

Subcontract Exhibits

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EXHIBIT B - INDEMNIFICATION

- A. Subcontractor agrees to defend, indemnify, and hold Contractor harmless from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with work performed or to be performed under this Subcontract by Subcontractor's agents or employees to the fullest extent permitted by law and subject to the limitations provided below.
- B. Subcontractor's duty to indemnify Contractor shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Contractor or Contractor's agent or employees.
- C. Subcontractor's duty to indemnify Contractor for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) Contractor or Contractor's agents or employees and (b) Subcontractor or Subcontractor's agents or employees, shall apply only to the extent of negligence of Subcontractor or Subcontractor's agents or employees.
- D. 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 to or for any third party under worker's compensation acts, disability benefit acts, or other employee benefits acts; provided, Subcontractor's waiver of immunity by the provisions of this paragraph extends only to claims against Subcontractor by Contractor, and does not include, or extend to, any claims by Subcontractor's employees directly against Subcontractor.
- E. Subcontractor's duty to defend, indemnify and hold Contractor harmless shall include, as to all claims, demands, losses and liability to which it applies, Contractor's personnel-related costs, reasonable attorney's fees, court costs and all other claim-related expenses.

EXHIBIT D – TERMS AND CONDITIONS

1. Obligations and Responsibilities

The Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor has assumed toward the Owner under the Main Contract to the extent of the work herein subcontracted and shall be entitled to all privileges and protections granted the Contractor by the Owner under the Main Contract. In case of conflict or inconsistency between the terms of the obligations and the responsibilities of the parties to this Subcontract and the Main Contract, this Subcontract shall control. This Subcontract Agreement states all contract terms, and supersedes all prior terms and agreements, or notions in Subcontractor's bid or proposal unless specifically set forth herein. The Subcontractor agrees not to assign or subcontract a substantial portion of the performance of this Subcontract without the prior written consent of the Contractor. Subcontractor shall designate in writing all lower tier Subcontractors to Contractor and shall not subsequently change such lower tier Subcontractors without Contractor's approval. Contractor shall furnish to the Subcontractor, upon Subcontractor's request, the legal description of the premises covered by the Main Contract. A copy of the Main Contract will be provided upon request. The Subcontractor shall attend all meeting as requested by the Contractor, including job coordination, scheduling and safety meetings.

2. Drawings

- A. If drawings, plans, specifications, samples or detail work are required with respect to the work, either by the Subcontractor or the Contractor, whether on account of work required to be done thereunder or on account of changes in work, Subcontractor shall promptly supply the same to Contractor's main office. Such submittals shall be made so as to (1) permit their submission to Owner within any time limit specified in the Main Contract, and

(2) to allow Subcontractor to pursue the work efficiently in accordance with Contractor's schedules and at a speed that will not cause delay in the progress of Subcontractor's work or work carried on by Contractor or other Subcontractors. Subcontractor shall not be entitled to a time extension for delays in preparing or receiving approvals of shop drawings or samples, which, by the exercise of reasonable diligence and judgment, could have been anticipated and avoided.

- B. In the event any said drawings, plans, specifications, samples or detail work are submitted by Contractor to Owner's architect or engineer for approval, such approval shall relate solely to general conformity with the project design and such approval shall not be construed as an approval in detail of conformity of such drawings, plans, specifications, samples or detail work with the project drawings or specifications. Subcontractor shall clearly and specifically identify on all submittals any deviations from the terms of this Subcontract or the contract documents and the Subcontractor assumes all responsibility for the consequences of any deviation without regard to any approvals obtained from Contractor or Owner or their respective employees, agents or officers.
- C. In the event that any such drawings, plans, specifications, samples or detail work as submitted by Subcontractor, whether or not they are approved by Owner's architect or engineer, deviate from or are inconsistent with any particular of the project drawings or specifications, and in the further event that any such deviations or inconsistencies shall impose upon Contractor any expense because of delays or extra work or otherwise, Subcontractor agrees to hold Contractor harmless from and to indemnify Contractor for any such expense. Contractor may, at its option, withhold from Subcontractor any payments due or to become due to Subcontractor an amount sufficient fully to reimburse Contractor for any such expense. The provisions of this paragraph are in addition and not in lieu of the remedies provided Contractor by law or any other section of this Subcontract.

