



1280 Fir St. S
Salem, OR 97302

SUBCONTRACT AGREEMENT

This agreement is dated _____ between Skyline Builders, LLC (hereinafter, "Contractor"), and _____ (hereinafter, "Subcontractor"), to perform the Work that Subcontractor is in the business of providing. Subcontractor shall provide such services to Contractor as are usually provided by Subcontractor, in accordance with the Project Contract Documents.

SUBCONTRACTOR'S ADDRESS: _____

SUBCONTRACTOR'S BILLING/INSURANCE PHONE NUMBER: _____

SUBCONTRACTOR'S EIN OR TAXPAYER ID: _____

In consideration of their mutual promises made herein, the parties hereby agree as follows:

Article 1

PROJECT CONTRACT DOCUMENTS. The Subcontract agreement consists of this Agreement, any modifications to this Subcontract, and all other documents incorporated by reference herein.

Article 2

CONTRACT PAYMENT. Contractor agrees to pay Subcontractor for satisfactory performance of Subcontractor's Work on the basis of an agreed-upon set of specifications, scope of work, and price. All price agreements must be made in writing with a description of services provided. Contractor shall not be liable to Subcontractor for any per-diem and/or travel expenses of persons performing the services unless agreed upon in writing prior to such expenses being made.

(a) Monthly Progress payments shall be made to Subcontractor for Work satisfactorily performed. Subcontractor shall submit to Contractor, in digital form only, detailed invoices for its services under this Agreement. Invoices are to be submitted via email to skylinebuildersllc@bill.com. Invoices to Contractor are to be submitted no later than thirty (30) days after such Work is performed. Invoices submitted more than thirty (30) days after such Work is performed shall be subject to fees and/or delay of payment. Invoices not received by 11:59pm on the twentieth (20th) day of each month may NOT be included in the following draw and are not required to be paid by the tenth (10th) day of the month following Contractor's receipt of the invoice. In such cases, Contractor will not be required to deliver payment to Subcontractor until the tenth (10th) day of the second month following Contractor's receipt of the invoice. Subcontractor shall be paid via a method determined by Contractor, including but not limited to United States Postal Service first-class mail, electronic funds transfer (EFT), or physical delivery to Subcontractor's place of business. In the event of non-receipt of payment on the date payment was agreed to be received, Subcontractor must provide Contractor with a written notice on the following business day notifying Contractor that said payment was not received, to allow Contractor to execute a stop payment and re-send payment. These payments are subject to receipt of such lien waivers, affidavits,

warranties, and guarantees required by the Project Contract Documents or Contractor. Subcontractor agrees that payment by Owner or Financial Institution to Contractor on account of Subcontractor's Work is a CONDITION PRECEDENT to Contractor's obligation to pay Subcontractor under this Agreement. Subcontractor expressly assumes the risk that Owner will not pay all or any part of the amounts due Contractor on account of Subcontractor's Work under this Agreement. Contractor shall have the right to withhold retainage based upon a per-project requirement as required by financing institutions or partners. Contractor shall retain a portion of each disbursement of Subcontractor's pay equal to the retention percentage. At Contractor's sole discretion, Contractor may release some or all of such retainage earlier than the final completion of the Project. For the purposes of this Agreement, "final completion" is defined as completion of the following events: full payment from Owner to Contractor; and, issuance of all related permits, certifications, and lawful documents necessary for the inhabitation and use by individuals of the property and structures on which the Work was performed.

(b) Subcontractor shall pay all of its suppliers and/or its subcontractors for materials, products or labor supplied to Subcontractor for the Work no later than seven (7) days after Subcontractor receives payment under this Agreement, or per the written payment requirements of the supplier. Subcontractor shall require each of its suppliers of materials or products and/or its subcontractors to provide a written billing or invoice for the work performed or materials or products supplied and a waiver of any lien for labor, equipment, services, materials or products at the time that payment for the same is made. Subcontractor shall provide Contractor with at least fourteen (14) days prior written notice of its intent to file a claim of lien against the property on which the Work is performed. Subcontractor shall also immediately notify Contractor in writing if it knows or in the exercise of reasonable diligence should know that any of Subcontractor's suppliers and/or its subcontractors intend to file a claim of lien against the property on which the Work is performed, so that Contractor may take any and all steps it deems necessary to prevent a claim of lien from being filed. If

Contractor pays any supplier of materials or products and/or any subcontractor for work performed under this Agreement for which Subcontractor is obligated to pay, Subcontractor shall reimburse Contractor upon demand.

