



Date

Re: Master Subcontract Agreement

Dear \_\_\_\_\_ :

We look forward to working with you! Enclosed is your Master Agreement Package. Please have a company officer, owner or duly authorized individual complete Article 1.5, initial Article 6.7.3 and sign where indicated on page 13.

Within 10 days, please return the following items:

1. **An executed copy of the Master Agreement Package**, signed as indicated above.
2. **A copy of your Accident Prevention Plan.**
3. **A Certificate of Insurance, including all endorsements.** Forward the Insurance Exhibit included in the package to your agent so that they can issue a certificate (including all applicable endorsements) that meets these requirements. The certificate and applicable endorsements can be emailed to [insurance@foushee.com](mailto:insurance@foushee.com). (A separate Insurance Requirements attachment is included with this package so that you can easily forward these requirements to your broker.)

**IMPORTANT:** Any changes to the contract language must be in writing and will not be valid until reviewed and initialed by Foushée's authorized representative.

Sincerely,

Representative Name  
Representative Job Title  
Enclosures



**Master Agreement**

THIS AGREEMENT between FOUSHÉE AND ASSOCIATES COMPANY, INC. hereinafter called the "Contractor" and \_\_\_\_\_, hereinafter called the "Subcontractor" as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_. The Contractor and Subcontractor agree as follows:

**ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES**

§ 1.1 This Master Agreement shall be effective for one year after the date first written above ("Date of this Master Agreement.")

§ 1.2 This Master Agreement shall apply to all Work Orders agreed to by the parties within the term of this Master Agreement until completion of the Work Order. In the event of a conflict between terms and conditions of this Master Agreement and a Work Order, the terms of the Work Order shall take precedence for the Work provided pursuant to the Work Order.

§ 1.3 This Master Agreement will renew on an annual basis, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Work Orders under this Master Agreement are completed or terminated.

§ 1.4 The Contractor identifies the following representative authorized to act on the Contractors' behalf with respect to this Master Agreement:

Representative Name  
Foushée and Associates Company, Inc.  
P.O. Box 3767  
Bellevue, WA 98009  
425-746-1000  
Representative Email Address

§ 1.4.1 In each Work Order, the Contractor will identify a representative authorized to act on the Contractors' behalf with respect to the Work Order.

§ 1.5 The Subcontractor identifies the following representative authorized to act on the Subcontractor's behalf with respect to this Master Agreement:

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§ 1.5.1 In each Work Order, the Subcontractor will identify a representative authorized to act on behalf of the Subcontractor with respect to the Work Order.

**ARTICLE 2 WORK ORDERS**

§ 2.1 The Contractor is not required to issue any Work Orders under this Master Agreement.

§ 2.2 The Subcontractor may decline to accept any Work Order issued by the Contractor.

§ 2.3 The Subcontractor shall execute the Work set forth in each agreed upon Work Order, consistent with Exhibit 3 – Subcontract Work Order Template. Each Work Order shall state the name, location, and detailed description of the Project; identify the Owner and Architect; state the Subcontract Sum; describe the Subcontractor's Work; and enumerate the Subcontract Documents.

§ 2.4 The Contractor shall make the Subcontract Documents available to the Subcontractor prior to execution of the Work Order, and thereafter, upon request. The Contractor may charge the Subcontractor for the reasonable cost to reproduce the Subcontract Documents provided to the Subcontractor.

**ARTICLE 3 SUBCONTRACT DOCUMENTS AND SUBCONTRACT**

§ 3.1 The Subcontract Documents are enumerated in each Work Order and consist of (1) this Master Agreement; (2) the Prime Contract, as defined in a Work Order, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) the Work Order executed by the Contractor and Subcontractor (including, if applicable, Supplementary and other Conditions applicable to the Work Order); (4) all Drawings, Specifications, and Addenda issued in connection with the Work Order; (5) other documents listed in the Work Order; and (6) Modifications issued after execution of the Work Order in accordance with the provisions of Article 7. These form the Subcontract and are as fully a part of the Subcontract as if attached to this Master Agreement or repeated herein.

§ 3.2 The Subcontract Documents for each Work Order form a separate Subcontract for construction of the Subcontractor's Work ("the Subcontract"). The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.

§ 3.3 The Subcontract may be amended or modified only by a Modification. A Modification is a written amendment to the Subcontract signed by both parties, or as otherwise described in, and in accordance with the provisions of, Article 7.

§ 3.4 The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

#### **ARTICLE 4 MUTUAL RIGHTS AND RESPONSIBILITIES**

The Contractor and Subcontractor shall be mutually bound by the terms of this Master Agreement and, to the extent that the provisions of the Prime Contract, as defined in a Work Order, apply to this Master Agreement and to the Work of the Subcontractor, the Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor, under the Prime Contract, as defined in a Work Order, assumes toward the Owner and the Architect. This includes, without limitation, all terms relating to charges, differing site conditions, variation in quantities, changes, extra work, audits, default, termination, and all provisions of any disputes terms. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor that the Owner, under the Prime Contract, as defined in a Work Order, has against the Contractor. Where a provision of the Prime Contract, as defined in a Work Order, conflicts with a provision of this Master Agreement, the provision imposing the greater duty or obligation on the Subcontractor shall govern.

#### **ARTICLE 5 CONTRACTOR**

##### **§ 5.1 General**

§ 5.1.1 The Contractor is the person or entity identified as such in this Master Agreement and is referred to throughout the Subcontract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 5.1.2 Reserved.

##### **§ 5.2 Services Provided by the Contractor**

§ 5.2.1 Promptly after execution of a Work Order, the Contractor shall provide the Subcontractor with scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction schedules and additional scheduling details.

##### **§ 5.3 Communications**

§ 5.3.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects the performance of the Subcontract and that becomes available to the Contractor subsequent to execution of the Subcontract.

§ 5.3.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 5.3.3 Reserved.

§ 5.3.4 If hazardous materials or substances are being used on the site by the Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than the Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Contractor shall, prior to delivery to the Project site or exposure of the Subcontractor's employees to such material or substance, give notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 5.3.5 Reserved.

§ 5.3.6 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein. If the Contractor does not have such information, the Contractor shall request the information from the Owner and promptly furnish the information received from the Owner to the Subcontractor.

##### **§ 5.4 Claims by the Contractor**

§ 5.4.1 Liquidated damages, if provided for in the Prime Contract, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of the applicable Subcontract.

§ 5.4.2 The Contractor's Claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials.

##### **§ 5.5 Contractor's Remedies**

If the Subcontractor defaults or neglects to carry out the Work in accordance with the Subcontract and fails within forty-eight (48) hours after receipt of notice from the Contractor to commence and continue correction of such default or neglect with diligence and

promptness, the Contractor may, without prejudice to other remedies the Contractor may have, remedy such default or neglect and withhold, in accordance with Section 10.1.9, the reasonable cost thereof from current or future payments due the Subcontractor. If payments due to the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor. To remedy such default or neglect, Contractor shall have full power, without process of law, to take over and complete said work at Subcontractor's expenses, including the use of Subcontractors equipment and materials. In addition to the remedies specified above, Contractor reserves all other rights provided by law including the language of the Prime Contract, as defined in a Work Order, against Subcontractor to recover damages from Subcontractor or its surety for the default. No further payments shall be made to Subcontractor until the work is completed and Contractor has determined the extent of all costs incurred for performing Subcontractor's work.

## **ARTICLE 6 SUBCONTRACTOR**

### **§ 6.1 General**

The Subcontractor is the person or entity identified as such in this Master Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed in the jurisdiction where the Project is located. Subcontractor shall perform, supervise, and direct the Work in compliance with the Subcontract Documents, industry standards, applicable local, state, and federal laws and regulation, and using Subcontractor's best skill and attention; provided, however, if a higher standard is required to conform to requirements of good and generally accepted construction practices, the Work shall comply with such higher standard. Subcontractor shall be solely responsible for construction safety and for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Subcontractor shall comply with all reasonable requirements of Contractor as to means, methods, techniques, sequences and procedures, while conforming with and giving precedence at all times to all safety responsibilities under the Subcontract Documents.

### **§ 6.2 Execution and Progress of the Work**

**§ 6.2.1** For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of the Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Master Agreement. Subcontractor shall provide a list of Sub-subcontractors and Suppliers and their contact information for any contract or materials valued over \$5,000. (Refer to Exhibit C in Work Order)

**§ 6.2.2** The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in, or interference with the Work of the Contractor, other subcontractors, the Owner, or Separate Contractors.

**§ 6.2.2.1** Subcontractor shall, upon Contractor's request, furnish performance schedules, including periodic updates, showing the time frames when Subcontractor will be performing in conjunction with all other work on the Project. Contractor shall have the right to determine the sequence or work including making changes to Subcontractor's proposed schedule(s.)

**§ 6.2.2.2** Subcontractor shall continuously monitor the project schedule so as to be fully familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project and shall execute the Work in accordance with the requirements of the Project schedule including any revisions thereto.

**§ 6.2.2.3** Should the progress of the Work or of the Project be delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to Contractor including legal fees and disbursements incurred by Contractor (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Subcontractor and its surety hereunder or otherwise) or to the Owner or any damages or additional costs or expenses for which Contractor or the Owner may or shall become liable, the Subcontractor and its surety shall and does hereby agree to compensate Contractor and the Owner for and indemnify them against all such costs, expenses, damages and liability. Further, should the Subcontractor fail to make up for the time lost by reason of such delay, Contractor shall have the right to cause other Subcontractors to work overtime and to take whatever other action it deems necessary to avoid delay in the completion of the Work and of the Project, and the cost and expense of such overtime and/or such other action shall be borne by the Subcontractor.

### **§ 6.2.3 Submittals**

**§ 6.2.3.1** The Subcontractor shall submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors. Approval of the submittal does not relieve the Subcontractor of responsibility for compliance with all requirements of the Prime Contract, as defined in a Work Order, and the Subcontract or be deemed to authorize deviation or changes in the Subcontract Documents.

**§ 6.2.3.2** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

**§ 6.2.4** The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of the Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 6.2.5 The Subcontractor agrees that the Contractor and the Owner or Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract, as defined in a Work Order. The Owner or Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract, as defined in a Work Order.

§ 6.2.6 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of the Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 6.2.7 The Subcontractor shall take necessary precautions to properly protect the work of the Contractor, Separate Contractors, and other subcontractors from damage caused by operations under the Subcontract.

§ 6.2.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and Separate Contractors whose work might affect the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, as defined in a Work Order, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or Separate Contractors.

§ 6.2.9 By executing a Work Order, Subcontractor warrants that it has familiarized itself, or has been afforded the opportunity to do so, with all site conditions and scope of work, and warrants that it is able to perform the Work encompassed therein.

§ 6.2.10 Before proceeding with the work under a Work Order, Subcontractor will thoroughly field check all previous and surrounding work done by other trades. Failure by Subcontractor to detect or report discrepancies constitutes a waiver of any claims by Subcontractor against Contractor for the recovery of costs, expenses, or damages resulting therefrom.

§ 6.2.11 Time is of the essence with respect to all terms and provisions of this Subcontract.

