor's failing to comply herewith.

Article 25 – Special Provisions

- Exhibit A: Scope of Work, Terms & Conditions
- Exhibit B: Plans, Specifications & Amendments List
- Exhibit C-1: Project Safety Policy
- Exhibit C-2: Project Punch List Protocol

Exhibit D: Subcontractor / Supplier List
Exhibit E-1: Conditional Progress Lien Waiver and Release Upon Payment
Exhibit E-2: Unconditional Progress Lien Waiver and Release Upon Payment
Exhibit E-3: Conditional Final Lien Waiver and Release Upon Payment
Exhibit E-4: Unconditional Final Lien Waiver and Release Upon Payment
Exhibit H: Indemnification Addendum
Exhibit I: **Idaho** Addendum

EXHIBIT A

SCOPE OF WORK, TERMS & CONDITIONS

SUBCONTRACTOR shall provide all labor, equipment and materials for all [INSERT SCOPE OF WORK] as follows:

SCOPE OF WORK: Scope of Work shall be performed strictly per such plans and specifications as revised, unless otherwise stated herein.

**(“Subcontractor”)
Contract Value: (\$)**

This Scope of Work Specifically Includes, but not limited to:

- [INSERT SCOPE OF WORK]

Inclusions:

- [INSERT INCLUSIONS]

Exclusions:

- [INSERT EXCLUSIONS]

Total Amount: (\$)

1. [INSET NOTE]
2. Subcontractor to clean and scrap all of Subcontractor's own work daily.
3. Subcontractor will comply with all applicable laws, including but not limited to OSHA, related to this scope of work.
4. Attendance at weekly Project meetings is required unless directed in writing by Contractor otherwise.

GENERAL SCOPE NOTES:

1. Provide all required submittals within ten (10) days of Subcontract award, unless directed by Contactor in writing otherwise, to Contractor for review. Subcontractor shall not manufacture or install any products without Contractor's approval. All products to be supplied and installed as per manufacturer's recommendations and instructions. Should Project conditions or specified requirements conflict with manufacturer's instructions, consult Contractor to resolve conflict.
2. All required insurance coverage shall be obtained and certificates of insurance certifying it to be in force shall be delivered to Contractor **prior** to the commencement of any Subcontract Work.
3. A Letter of Warranty and all required closeout information for the scope of the Subcontract shall be submitted to Contractor **prior to retention being released.**
4. Subcontractor to provide all supervision, labor, materials and equipment for Subcontractor's Work. All Work to be of the highest quality, and acceptable to Contractor, and Owner's Architect(s) and/or Engineer(s). All Work to satisfy requirements of the State of Idaho, City of Boise, County of Ada , and all other applicable code authorities. All applicable code authorities' requirements supersede drawings, notes, and specifications where applicable at no additional expense to Contractor, Owner, or Owner's Architect(s) and/or Engineer(s).
5. Observe all pertinent safety rules. This is a HARD HAT AREA Project. SDS Sheets and Safety Manuals are required to be on site at Contractor's job site office for the duration of Subcontractor's onsite performance.

TERMS & CONDITIONS OF PAYMENTS

Contractor will make every effort to pay Subcontractor on time if the following procedures are observed. The following forms are included in the Payment Package: “Application for Payment”, “Conditional Progress Lien Waiver and Release Upon Payment”, “Unconditional Final Lien Waiver and Release Upon Payment” and “Schedule of Values” (when applicable).

1. The Payment Package must include the name and address of Subcontractor along with the Project name and a clear description of the Work and/or materials furnished.
2. The Payment Package must be submitted to Contractor's office no later than the 20th of the month. Payment packages received after the 20th will be delayed thirty (30) days being processed for payment.

Initial

Initial

3. All non-discount invoices will be paid and mailed by the 10th day following receipt of payment from Owner, subject to the requirement of Article 4 Payments. Subcontractor acknowledges and accepts that payment from the Owner is a condition precedent to Contractor's obligation to pay. Subcontractor specifically agrees that it is relying upon the Owner's credit (not the Contractor's) for payment, and Subcontractor specifically accepts the risk of nonpayment by the Owner.