Article 3

BID INSTRUCTIONS

- (a) All bids submitted by Subcontractor shall be on the Bid Form included in the Bid Package and must be signed by an authorized representative of Subcontractor. Bids which are incomplete, conditioned or qualified in any way, contain erasures or alterations, include alternate bids or other items not called for on the Bid Form and in the Bid Package, are not in conformity with the law or with these Instructions, contain any statement by Subcontractor reserving the right to accept or reject an award or to enter into the contract, or include any other irregularity may be rejected as non-responsive by Contractor. Only the amounts and information asked for on the Bid Form furnished by Contractor will be considered as the bid.
- (b) The Bid Form may require Subcontractor to submit bid prices for one or more items on various bases, including: Cost Plus, Design-Build, Guaranteed Maximum Price, Incentive Construction, Integrated Project Delivery, Lump Sum, Time and Materials, Unit Price, or any combination thereof.
- (c) Inclusions: Any bid, including alternate pricing requested by Contractor on the Bid Form, should include all time, material, equipment, supervision, profit, bonds, insurance, engineering, labor, material, delivery, layout, craning and hoisting, uncrating, setting, installation, parking, traffic control, temporary task lighting, temporary weather protection, storage, shop drawings, submittals, samples and mock-ups as required in contract, overhead, and other costs necessary to complete the Work, in accordance with the Project Contract Documents. Contractor shall analyze alternate bids for each Bid Package to determine whether to award the alternate bid or the Base Bid only.
- (d) Subcontractor shall acknowledge receipt of any Addenda to each Bid Package by identifying the Addenda numbers in the space provided for this purpose on the Bid Form. Failure to do so may result in Subcontractor's bid being declared non-responsive.
- (e) Telephone, faxed, and verbal bids will not be accepted.
- (f) All bids, including alternates, shall remain valid and binding for a period of (60) review days from bid submission deadline, unless as defined otherwise by Subcontractor. Contractor may, at any time during the written review period, accept or reject a bid without any change to the bid price.
- (g) Contractor reserves the right to reject any or all bids, and the right to waive any informalities or irregularities in any bids received.
- (h) Successful Bid Criteria: Subcontractor shall not have lawsuits with judgments entered against Subcontractor within five years of the bid submittal date that demonstrate a pattern of failing to meet the terms of contracts, unless there are extenuating circumstances and such circumstances are deemed acceptable to Contractor.
- (i) Safety: Subcontractor's safety plans shall be effective in practice and its safety record shall not demonstrate a pattern of safety problems. A safety plan may be requested by Contractor prior to awarding the Work, or following the execution of a contract.
- (j) Documentation: As evidence that Subcontractor meets the bidder responsibility and safety criteria above, Contractor reserves the right to request the following documentation from Subcontractor:
 - a. A list of similar projects completed within the previous three years including the following information for each project: the owner and contact information for the owner; a list of claims filed against the retainage and/or bonds for any of the projects listed; and, a written explanation of the circumstances surrounding each claim and the ultimate resolution of the claim (Contractor may contact the previous owners of such projects to validate the information provided by Subcontractor).
 - b. A list of lawsuits with judgments entered against Subcontractor within five years of the bid submittal date, along with a written explanation of the circumstances surrounding each lawsuit. Contractor may evaluate these explanations to determine whether the lawsuits demonstrate a pattern of failing to meet the terms of construction-related contracts. Contractor may also evaluate lawsuits within the time period specified that are not reported by Subcontractor.
 - c. A record of federal and state OSHA citations assessed against Subcontractor. Contractor may request such records directly from Subcontractor or through the Freedom of Information Act and/or state public records laws.
- (k) Subcontractor will be notified of a successful bid after the thorough review and evaluation of all bids for responsiveness, and in compliance with the bidder responsibility criteria included in the Bid Package and this Agreement.
- (l) Prior to being granted access to the site, Subcontractor must provide proof of insurance and any bid bonds and/or performance bonds required by Contractor pursuant to the Bid Package and in accordance with Articles 8 and 9 of this Agreement. If Subcontractor is unable to comply with Contractor's insurance requirements or supply such bonds, Contractor may reject Subcontractor's bid and elect to use the next responsible bidder.
- (m) In the event Subcontractor discovers an error in its bid following submission of its bid to Contractor, Subcontractor may request to withdraw its bid by submitting written notification to Contractor within 72 hours following the bid submittal deadline.
- (n) In the event Subcontractor discovers an error in its bid following execution of the contract to perform the Work for which the bid was submitted, Contractor reserves the right to approve or disapprove a request for withdrawal of the contract in writing. If Subcontractor's request for withdrawal of its bid is approved, Subcontractor will be released from further obligation to Contractor. If Subcontractor's request for withdrawal of its bid is disapproved, such a circumstance may result in Contractor collecting the amount of the bid bond from Subcontractor's bonding company.
- (o) If Subcontractor claims to be aggrieved by any part of the bid package process or the results of the bid, Subcontractor may file a written protest with Contractor, but only in accordance with the procedures set forth herein:
 - a. All protests must be in writing and contain the following information: (1) the bid package title