3. Scheduling

- A. Contractor shall give advanced notice to the Subcontractor of the anticipated starting date for Subcontract work. At Subcontractor's request, Contractor shall consult with Subcontractor on development and update of construction schedules and shall make such schedules available to the Subcontractor. Subcontractor shall start work on the date named by the Contractor, and shall complete the several portions and the whole of the work herein sublet, at such times as will enable the Contractor to fully comply with the Main Contract. Subcontractor shall cooperate with the Contractor and other Subcontractors. The Subcontractor will be bound by any provisions in the Main Contract for liquidated damages and shall pay such damages for any delay to the extent caused by Subcontractor. Time is of the essence of this Subcontract. Subcontractor shall furnish all materials, labor, tools, equipment, and supplies necessary for performance of this Subcontract in a prompt, efficient, and workman-like manner in order to perform the work in accordance with the Subcontract and within the time specified in progress schedules from time to time designated by Contractor or any revisions thereof. Subcontractor shall prosecute the work or any part of it, as it becomes available, or at such other time or times as Contractor may direct, and in order to promote the general progress of the entire construction, and shall not, by delay or otherwise, interfere with or hinder the work of Contractor or any other Subcontractor.
- B. If in- place work falls behind the current updated and approved schedule and it becomes apparent from the current schedule that the work will not be completed within the contract time, Subcontractor agrees that it will, as necessary, take some or all of the following actions at no additional cost to Contractor to improve its progress: (1) Increase manpower in such quantities and crafts as will substantially eliminate the backlog of work; and/or (2) Increase the number of working hours per shift, shifts per working day, working days per

week, or the amount of equipment, or any combination of the foregoing sufficiently to substantially eliminate the backlog of work. Subcontractor shall keep Contractor fully advised at all times of any pending or possible delays in deliveries or work accomplishments that could affect immediate or long- range scheduling of the project.

- C. If a progress schedule is furnished by Contractor to Subcontractor, it shall be solely for the Contractor's use and shall not be insisted upon by the Subcontractor. Subcontractor shall be ready to perform at the times indicated in the progress schedule. Contractor makes no representation that it will be ready for Subcontractor at the times indicated in said schedule regardless of whether the delays may be within the control of Contractor. Subcontractor shall be prepared to perform the work to be performed by Subcontractor within the amount of time allowed for such work in any such progress schedule.
- D. As required by Contractor, Subcontractor shall submit to Contractor progress schedules for the work subcontracted, or at the Contractor election, cooperate in the preparation of a progress schedule.
- E. If, in the judgment of Contractor, there exists a reasonable belief that Subcontractor will not be able to fully complete Subcontractor's work within the time required hereunder, or complete a portion of Subcontractor's work as necessary for the overall coordination and timely completion of the project, Contractor may order Subcontractor to prosecute Subcontractor's work on an overtime basis, provide additional work forces, or add additional shifts and expedite the furnishing of labor and materials in order to meet the progress schedule. Subcontractor shall, at the expense of Subcontractor, promptly, but in no event more than forty- eight (48) hours after such order, commence and continue to perform Subcontractor's work on such basis to the extent necessary to cause Subcontractor's work to be fully completed in a timely fashion in accordance with the project schedule and the Subcontract.
- F. Contractor may become liable to Owner or others for delay in the completion of the project, which could result in Contractor incurring additional costs and expenses. Subcontractor shall reimburse Contractor for any and all damages suffered by or assessed against Contractor, including but not limited to liquidated damages, which are attributable to or caused, in whole or part, by Subcontractor's failure to furnish materials or to perform the work, or any portion thereof, within the time fixed or in the manner provided for herein and, in addition thereto, agrees to pay Contractor such other or additional damages as Contractor may sustain by reason of any such failure or delay by Subcontractor. Payment of such damages shall not release Subcontractor from its obligation to otherwise fully perform this Subcontract.