4. Work not covered by Subcontract must be authorized by a signed Change Order **PRIOR** to submitting an invoice.

5. A signed and notarized Conditional Progress Lien Waiver and Release Upon Payment must be submitted with each payment application.

6. A signed and notarized Conditional Progress Lien Waiver and Release Upon Payment from each supplier and Lower Tier Contractor must be submitted with each payment application.

7. Contractor reserves the right, at any time, to make an inquiry to other Lower Tier Contractors, and material suppliers to verify that said Lower Tier Contractors and material suppliers are paid regularly as related to Contractor's Project.

8. The Subcontractor / Supplier List is being furnished to Contractor for the express purpose of being able to monitor how the Subcontractor is paying bills to their vendor(s) on this specific Project. If the Subcontractor purchases from any additional vendor(s) not included on the Subcontractor / Supplier List, the Subcontractor must notify Contractor immediately in WRITING. **That, for the purpose of said Subcontract, the omission of any suppliers, materials, or Lower Tier Contractors can be construed as deliberate and constitute fraud.**

9. Questions or differences in the accounting between Subcontractor and Contractor should be brought to Contractor's immediate attention. Unresolved differences will only delay payment.

10. Payment Packages for materials back ordered, materials not stored on job site, or for work not yet performed will not be accepted.

11. Retention will be required on all subcontracts. The retention will be held until Owner accepts the building as complete and Contractor receives payment from Owner. Subcontractor acknowledges and accepts that payment from the Owner is a condition precedent to Contractor's obligation to pay. Subcontractor specifically agrees that it is relying upon the Owner's credit (not the Contractor's) for payment, and Subcontractor specifically accepts the risk of nonpayment by the Owner. At the end of the retention period an Application for Payment, a Conditional Final Lien Waiver and Release Upon Payment from Subcontractor, and an Unconditional Final Lien Waiver and Release Upon Payment from all Suppliers and Lower Tier Contractors must be submitted to obtain payment of retention. Retention will be released within ten (10) days after Contractor has received final payment from Owner.

12. If the Project requires Certified payroll, reports are required to be sent to Contractor on a monthly basis. If there is a third-party subcontractor that is contracted with you, your company is responsible to forward their reports to Petra on a monthly basis also. Payments will be held until all required documents are received.

13. Petra, Inc. - Idaho looks forward to doing business with your company. If the above procedures are closely observed, Payment Packages will be processed and paid with minimal delays. We thank you for your cooperation.

EXHIBIT B

DESIGN TEAM

ARCHITECTURAL:

Lombard / Conrad
472 W Washington St
Boise, ID 83702
(208)-345-6677

MECHANICAL:

N/A

CIVIL:

N/A

ELECTRICAL:

N/A

STRUCTURAL:

N/A

PLANS, SPECIFICATIONS & AMENDMENTS LIST

See Next Page

EXHIBIT B
PLANS, SPECIFICATIONS & AMENDMENTS LIST

PLANS

<u>Sheet No.</u>	<u>Description</u>	<u>Date</u>
A2.0	Floor 1 – Demolition Plan	7/16/2025
A2.1	Floor 1 – Wall Finish Plan	7/16/2025
A2.2	Floor 1 – Carpet Finish Plan	7/16/2025
A2.3	Reflected Ceiling Plans	7/29/2025
A6.0	Interior Elevation – Grand Ballroom	7/16/2025
A6.1	Interior Elevations – Junior Ballroom	7/16/2025
A6.2	Interior Elevations – Hallways	7/29/2025

EXHIBIT C-1

PROJECT SAFETY POLICY

This construction Project necessarily entails certain risks and hazards. Subcontractor must take active steps to ensure every safety precaution associated with the performance of Subcontractor's Work is strictly followed. Subcontractor's supervisors and/or employees must understand how integral accident prevention is to performance. Since more injuries occur because of unsafe acts than as a result of unsafe conditions, Subcontractor must strive to make safe work habits an integral part of daily job performance.