under which the protest is made; (2) the name, address, and telephone number of the protesting party; and, (3) a detailed statement of the legal and factual grounds for the protest, including copies of any relevant documents and a statement as to the form of relief requested.

- b. Protests relating specifically to the bid package process and/or bid documents must be submitted to Contractor not less than two (2) working days prior to the specified bid date.
- (p) Failure to provide all of the above information or to comply with the protest procedures noted above will result in waiver of any claim or rights to protest and dismissal of the protest at the sole discretion of Contractor.
- (q) Exhaustion of the protest procedures shall be a condition precedent to any action based on the protest filed in a court of law.
- (r) Nothing in this protest procedure shall require Contractor to suspend advertisement, contract award, contract performance, or to terminate the awarded contract.

Article 4

SCOPE OF WORK.

- (a) Subcontractor shall furnish necessary labor, materials, services, tools, equipment and other things necessary to fully perform and complete the Work in cooperation with the other trades in a good and workmanlike manner to the satisfaction and acceptance of Contractor and Owner and perform all the Work as set forth herein (hereinafter referred to as the "Work"). Subcontractor shall furnish duly qualified personnel to provide the services under this Agreement, which persons shall at all times be either employees or subcontractors of Subcontractor, and not employees of Contractor. Contractor and Subcontractor intend that this Agreement create an independent contractor relationship between both parties. Subcontractor is not an agent or employee of Contractor for any purpose. Contractor is not responsible for deducting, and shall not deduct from payments to Subcontractor, any amounts for withholding taxes, FICA, insurance, or other similar items relating to Subcontractor or Subcontractor's employees. Neither Subcontractor nor Subcontractor's employees shall be liable or entitled to any of the benefits to which employees of Contractor may be entitled to on the account of Contractor.
- (b) No claim shall be made due to minor variations in the actual conditions of the premises from what is shown on the plans. Subcontractor shall examine the premises, note and ascertain the existing conditions at the site and the nature and location of the Work. All Work affected or governed thereby or required for the thorough and satisfactory execution and completion of Subcontractor's Work, whether indicated or specified or not, and regardless of quantity estimated, shall constitute part of this Subcontract and shall be performed without extra charge.
- (c) Permits: Subcontractor shall be solely responsible for applying for, obtaining, and paying for permits necessary for the proper execution and completion of Subcontractor's Work, unless specifically excluded in the written scope of work.
- (d) Storage and On-Site Setup: Contractor shall provide suitable areas for storage of Subcontractor's materials and equipment. Products and materials left unsecured are not the responsibility of Contractor or property

owner. Any items that need to be stored on-site, including all tools, equipment, and building materials, must be easily moveable. Whenever possible, Subcontractor shall deliver materials to the job site in a "just-in-time" fashion to avoid excessive handling and moving. Materials included in Subcontractor's deliveries shall be unloaded and handled by Subcontractor. All delivery dates and times shall be coordinated with Contractor's site superintendent, and Subcontractor must provide at least 24-hour advance notice of all such deliveries. Deliveries not coordinated with Contractor's site superintendent are subject to refusal, and all re-delivery costs shall be the responsibility of Subcontractor. Space for Subcontractor's construction offices and storage trailers, if any, shall be coordinated with Contractor in the space provided per site logistics plans. All costs associated with temporary power to Subcontractor's offices or storage units shall be included in Subcontractor's bid amount.