4. Payments

- A. Subcontractor shall submit to the Contractor applications for payment by the 15th day of each month. Contractor shall withhold retainage from the Subcontractor in the amount of ten (10) percent. If an application for payment is received by the Contractor after the 15th day of the month, it will be processed the following month. The Subcontractor's payment applications shall indicate the percentage of completion of each portion of the Subcontractor's work as of the end of the period completed by the application for the payment. Subcontractor shall be paid for work to the date of Contractor's last progress billing date, as approved by the Owner, Architect or Engineer, within ten days after Contractor has received payment for such progress billing. Final payment for work under this Subcontract shall be made within ten days after the Contractor has received final or complete payment provided that Subcontractor has completed its work and fulfilled all of its obligations under the Subcontract. The Contractor's obligation to release retention of the Subcontractor shall be subject to proof that there are no existing or anticipated claims of the Subcontractor's subcontractors or material suppliers.

- B. Payment to the Subcontractor is subject to the following conditions: (1) timely receipt of Subcontractor's payment application; (2) signed Subcontract on file; (3) current insurance certificate on file; (4) safety plan on file; (5) the Subcontractor's quality of work is satisfactory to the Contractor; (6) the Subcontractor's work is completed to a stage commensurate with the Subcontractor's application for payment; (7) Subcontractor and its subcontractors and suppliers, if any, have provided lien waivers if requested by the Contractor; and (8) there is no reasonable evidence of delay that the unpaid balance of the Subcontract price may not be sufficient to offset costs of Contractor for Subcontractor incomplete or incorrectly performed work.
- C. Contractor's payment to the Subcontractor is expressly conditioned on Contractor receipt of payment from the Owner. Contractor's receipt of payment from the Owner is an express condition precedent to Contractor's obligation to pay the Subcontractor. The Subcontractor will be paid only with funds received by Contractor from the Owner on account of Contractor's work.
- D. All payments received by Subcontractor under this Subcontract shall constitute a trust fund in favor of laborers, material person, governmental authorities, and all others who are legally entitled to claim a lien on the premises covered by this Subcontract or who otherwise are entitled to file a claim against any retained percentages or payment bond. Progress payments shall be deemed advances and are subject to adjustment at any time prior to final payment for errors, payment of bond or retention or lien claims, overpayment, or Contractor's good faith determination that the remaining balance of payment may be insufficient to insure completion of work covered by this Subcontract in accordance with its terms.
- E. If the Contractor determines in good faith that the Subcontractor is obligated to the Contractor or anyone else for labor, fringe benefits, taxes, supplies, materials, equipment, rental or other proper charges against the work covered by this Subcontract agreement, the amount of such obligation may be deducted by the Contractor from any payments or payments made under this provision. The Contractor may reduce the amount to be paid Subcontractor by the estimated cost, plus markup, of all labor, material, and/or work not yet furnished by the Subcontractor. Subcontract in accordance with its terms.
- F. The Contractor may at any time require the Subcontractor to provide a statement in writing setting forth what amounts, if any, are due and payable by Subcontractor to third parties for labor, and fringe benefits, taxes, materials, equipment, or supplies in connection with or arising out of the performance of this Subcontract. The Contractor may withhold from any payment, partial or final, otherwise due under this Subcontract, such sums as the Contractor reasonably may determine necessary to secure and protect the Contractor or the Owner from claims or liens that may be asserted by said third parties.
- G. If the Main Contract permits payment for materials delivered to the jobsite or to satisfactory storage facilities, Subcontractor may invoice for materials so delivered and may receive payment therefore as outlined above. The Subcontractor shall assume full risk of loss or damage to the materials until the Contractor's acceptance of the Subcontract work.
- H. It is Subcontractor's responsibility to submit timely payment applications to Contractor. In the event Subcontractor fails to submit an approved payment application within ninety (90) days following the performance of its work, Subcontractor shall be assessed a monthly One Thousand and No/100 Dollars (\$1,000.00) late processing fee which shall be deducted from Subcontractor's payment application.

5. Change Orders

- A. The Contractor may, without invalidating this Subcontract, order in writing extra work or make changes by altering, adding to, or deducting from the work, and the Subcontract price shall be adjusted as agreed. All such work shall be executed under the conditions

hereof and of the Main Contract, except that any claims for extensions of time caused thereby must be agreed upon at the time of ordering such change. The Subcontractor shall make no claims for extras unless the same shall be agreed upon in writing by the Contractor prior to the performance of any such extra work. If work has been fully accepted by Owner, payment shall be made to Subcontractor after payment is received by Contractor. In case of disputes over the adjustment of the cost, Subcontractor shall proceed with the work and the dispute shall be resolved in accordance with the procedures set forth in the Main Contract to the extent that the Contractor is bound by such procedures, otherwise in accordance with the dispute resolution process in this Subcontract. Subcontractor shall not be entitled to any additional compensation or extension of time unless the Subcontractor shall have made written request to the Contractor for such within sufficient time to permit the Contractor to give timely notice to the Owner.