Contractor's management considers accident prevention the most important aspect of this Project. Contractor desires to maintain and support safe, healthful working conditions. Subcontractor must always follow operating practices that safeguard both employees and the public at the job site.

Subcontractor's mandatory requirements are as follows:

1. Subcontractor will monitor job site safety for Subcontractor's trade and scope of Work. This includes but is not limited to:

- A. Enforcing safety rules and/or regulations.
- B. Taking disciplinary action when necessary.
- C. Providing adequately trained supervision for Subcontractor's scope of the Project.
- D. Conducting and documenting weekly safety training.
- E. Providing documentation thereof upon the request of Contractor and/or an authorized inspector.
- F. Inspecting the job site prior to commencing Work.
- G. Inspecting the job site regularly throughout the scope of Work.
- H. Providing SDS and any other information regarding safety to Contractor's Project Superintendent.
- I. Reporting all safety violations and accidents to Contractor's Project Superintendent.
- J. Maintaining all mandated Federal, State and Local documentation.
- K. Providing a copy of Subcontractor's Safety Manual to Contractor's Project Superintendent for the duration of Subcontractor's performance. Submission of such Safety Manual shall in no way relieve Subcontractor from the obligations set forth under this contract.
- L. Providing appropriate personal protective safety equipment to Subcontractor's employees.
- M. Requiring the use of said personal protective safety equipment at all appropriate times.
- N. Contractor's job sites are hardhat required areas at all times during construction.

2. Subcontractor shall comply with Contractor's Safety Program. Subcontractor, its Project supervision and personnel shall attend and participate in safety meetings and programs as required by Contractor.

3. Failure to comply with all safety requirements may result in a worker's removal from the job site. The removal of one or more of Subcontractor's workers does not negate Subcontractor's obligation to provide an adequate number of workers to complete Subcontractor's scope of Work in accordance with established schedules.

4. Subcontractor shall be liable for, and shall reimburse Contractor for any and all costs, penalties, losses or damages that Contractor may incur, including without limitation any attorney's fees, court costs, expert fees and judicial awards as a result of Subcontractor's violation of Federal, State or Local safety regulations, whether said violation is willful or otherwise. Said liability includes but is not limited to Federal, State or Local Occupational Safety and Health Administration (OSHA) or equivalent requirements. It is Subcontractor's responsibility to know and to understand said requirements as they relate to the scope of Work conducted by Subcontractor.

5. Repeated safety violations may result in the permanent removal of Subcontractor from the Project. Should Subcontractor be replaced as a result of repeated safety violations Subcontractor will be held liable for the difference in price between their contract and the price of the replacement Subcontractor.

EXHIBIT C-2

PROJECT PUNCHLIST PROTOCOL

In order to insure an efficient and expeditious completion of the Project Punch List, Contractor and Subcontractor agree to the following protocol.

A. USE OF CONTRACTOR’S PROJECT MANAGEMENT SOFTWARE: During construction, Contractor and Subcontractor will manage deficiencies and punch list items through Contractor’s project management software, to which Subcontract will be given access. Issuance of these items, communication regarding them, and tracking to completion will be done through this software. Subcontractor is responsible to receive, provide updates on status, and verify completion of deficiencies and/or punch list items through this software.

B. DEFICIENCIES: During construction, the Project Team may periodically issue to the Subcontractor a Deficiency List (or “observations”) of items currently in need of correction.

All Deficiency List items and observations are to be corrected within 72 hours of notification to Subcontractor. If after the documented time period Deficiency List items are still not corrected, Contractor may issue Subcontractor a 48 Hour Notice to Comply. After expiration of this notice period Contractor may suspend all payments due to Subcontractor non-compliance and arrange correction of the deficient items at the sole expense of the Subcontractor.

C. PUNCH LIST: The Punch List(s) shall be distributed to Subcontractor from Contractor. Additionally, when Punch List items are received from the Architect, Contractor will distribute those to Subcontractor as well.