- (e) As much as is reasonably possible, Contractor will provide and maintain temporary fencing and/or other barricades to secure the work site from the entry of others. However, Subcontractor is responsible for securing Subcontractor's own materials and equipment. Contractor is not liable for any of Subcontractor's tools, materials, and equipment left uninstalled on the jobsite. If Subcontractor removes or relocates any portion of Contractor's temporary fencing in order to accomplish a work activity, Subcontractor must replace it in the original location at Subcontractor's cost.
- (f) Contractor-Furnished Equipment: A 10K Reach Forklift equipped with outriggers will be available on site. Subcontractor must submit a certificate of operation that meets Contractor's expectations prior to use of this equipment, or any other equipment provided by Contractor. Only certified individuals may operate such equipment. If the operation of any equipment, whether owned by Contractor or otherwise, is observed to be unsatisfactory or unsafe, Contractor reserves the right to give a cease operations order. If a cease operations order is given, the individual operating the equipment or machinery must no longer operate such equipment or machinery until Contractor addresses the circumstance. Contractor may require additional training and/or evaluation prior to allowing Subcontractor to continue operating the equipment.
- (g) Safety: Subcontractor agrees to comply with all applicable aspects of Contractor's [Master Safety Plan](#) and any other program implemented by Contractor to benefit the health, safety and welfare of persons or property. However, nothing contained herein shall relieve Subcontractor of its obligations of implementing its own safety program and of its responsibilities towards its employees subcontractors. Subcontractor agrees to follow all current applicable standards of the federal Occupational Safety and Health Administration (OSHA), Oregon OSHA, and all other Authorities Having Jurisdiction (AHJ). Contractor will post all required federal, state and/or local notices at the premises. Contractor will, at least monthly, conduct safety meetings which must be attended by all available persons working at the premises. Contractor will determine the day and time of such meetings and will post notice of the same. Prior to starting work at the premises, Subcontractor shall conduct a site-specific safety orientation for all employees of Subcontractor, and shall do the same for all new employees of Subcontractor thereafter, prior to said employees starting work at the premises. Subcontractor shall provide Contractor with written documentation of such