### § 6.3 Permits, Fees, Notices, and Compliance with Laws

§ 6.3.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of the Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract, as defined in a Work Order.

§ 6.3.2 The Subcontractor shall comply with Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of the Subcontract.

§ 6.3.3 Subcontractor shall have full and exclusive liability for payment of any and all taxes, and contributions for unemployment insurance, retirement benefits, and life pensions and annuities which may now or hereafter be imposed by the United States, any state, municipality or any labor agreement to which Contractor is a party, whether measured by the wages, salaries or other form of remuneration paid to persons employed by Subcontractor, or on some other basis, in connection with the Work.

### § 6.4 Safety Precautions and Procedures

§ 6.4.1 The Subcontractor shall take reasonable safety precautions with respect to performance of the Subcontract. The Subcontractor shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract, as defined in a Work Order. The Subcontractor shall notify the Contractor immediately of any injury or incident to an employee or agent of the Subcontractor which occurred at the site. Subcontractor shall further comply with all requirements included in Exhibit 4 - Safety Addendum and Exhibit 2 - Subcontractor General Scope Requirements.

§ 6.4.2 If hazardous materials or substances are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors, or anyone directly or indirectly employed by them, and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Subcontractor shall, prior to delivery to the Project site or exposure of the Contractor, other subcontractors, and other employers on the site to such material or substance, give notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with the laws by the Contractor, other subcontractors, and other employers on the site.

§ 6.4.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay, and remobilization, which adjustments shall be accomplished as provided in Article 7 of this Master Agreement.

§ 6.4.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 6.4.3 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible

property (other than the Work itself) except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 6.4.5** The Subcontractor shall reimburse the Contractor for the cost and expense the Contractor incurs (1) for remediation of a hazardous material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 6.4.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

#### **§ 6.5 Cleaning Up**

**§ 6.5.1** The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under the Subcontract. At the end of each work shift and at Subcontractor's expense, the Subcontractor shall promptly remove all excess material, tools, structures, and equipment, which may have been brought on the premises, or erected by the Subcontractor. Egress pathways must remain clear at all times. In the event of the failure of the Subcontractor to do so, the Contractor may, after 24 hours' notice to the Subcontractor, clean up the premises at the cost and expense of the Subcontractor. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

#### **§ 6.6 Warranty**

**§ 6.6.1** The Subcontractor warrants to the Owner, Architect, and Contractor that materials, systems, and equipment furnished under the Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will strictly conform to the requirements of the Subcontract Documents, will be of good quality, and will be free from defects and faults, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements as reasonably determined by Contractor will be considered defective. Further, Subcontractor warrants that irrespective of the specification of materials, equipment, or systems in the Subcontract Documents, the materials, equipment and systems furnished by Subcontractor are appropriate for the purposes specified and are safe for the applications implicit in the Subcontract Documents. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished or to be furnished.

**§ 6.6.2** Subcontractor is responsible for and shall bear the risk of loss for any damage to the Subcontractor's work, including but not limited to materials, materials in transit and stored, supplies and equipment, and shall promptly replace all such damaged work, supplies or materials. Subcontractor shall guarantee its work to the same extent that Contractor is obliged to guarantee its work per all provisions of the contract documents, but in no event shall such guarantee be less than one year from the date of substantial completion. Subcontractor shall indemnify the Contractor and defend and save it harmless from any liability for damage to the work, materials (whether or not incorporated into the work), supplies, equipment or property of Owner. Contractor or others on the project, if such damage is directly or indirectly caused, occasioned or contributed to, in whole or in part, any act or omission of Subcontractor or anyone acting under its direction, control or in its behalf in connection with or incident to the work.

**§ 6.6.3** All material, equipment, or other special warranties required by the Subcontract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the Subcontract Documents.

**§ 6.6.4** In addition to its other warranty obligations above and elsewhere in the Subcontract Documents, for a period of one (1) year after the date of substantial completion of the Project, or for such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Subcontract Documents, and at the Contractor's sole election, Subcontractor shall promptly correct, repair, or replace any portion of the Work that is the subject of a warranty claim. In the event Subcontractor has a duty to correct or replace the Work pursuant to this warranty, then as to the specific affected area or item or any portion of the Work, this warranty obligation shall be extended for one (1) year from the date of the correction or replacement of such specific affected area or item. Contractor shall have the right to use the building systems and equipment prior to substantial completion for construction purposes without affecting any warranty herein benefiting Owner and/or Contractor. If there are any special requirements or costs necessitated by this provision, these costs shall be included in Subcontractor's bid or specifically identified on the bid. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation that Subcontractor might have under the Subcontract Documents. The establishment of the time period of one (1) year after Substantial Completion of the Project or such longer period of time as may be prescribed by any laws or by the terms of any applicable special guarantee required by the Subcontract Documents relates only to the specific obligation of Subcontractor to correct the Work and has no relationship to the time within which Contractor may seek to enforce Subcontractor's obligation to comply with the Subcontract Documents, nor to any other warranty obligations, nor to the time within which proceedings may be commenced to establish Subcontractor's liability for loss or damage arising out of any errors, omissions or negligence by Subcontractor in connection with the design or construction of the Work.

**§ 6.6.5** The warranties contained in Section 6.6 are in addition to and not in limitation of any other warranty or remedy required or available under any laws or the Subcontract Documents.

**§ 6.6.6** Subcontractor agrees that any warranty under the Subcontract Documents shall be fully assignable and transferable to any third party owner (either the original or subsequent purchaser/owner) of the Project during the term of the warranty. Subcontractor agrees to execute any consent, documents or certifications necessary to effectuate the transfer or assignment of any warranties pursuant to this provision. Subcontractor's consent shall not be withheld.

**§ 6.7 Indemnification**

**§ 6.7.1** To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Owner, Contractor, and agents, officers, directors, partners, members, shareholders, affiliates, and employees of any of them (each, an "Indemnitee" and collectively, the "Indemnitees") from and against claims, damages, losses, demands, obligations, actions, cause of action, costs, liabilities, and expenses, including but not limited to attorney's fees, expenses, costs and other legal and dispute resolution expenses, arising out of or resulting from performance or non-performance of the Subcontract, Subcontractor's Work under the Subcontract, or the intentional misconduct of Subcontractor's employees (all of the foregoing being referred to as "Indemnity Claims"). Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.7. Subcontractor's obligations to defend and indemnify (i) include (without limitation) all Indemnity Claims, whether occurring before, during or after the performance of the Subcontract, which arise from or relate to the activities, products, actions or omissions of Subcontractor, its sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable (collectively, the "Subcontractor Parties"); (ii) shall not be limited in any way by any insurance required to be carried by Subcontractor under the Subcontract Documents; (iii) specifically and expressly include (without limitation) any Indemnity Claims caused in part by the negligence (whether active or passive) or other misconduct of any Indemnitee; and (iv) shall be triggered by the assertion of an Indemnity Claim against any Indemnitee without the requirement that it first be determined that Subcontractor or any Subcontractor Party was negligent or otherwise at fault or that the Indemnity Claim has any merit.

**§ 6.7.2** Notwithstanding the provisions of Section 6.7.1 above, and pursuant to RCW 4.24.115, Subcontractor is not obligated to indemnify an Indemnitee for an Indemnity Claim which is ultimately determined, upon final adjudication, settlement, or other resolution of the Indemnity Claim ("Finally Determined"), to have been caused solely by the active negligence or willful misconduct of that Indemnitee; provided, however, that this exception does not limit or relieve Subcontractor's defense obligations prior to the Indemnity Claim being so Finally Determined or Subcontractor's obligations to indemnify all other Indemnitees which are not Finally Determined to have participated in such negligence or misconduct. Subcontractor's duty to indemnify Indemnitees under this Section 6.7 as to an Indemnity Claim resulting from the concurrent negligence of an Indemnitee and the Subcontractor Parties shall apply only to the extent of negligence of Subcontractor or Subcontractor's agents or employees. Subcontractor shall bear the financial responsibility for defense of Indemnitees until negligence is Finally Determined.

**§ 6.7.3** Subcontractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51, RCW. Further, the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor or any Subcontractor Party, or to or for any third party, under workers' compensation acts, disability benefits acts, or other employee benefits acts; PROVIDED subcontractor's waiver of immunity by the provision 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.

The undersigned, by initials below, certify that this indemnification provision was mutually negotiated. Subcontractor specifically agrees and acknowledges that this agreement of indemnification and hold harmless together with Subcontractor's waiver of immunity under RCW Title 51, was the subject of discussion and negotiation between Subcontractor and Contractor and that Subcontractor's promises and waiver herein are a part of the consideration for Contractor entering into this Master Agreement.

\_\_\_\_\_  
**Subcontractor Initials**

\_\_\_\_\_  
**Contractor Initials**

**§ 6.9 Professional Services Provided by Subcontractor**

**§ 6.9.1** The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Subcontract Documents or unless the Subcontractor is required to provide such services in order to carry out the Subcontractor's responsibilities for its own construction means, methods, techniques, sequences, and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law.

**§ 6.9.2** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by the Subcontract Documents, the Contractor will provide all performance and design criteria that such services must satisfy to the extent the Contractor has received such performance and design criteria from the Owner and Architect under the terms of the Prime Contract, as defined in a Work Order.

**§ 6.9.3** If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required by the Contractor and related to the Work of the Subcontractor, the Contractor will provide all performance and design criteria that such services must satisfy.

**§ 6.9.4** The Subcontractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the performance and design criteria received from the Contractor under this Section 6.9.

**§ 6.9.5** The Subcontractor shall cause the professional services performed under this Section 6.9 to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed by such design professional shall bear the professional's written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals, provided the Contractor has provided to the Subcontractor all performance and design criteria required by this Section 6.9.

## **ARTICLE 7 CHANGES IN THE WORK**

§ 7.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract, as defined in a Work Order. Upon receipt of a Modification to the Prime Contract, as defined in a Work Order, issued after the execution of a Work Order, the Contractor shall promptly notify the Subcontractor of such Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract, as defined in a Work Order.

§ 7.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating the Subcontract, to make changes in the Work within the general scope of the Subcontract consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract, as defined in a Work Order, issued after the execution of a Work Order, with the Subcontract Sum and the Subcontract Time adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a Claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 7.3 The Subcontractor shall make all Claims promptly to the Contractor for additional cost, extensions of time, and damages for delays, or other causes in accordance with the Subcontract Documents. A Claim which will affect or become part of a Claim which the Contractor is required to make under the Prime Contract, as defined in a Work Order, within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract, as defined in a Work Order. Such Claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's Claim must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

§ 7.4 Subcontractor shall perform no work for which it claims extra time or compensation without first receiving written directives from Contractor to proceed. Failure to obtain such written directives shall constitute an absolute waiver of such claim.