- B. If the Contractor and Subcontractor are unable to agree on the appropriate adjustment to the subcontract amount, and the adjustment amount shall be submitted to a dispute resolution proceeding, including arbitration and the amount attributable to the Subcontractor overhead and profit shall not exceed (10%). Any claim not timely submitted shall be deemed waived by the Subcontractor. If any claim for changed or extra work of the Subcontractor is presented to the Owner, together with claims of the Contractor or others, the Contractor's determination as to the Subcontractor's share of any award by the Owner shall be conclusive and binding on the Subcontractor.
- C. Unless otherwise provided for in a written change order, any change in the contract price and/or time effected through a written change order shall constitute full payment and final settlement of all claims arising from the change order work including labor performed, material and equipment furnished, and costs for any delay, acceleration, disruption of schedule or loss of efficiency associated with the change in the work.

6. Claims

A claim is a demand or assertion made in writing by the Contractor or Subcontractor seeking an adjustment in the Subcontract price and/or Subcontract time, an adjustment or interpretation of the Subcontract terms, or other relief arising under or relating to this Subcontract, including the resolution of any matters in dispute between the Contractor and Subcontractor in connection with the project. The Subcontractor agrees to make all claims against the Contractor for which the Owner is or may be liable in the same manner and within the same time limits provided in the Main Contract for like claims by the Contractor against the Owner and in sufficient time for the Contractor to make such claims against the Owner in accordance with the Main Contract. The Contractor agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor in the manner provided in the Main Contract for like claims by the Contractor against the Owner. The Subcontractor shall give the Contractor written notice of all claims within seven (7) calendar days of the date when the Subcontractor knew of the facts giving rise to the event for which the claim is made; otherwise, such claims are waived.

7. Nature of Work

Subcontractor has satisfied itself as to the nature and location of the work, the character, kind and quantity of material to be encountered, the character, kind and quantity of the equipment during the prosecution of the work, the location, conditions and other matters which can in any manner affect the work under this Subcontract, and acknowledges that the Subcontractor has had a reasonable opportunity to examine the site and all of the Main Contract documents. Prior to commencing work, the Subcontractor shall examine the site and any surfaces upon which the work is to be performed. Subcontractor shall notify the Contractor in writing of any conditions that might adversely affect its work, failure to do so will constitute a waiver of entitlement to any additional compensation and contract time arising out of such conditions.

8. Subcontractor as Employer

Subcontractor has the status of an employer as defined by Industrial Insurance, Workers Compensation and Unemployment, Compensation Act, Social Security and other similar acts of the federal, state and local government. Subcontractor will withhold from its payroll the applicable social security taxes, workers compensation, unemployment compensation contributions and withholding taxes, and pay the same, and the Contractor shall be in no way liable as an employer to or on account of any of the employees of the Subcontractor. Before final payment is made under this Subcontract, Subcontractor shall furnish satisfactory evidence to the Contractor that it has conformed to said laws, rules, and regulations. The Subcontractor hereby agrees to indemnify the Contractor for any and all liability under such laws arising from the work performed under this Subcontract agreement. Subcontractor shall have a representative acceptable to contractor and Owner on site at all times during performance of its work with authority and responsibility to make immediate decisions on its behalf. Subcontractor's representative shall attend scheduled job meetings and other meetings as requested by Contractor and submit daily field reports, indicating manpower and work accomplished, in a form acceptable to Contractor. Subcontractor agrees to promptly remove from the job any of its employees who are unsatisfactory to Contractor or Owner.