- orientations. Subcontractor shall incorporate into its safety orientations and shall adhere to (and shall instruct its employees, agents, subcontractors and any third party working at the premises on behalf of Subcontractor to adhere to) any and all COVID-19 job site practices recommended by the Oregon Columbia Chapter of Associated General Contractors and any other recommendation, regulation, law, rule or order issued by a governmental body (whether local, state or federal) to prevent the spread or transmission of COVID-19. Contractor has a 100% Hard Hat, Safety Glasses and High Visibility Clothing policy. Unless a PPE Variance has been approved in writing by Contractor, these items shall be worn by all employees and visitors for the duration of the project. Failure to follow Contractor's safety directives may result in disciplinary actions for all personnel involved, up to and including termination of this Agreement. Any individual may be removed from the job site at any time for safety violations that endanger his/her life or the life of another individual. If Subcontractor is cited for OSHA/AHJ violations, the costs of any and all penalties levied against Contractor due to the actions of Subcontractor will be deducted from the payment due, or that may become due, to Subcontractor. If the project is shut down or suspended due to Subcontractor's failure to comply with OSHA or other applicable AHJ safety requirements, no part of the resulting time lost shall be made the subject of any claim by Subcontractor for an extension of time or for increased cost or damage. Additionally, Subcontractor will be responsible for any additional supervision or material costs incurred by Contractor due to the results of any such event.
- (h) Tobacco & Drugs: There will be no smoking or tobacco products permitted anywhere on the job site. This includes, but is not limited to, cigarettes, e-cigarettes, chewing tobacco, and vaping products. Contractor shall enforce a strict zero-drug policy on site. Contractor reserves the right to dismiss any individual if drug use is observed or suspected. Any individual under the influence of drugs, including any substance that is suspected to affect cognition, judgment, alertness, responsiveness, or safe behavior in any form may be dismissed from the job site for the duration of the project.
- (i) Closeout Documents: Subcontractor is responsible for reviewing the project manual for required close-out submittals and documents. Closeout Documents are required with Subcontractor's final invoice.
- (j) Submittals: Subcontractor shall submit Shop Drawings, Product Data, Samples, and similar submittals required by the Project Contract Documents no later than two (2) weeks after a Notice to Proceed is issued by Contractor. If Subcontractor cannot meet this timeline, Subcontractor is responsible for notifying Contractor and proposing an alternative scheduled delivery date that is as close to the required delivery date as possible.
- (k) Hazardous Materials: If hazardous materials are discovered on the site, Subcontractor shall notify Contractor immediately in writing. Both Contractor and Subcontractor agree that dealing with hazardous materials, waste, lead-based paint, or asbestos requires specialized training, certifications, and licenses. Unless the scope of the project includes the specific handling, disturbance, removal or transportation of hazardous materials, Subcontractor shall notify Contractor immediately upon discovery of any such materials upon or within the job site or premises.
- (l) Cleaning Up: Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operation performed under this Subcontract. If site cleanup does not meet Contractor's expectations, Contractor may walk the site or provide photos of the debris to Subcontractor along with a written request to specify whether the trash/debris indicated is due to Subcontractor's own work, or the work of others. If due to Subcontractor's own work, Subcontractor must discard the trash/debris per the requirements of this section within one (1) business day of Contractor's written request. If Subcontractor fails to clean up pursuant to the requirements of this section, Contractor will charge Subcontractor for Subcontractor's appropriate share of cleanup costs.
- (m) Protection of Finishes: Subcontractor shall provide temporary protection of finished products immediately after installation. Such protection shall be designed to protect Subcontractor's finished work from damage during construction. Finished work is defined as any work that will be exposed to view at the completion of the project. All costs for repairs required to correct damage by subcontractors to finished work (whether protected or not) will be charged to the subcontractor responsible for the damage.
- (n) Subcontractor agrees to commence Subcontractor's Work herein described upon notification by Contractor, and to perform and complete such Work in accordance with the Project Contract Documents and under the general direction of Contractor in accord with Contractor's schedule. This shall include all work necessary or incidental to complete: Contractor's attached Scope of Work/Bid.
- (o) Cost estimates of any materials, labor or supplies to be used on the Work are based on the actual price of such items at the time the estimates are provided to Subcontractor. Subcontractor is liable for and shall bear the cost of any increases in the price of materials or supplies between the date Subcontractor is provided with the cost estimates and the date Subcontractor purchases said materials or supplies, unless otherwise agreed to by Contractor in writing. Should a price increase be necessary in order for Subcontractor to provide the agreed upon Work, Subcontractor must provide a written revised bid that defines the service or material item and the associated cost increase. This revised bid must be provided to, and signed by, Contractor before Subcontractor performs the service or is provided with or obtains that specific material item. If an expired bid proposal is signed by Contractor, Subcontractor must notify Contractor at the time the signed proposal is received, and re-send a revised and effective bid proposal prior to the Work being awarded by Contractor, or the Work beginning on any construction work site.

Article 5 **SCHEDULE OF WORK.**

- (a) Subcontractor hereby acknowledges that time is of the essence with respect to Contractor's completing the Project and that such completion is substantially dependent upon Subcontractor's performance of the Work on or before the dates set forth in the Project Master Schedule, Progress Schedule and/or Progress Meetings. At the time Subcontractor's bid is submitted, Subcontractor must define, in writing, the job site conditions required to begin the Work and the time required to complete the Work, per the work order, construction documents, and scope of work provided. If

Subcontractor's bid is awarded, the Project Master Schedule will be revised to acknowledge the defined timeline for completion of the Work. Any additional manpower or overtime costs required to meet the Project Master Schedule must be included in Subcontractor's bid amount. Subcontractor shall visit the site 3-7 business days prior to commencing the Work. If job site conditions do not meet the written expectations defined in Subcontractor's bid, a list of deficient or incomplete site requirements must be submitted to Contractor in writing. Contractor shall confirm when all site requirements have been met prior to the commencement of Subcontractor's Work.