## **ARTICLE 8 CLAIMS AND DISPUTES**

§ 8.1 Subcontractor shall provide written notice to Contractor within forty-eight (48) hours after the occurrence of any event giving rise to a claim by Subcontractor or, if the Prime Contract, as defined in a Work Order, provides for a shorter period, no less than five (5) work days before Contractor must submit a claim to Owner (whichever is sooner), including but not limited to, claims for interruptions, extra work, additional work, changed work, delay, hindrances, and/or inefficiency loss(es) of any nature whatsoever in Subcontractor's Work. Failure by Subcontractor to provide notice in strict accordance the requirements of the Subcontract shall result in an absolute waiver of any claim of Subcontractor, including those for additional costs or additional time arising in any way from, or caused by, the occurrence. Contractor does not waive the requirement for timely written notice unless Contractor's waiver is unequivocal, explicit, and in writing.

§ 8.2 If the claim, dispute, or other matter in question arising out of or related to the Subcontract is unrelated to a dispute between the Contractor and Owner, or if the Subcontractor is legally precluded from being a party to the dispute resolution procedures set forth in the Prime Contract, as defined in a Work Order, then claims, disputes or other matters in question shall be resolved in accordance with this Section 8.2 and Section 8.3. Any such claim, dispute or matter in question shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 8.3 If the parties do not resolve a claim, dispute, or matter in question through mediation, the method of binding dispute resolution shall be the following:

[  ] Arbitration pursuant to the terms and conditions set forth in this Section

[  ] Litigation in a court of competent jurisdiction

If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in the Master Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Master Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 8.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 8.3.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Master Agreement with any other arbitration to which it is a party provided that (1) the arbitration



agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 8.3.5** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 8.3.6** The parties grant to any person or entity made a party to an arbitration conducted under this Section, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the parties under this Master Agreement.

**§ 8.3.7** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Master Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 8.4** The Subcontractor shall defend, indemnify and hold the Contractor and the Contractor's officers and employees harmless from and against damages, losses, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Subcontractor, its employees, and its Sub-subcontractors in the performance of the Work under the Subcontract.

**§ 8.5** In the event the disputes provisions of the Prime Contract provide for arbitration, Subcontractor agrees to be joined as a party in said arbitration.

**§ 8.6** In case of a dispute between Subcontractor and Contractor for or on account of acts and/or omissions of the Owner or the Owner's engineer/architect or agent, Subcontractor agrees to present to the Owner, in Contractor's name, all of Subcontractor's claims for equitable adjustment or time extensions and to invoke if necessary, any dispute resolution procedure of the Prime Contract. Subcontractor is responsible for providing the materials in accordance with all applicable notice requirements, and at its own cost including attorneys' fees. The Contractor's decision shall be final as to whether any claims of Subcontractor are on account of acts and/or omissions of the Owner or Owner's engineer/architect or agent.

**§ 8.7** Subcontractor agrees to stay and suspend any legal action against Contractor, including any action claiming that the dispute does not entail an act or omission of the Owner or Owner's agent, until the action against the Owner has been exhausted, including any appeals. Subcontractor shall not be entitled to receive any greater amount from the Contractor than Contractor receives from the Owner for Subcontractor's Work less appropriate mark-ups and Subcontractor agrees that it will accept such amount in full satisfaction and discharge of any Subcontractor's claim against Contractor or Owner by reason of said dispute. It is understood that the only fund from which claims for changes or extra work is to be paid is created by Owner's payment to Contractor and that Subcontractor will be paid only if Contractor is paid for Subcontractor's Work. In the event the dispute arises during the performance of the Work Subcontractor shall, nonetheless, proceed with the Work pending final resolution of the dispute or any dispute arising out of this Subcontract.

**§ 8.8** Subcontractor shall continue with the diligent performance of Work pursuant to this Subcontract and follow and abide by directions and instructions issued by Contractor during the pendency of any dispute, including dispute resolution procedures, ADR procedures, arbitration or litigation.

**§ 8.9 Waiver of Claims for Consequential Damages**

The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to the Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 9. Nothing contained herein shall be deemed to preclude an award or assessment of liquidated damages, when applicable, in accordance with the requirements of the Subcontract.

**ARTICLE 9 TERMINATION, SUSPENSION, OR ASSIGNMENT OF THE SUBCONTRACT**

**§ 9.1 Reserved**

**§ 9.2 Termination by the Contractor**

**§ 9.2.1 Termination for Cause**

If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with the Subcontract and fails within forty-eight (48) hours after receipt of notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. The Contractor reserves all other rights provided by law including the language of the Prime Contract, as defined in a Work Order, against Subcontractor to recover damages from Subcontractor or its surety for the default. No further payments shall be made to Subcontractor until the work is completed and Contractor has determined the extent of all costs incurred for performing Subcontractor's work. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed the unpaid balance of the Subcontract Sum, the Subcontractor shall pay the difference to the Contractor.

**§ 9.2.1.1** Should one or more other contracts or Work Orders, now or hereafter exist between the parties hereto concerning this or any other construction project, then, in addition to all other available remedies, in the event of a failure of performance by Subcontractor of any of said contracts or Work Orders, the Contractor may at its option, terminate any or all of the contracts or Work Orders or may

withhold monies due or to become due on any of such contracts or Work Orders and apply the same toward payment of any loss suffered on that or any other such contract or Work Order.

**§ 9.2.2 Termination for Convenience**

**§ 9.2.2.1** If the Owner terminates the Prime Contract, as defined in a Work Order, for the Owner's convenience, the Contractor shall promptly deliver notice to the Subcontractor.

**§ 9.2.2.2** In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work properly executed, costs incurred by reason of the termination, and reasonable overhead and profit on the Work not executed, but only if and to the extent the same are recovered by Contractor from Owner. Further, Contractor may, at its option, at any time and for any reason, terminate a Work Order as to all or any portion of the uncompleted Work thereunder.

**§ 9.2.2.3** Upon receipt of notice of termination, the Subcontractor shall

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

**§ 9.3 Suspension by the Contractor for Convenience**

**§ 9.3.1** The Contractor may, without cause, order the Subcontractor in writing to suspend, delay, or interrupt the Work of the Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum, but only if and to the extent the Contractor receives an adjustment on account of the same from Owner.

**§ 9.3.2** The Subcontract Time and Subcontract Sum shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption as described in Section 9.3.1, but only if and to the extent the Contractor receives an adjustment on account of the same from Owner. Adjustment of the Subcontract Sum shall include profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent that

- .1 performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of the Subcontract.

**§ 9.4 Assignment of the Subcontract**

**§ 9.4.1** In the event the Owner terminates the Prime Contract, as defined in a Work Order, for cause, the Subcontract is assigned to the Owner, provided the Owner accepts the assignment by notifying the Contractor and Subcontractor.

**§ 9.4.2** Without the Contractor's written consent, the Subcontractor shall not assign the Work of the Subcontract, subcontract the whole of the Subcontract, or subcontract portions of the Subcontract, and any such assignment shall be void if made without Contractor's consent.

**§ 9.5** Termination of the Subcontract under this Article 9 shall not be deemed a termination of other Subcontracts under this Master Agreement.

**ARTICLE 10 PAYMENTS**

**§ 10.1 Subcontract Sum and Progress Payments**

**§ 10.1.1** Each Work Order shall include a Subcontract Sum. The Contractor shall pay the Subcontractor the Subcontract Sum in current funds in accordance with each individual Work Order.

**§ 10.1.2** Applications for Payment will be submitted individually for each Work Order.

**§ 10.1.3** Based upon Applications for Payment submitted to the Contractor by the Subcontractor, corresponding to Applications for Payment submitted by the Contractor to the Owner or Architect, and Certificates for Payment issued by the Owner or Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

**§ 10.1.4** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as set forth in the Work Order.

**§ 10.1.5** Provided an Application for Payment is received by the Contractor not later than the «20th » day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next Application for Payment which the Contractor is entitled to submit to the Owner or Architect. No Payment or retainage or other compensation to Subcontractor for work hereunder shall be due to Subcontractor unless or until Contractor has received payment from Owner. Contractor and Subcontractor expressly agree

that receipt of such payment from Owner on account of Subcontractor's Work shall constitute and is acknowledged by Subcontractor to be an absolute condition precedent to Contractor's obligation to pay Subcontractor, and Subcontractor expressly agrees to bear the risk of Owner's non-payment. Specific payment terms will be outlined as set forth in a Work Order.

**§ 10.1.6** If the Subcontractor's Application for Payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next Application for Payment submitted to the Owner or Architect.

**§ 10.1.7** The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent Application for Payment shall be based upon the most recent schedule of values approved by Contractor and submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require, and unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's Applications for Payment.

**§ 10.1.8** Applications for Payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the Application for Payment.

**§ 10.1.9** Unless otherwise required by the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

**§ 10.1.9.1** The amount of each progress payment shall first include:

- .1 That portion of the Subcontract Sum properly allocable to completed Work;
- .2 That portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, provided the applicable documentation for stored materials is also included and previous approval by Contractor has been received (refer to Exhibit 6 – Stored Materials Billing Instructions); and
- .3 The amount, if any, for changes in the Work that are not in dispute and have been properly authorized by the Contractor, to the same extent provided in the Prime Contract, as defined in a Work Order, pending a final determination by the Contractor of the cost of changes in the Subcontractor's Work, even though the Subcontract Sum has not yet been adjusted.

**§ 10.1.9.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of previous payments made by the Contractor;
- .2 The amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld a Certificate for Payment for a cause that is the fault of the Subcontractor;
- .3 For Work performed or defects discovered since the last payment application, any amount for which the Contractor may withhold payment in whole or in part for a cause that is the fault of the Subcontractor; and
- .4 Retainage withheld pursuant to Section 10.1.10 of this Agreement.

**§ 10.1.10 Retainage**

**§ 10.1.10.1** For each progress payment made prior to substantial completion of the Subcontractor's Work, the Contractor may withhold from the payment otherwise due retainage as set forth in Item H of the Work Order.

**§ 10.1.11** Upon the partial or entire disapproval by the Contractor of the Subcontractor's Application for Payment, the Contractor shall provide notice to the Subcontractor. If the Subcontractor disputes the Contractor's decision regarding a Subcontractor's Application for Payment in whole or in part, the Subcontractor may submit a Claim in accordance with Article 8. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

**§ 10.1.12** Prior to any payment, including retainage, Contractor has the right to require Subcontractor to furnish Contractor and/or Owner with lien and claim releases, in forms acceptable to Contractor, releasing Owner, Contractor, Contractor's surety, architect or engineer, or others and land, underlying improvements, and all improvements from any and all claims, claim of lien, or claims on bonds or any other security or funds.

**§ 10.1.13** Subcontractor shall promptly make payments to all persons furnishing labor, materials, and supplies to the Project and shall defend, indemnify, and hold Contractor and Owner harmless from any claims arising out of non-payment, including claims against Contractor's sureties and retainage being withheld by Owner. Provided the Contractor has fulfilled its payment obligations under the Subcontract Documents, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. If approved by the applicable court, when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted. Otherwise, Subcontractor shall discharge the lien within ten (10) days of filing or Contractor's demand. All funds paid to Subcontractor for the account of sub-subcontractors, suppliers, laborers or materialmen are deemed trust funds for their benefit. Failure to promptly pay sums when due entitles Contractor to discharge said lien or claim out of the funds due or to become due Subcontractor or to make joint checks payable to Subcontractor and any employee or supplier of Subcontractor. The amount of the Subcontract shall be reduced accordingly in addition to all other remedies available to Contractor.