9. Permits and Taxes

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

10. Materials

Materials delivered by or for the Subcontractor and intended to be incorporated into the construction hereunder shall remain on the jobsite and shall become property of the Owner upon payment, but the Subcontractor may repossess itself of any surplus remaining at the completion of the contract. All scaffolding, apparatus, waste, works, machinery and plant brought upon the premises by the Subcontractor shall remain its property; but in case of inability to perform, and the completion of the work is done by the Contractor, the Contractor shall be entitled to the use of said scaffolding, apparatus, waste, works, machinery and plant without cost or liability for depreciation or damage by use, without prejudice to Contractor's other rights or remedies for any damage or loss sustained by reason of said inability. It shall be the Subcontractor's responsibility to unload, store and protect its materials and the Subcontractor shall bear the risk of loss thereof, and shall protect such material against loss until actual incorporation into the work and the work accepted even though title thereto may have previously passed to the Owner under the preceding provisions except that Subcontractor shall not bear such loss as may be due to the sole negligence of the Contractor. Due to limited storage area available at the jobsite, Subcontractor shall be responsible for coordination of material deliveries so that shipments received shall follow the construction sequence. The Contractor shall not be responsible for off- site material storage costs, which may be incurred by Subcontractor.

11. Equipment

The Contractor may make its equipment available to the Subcontractor at the Contractor's discretion and on mutually satisfactory terms. Should the Contractor allow the use of its equipment and/or its operator by the Subcontractor, Subcontractor agrees that such operator shall be considered as the agent or servant of the Subcontractor and the Subcontractor shall be solely responsible for the acts of such operator during the time of the equipment use. The Subcontractor shall make a thorough inspection to the Subcontractor's satisfaction as to the physical condition and capacity of the equipment as well as the competency of the operator, there being no representations or warranties by the Contractor with reference to such matters. The Subcontractor waives any and all claims against the Contractor relating to the use by the Subcontractor of the Contractor's equipment or operators.

12. Termination for Convenience

The Contractor shall have the right to terminate the Subcontract, without the Subcontractor being at fault, for any cause or for its own convenience, and require the Subcontractor to immediately stop work. In such event, the Contractor shall pay the Subcontractor for that work actually performed in an amount proportionate to the Subcontract price. The Contractor shall not be liable to the Subcontractor for any other costs, including prospective or lost profits on work not performed.

13. Takeover

- A. Subcontractor shall commence and at all times, carry on perform and complete this subcontract to fulfill and complete satisfaction of the Contractor and of the Architect/Engineer or Owner. Upon Contractor's written request, Subcontractor shall furnish such evidence as Contractor may require relating to Subcontractor's ability to perform this Subcontract in the manner and within the time specified herein. In the event that the Contractor determines in good faith, after consultation with the Subcontractor, that the Subcontractor is not proceeding with diligence and/or in such a manner as to satisfactorily complete the work within the required time, or if the Subcontractor fails to correct, replace or re- execute faulty or defective work done or materials furnished under this Subcontract as required by the Subcontract, then Contractor may take over (part or all of) the work of the Subcontractor upon forty- eight (48) hours written notice to Subcontractor. Contractor shall have the right to complete (or contract with another company to complete) the Subcontractor's work at the cost and expense of the Subcontractor, without prejudice to the Contractor other rights or remedies for any loss or damage sustained. Contractor shall have the right to enter upon the premises and take possession, for the purpose of completing the work included in this subcontract, of all materials, tools and appliances thereon, all without liability on the part of Contractor for any injury or damage to said materials, tools and appliances. In the event of any emergency involving risk or loss or injury to person or property, arising prior to an actual takeover, Contractor may take appropriate action to mitigate such emergency and may charge Subcontractor for all costs incurred in such mitigation.
- B. In the event of a takeover by the Contractor, Subcontractor shall not be entitled to receive any further payment under this Subcontract until the work is finished and Contractor has received payment in full from Owner, at which time, if the unpaid balance of the amount to be paid under this Subcontract exceeds the expenses incurred by Contractor in finishing the work, such excess shall be paid by Contractor to Subcontractor; but if such expense shall exceed such unpaid balance, then Subcontractor shall pay the difference to Contractor. As used in this section the word "expense" shall be defined to mean actual cost to Contractor plus an amount equal to fifteen percent (15%) of such cost for overhead. The expense incurred by Contractor as herein provided, either for furnishing materials or for finishing the work, and any damages incurred as a result of such default, shall be chargeable to and paid by Subcontractor, and Contractor shall have a lien upon all materials, tools and appliances taken possession of, as aforesaid, to secure the payment thereof.