All Punch List items are to be corrected within 72 hours of notification to Subcontractor. If after the documented time period Punch List items are still not corrected, Contractor may issue Subcontractor a 48 Hour Notice to Comply. After expiration of this notice period Contractor may suspend all payments due to Subcontractor non-compliance and arrange correction of the deficient items at the sole expense of the Subcontractor.

Subcontractor must notify Contractor in writing within 24 hours if any of the Punch List items cannot be completed within 72 hours of receipt of the Punch List. Written notice to Contractor does not release the Subcontractor from responsibility to complete all Punch List items within the 72-hour time frame.

At the conclusion of the 72-hour time frame, the Project Superintendent and the Project Manager will confirm with Owner’s Representative that Subcontractor’s Punch List items have been satisfactorily completed.

Initial

Initial

EXHIBIT D

SUBCONTRACTOR SUPPLIER LIST

Subcontractor Name: _____

The following is a true, accurate, and complete list of all suppliers/vendors, subcontractors, and/or sub-subcontractors from whom we will be purchasing or have purchased either labor or materials or subcontracted items for the furtherance of our contract or purchase order from Petra, Inc. - Idaho for the Boise Centre West Refresh Phase 1 located at 850 W Front St. Boise, ID. We are furnishing this list for the express purpose of Petra, Inc. - Idaho being able to monitor how we are paying our bills to our vendors on this specific Project. If we purchase from any additional vendors not included on this list, we will immediately notify Petra, Inc. - Idaho in writing those additional vendors when we place our orders. That, for the purpose of said contract, the omission of suppliers, materials or Lower Tier Subcontractors can be construed as deliberate and constitute fraud.

Date _____

Signature _____

Position _____

SUPPLIER BUSINESS NAME	CONTACT NAME	ADDRESS, CITY, STATE	PHONE #	ESTIMATED AMOUNT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(Attach separate sheet if additional space is required)

TOTAL ESTIMATED SUPPLIER AMOUNT \$ _____

Initial

Initial

SUBCONTRACTOR BUSINESS NAME	CONTACT NAME	ADDRESS, CITY, STATE	PHONE #	ESTIMATED AMOUNT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(Attach separate sheet if additional space is required)

TOTAL
ESTIMATED
SUBCONTRACT
OR AMOUNT \$ _____

Initial

Initial

EXHIBIT E-1

CONDITIONAL PROGRESS LIEN WAIVER AND RELEASE UPON PAYMENT

Upon receipt by the undersigned of a check from: Petra, Incorporated in the sum of \$_____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of Boise Centre West Refresh Phase 1 located at 850 W. Front St. Boise ID to the following extent. This release covers a progress payment for labor, services, equipment and material furnished to Petra, Incorporated through _____(date) only and does not cover any retentions retained before or after the release date; extras, disputed items, and any items furnished before the release date for which payment has not been received; extras or disputed items furnished after the release date. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights including rights between parties to the contract based upon a recession, abandonment or breach of the contract or the right of the undersigned to recover compensation for furnished labor, services, equipment or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Company Name: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Note to Lien Claimant: Signing this form has legal implications. If you have any questions regarding how to complete this form or whether it has been properly completed, you should consult an attorney.

Subscribed and sworn before me this _____ day of _____, 20 _____

Notary Public: _____

State of: _____ County of: _____

My Commission expires: _____

Seal

Initial

Initial

EXHIBIT E-2

UNCONDITIONAL PROGRESS LIEN WAIVER AND RELEASE UPON PAYMENT

The undersigned has been paid and has received progress payment in the sum of \$_____ for labor, services, equipment or material furnished to Petra, Incorporated on the job of **Boise Centre West Refresh Phase 1** located at 850 W Front St. Boise, ID and does hereby release any mechanic's lien, stop notice or bond right that the undersigned has on the above referenced job to the following extent. This release covers progress payments for labor, services, equipment, or material furnished to Petra, Incorporated through _____(date) only and does not cover any retention retained before or after the release date; extras, disputed items, and any items furnished before the release date for which payment has not been received; extras or disputed items furnished after the release date. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payments.