### **§ 10.2 Substantial Completion**

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, as defined in a Work Order, the Contractor shall, upon application by the Subcontractor, make prompt Application for Payment for such Work. Within 30 days following issuance by the Owner or Architect of the Certificate for Payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, as defined in a Work Order, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor.

### **§ 10.3 Final Payment**

**§ 10.3.1** Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Owner or Architect has issued a Certificate for Payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner.

**§ 10.3.2** Before issuance of the final payment, the Subcontractor, if requested, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work, including proof that all of the Subcontractor's laborers (including Union Trust Funds), Sub-subcontractors and suppliers have been paid and that all persons or entities entitled to make claim against the property or any improvements thereof, or claims against the fund designated for the construction of the project, the Owner, retainage or Contractor's surety, have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor.

**§ 10.4** If for any reason, joint checks become necessary, Contractor will require Subcontractor and payee/creditor to enter into Contractor's Joint Check Agreement. A \$100 charge will be assessed to Subcontractor.

**§ 10.5** In the event of any controversy between Contractor and Subcontractor as to the value of work added, deducted, or terminated, Contractor may inspect the books, contracts and records of Subcontractor, who shall make them available upon request. Failure to permit such inspection shall constitute a waiver of any right to affirmative recovery.

**§ 10.6** Prior to release of final Retainage, Subcontractor shall provide appropriate close-out documentation and warranty letters as specified in Work Order at Exhibit F – Close-out Documentation and Warranty Letter.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 Subcontractor's Required Insurance Coverage**

The Subcontractor shall purchase and maintain the insurance coverage required in this Article 11, and any additional coverages required for a specified project as set forth in a Work Order.

**§ 11.1.1** The Subcontractor shall purchase and maintain the types and limits of insurance as set forth in Exhibit 1 – Insurance Requirements, from a company or companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract.

**§ 11.1.2** For each Subcontract, coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract, as defined in a Work Order.

**§ 11.1.3** If professional services are required under Section 6.9, the Subcontractor shall provide the professional liability insurance coverage required under this Section 11.1 for the period after completion of the Work, as defined in Item A(7) of Exhibit 1 – Insurance Requirements.

**§ 11.1.4 Certificates of Insurance.** The Subcontractor shall provide certificates of insurance acceptable to the Contractor evidencing compliance with the requirements in this Article 11 and any additional requirements set forth in the Subcontract at the following times: (1) prior to commencement of the Subcontractor's Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Contractor's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required in this Article 11. The certificates shall show the Contractor and the Owner as additional insureds on the Subcontractor's Commercial General Liability and any excess or umbrella liability policy.

**§ 11.1.5 Deductibles and Self-Insured Retentions.** The Subcontractor shall disclose to the Contractor any deductible or self-insured retentions applicable to any insurance required to be provided by the Subcontractor.

**§ 11.1.6 Additional Insured Obligations.** To the fullest extent permitted by law, the Subcontractor shall cause its commercial general liability coverage to include: (1) the Contractor and the Owner, as additional insureds for claims arising out of the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor and Owner as additional insureds for claims arising out of the Subcontractor's negligent acts or omissions for which loss occurs during the Subcontractor's completed operations. The additional insured coverage shall be primary and non-contributory to any of the Contractor's and Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 10/01, CG 20 37 10/01.

**§ 11.1.7 Notice of Cancellation or Change in Coverage.** Within three (3) business days of the date the Subcontractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Subcontract Documents, the Subcontractor shall provide notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of notice from the Subcontractor, the Contractor shall, unless the lapse in coverage arises from an act or omission of the Contractor, have the right to suspend the Work in accordance with this Master Agreement until the lapse in coverage has been cured by the procurement of replacement coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Subcontractor of any contractual obligation to provide any required coverage.

**§ 11.2 Subcontractor's Required Performance Bond and Payment Bond**

The Subcontractor's performance bond and payment bond obligations shall be as required in the Work Order.

**§ 11.2.1** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under the Subcontract, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**§ 11.4 Property Insurance**

**§ 11.4.1** When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project, to the extent copies of the policies are available to the Contractor. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

**§ 11.4.2** If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

**§ 11.4.3** Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the Application for Payment process.

**§ 11.4.4** Job damage caused by Subcontractor on work other than its own shall be reported immediately to Contractor and Subcontractor shall be responsible for its repair. Should the Subcontractor choose to file a claim against the project's property or Builder's Risk policy, Subcontractor shall be liable for the policy deductible. Job damage caused by Contractor on work of Subcontractor shall be reported immediately to the Subcontractor and Contractor shall be responsible for its repair.

**§ 11.5 Waivers of Subrogation**

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance provided under the Prime Contract, as defined in a Work Order, or other property insurance applicable to the Work or to property at or adjacent to the Project site, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require similar written waivers in favor of the individuals and entities enumerated herein from the Subcontractor's Sub-subcontractors, agents, and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.5 shall not prohibit this waiver of subrogation, which shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the property damaged.

**ARTICLE 12 MISCELLANEOUS PROVISIONS**

**§ 12.1** Each Work Order shall be governed by the law of the place where the Project described in the Work Order is located. If the parties have selected arbitration as the method of binding dispute resolution in Section 8.2, the American Arbitration Association in accordance with its Construction Industry Arbitration Rules shall govern the arbitration.

**§ 12.2** Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

**§ 12.3 Notice**

**§ 12.3.1** Except as otherwise provided in Section 12.3.2, where the Subcontract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic notice is set forth in Section 12.3.3.

**§ 12.3.2** Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed, as well as those representatives identified in or pursuant to Section 1.4 and Section 1.4.1 of this Master Agreement, by certified or registered mail, or by courier providing proof of delivery.

**§ 12.3.3** Notice in electronic format, pursuant to Section 12.3.1, may be given to the authorized representatives listed in Articles 1.4 and 1.5 via email.

**§ 12.4** Neither the Contractor's nor the Subcontractor's representatives shall be changed without ten days' prior notice to the other party.

§ 12.5 The invalidity of any provision of the Subcontract Documents shall not invalidate the Subcontract or its remaining provisions. If it is determined that any provision of the Subcontract violates any law or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, the Subcontract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Subcontract.

§ 12.6 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 12.7 The parties hereto shall be bound by the procedures outlined in The National Plan for the Settlement of Jurisdictional Disputes for labor disputes, which arise under this contract. The Subcontractor shall comply with and be bound by any labor agreements executed by the Contractor or on Contractor's behalf.

§ 12.8 At any time prior to or during the performance of its work, Subcontractor shall, within ten (10) days of demand by Contractor, furnish their current Contractor Score Certificate or other such financial information requested by Contractor to assure Contractor that Subcontractor, in the sole discretion of Contractor, has the financial resources to complete the performance of its work in accordance with the contract documents. Contractor may terminate this Subcontract if it determines, in its sole discretion, that Subcontractor is or may become unable to perform its work in accordance with this Subcontract. Subcontractor shall also furnish evidence that all licenses and registrations are current. The failure of Subcontractor to furnish said documents shall entitle Contractor to terminate Subcontract. In the event of termination, Contractor and Subcontractor shall owe each other no further obligation.

§ 12.9 Subcontractor acknowledges that a written Substance Abuse Policy is in effect for this project and is available for review at Subcontractor's request. Subcontractor agrees to be bound by all of the terms of said Policy. Subcontractor further acknowledges that said policy shall remain in effect until rescinded by written notice from Contractor. Subcontractor and its sub-subcontractors shall maintain a written Accident Prevention Plan.

§ 12.10 In the event the Subcontract, or any part of it, is based on unit prices, it is understood and agreed that any quantities and amounts referred to in the Subcontract are approximate only, may be more or less at the same unit price, and may be subject to change as ordered and directed by the Contractor. Regardless of the variation in the estimated quantity, Subcontractor agrees to accept the unit prices set forth in this Subcontract unless an equitable adjustment is obtained from the Owner.

§ 12.11 In case of any litigation, arbitration, or other dispute concerning this Subcontract, the prevailing party shall be entitled to all its attorneys' fees, costs, and expenses, including without limitation its expert and discovery expenses.

§ 12.12 Every provision of the Subcontract is intended to be severable. In the event any term or provision hereof is declared to be invalid or illegal for any reason whatsoever by a tribunal of competent jurisdiction, such invalidity or illegality shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable, and such invalid or illegal term shall be tailor only as needed so that it is no longer invalid or illegal.

§ 12.13 Any sub tier subcontractor, supplier, and/or material supplier of the Subcontractor shall be bound to the Subcontractor to the same extent Subcontractor is bound to the Contractor. Subcontractor agrees to include written provisions in any contract it has with any such sub tier parties which fully and completely complies with this section, and shall defend, indemnify, and hold harmless Contractor from all claims, damages, costs and expenses, including attorney fees, which may arise or be incurred by Contractor as a result of Subcontractor's failure to fully comply with this section.

#### **ARTICLE 13 SCOPE OF THIS MASTER AGREEMENT**

§ 13.1 This Master Agreement represents the entire and integrated Master Agreement between the Contractor and Subcontractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Master Agreement may be amended only by written instrument signed by both Contractor and Subcontractor.

§ 13.2 This Master Agreement is comprised of the following documents listed below:

- .1 This Master Agreement Between Contractor and Subcontractor;
- .2 Prime Contract, as defined in a Work Order, between the Owner and Contractor, including all exhibits thereto;
- .3 Other documents:

- Exhibit 1 – Insurance Requirements
- Exhibit 2 – Subcontractor General Scope Requirements
- Exhibit 3 – Subcontract Work Order Template
- Exhibit 4 – Safety Addendum
- Exhibit 5 – Payment Policy
- Exhibit 6 – Stored Materials Billing Instructions



This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**SUBCONTRACTOR** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

SAMPLE

## Exhibit 1 Insurance Requirements

Prior to the commencement of Work, Subcontractor shall purchase and maintain such insurance as will protect it from the claims which may arise out of or result from Subcontractor's operations under this agreement, including any future changes or amendments to this agreement, whether such operations be by itself or by any sub-Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Limits shall be all the Insurance Coverage and/or limits carried by or available to the Subcontractor, the minimum limits as required herein or as required in the Main Contract, whichever is greater:

### A. COVERAGE

1. **Commercial General Liability** – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CG 00 01 (or its equivalent), written on an occurrence basis with policy limits of not less than:

**\$1,000,000 Each Occurrence**

**\$1,000,000 Personal & Advertising Injury**

**\$2,000,000 General Aggregate with Per Project General Aggregate Endorsement**

**\$2,000,000 Products/Completed Operations Aggregate**

The Commercial General policy

- a. Shall include coverage for the following:
  - i. Bodily injury other than to employees of the insured
  - ii. Indemnity arising out of injury to employees of the insured
  - iii. Rendering or failure to render any professional services by you or on your behalf, that are part of ordinary means, methods, techniques, sequences and procedures employed by you in connection with your operations as a construction contractor
  - iv. bodily injury or property damage arising out of ongoing and completed operations;
  - v. Work in connection with construction or demolition work on or within 50 feet of a railroad (including any light rail, fixed rail, or other rail system), if applicable to the work;
  - vi. Per Project General Aggregate Endorsement; and
  - vii. Electronic Data Liability
- b. Shall not contain an exclusion or restriction of coverage for any of the following:
  - i. Cross Suits applicable to Additional Insureds;
  - ii. Removal or limitation to the "Damage To Your Work" performed by sub-Subcontractors on your behalf exclusion exception if the damaged work or the Work out of which the damage arises was performed on your behalf by a sub-Subcontractor;
  - iii. Limitation or amendment to the definition of the "Insured Contract" of Contractual Liability coverage;
  - iv. Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project;
  - v. Roofing, if the Work involves roofing;
  - vi. Exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces;
  - vii. Claims related to earth subsidence or movement; and
  - viii. Explosion, collapse, and underground hazards

2. **Business Auto Coverage** - Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01 or equivalent, written on an occurrence basis to apply to "any auto" or at a minimum "all owned, hired and non-owned autos", with policy limits of not less than:

**\$1,000,000 per accident, for bodily injury, death of any person, and property damage**

The Business Auto policy shall not contain an exclusion or restriction of coverage for any of the following:

- a. Any statutorily required automobile coverage;
- b. Discharge of pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto, if applicable to the Work; and
- c. Work in connection with construction or demolition work on or within 50 feet of a railroad (including any light rail, fixed rail, or other rail system), if applicable to the Work.