- (b) Subcontractor shall turn the Work over to Contractor in good condition and free and clear of all claims or liens arising from the performance of the Subcontract, and shall, at Subcontractor's expense, defend all suits and pay all claims arising from its performance of this Subcontract.
- (c) Subcontractor covenants and agrees that it shall not employ any labor which will interfere with labor harmony at the job site or with the introduction and storage of materials and execution of Work by other subcontractors. If Subcontractor breaches this covenant and such breach shall cause a stoppage of Work at the job site, Subcontractor shall be liable for all damages suffered by Contractor caused by such delay in completing the job, including specifically any penalty or liquidated damages imposed upon Contractor for failing to complete the job on the completion date set forth in the Project Contract Documents. Contractor is not liable to pay for work that is not performed. Contractor is not liable to pay for work that is not performed with workmanlike standards per code, plan, and/or any associated written specifications.
- (d) If requested or required by Contractor, Subcontractor must supply to Contractor the name, address and telephone number of every supplier or subcontractor furnishing materials and/or labor to Subcontractor for the Work covered herein and a cost breakdown of this Subcontract.
- (e) Subcontractor shall comply with all laws, ordinances and regulations relating to the manner of doing the Work or to the supplying of the material at the job site, and shall provide safe working conditions for its employees, other employees and the public.
- (f) If any part of Subcontractor's Work depends for proper execution or results upon the work of any other subcontractor, Subcontractor shall inspect and promptly report to Contractor any defects in such work that render it unsuitable for such proper execution and results. Subcontractor's failure to inspect and report shall constitute an acceptance of the other subcontractor's work as fit and proper for the reception of Subcontractor's Work.
- (g) Subcontractor shall provide Contractor with any requested scheduling information of Subcontractor's Work. The Schedule of Work, including that of this Subcontract, shall be prepared by Contractor and may be revised as the Work progresses. Subcontractor recognizes that changes may be made in the Schedule of Work and agrees to comply with such changes without additional compensation. Subcontractor shall coordinate its work with all other contractors, subcontractors, and suppliers on the Project so as not to delay or damage their performance, work, or the Project.
- (h) If Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five (5) working days after receipt of notice from

Contractor to commence and continue correction of such default or neglect with diligence and promptness, Contractor may, without prejudice to other remedies Contractor may have, remedy such default or neglect and withhold, in accordance with Article 6(c), the reasonable cost thereof from current or future payments due to Subcontractor. If payments due to Contractor are not sufficient to cover such amounts, Subcontractor shall pay the difference to Contractor.

- (i) Subcontractor shall maintain all required insurance as defined in this Agreement for the duration of its Work, and to cover any instance of its own or its employees' presence upon the job site.
- (j) Prior to the completion of a project, Contractor may send a Billing Completion Notice in order to close out contract documents on behalf of Owner, or to satisfy Contractor's own purposes. Subcontractor shall sign the Billing Completion Notice, whereby the accumulated bills sent by Subcontractor, and paid by Contractor, are deemed complete and final. Any amount billed for work conducted on the associated job site by Subcontractor after a Billing Completion Notice is signed must be agreed upon and signed in writing by Contractor. Contractor withholds the right to retain final payment until the Billing Completion Notice has been signed by Subcontractor.