14. Unit Price

In the event the Subcontract contains unit pricing items, it is understood and agreed that any quantities are approximate only and subject to change as required by the Main Contract and as ordered and directed by the Contractor.

15. Material Quality

Materials furnished by the Subcontractor that are determined by the Contractor, Architect/Engineer or Owner as failing to conform to the Main Contract shall be immediately removed by the Subcontractor upon notice from the Contractor.

16. Job Damage

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. Job damage caused by Contractor on work of Subcontractor shall be reported immediately to the Subcontractor and Contractor shall be responsible for its repair.

17. Cleanup

Subcontractor shall regularly and promptly remove all refuse, waste, and debris produced by its operation. Refuse shall not be permitted to accumulate to the extent that it interferes with the free access to the work site. Compliance with all safety requirements of good housekeeping is an essential part of Subcontractor's obligation. In the event of Subcontractor's failure to comply, provided that Subcontractor has received written notice within 24 hours, or refusal to meet these requirements, refuse removal may be done by the Contractor and charged against the account of the Subcontractor. This provision requires only one initial notice.

18. Bond

If requested by Contractor, Subcontractor shall furnish a performance and payment surety bond, conditioned on and covering the faithful performance of, and compliance with, all of the terms, provisions, and conditions of this Subcontract, and payment for all labor, materials, equipment, and supplies used in the prosecution of the work provided herein. Subcontractor shall furnish such a bond within ten (10) days of Contractor's written request. Contractor shall pay for the costs of obtaining the performance and payment surety bond.

19. Workers Compensation

Subcontractor shall furnish to Contractor evidence that it has in force Workers Compensation Insurance including employer's liability, as may be required by the State of Washington. Where applicable, this shall include United States Longshoremen's and Harbor Workers Act insurance, including coverage B- employers liability general conditions of the specifications, but in no event less than \$500,000. Such evidence of the insurance may be in the form of an insurance certificate issued by Subcontractor's insurance carrier satisfactory to the Contractor and shall provide for not less than thirty (30) days' notice to Contractor of cancellation or reduction of coverage. In the event that Subcontractor fails to maintain any insurance required by this Subcontract in force during the entire life of the Subcontract, Contractor may at its option purchase such insurance in the name of the Subcontractor and deduct the cost of the same from payments due Subcontractor.

20. Sub-Tier Contractors

Any sub tier Subcontractor shall be bound to this Subcontractor the same as the Subcontractor is bound to the Contractor and the same as the Contractor is bound to the Owner. This form may be used for sub- tier Contractors and when so used, the term Contractor shall mean Subcontractor and the term Subcontractor shall mean sub- tier Subcontractors.

21. Safety

- A. Subcontractor shall comply with all safety standards, rules, and regulations of local, state, and federal authorities and the safety standards of the Contractor. Subcontractor shall submit a quality assurance plan and a site-specific safety and fall protection plan within fifteen (15) days of signing this Subcontract. All subcontracted work is to be performed in a safe and workman-like manner and must conform to national, state, WISHA, OSHA, and local building codes. Subcontractor shall provide all safety equipment required to perform

the work unless previously agreed in writing that the Contractor will furnish the required safety equipment. Subcontractor shall develop and enforce an accident prevention program together with site-specific plans consistent with the Washington Industrial Safety and Health Act. Subcontractor shall have and enforce a disciplinary schedule that will be followed by Subcontractor's subcontractors in the event that safety violations are discovered, regardless who makes the discovery. Appropriate disciplinary action shall not be contingent upon the issuance of a WISHA citation. In the event any liability is assessed against Contractor because of failure of the Subcontractor to comply with federal, state, or local laws, the Subcontractor shall pay and indemnify Contractor for such amounts and Contractor may set off one hundred and fifty percent (150%) of any such fines, assessments, penalties, or liability resulting from such violation against amounts owing to the Subcontractor.