3. **Workers' Compensation and Employer's Liability and/or Stop Gap Liability** – All Subcontractors of every tier shall provide coverage for industrial injury to their employees (or leased / borrowed employees as applicable) in strict accordance with the provisions of the State or States in which project work is performed or where jurisdiction is deemed to be applicable. Workers' Compensation shall be provided in a statutory form on either a state or, where applicable, federal (U.S. Longshore & Harbor Workers Act, Maritime – Jones Act, etc.) basis as required in the applicable jurisdiction.

**Minimum Limits of Liability, not less than;**

**Workers Compensation: Statutory**

**Employers Liability:**

**\$1,000,000 Bodily Injury by Accident – Each Accident**

**\$1,000,000 Bodily Injury by Disease – Total Limit**

**\$1,000,000 Bodily Injury by Disease – Each Employee**

All Subcontractors are required to furnish Workers' Compensation Insurance, notwithstanding any statutory exemptions. This includes but is not limited to sole proprietors, partners, executive officers, and limited liability companies.

4. **Commercial Umbrella or Excess Liability Insurance** - Coverage shall be no less broad than that provided by the required Commercial General Liability, Business Auto and Employer's Liability shown above, written on an occurrence basis, with:

**Policy limits not less than:**

**\$2,000,000 Each Occurrence**

**\$2,000,000 Aggregate**

5. **Pollution Liability** - Subcontractor shall provide evidence of Pollution Liability; specifically including coverage for mold and covering all operations necessary or incidental to the fulfillment of all contract obligations hereunder. Such insurance shall provide coverage for bodily injury, property damage (including loss of use of damaged or undamaged property), clean-up costs, remediation obligations and their related costs, legal costs, defense costs, natural resource damage, transportation of pollutants on and off the project site, and non-owned disposal site liability if Subcontractor's scope of Work (or Subcontractor's consultants) includes any disposal of contaminated material or waste from its activities. Coverage shall also extend to pollution conditions arising out of the Subcontractor's operations, including coverage for sudden/accidental and gradual release, and operations of any of its sub-Subcontractors or consultants. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of Subcontractor engagement and shall continue for not less than 36 months after completion, or the period of time Subcontractor may be held legally liable for its Work, whichever is longer. The retro date (if any) of any such coverage shall be prior to the commencement of Subcontractors Work.

**Such insurance shall be in the amount of not less than:**

**\$1,000,000 Per Claim or Occurrence and \$2,000,000 Aggregate**

**If Subcontractor's Work includes asbestos or lead abatement, such insurance shall be in an amount of:**

**\$5,000,000 Per Claim or Occurrence and \$5,000,000 Aggregate.**

6. **Property Insurance**

- a. **Contractors Equipment:** Subcontractor shall provide property insurance on an "all risk" form, covering property owned, leased, rented, or hired by the Subcontractor and used on the Project site, including but not limited to scaffolding, contractors equipment, tools, and vehicles.
- b. **Waiver of Subrogation:** Owner, Contractor, and Subcontractor(s) waive all rights of subrogation for damages to the extent caused by property coverage required by Prime Contract.

7. **Other coverages:**

- a. **Professional Liability (Errors & Omissions)** - Subcontractor shall provide evidence of Professional Liability insurance covering claims that arise from the actual or alleged errors, omissions or acts of the Subcontractor or any entity for which the Subcontractor is legally responsible, for the provision of all professional services necessary or incidental to the fulfillment of all contract obligations hereunder.

**Such insurance shall be in an amount of not less than:**

**\$1,000,000 Per Claim and \$2,000,000 Aggregate**

The policy shall be effective from the date of commencement of all professional services in connection with the fulfillment of all contract obligations hereunder. The retroactive date in the current and future policies shall be prior to the commencement of all professional services. Coverage shall be maintained for a period not less than 36 months or the period of time Subcontractor may be held legally liable for its Work, (whichever is longer) following the completion of the Work; or an extended reporting period of 36 months following completion of the Work shall be purchased.

Coverages shall not include any exclusion or other limitations related to scopes of services or project type or construction type, or delays in project completion and cost overruns. Subcontractor is required to provide notice to the Contractor if their Professional Liability limits are impaired by payments or reserves for claims or expenses in excess of 50% of the policy limit, regardless of whether such payments or reserves are related to work performed for this project.

The Subcontractor acknowledges and understands that the purchase and maintenance of this insurance shall not release the Subcontractor from its respective obligations or liabilities in connection with this agreement or the Prime Contract. Furthermore, the Subcontractor is responsible for any losses, claims, and costs of any kind, which exceed the limits of liability or which may be outside the coverage scope of the policy.

- b. **Aircraft liability/UAV** – If Subcontractor (or its Subcontractors or suppliers, regardless of tier) use any owned, leased, chartered, or hired aircraft of any type or any unmanned aerial vehicle (drones) in the performance of this contract, they shall maintain Aircraft Liability including Passenger Liability as applicable. Coverage shall be on an occurrence basis and include bodily injury, property damage, personal & advertising injury and products/completed operations coverage with limits no less than:

**\$1,000,000 Per Occurrence and \$2,000,000 in the Aggregate**

- c. **Riggers Liability** – If Subcontractor's Work involves moving, lifting, lowering, rigging, or hoisting of property or equipment, Subcontractor shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment with a policy limit equal to the maximum value of any one item in Subcontractor's care/custody/control.

- d. **Cyber Security Insurance** – Loss to the Contractor or Owner for data security and privacy breach including costs of investigating a potential or actual breach of confidential or private information with policy limits of not less than:

**\$1,000,000 Per Claim and \$1,000,000 in the Aggregate**

## B. OTHER PROVISIONS

1. **Additional Insured:** To the fullest extent of coverage allowed under applicable law, the Subcontractor shall provide All Operations coverage with the following included as Additional Insured(s) including ongoing and products/completed operations coverage on General Liability, Automobile, Excess Liability, and Pollution insurance:

**Foushée and Associates Company, Inc., Project Owner and any other person or organization that you agree in a written contract or agreement to include as an Additional Insured.**

The additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. General Liability (ISO) forms CG 20 10 10/01 (or equivalent) and CG 20 37 10/01 (or equivalent), Auto CA 00 01 (or equivalent), and Umbrella/Excess Liability will be no less broad than underlying policies.

All required insurance shall apply as **primary and will not seek contribution** from any other insurance carried by such Additional Insured.

Additional Insured status shall be for all limits carried, not limited to the minimum acceptable as required herein.

General Liability and Umbrella/Excess Liability Additional Insured endorsements that contain comparative fault, vicarious liability or sole negligence limitations of the contractor / owner or any other party required by the contract, **will not be accepted.**

Contractor reserves the right, in its sole and subjective discretion, to reject any forms that are deemed not equivalent to what is required herein.

2. In the event where the General Liability, Automobile Liability, and/or Employer's Liability Limits cannot be met, Umbrella/Excess Liability may be used to meet the required limits. Coverage must be as broad as underlying policy forms and shall be Primary / Non-Contributory to insurance program(s) of Additional Insureds noted in B. 1. above.

3. To the fullest extent allowable by law, all insurance maintained by Subcontractor shall include a **waiver of rights of subrogation** of the insurers in favor of all parties required in B. 1. above.
4. All required insurance shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and such insurance companies shall have an A.M. Best rating of A- VII or greater.
5. Should any of the described policies be cancelled before the expiration date thereof, Subcontractor shall immediately provide notice to Contractor within 3 business days of receiving notice of cancellation from the insurer.
6. Subcontractor should disclose and shall be fully and financially responsible for all deductibles, self-insured retentions, or the insolvency of any insurer and all costs and expenses of securing any collection of insurance proceeds arising out of or related to Subcontractor's Work or liability.
7. It is the Subcontractor's sole responsibility to require and monitor compliance and appropriate coverage and minimum limits as required herein for any liability coverages for all tiers of sub-Subcontractors. For any coverage required herein where the Subcontractor shall name Contractor, Owner, and any other parties as required herein as Additional Insured(s) the Subcontractor shall require sub-Subcontractors to include all upstream parties Additional Insured(s) as well.
8. The required insurance (including products/completed operations Additional Insured status on General Liability and Umbrella/Excess Liability) shall be maintained for a minimum of the applicable statute of repose, statute of limitations, or the amount of time you are legally liable, whichever is longer.
9. If Subcontractor fails to secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, Contractor may, in addition to any other rights it may have under this Agreement or at law or in equity, terminate this subcontract or secure such policies or policies of insurance for the account of Subcontractor and charge Subcontractor for the premiums paid therefore, or withhold the amount thereof from sums otherwise due from Contractor to Subcontractor. Neither the Contractor's rights to secure such policy or policies nor the securing thereof by Contractor shall constitute an undertaking by Contractor on behalf of or for the benefit of Subcontractor or others to determine or warrant that such policies are in effect.
10. In accordance with Article 11.1.4, Subcontractor shall provide certificates of insurance acceptable to Contractor evidencing compliance with the requirements herein at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Contractor or Owner's written request. An additional certificate evidencing continuation of coverage, including coverage for completed operations, shall be submitted with the final application for payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required. The policy forms or endorsements evidencing Additional Insured status, Primary/Non-Contributory Coverage and Waiver of Subrogation or Transfer of Rights of Recovery must be attached to the certificate of insurance.  
  
If requested by the Contractor, Subcontractor shall provide a full copy of any or all policies.
11. Contractor does not warrant or represent that such coverages and minimum limits as required herein are appropriate or adequate to protect Subcontractor. Neither Contractor's specification nor approval of the insurance in this document shall be construed to relieve Subcontractor from liability in excess of such limits. Acceptance of the certificates or endorsements by the Contractor shall not constitute a waiver of Subcontractor's obligations hereunder. Subcontractor may, at its expense, purchase larger coverage amounts. Contractor's access to the full breadth of limits and coverage under Subcontractor's insurance program will not be limited by the minimum requirements stated herein.