Company Name: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

NOTE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY FOR THE AMOUNT INDICATED ABOVE ONLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IN, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

Note: This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. It is not effective until the check that constitutes payment has been properly endorsed and cleared by the bank.

Subscribed and sworn before me this _____ day of _____, 20_____

Notary Public: _____

State of: _____ County of: _____

My Commission expires: _____

Seal

Initial

Initial

EXHIBIT E-3

CONDITIONAL FINAL LIEN WAIVER AND RELEASE UPON PAYMENT

Upon receipt by the undersigned of a check from Petra, Incorporated in the sum of \$_____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of Boise Centre West Refresh Phase 1 located at 850 W Front St. Boise, ID . This release covers the final payment to the undersigned for all labor, services, equipment or material furnished on the job, except for disputed claims for additional work in the amount of \$_____.

Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Company Name: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Note to Lien Claimant: Signing this form has legal implications. If you have any questions regarding how to complete this form or whether it has been properly completed, you should consult an attorney.

Subscribed and sworn before me this _____ day of _____, 20 _____

Notary Public: _____

State of: _____ County of: _____

My Commission expires: _____

Seal

Initial

Initial

EXHIBIT E-4

UNCONDITIONAL FINAL LIEN WAIVER AND RELEASE UPON PAYMENT

The undersigned has been paid in full for all labor, services or material furnished to Petra, Incorporated and does hereby waive and release any and all rights to mechanic’s lien, stop notice, or any right against a labor and material bond on the job of Boise Centre West Refresh Phase 1 located at 850 W. Front St. Boise, ID 83702.

Company Name: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Note: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.

Subscribed and sworn before me this _____ day of _____, 20 _____

Notary Public: _____

State of: _____ County of: _____

My Commission expires: _____

Seal

Initial

Initial

EXHIBIT H

INDEMNIFICATION ADDENDUM

In addition to any other defense, indemnify or hold harmless obligation imposed on Subcontractor by the Subcontract, Main Contract or applicable law, Subcontractor shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the Owner, Contractor, and their respective directors, officers, employees, parents and subsidiaries of any tier, representatives, agents, successors and assigns, and any and all representatives, agents, directors, officers, employees or any of the foregoing (collectively, "Indemnified Parties") from and against any and all losses, costs, expenses, damages, injuries, claims, demands, obligations, liabilities, judgments, fines, penalties, interest and causes of action, including without limitation administrative and legal costs and reasonable attorneys' fees ("Damages") involving the following:

1. Any actual or alleged infringements of any patent, trademark, copyright or other intellectual property or proprietary right by Subcontractor, its Lower-Tier Subcontractor or the Work furnished or performed by Subcontractor;
2. Death or bodily injury to persons or damage to property arising out of the fault of Subcontractor, or the fault of Subcontractor's agents, representatives or subcontractors, including but not limited to, Subcontractor's employees, consultants, sub-subcontractors and suppliers at any tier, whether or not such death or bodily injury to persons or damage to property arises out of the fault of any of the Indemnified Parties but in such event only to the extent such death or bodily injury or damage to property arises out of the fault of Subcontractor, or the fault of Subcontractor's agents, representatives or subcontractors, including but not limited to Subcontractor's employees, consultants, sub-subcontractors and suppliers at any tier; Injury or death to any person, or damage to or destruction of any property (including loss of use thereof), or any other damage or loss by whomsoever suffered resulting from or arising out of or in connection with the Work, whether or not any such damage or loss is due to the negligence of any kind or character or other fault of any one or more of the Indemnified Parties or breach of any statutory duty, contractual obligation or other obligation by one or more of the Indemnified Parties;
3. Any failure of the Subcontractor or the Work to comply with the requirements of the Subcontract;
4. Any lien, claim, security interest or other encumbrance made or filed against: (a) the Work, Project site and the Project; any and all interests and estates therein and any and all improvements and materials places on the Project site by Subcontractor or its Lower Tier Subcontractors; or (b) any payment, performance, lien prevention, or lien discharge bond posted by any of the Indemnified Parties;
5. Any hazardous material or waste, toxic substance, pollution or contamination brought to or generated on the Project site by Subcontractor or its Lower-Tier Subcontractor, or used, handled, transported, stored, removed, remediated, disturbed or disposed of by Subcontractor or its Lower- Tier Subcontractor; and
6. Any other claim or demand asserted against Contractor as a result or an act, omission, services, Work, product or fault of Subcontractor or Subcontractor's agents, representatives or subcontractors, including but not limited to Subcontractor's employees, consultants, Lower Tier Subcontractors and suppliers at any tier.