- B. In order to effectively promote safety at the work site, the Subcontractor shall identify, prior to commencement of work, an employee or officer of the Subcontractor's company who is responsible for job site safety, and such employee or officer shall report to the Contractor and respond to all inquiries or concerns of the Contractor during the course of the work. Subcontractor shall immediately report to Contractor any safety hazards, violations, injuries, or illnesses involving its employees or those of its subcontractors, relating to the work or which have caused or may cause injury to a third party or damage to the property of Owner or Contractor. Subcontractor shall promptly furnish to Contractor copies of any worker's compensation report of injury or illness forms filed by any of its employees or those of its subcontractors and when requested, assist Contractor in any investigation it may conduct of any such accident, injury or illness.

22. Use or Occupancy by Contractor

Whenever it may be useful or necessary for Contractor to do so, Contractor may occupy and use any portion of the work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by Owner, but such use or occupancy shall not relieve Subcontractor of its guaranty of said work and materials nor of its obligation to make good, at its own expense, any defect in materials and workmanship which may exist or subsequently be discovered. Subcontractor shall not be responsible for the maintenance of such portion of the work as may be used or occupied by Contractor, nor for any damage thereto that is due to or caused by the sole negligence of Contractor during such period of use.

23. Warranty

- A. Subcontractor warrants that its work will be free from defective materials; constructed in accordance with industry standards; constructed in a workmanlike manner; constructed in compliance with all laws applicable to Subcontractor's work; performed in strict conformance with the manufacturer's specifications for each product used; and constructed in accordance with all other contract documents that legally apply to Subcontractor with respect to the applicable project. Subcontractor guarantees that it will promptly return to the project at Subcontractor's sole expense and repair or replace, as necessary, any work that does not comply with Subcontractor's contract and warranty obligations.
- B. The term of Subcontractor's warranty shall continue for as long as Contractor is bound to the Owner under the terms of the Main Contract. Upon request of Contractor, Subcontractor shall furnish and pay for a maintenance bond to indemnify Contractor for any loss that may be caused by breach of said warranty and guaranty. Subcontractor shall furnish and pay for all written guarantees and/or maintenance bonds required by the Main Contract in connection with Subcontractor work. Contractor may withhold payment from Subcontractor such sums as Contractor in its sole discretion shall deem necessary to protect and indemnify Contractor for any loss that may be caused by breach said warranty

or guaranty, until such time that Contractor is released from responsibility by Owner. Upon substantial completion of Subcontractor's work or of the project, whichever is earlier, Subcontractor shall submit to Contractor all applicable warranties, guaranties, maintenance and operations manuals, as-built drawings and/or record drawings satisfactory to Owner and Contractor.

24. Modification and Waiver

This Subcontract may not be modified unless done so in writing and signed by both parties. The parties intend for every provision in this Subcontract to be enforceable. The parties desire to avoid a future situation where one party claims the other party has waived a provision of this Subcontract by implication from the party's conduct. Accordingly, Contractor and Subcontractor agree that any waiver to the terms of this Subcontract shall not be enforceable, unless it is executed in writing and signed by the party to be charged.

25. Disputes

- A. In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves the work performed or to be performed by Subcontractor, or in the event of any dispute or claim between Contractor and Subcontractor caused by or arising out of conduct for which Owner may be responsible, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor to the same extent that Contractor is bound to Owner by the terms of the Main Contract and by any and all procedures and resulting decisions, findings, determinations, or awards made there under by the person so authorized in the Main Contract, or by an administrative agency, board, court of competent jurisdiction or arbitration. If any dispute or claim of Subcontractor is prosecuted or defended by Contractor together with disputes or claims of Contractor's own, and Subcontractor is not directly a party, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses, and other information required by Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of Subcontractor's interest in such claim or dispute.
- B. Subcontractor agrees to be bound by the procedure and final determinations as specified in the Main Contract and agrees that it will not take, or will suspend, any other action or actions with respect to any such claims and will pursue no independent litigation with respect thereto, pending final determination of any dispute resolution procedure between Owner and Contractor. It is expressly understood and agreed that as to any and all claims asserted by Subcontractor in connection with this project arising from the actions or fault of Owner, Contractor shall not be liable to Subcontractor for any greater amount than Owner is liable to Contractor, less any markups or costs incurred by Contractor. As to any claims asserted by Subcontractor for or on account of acts or omissions of Owner or its agents or design professionals, at the sole option of Contractor, Subcontractor agrees to prosecute such claims in Contractor's name. For any amount recovered or collected (whether through proceedings or settlement) by Subcontractor, Contractor shall be entitled to ten (10) percent of such amount received or collected as its mark-up for such claims. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear expenses thereof including attorneys' fees.
- C. All other claims or disputes between Contractor and Subcontractor arising out of, or relating to, the Main Contract or this Subcontract, the breach thereof, or work thereunder (for which a dispute resolution procedure is not otherwise provided in the Main Contract), shall be decided by a court of competent jurisdiction. If suit is filed in Superior Court, the matter shall be resolved pursuant to the Mandatory Arbitration Rules regardless of the amount in dispute. The arbitrator shall have the authority to determine the validity and enforceability of any lien. The parties expressly and irrevocably agree to abide by the