## Exhibit 2 Subcontractor General Scope Requirements

The following is the general scope of work for a Subcontractor. The following provides standards that all trades will be required to comply with.

### **General Inclusions:**

#### **A) Safety:**

- All Subcontractor personal shall wear the required Personal Protective Equipment.
- Subcontractor must provide all Personal Protective Equipment (PPE) when required for their work including, but not limited to: a) hard hats, eye protection, foot protection, high-visibility clothing, b) work shoes that have ankle support and substantial sole protection exhibiting anti-slip properties, c) 100% eye protection is required to be worn by all employees while on the project per ANSI Z 87.1, d) the use of gloves when necessary while on the project i.e. material handling, handling sharp metal/objects, demolition work, etc., and e) additional PPE per task to include ear protection, eye/face protection, fall protection, respirators, air and/or noise monitoring equipment.
- All equipment to be used on these projects shall be in compliance with all local, state and national safety requirements. Perform required maintenance and maintain records at the job site for all equipment. Use of broadband backup alarms is required.
- Subcontractor shall secure, brake, and remove keys on all unattended equipment.
- Subcontractor must notify FOUSHÉE immediately of any safety violations and or accidents.
- No operators or truck drivers are to be operating equipment and talking on a cell phone at the same time.
- Fall protection is required regardless of height as per WAC Part C-1 for exposure to dangerous equipment, floor holes or openings, and impalement hazards. Fall protection is required for all activities on site greater than or equal to four feet or more in height. For activities greater than or equal to ten feet in height, provide site specific safety/fall protection plans to Superintendent BEFORE commencing with any work.
- All other safety requirements are included in the Master Agreement at Exhibit 4 – Safety Addendum.

#### **B) Cleanup:**

- A Community Dumpster(s) will be provided by FOUSHÉE for disposal of packing materials. The dumpster will be located at FOUSHÉE's discretion. Subcontractors are responsible to remove boxes, cartons and crates from the building and place it in the provided dumpster on a daily basis. Subcontractor shall be responsible to coordinate and pay for disposal of construction waste and building debris, such as drywall scrape, masonry scrape, concrete waste and waste generated from remedial work.
- During Subcontractor's phase of work and as long there is work on-site, provide manpower for clean-up operations. The Subcontractor will maintain a clean and debris free work area and remove all spent debris and dunnage on a daily basis. At the completion of each phase of work, clean all work and adjoining areas, remove all unused materials and other accessory upon completion of work or as directed by FOUSHÉE.

#### **C) Quality:**

- All work shall be of the highest quality, acceptable to FOUSHÉE and the authorities having jurisdiction. Work found to be defective or unacceptable shall be promptly removed at the direction of FOUSHÉE and corrected immediately. Subcontractor will be responsible for replacing defective work at no additional cost to FOUSHÉE. Subcontractor will be responsible for any associated impact costs due to defective work.
- All design drawings must be approved by the authorized jurisdiction, local fire Marshall and/or rating bureau. All design drawings must be coordinated with all other Subcontractors (to include Mechanical, Electrical, Plumbing and Fire Protection). Comply with all general notes as provided on the contract plans and specifications. All products (equipment and materials) supplied to be specification grade and UL listed and are to be supplied and installed per manufacturer's instructions.
- Should job conditions or specified requirements conflict with manufacturers' instructions, provide FOUSHÉE with written notice of conflict prior to proceeding with the work.
- Protection of Finished Products: Subcontractor shall protect its finished products from damage by others. Damage to finishes as a result of Subcontractor's failure to provide sufficient protection from normal construction activity shall be corrected by Subcontractor at Subcontractor's expense. Prior to removing another trade's protection, the Subcontractor must obtain approval from the Project Superintendent and unless specifically agreed to by the Project Superintendent the Subcontractor must reinstall the protection to like condition.
- Subcontractor shall be responsible to seal around all penetrations through walls, slabs, and roofs. Seal shall meet all fire, sound and security ratings.

#### **D) Schedule:**

- The Subcontractor shall plan its work to meet FOUSHÉE's Project Schedule. It's the Subcontractor's responsibility to allocate the necessary manpower, material and equipment to meet this schedule. All detailed construction activities are to be coordinated with the Project Superintendent. If in the opinion of the Project Superintendent, the Subcontractor falls behind schedule, the Subcontractor shall take such steps as may be necessary to improve its progress, and Project Superintendent may require the Subcontractor to increase their labor force, the number of shifts, amount of overtime

work, days of work, including Saturdays, Sundays, Holidays and the amount of construction plant and equipment, all without increase in contract price.

- Subcontractor shall carefully review the FOUSHÉE Project Schedule. Schedule is extremely critical. All work shall be completed in accordance with the schedule and FOUSHÉE's direction. It is the Subcontractor's responsibility to furnish adequate manpower to complete all work within the time frames allotted to this scope of work in the project schedule.
- FOUSHÉE will not be responsible for any costs for weather related schedule delays.
- FOUSHÉE will not be responsible for any costs for suspension of work due to safety issues or construction methods employed by the Subcontractor.
- If Subcontractor falls behind schedule due to its own work they are responsible for all costs associated with such delays, including but not limited to crane operator and rigger overtime and weekend pay, overtime and impact costs to other trades, FOUSHÉE's supervision for weekend, off hours and or extended general conditions, loss of rent due to delay of project and any liquidated or consequential damages (if applicable). Subcontractor will take whatever means necessary to regain any delays caused by its work.
- Subcontractor will pay for all delays caused by its late delivery of materials and non-completion of its work within the allotted time in the schedule. These costs include but are not limited to: FOUSHÉE's overhead, fee and general conditions, other Subcontractors' impacts, overtime costs required to bring project on schedule, loss of revenue from sales or interest.
- Subcontractor shall maintain strict schedule adherence as Subcontractor's work can impact the project critical path and/or impacts other trades when Subcontractor's work is not completed as planned. Subcontractor shall maintain all activity start and completion dates, in strict compliance with the schedule, and any alterations that may occur at the sole discretion of FOUSHÉE. Subcontractor shall assume multiple activities will need to occur simultaneously throughout the project to maintain the schedule.
- Subcontractor shall coordinate and cooperate with other trades and FOUSHÉE to ensure Subcontractor's activities are not impacting others' activities as planned and scheduled.
- The project schedule is a working tool to be used by all trades, and minor changes to the schedule by FOUSHÉE is normal industry practice to meet changing conditions. Subcontractor will not be due additional costs for minor variances in the project schedule when changes by FOUSHÉE are made to benefit the overall progress of the project.
- Subcontractor is required to provide schedule input of its activities that conform to the overall plan identified in the project schedule. FOUSHÉE will review Subcontractor's input to the schedule, and where variations to the schedule can be made for the benefit of the overall project, those changes will be made. Subcontractor shall not assume that those changes will be made, as a condition of its contract price.
- Furthermore, FOUSHÉE will furnish a short interval schedule that is based on milestones identified in the Project Schedule. The short interval schedule will be distributed and reviewed in the weekly Subcontractors' coordination meeting. FOUSHÉE will review the short interval schedule with all attendees. It is mandatory that Subcontractor attend the weekly Subcontractor meetings and review the schedule. If Subcontractor objects to the activities identified in the schedule, objection to the schedule shall be stated in the meeting and addressed and resolved while all trades are present, otherwise, Subcontractor shall meet activity dates identified in the short interval schedule.
- Subcontractor acknowledges in its contract price that the short interval schedule, and the overall project schedule, will be modified from the bid schedule when necessary, for the purpose of maintaining efficient productivity and sequencing of trades, and to ensure project milestone dates are met.
- Project Working Hours: Working hours will be established by FOUSHÉE and/or requirements of the Authority Having Jurisdiction. All work is to be performed within these established hours unless special provisions are made in writing. Subcontractors are responsible to coordinate any work required outside of these hours with the Project Superintendent.
- This agreement includes all necessary costs so as to guarantee delivery of equipment and materials in accordance with the project schedule.

**E) Contract Documents:**

- This exhibit identifies scope of work activities under this Master Agreement, identified by Building Systems. Subcontractor understands that Building Systems include multiple CSI specification sections and Subcontractor shall furnish and install their building system per appropriate specification section requirements for a complete system, including necessary substrate preparation, attachments, and structure inserts, cutting and patching, unless specifically indicated otherwise herein.
- All work is to be performed as shown within the Subcontract and Contract documents
- No Deviations from the contract drawings, specifications, or approved submittals will be allowed without prior written consent of FOUSHÉE.

**F) Permits and Code Requirements:**

- All work must satisfy the requirements of the permit, the jurisdictional Fire Marshall and all other authorities having jurisdiction, this specifically includes all ADA requirements. These requirements supersede the drawings, notes and specifications where applicable at no additional expense to FOUSHÉE.
- All Subcontractor's work shall be performed in accordance with the plans and specifications, as well as jurisdictional local, state and national agency requirements without exception. Where conflicts exist between codes, plans, and specifications, the more stringent shall apply.
- Provide all permits (street use permits, traffic control permits, etc.), excluding only developer assessment fees or latecomer fees and building permit.

- Subcontractor shall arrange, and schedule through FOUSHÉE as appropriate, all testing and inspections required by Authority Having Jurisdiction (AHJ) for Subcontractor's scope of work.
- Subcontractor is responsible to obtain and post in FOUSHÉE's project office all necessary permits other than the building permit. The Subcontractor is responsible for researching and complying with all local codes, agencies and jurisdictions having authorities that regulate and govern construction.

**G) Materials & Submittals:**

- Subcontractor shall be responsible to create, maintain and submit a log on a monthly basis that tracks the status of all material they are responsible for procuring with a lead time greater than 1 week. This log should track anticipated submittal date, actual submittal date, date released, lead time of material, anticipated delivery date, actual delivery date, required date and should include all phases and types of submittals (product data, shop drawings and material samples). All dates must conform to the current project schedule. In no way should this serve as Subcontractors' notice of delay and it is Subcontractor's sole responsibility that materials are delivered to meet the project schedule.
- Whenever possible all submittals relating to this scope of work should be submitted at once including product data, shop drawings, material samples, etc. Partial/Incomplete submittals may be rejected at FOUSHÉE's discretion.
- After Notice to Proceed, submit shop drawings and product data for review by FOUSHÉE and their consultants within two weeks from NTP if submittal preparation cannot be completed in two weeks provide schedule of anticipated submittal dates that allow adequate time to coordinate and procure materials for construction.
- Subcontractor is responsible to submit all material specification sheets, shop drawings, color and material samples. Failure to do so in a timely manner required to meet the project schedule and to allow other contractors to coordinate their work with their submittals will result in its payment of delay costs. These costs include but are not limited to: FOUSHÉE's overhead, fee and general conditions, other Subcontractors' impacts, overtime costs required to bring project on schedule. Submit shop drawings and product data in such a sequence as to cause no delay in the work or in the activities of FOUSHÉE or other Subcontractors.
- All Submittals shall be accompanied by a letter of transmittal. The transmittal shall state the quantity being submitted, specification or drawing reference.
- Any Deviations, Clarifications (Request for Information), or Field Bulletins from the contract documents must be clouded or clearly identified on all submittals and shall also be noted in the accompanying transmittal. If the submittal includes a deviation from the contract documents, the reason for such deviation shall be clearly noted.
- Minimum Quantities of Submittals shall be coordinated with FOUSHÉE and the contract documents.
- Approval of submittals shall not relieve the Subcontractor from full compliance with the contract requirements.
- Subcontractor shall be responsible to obtain copies of all approved shop drawings required to interface and coordinate the work of this subcontract with the work of others. Subcontractor shall be responsible for all costs associated with re-work of its own work or the work of others for failure to comply with these provisions.
- All materials and assemblies are to be either Underwriter Laboratories (UL) approved or have prior written approval by the authority having jurisdiction, written approval to be supplied at bid time. By submitting a bid, Subcontractor is explicitly acknowledging that failure to meet this requirement is grounds for termination of cause.