The foregoing obligations of Subcontractor shall not be affected or limited in any way by any insurance required of or provided to Subcontractor under the Subcontract. If a temporary restraining order or preliminary injunction is granted in any proceeding involving a claim, demand or cause of action covered by clause (1) above, Subcontractor shall make every reasonable effort at its own expense to secure the suspension of the restraining order or injunction by giving a satisfactory bond or otherwise. If any portion of the Work is held in such proceeding to constitute an infringement and the use thereof is permanently enjoined, Subcontractor shall at its own expense promptly secure a license authorizing Contractor's and Owner's continued use of such Work, or, if Subcontractor is unable to secure such a license, replace the affected Work or modify it so that it is qualified as non-infringing. Subcontractor shall not be required to indemnify, defend and hold harmless any Indemnified Party for Damages resulting, or to result from that Indemnified Party's sole negligence or intentional misconduct.

To the fullest extent permitted by law, Subcontractor shall furthermore defend all Indemnified Parties against any and all Damages that are alleged to have occurred in whole or in part by the result of or due to the act, omission, negligence or fault of Subcontractor, its employees, consultants, agents, representatives, Lower Tier Subcontractors and suppliers at any tier.

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.

Without limiting the generality of the foregoing, Subcontractor's obligations of indemnity and defense specifically apply, to the fullest extent permitted by law, to claims arising out of the injury or death to Subcontractor's own employees, and Subcontractor's obligations thereof are not limited by provisions of any Worker's Compensation or similar statute and Subcontractor waives any immunity thereunder as to these obligations. Further, except as expressly required by law, no indemnification or defense obligation under the Subcontract shall be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third-party under workers' compensation acts; provided Subcontractor's waiver of immunity by the provisions of this paragraph extends only to claims against Subcontractor by Contractor, and does not include, or extend to, any claims by Subcontractor's employees directly against Subcontractor.

Subcontractor's obligations under this Section apply to any claims, demands, suits and other matters covered by this Section even though such claims may prove to be false, groundless or fraudulent.

In the event any claim for Damages, by a third-party arising from, resulting from, or connected with the services to be performed under the Subcontract by Subcontractor (its agents, and Lower Tier Subcontractors and suppliers of any tier) is made against Contractor, before the expiration of any limitation imposed by any Applicable Law (which is defined to include any applicable statute of limitations or repose), and even though such claim may prove to be false, groundless or fraudulent, Subcontractor agrees that its indemnity and defense obligations to Contractor under the Subcontract shall survive any limitations imposed by any Applicable Law. In such event, notwithstanding any provision to the contrary in any Applicable Law, Contractor's claim for indemnity or defense against Subcontractor shall not accrue, and any applicable statute of limitation or repose shall not begin to run, until Contractor's payment of (i) a final judgment; (ii) an arbitration award; or (iii) a settlement of any Damages.

EXHIBIT I
IDAHO ADDENDUM

Article 4 - Payments is amended to include the following:

If the Project is located within the State of Idaho but is not governed by Idaho's Public Work Act, then progress payments will be made by Contractor to Subcontractor for Work actually performed and satisfactorily completed according to certified and approved billings timely received by Contractor from Subcontractor in accordance with the Contract Documents:

- (i) It is expressly agreed that as a condition precedent to any payment obligation by Contractor to Subcontractor hereunder the Contractor must first receive a corresponding payment from the Owner for the Work of Subcontractor for which payment is sought. Subcontractor specifically agrees that it is relying upon the Owner's credit (not the Contractor's) for payment, and Subcontractor specifically accepts the risk of nonpayment by the Owner
- (ii) To the extent that payment is received from Owner, and as a condition precedent to Contractor's obligation to pay Subcontractor, progress payments to Subcontractor for satisfactory performance of Subcontractor's Work shall be made ten (10) calendar days after receipt by Contractor of payment from Owner for such Subcontractor's Work and after receipt of all items required from Subcontractor prior to payment.
- (iii) Any billing or estimate submitted by Subcontractor under this Subcontract shall be in strict accordance with the provisions of this Subcontract, shall be in the form and detail prescribed by Contractor, shall be accompanied by appropriate notarized conditional waivers of any construction, mechanic's or materialman's lien from Subcontractor and from each person performing labor or supplying materials, products, equipment or services used in the Work, and shall be personally certified by Subcontractor's principal executive officer, evidenced by his or her signature and notarized verification, that:
 - (1) the signing officer has reviewed the billing or estimate;
 - (2) based on the officer's knowledge, the billing or estimate does not include any amounts for which Subcontractor is not entitled to payment under the terms of this Subcontract and mutually accepted modifications;
 - (3) based on such officer's knowledge, the billing or estimate fairly present in all material respects the amounts due and unpaid to Subcontractor as of the date stated; and
 - (4) that as a condition precedent to any payment obligation by Contractor to Subcontractor hereunder the Contractor must first receive a corresponding payment from the Owner for the Work of Subcontractor for which payment is sought.

Such certification is mutually agreed to be a material provision of this Subcontract.

- (iv) Nothing in this Subcontract shall obligate Contractor to pay or to request payment for amounts withheld by the Owner, unsatisfactory work progress, defective construction work, materials or products not remedied, or disputed work, materials or products, nor in the event of Subcontractor's failure to comply with material provisions of this Subcontract, third-party claims filed or which may be filed relative to the Work, Subcontractor's failure to make timely payments for labor, equipment, materials and products, damage to Contractor, another subcontractor, the public or the Owner, reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract Amount, retainage not due or other reasons set forth in the Contract Documents.

If the Main Contract is a public contract for a public improvement and owned by a public entity within the state of Idaho:

- (i) To the extent that Subcontractor is satisfactorily performing pursuant to the Subcontract, Contractor shall pay Subcontractor for satisfactory performance under this Subcontract within ten (10) days of such amounts actually being received and which were included in Contractor's request for payment to the public entity for Subcontractor's Work. Contractor shall pay to the Subcontractor an interest penalty on amounts due in the case of each payment not made within thirty (30) days after actual receipt of payment from the public entity for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made. Interest shall be computed at the federal fund rate plus 2%. Such interest is not subject to annual compounding.

- (ii) Subcontractor shall pay all Lower Tier Subcontractors, suppliers, sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to Subcontractor any amounts actually received which were included in its pay application to Contractor in the same manner that Contractor is obligated to pay Subcontract pursuant to this Exhibit I (i).
- (iii) Contractor shall use the procedures set forth in this Subcontract for processing payments, as provided in this Subcontract, during the entire term of this Subcontract.
- (iv) Subcontractor shall include in each of its subcontracts, and with each of its Lower Tier Subcontractors, and purchase orders a payment clause and a default interest rate of not less than federal fund rate plus 2%. Subcontractor shall also require each of its subcontractors, Lower Tier Subcontractors, and suppliers to include such clauses in their agreements with each of their Lower Tier Subcontractors, sub-subcontractors or suppliers.
- (v) Notwithstanding the foregoing, Contractor shall retain 5% of any amount earned by Subcontractor as retention until the Subcontractor's Work is completely and satisfactorily accepted by the public entity. To the extent that the public entity has chosen to release retainage above the 5% withhold, Contractor shall pay Subcontractor such released retainage but only to the extent that Subcontractor has satisfactorily performed pursuant to the Subcontract, Contractor shall only be obligated to pay Subcontractor for satisfactory performance under this Subcontract.