Arbitrators' decision, waiving all rights of appeal, and waiving all rights to a trial de novo, the parties hereby agreeing to accept the Arbitrator's decision as final and binding.

26. Equal Employment Opportunity Policy Statement

Holiday- Parks, Inc. is an equal opportunity employer and is committed to nondiscrimination in employment. Holiday- Parks, Inc. expects all of its subcontractors to be equally committed to equal opportunity employment in the workplace without regard to race, color, religion, sex, national origin, age, disability or veteran status. Any questions, concerns, or complaints should be brought to the attention of the EEO Officer.

A. Federal Construction contracts, but NOT federally assisted construction contracts) worth at least \$10,000:

- i) The Equal Employment Opportunity Clause required under Executive Order 11246 and Section 503 of the Rehabilitation Act (as amended) and the related regulations of the US Secretary of Labor (41 CFR 60-1.4 (a) and 60- 741.5) are incorporated by reference in this contract.
- ii) For federally assisted construction contracts worth at least \$1,0,000: The Equal Employment Opportunity Clause required under Executive Order 11246 and the related regulations of the U.S. Secretary of Labor (41 CFR 60-1.4(b)) are incorporated by reference in this contract.
- iii) For construction but not federally assisted construction contracts worth at least \$10,000. The Equal Employment Opportunity Clause required under the Vietnam Era Veterans Readjustment Assistance Act (as amended) and the related regulations of the US Secretary of Labor (41 CFR 60-250.5) are incorporated by reference in this contract.
- iv) For federal and federally assisted construction contracts worth at least \$10,000: The "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" found in 41 CFR 60-4.3, including the sixteen required EEO and affirmative action requirements for federal construction contractors found in 41 CFR 60-4.3(a)(7), are incorporated by reference in this contract Also, pursuant to 41 CRF 60- 4.2(d), please be aware of the following "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)":

- 1) The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
- 2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation in each trade	Goals for female participation in each trade

- 3) These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

- 4) The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
- 5) The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- 6) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is _____ (insert a description of the geographical area in which the contract is to be performed giving the state, county and city, if any).

27. Employment Verification

Subcontractor will comply in all respects with the Form I-9 employment verification requirements of the federal Immigrations and Nationality Act of 1986 (as amended) and in accordance with guidance published by the United States Citizenship and Immigration Services. Subcontractor will take such other reasonable and lawful actions as may be necessary to ensure that its employees are legally authorized to work in the United States. Contractor reserves the right to audit Subcontractor's Form I- 9 file to ensure compliance with this requirement, and Subcontractor agrees to makes its Form I- 9 files available for inspection upon reasonable notice by Contractor.

28. Employment Eligibility Verification (E-Verify)

If this contract is covered by Executive Order 12989, then the Employment Eligibility Verification Clause required under Executive Order 12989 and the related Federal Acquisition Regulations (48 CFR 22.1800 et seq. and 52.222-54) are incorporated by reference.

29. Notice of employee rights under the National Labor Relations Act

This provision applies if the Subcontractor is performing on a subcontract at any tier related to a prime federal contract (NOT federally assisted construction contract) worth at least \$100,000, unless the value of the Subcontractor's subcontract is \$10,000 or less. This requirement applies to federal contracts resulting from government solicitations that occur on or after June 21, 2010. If applicable, the provisions of 29 CFR Part 471, Appendix A to Subpart A (relating to the obligation to post a notice of employee rights under the National Labor Relations Act and to notify covered subcontractors of their obligation to do so) are incorporated by reference in this contract.