**H) Operations & Maintenance Manuals:**

- Subcontractor to provide complete Operations and Maintenance (O & M) Manuals indexed and tabbed upon completion and acceptance of the work by FOUSHÉE. These must be submitted prior to final payment. In addition, Subcontractor will provide an electronic version of all Operating and Maintenance Manuals and As-Built Drawings in CAD and PDF formats.

**I) Hoisting & Rigging:**

- Subcontractor shall abide by all provisions for hoisting and rigging regulations as per WAC 296-155 Part L.
- Subcontractor shall provide all required hoisting and material handling needed to complete this scope of work.
- Subcontractor to ensure a Crane operator, Lift director, Qualified rigger, Qualified signaler, Assembly/disassembly director, and Site supervisor are assigned, in place, and onsite. All coordination, rigging, dunnage, support personnel and lifting safety plans required for all hoisting performed for its scope of work. Rigging, which includes all Subcontractor supplied related accessories required to lift Subcontractor's load, is subject to FOUSHÉE's review. If FOUSHÉE objects to any aspect of Subcontractor's rigging, load will not be lifted until said objections are resolved to FOUSHÉE's satisfaction.
- Crane documentation to submit to FOUSHÉE prior to and in advance of hoisting and rigging includes but not limited to crane annual, assigned personnel, and lift plan. Crane activities will not occur until documents have been formally submitted.
- Minimum clearance distance is 20 feet unless KV is known and documented. A dedicated spotter/signaler may be required.
- Subcontractor must show evidence of Rigger's Liability Insurance coverage. Refer to Master Agreement at Exhibit 1 – Insurance Requirements.

**J) Layout & Control:**

- Subcontractor shall be responsible for their own entire layout unless otherwise agreed upon. FOUSHÉE will provide one grid line along the X and Y-axis and vertical control point for the building ONLY. Subcontractor is responsible for replacing (at their own cost) all staking, flagging, gridline layouts and/or benchmarks damaged or removed by their personnel in performing this scope of work.

- Subcontractor shall be responsible for alignment and leveling of all installations under this scope of work.
- Subcontractor to coordinate locations and sizes of all openings in Subcontractor's work with respective trades. Subcontractor's failure to coordinate with other trades will result in Subcontractor reworking openings in their work at no additional expense to FOUSHÉE. Any other costs that arise due to Subcontractor's failure to coordinate will be absorbed by the Subcontractor.
- Concrete Layout and Coordination: Each Subcontractor is responsible for coordination of layout and installation of all required embeds, sleeves and the like in concrete for their scope of work. Any required slab x-ray services and/or core drilling will be the sole responsibility of the responsible Subcontractor. All penetrations through post tension decks or shear walls are to be blocked out in lieu of core drilling and authorized by FOUSHÉE. Subcontractor shall not core drill holes through any structural member without prior notification by FOUSHÉE and approval by the Structural Engineer.
- Subcontractor is responsible for providing a layout drawing of proposed access door locations for approval. Layout approved locations in the field prior to framing and transmit the proper sizes and quantities of access doors to the drywall Subcontractor for installation. All access doors on the project will be provided by the same manufacturer and in accordance with the specifications and after receipt of a stamped and approved submittal.
- Subcontractor shall be solely responsible for providing locating services **for all** (public and private) utilities within the Subcontractor's work areas for Subcontractor's work.

**K) Erosion, Dust, Soil Protection, Noise & Traffic Control:**

- Provide all erosion control required for this scope of work. Provide dust control and noise control as required by governing agencies.
- Subcontractor recognizes the sensitivity of the soil condition and shall take extreme precautions not to aggravate it further and adhere to conditions of construction stormwater permit as applicable. FOUSHÉE reserves the right to temporarily suspend any portion of work if the type of equipment or methods of construction being used are determined to be detrimental to the best interests of the project. It is the responsibility of the Subcontractor to protect all proposed structural excavation back fills and stockpiled materials due to this scope of work from water saturation and to ensure the material's compaction performance. Leave the site at the end of each day in such condition to prevent standing water, and eliminate, cover, or contain your materials that could cause erosion from leaving the site or eroding into other areas of the site. Control surface water via the use of drainage ditches, berms and/or the use of temporary sump pumps. If material is contaminated or saturated while being stockpiled and protected, Subcontractor shall import material at no additional cost to FOUSHÉE. Subcontractor shall prevent all contamination from entering the site. Subcontractor shall immediately notify FOUSHÉE Jobsite Supervision in the event of any release of contaminants and immediately coordinate the lawful removal of the contamination from the site.
- Provide all traffic control and approved haul routes necessary for the completion of this scope of work per jurisdiction's traffic requirements. Traffic Control includes but is not limited to certified flaggers, street permits, traffic control plans, signage, police officers, barricades and spotters.
- The Subcontractor will make provisions to remove excess soil from trucks and other vehicle tires as necessary to prevent tracking of mud or other substances onto paved streets and highways. Subcontractor responsible for tracking debris on to paved surfaces will be required to obtain the service of a street sweeper.

**L) Deliveries and Staging:**

- Subcontractor shall coordinate material deliveries with the Project Superintendent or his agent and shall be on site to accept, unload, and stock all deliveries.
- Subcontractor is specifically responsible for ensuring that all materials, equipment and stocking of such do not compromise the structural integrity of the building or any other work-in-place.
- The parking of equipment, storage of material, parking of construction personnel's vehicles and use of any permanent facilities in the project shall be as directed by FOUSHÉE. All staging areas are strictly for short term use and will be at FOUSHÉE's jobsite supervision's discretion. All material deliveries need to be scheduled and coordinated for immediate installation so as to maximize storage space on site.
- Subcontractor will be required to provide licensed flaggers, or police officers to manage and direct traffic as required for their assigned scope of work and deliveries. Subcontractor will be responsible for coordinating, permitting and providing all traffic control measures and traffic plans to suit Subcontractor's requirement. Any "alternate traffic plan" will require approval of FOUSHÉE, and the jurisdiction having authority.

**M) Site Access/Flagging/Traffic/Parking:**

- Sequencing and barricading of work shall provide for the complete safety of the public and all construction personnel, and shall minimize interference with the normal flow of pedestrians and vehicles either on or off the site. This shall include, among other things, flagmen, police officers, signs and/or traffic plates.
- Access to the site will be at FOUSHÉE's jobsite supervision's direction only.
- Subcontractor must meet all requirements of Jurisdiction and other governing agencies in regard to haul off of debris, dust control, street cleaning, traffic control, and haul hours. Subcontractor is responsible for all street cleaning required due to this scope of work to include street cleaning due to truck traffic hauling materials on or off the site.

**N) Meetings:**

- Pre-Construction Meeting – Subcontractor’s project manager and superintendent are required to attend a Preconstruction Meeting held at the project if requested.
- Coordination/Scheduling Meetings - Subcontractor site supervision must also attend weekly safety meetings as well as separate coordination/scheduling meetings held on site by FOUSHÉE if requested.
- Safety Meetings – The Subcontractor’s entire crew is required to attend a weekly safety meeting held on site. If the Subcontractor decides not to attend the meeting a representative for that company must attend and relay jobsite hazards to the rest of the Subcontractors and their staff. The Subcontractor must also submit weekly safety meeting notes showing items were shared with the rest of their staff.

**O) Existing Conditions:**

- Subcontractor shall be knowledgeable of other Subcontractors’ in place work, this includes but is not limited to: their staking; below grade piping and conduits; stub ups for utilities, electrical, plumbing; pile cap rebar cages; floor drains; established sub grades; etc. Subcontractor must take care to protect from damage to others’ work, if damage occurs Subcontractor will replace at their expense.

**P) Damage:**

- Damage caused by Subcontractor or any agent of Subcontractor to any existing project elements including on-site or off-site utilities, subgrades, finished concrete, interior and exterior finishes, etc. will be repaired at Subcontractor’s sole expense.
- FOUSHÉE will make every effort to schedule and sequence the work to minimize trade damage. Subcontractor agrees to participate in a fair and equitable trade damage assessment.
- Subcontractor shall be responsible for costs of repairing and/or replacing any fireproofing on structural steel, metal deck and metal joists removed or damaged by Subcontractor’s forces. It is the Subcontractor’s responsibility to install all hangers, supports or attachments prior to the application of any fireproofing.

**Q) Extra Work Orders/Changes to Scope:**

- FOUSHÉE, at their option, may request certain work to be done during overtime hours. Should FOUSHÉE request such overtime, FOUSHÉE shall pay the premium cost (excluding state and local taxes). Any overtime to be reimbursed by FOUSHÉE shall be agreed to prior to and signed for by FOUSHÉE’s Jobsite Supervision on a daily basis. Copies of time sheets bearing FOUSHÉE’s Jobsite Supervision approval shall be submitted with the change order request as backup.
- All additional work authorized by FOUSHÉE’s jobsite supervision shall be verified on a DAILY basis with job tickets. Job tickets will note quantities, man and equipment hours. Signing of job tickets by FOUSHÉE jobsite personnel will be for verification of quantities and hours worked only and will in no way alter the Agreement OR be construed as acceptance of any additional terms not explicitly stated in the fully executed Agreement. Only FOUSHÉE’s Superintendents are authorized to sign job tickets.

**R) Supervision and Crew Size:**

- In addition to other provisions of this Agreement, and not limited to the provisions herein, Subcontractor shall provide sufficient project personnel necessary to maintain accurate records of as-built conditions of Subcontractor’s work at all times. Subcontractor shall provide shop drawings and other submittals as required to maintain the construction schedule and delivery of materials on time, plan and coordinate its work with sufficient detail to identify potential problems ahead of work being installed in place, and be responsible for timely submittal of field questions to avoid construction schedule impacts. Subcontractor’s project staff shall be available at all times throughout the project to submit additional costs within required timeframes with required detail to meet notice requirements of the Agreement for any additional contract sum or time requested. Failure of Subcontractor to provide sufficient project staff to meet the above requirements will be a basis for associated impact costs against Subcontractor and denial of any additional costs on Subcontractor’s behalf.
- Subcontractor’s crew and equipment, once established on site are not to be removed or reduced without written agreement from FOUSHÉE’s jobsite supervision.
- No electronic entertainment devices will be allowed within the construction areas during work hours.
- Smoking, vaping, chewing tobacco is not allowed in the building or on the jobsite.
- Consumption of food and/or drink shall only be allowed within designated areas. No food or drink will be permitted in the building.

**S) Hazardous Materials:**

- Prior to any equipment and/or fuel being brought onto the site, Subcontractor shall provide a written plan for contamination prevention and containment and cleanup of hazardous materials and spills (cutting oil, diesel, hydraulic fluid, etc.) potentially caused by their equipment and/or employees. The written plans shall include but not be limited to: handling of the fuels to prevent contamination; storage of the fuels (how, where, etc.); maintenance of the equipment to prevent leaks; if a spill happens, how it is to be contained and cleaned up; and how will any contaminated materials be disposed of. All plans and actions will be in accordance with the governing authorities. Subcontractor shall be responsible for all costs associated with any contamination caused in the performance of this scope.





**Exhibit 3**  
**Subcontract Work Order Template**

By executing this Work Order (“**WORK ORDER**”), \_\_\_\_\_ (“**SUBCONTRACTOR**”) and Foushée and Associates Company, Inc. (“**CONTRACTOR**”) are entering in a standalone Agreement, whereby (1) the Contractor is retaining the Subcontractor to perform the Work specified below and agrees to pay the Subcontractor the Subcontract Sum specified below in accordance with the terms and conditions of the Subcontract Documents and (2) the Subcontractor agrees to perform such Work and do all other things required of Subcontractor pursuant to the Subcontract Documents.

The Contractor may have a contract for construction (hereinafter, the Prime Contract) dated \_\_\_\_\_ with the Owner, \_\_\_\_\_ for the project known as \_\_\_\_\_. The Prime Contract may provide for the furnishing of labor, materials, equipment, and services in connection with the construction of the Project. A copy of the Prime Contract, if any, has been made available to the Subcontractor. With respect to the Work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to Contractor by each and all of the terms and provisions of the Prime Contract, and to assume toward Contractor all of the duties, obligations and responsibilities that Contractor by the Prime Contract assumes toward the Owner, insofar as applicable, generally or specifically, to Subcontractor’s Work, and the Subcontractor agrees further that Contractor shall have the same rights and remedies as against the Subcontractor as the Owner under the terms and provisions of the Prime Contract has against Contractor with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. By its signature to this Work Order, Subcontractor certifies, acknowledges, and agrees that it has knowledge of and assents to the terms of the Prime Contract referenced herein and has had a reasonable opportunity to review such documents.

This Work Order, together with the Subcontract Documents enumerated herein, including the Master Agreement between Contractor and Subcontractor dated \_\_\_\_\_ form the Subcontract.

**A. PROJECT NUMBER:**

**PROJECT NAME:**

**B. PROJECT LOCATION:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. THE ARCHITECT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**D. PARTY REPRESENTATIVES:**

The Contractor identifies the following representative in accordance with Article 1.4.1 of the Master Agreement (*list name, address, phone and email*):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Subcontractor identifies the following representative in accordance with Article 1.5.1 of the Master Agreement (*list name, address, phone and email*):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E. THE WORK OF THIS WORK ORDER:**

The Subcontractor shall execute the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

See Work Order Exhibit A – Subcontractor Scope Specific Requirements

**F. PROJECT SCHEDULE:**

The Subcontract Time is the period of time, including authorized adjustments, allotted in Contractor's schedule for Substantial Completion of the Work described in the Subcontract Documents. For Subcontract Time and schedule requirements, reference Master Agreement at Exhibit 2 - Subcontractor General Scope Requirements.

**G. SUBCONTRACT SUM:**

**Stipulated Lump Sum Basis -- Subcontract Sum** equals: \$ \_\_\_\_\_.

**Guaranteed Maximum Price Basis -- GMP Amount** equals: \$ \_\_\_\_\_.

If the sum of the cost of the Work plus the Subcontractor's Fee is less than the Guaranteed Maximum Price (the "Savings"), then \_\_\_ percent of such Savings shall accrue to the Contractor and \_\_\_ percent thereof shall accrue to the Subcontractor. Such Savings will be paid at the time of Final Payment pursuant to Article 10.3 of Agreement.

**Time and Materials Basis** (rates to be attached and updated on an annual basis)

**H. RETAINAGE PERCENTAGE** (Article 10.1.10 of Agreement): \_\_\_\_\_%

**I. PAYMENTS** (Article 10 of Agreement):

An application for payment in the form attached as Exhibit B must be attached to the Subcontractor's invoice including the most current Schedule of Values and any other required backup documentation. The application for payment must be received by Contractor no later than the 20<sup>th</sup> of the month. Applications for payment received after the 20<sup>th</sup> will be processed in the following month.

**Payment Terms:** \_\_\_\_\_

**J. INSURANCE AND BONDS:**

Insurance will be in accordance with Article 11 of the Master Agreement, except as otherwise indicated below:

If required by Contractor or Owner, Subcontractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**K. OTHER DOCUMENTS, IF ANY, LISTED BELOW, FORM PART OF THE AGREEMENT:**

- Exhibit A – Subcontractor Scope Specific Requirements
- Exhibit B – Payment Application
- Exhibit C – Sub-tier Contact Sheet
- Exhibit D – Job Site Information
- Exhibit E – Safety Plan Checklist
- Exhibit F – Close-out Documentation and Warranty Letter
- Exhibit G – Drawing Log



IN WITNESS WHEREOF, the parties hereto have executed this Work Order in one or more counterparts, on the date(s) set forth below, effective as of the day and year first above written.

**SUBCONTRACTOR:**

SUBCONTRACTOR NAME  
a \_\_\_\_\_ corporation

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**CONTRACTOR:**

FOUSHÉE AND ASSOCIATES COMPANY, INC.  
a Washington corporation

By: \_\_\_\_\_  
Name:  
Title:  
Date:

SAMPLE

#### **Exhibit 4 Safety Addendum**

Subcontractor and its lower-tier subcontractors shall take all reasonably necessary safety precautions pertaining to their Work and Work performance, including compliance with applicable laws, ordinances, regulations and orders issued by a public authority, whether federal, state, local, OSHA/DOSH (Washington State Division of Safety and Health) or other, and any safety rules and 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 their Work and ensure all of their employees have and wear personal protective equipment in compliance with applicable OSHA/DOSH requirements and Contractor's safety rules. Subcontractor shall promptly provide Contractor with written notice of any safety hazard or violation found anywhere on the job site, and of any injury, which occurs on the job site.

Subcontractor certifies that it and its lower-tier subcontractors are registered contractors and maintain a written Accident Prevention Plan and a job site-specific safety plan in compliance with applicable OSHA/DOSH regulations. Subcontractor's Accident Prevention Plan should address Subcontractor's role and responsibility pertaining to safety on the job site, training, and corrective action and be tailored to enforce a disciplinary action schedule in the event any safety violations are discovered, which should vary depending on the severity of the violations. When requested by Contractor, Subcontractor shall provide information regarding any and all safety matters to Contractor. The Subcontractor Safety Plan Checklist which is included and made part of this Subcontract will assist in ensuring compliance with all safety requirements.

Contractor's supervision may direct Subcontractor's superintendent to remove employees not in compliance with the above. In the event Subcontractor does not promptly correct any safety violations 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.

Subcontractor agrees to defend, indemnify and hold Contractor harmless from all OSHA and/or DOSH 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, ordinance, rules, regulations, orders, or obligations hereunder. Contractor may charge against the sums otherwise owing to Subcontractor the amount of the fines, fees, costs, and expenses incurred by Contractor due to claims, citations or fines assessed against Subcontractor or its lower-tier subcontractors.

## **Exhibit 5 Payment Policy**

### **PROGRESS PAYMENTS**

Please note that payment will be made only if **all** of the following criteria are met:

1. Subcontractor Pay Application (or vendor company invoice for Purchase Orders) is received in Foushée's office on time. The Pay Application form provided must accompany every monthly subcontractor billing and include Subcontractor's current Schedule of Values.
2. Unless otherwise agreed upon, a billing will be considered on time if received by the 20th of the month.
3. Electronic copies of Pay Applications and/or vendor invoices can be emailed to **acct@foushee.com**.
4. Subcontractor Pay Application must be on Foushée form:
  - Signed by an officer and notarized
  - Must have Foushée project name and number
  - The Conditional Waiver and Release section of the application must be completed
5. Signed Subcontract and up to date Insurance Certificates must be on file in Foushée's office.

Payment Dates:

- Discounts - postmarked on the 10th
- All others - postmarked on or about the 25th
- All checks for Progress Payments will be mailed.

### **RETENTION PAYMENTS (Subcontracts only)**

1. When Foushée receives final retention payment from the owner, we produce checks on the next available retention run.
2. Retention check runs are processed monthly on or about the 25th.
3. Unconditional final lien waivers will be emailed to you. You can either exchange the lien waiver for the check in person or we will mail the check upon receipt of the signed and notarized waiver. We accept both electronic and hard copies of the waiver.

It is not necessary to invoice us for retention.

**Exhibit 6**  
**Stored Materials Billing Instructions**

In order to bill for off-site stored materials, submit the following along with your application for payment or invoice:

1. An Inventory of stored materials, backed up with supplier invoices or other substantiated documentation (bills of lading, packing slips).
2. Digital photographic evidence of the stored materials. Mark and identify the subject materials and segregate them from other such goods held by the subcontractor.
3. Proof of insurance coverage on the subject materials while stored at the off-site location.

For materials Invoices in excess of \$5,000 (cumulatively), submit additionally:

1. A Signed "Bill of Sale" endorsed by a company officer for the subject materials. (a sample 'Bill of Sale' is provided for your use)



**SAMPLE**

**BILL OF SALE  
FOR OFFSITE STORED MATERIALS**

To: Foushée and Associates Company, Inc.  
3260 118th Ave SE  
Bellevue WA 98005

Project: \_\_\_\_\_  
Project No. \_\_\_\_\_  
Subcontract/Purchase Agreement No.: \_\_\_\_\_  
Subcontractor/Vendor Name: \_\_\_\_\_

Subcontractor/Vendor for and in consideration of the partial payments to be paid to it by Foushée and Associates Company, Inc. under the Subcontract/Purchase agreement hereby sells and transfers ownership to Foushee & Associates the property described in the attached copy of Invoice No. \_\_\_\_\_ Dated \_\_\_\_\_ which property is located at: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subcontractor/Vendor shall warrant and defend the sale of the property hereby transferred against all and every lawful claims and demands of all persons of the same or any part thereof.

Subcontractor/Vendor shall mark and identify the described property and shall segregate from and shall not commingle such property with other property held by Subcontractor/Vendor. Subcontractor/Vendor shall protect and bear the risk of loss or damage to such property until final completion and acceptance by Owner in accordance with the terms of the Subcontract/Purchase Agreement.

Foushee & Associates shall have free access to enter the premises and to take possession of and utilize, sell, lease or otherwise dispose of the property in any such manner as elected.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Subcontractor/Vendor  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_