Article 6 **CHANGES.**

- (a) Contractor may authorize changes to or deductions from the Work, said authorization to be effective and binding only when written and signed (hereinafter referred to as "extra work").
- (b) Whenever change order pricing is requested by Contractor and the scope and nature of same is reasonably susceptible to lump sum quotation, Subcontractor shall provide such quotation within seven (7) days of a request for same.
- (c) Any claim for compensation for extra work, whether lump sum or otherwise, must be presented to Contractor within thirty (30) days of authorization of the extra work. Claims for extra work received thereafter will not be considered. Proper claims for extra work shall be paid in accordance with this Subcontract Agreement.
- (d) Duly authorized extra work is hereinafter deemed included in the "Work". No dispute as to adjustments in the Contract Amount for extra work shall excuse Subcontractor from proceeding with the Work.
- (e) Contractor, without nullifying the Agreement, may direct Subcontractor to make changes to Subcontractor's Work. Adjustment, if any, in the contract price or contract time resulting from such changes shall be set forth in a Subcontractor's Change Order pursuant to the Project Contract Documents.

Article 7 **FAILURE OF PERFORMANCE OR ASSIGNMENT OF SUBCONTRACT.**

- (a) Without Contractor's written consent, Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.
- (b) Should Subcontractor at any time fail to prosecute and complete the Work in accordance with the Progress Schedule or as herein provided or fail to diligently and continuously perform its Work, or if in the opinion of Contractor the Work of Subcontractor cannot be completed in the time period set forth, or if Contractor is notified of Subcontractor's failure to pay for any material

or labor used on the Project, or in the event of a strike or stoppage of Work resulting from a dispute involving or affecting the labor employed by Subcontractor or its subcontractors, or if Subcontractor fails to perform any of the requirements herein, then such event shall be deemed a default and Contractor shall notify Subcontractor to correct such default and shall specify in such notice the action to be taken and a reasonable date by which the default shall be corrected.

- (c) If a default occurs and is not corrected on or before the date specified in the notice to Subcontractor, Contractor shall be entitled to exercise any or all of the following remedies as well as any other remedies available, including but not limited to binding and consolidated arbitration or through litigation in a court of law.
- (1) Contractor may immediately take any action necessary to correct such default, including specifically the right to provide labor, overtime labor and materials and may deduct the cost of correcting such default from payment due, or that may become due, to Subcontractor.
 - (2) Contractor may terminate this Subcontract and the employment of Subcontractor, and employ another subcontractor or use the employees of Contractor to finish the remaining Work to be performed hereunder. Contractor may deduct the costs of completing the remaining Work from the unpaid contract price, and if the cost of completing the remaining Work exceeds the unpaid Contract amount, Subcontractor shall pay to Contractor such excess costs, including but not limited to overhead and attorneys' fees. Termination of this Agreement by Contractor shall not release Subcontractor from liability or responsibilities established for Work performed by Subcontractor.
 - (3) Contractor may, in any such event, also refrain from making any further payments under this Subcontract to Subcontractor until the entire project shall be fully finished and accepted by Owner, at which time, if the unpaid balance of the amount to be paid under this Subcontract exceeds the expense incurred by Contractor to finish Subcontractor's work and other damage, such excess shall be paid to Subcontractor. If, however, such expenses and damages shall exceed such unpaid balance, Subcontractor shall promptly pay the difference to Contractor. If Contractor does not terminate the right of Subcontractor to proceed, Subcontractor shall continue with the balance of the Work. If Owner is damaged by reason of any breach by Subcontractor of this Subcontract the Subcontractor shall, subject to any defenses and offsets to which Subcontractor may be entitled under this Subcontract, pay Owner such damages.

Article 8 INSURANCE.

- (a) Prior to the beginning of the Work, Subcontractor must provide to Contractor certificates of insurance showing that Subcontractor has coverage for itself and its employees, agents and subcontractors. Subcontractor's insurance must provide adequate coverage for commercial general liability, commercial auto liability, umbrella liability, professional liability (if providing Design-Build services), and any workers' compensation obligations (including an employers' liability policy), or written verification of sole proprietorship with no employees. If any of these policies are terminated, Subcontractor must provide to Contractor certificates of insurance showing replacement coverage.

- (b) All coverage must be placed with insurance companies duly admitted in the state in which the Work will be performed and must be reasonably acceptable to Contractor.
- (c) All Subcontractor insurance carriers must maintain an A.M. Best rating of "A-" or better.
- (d) Subcontractor's policies must name Contractor as an additional insured on commercial general liability and commercial auto liability policies. Coverage must be afforded to Contractor as an additional insured whether or not a claim is in litigation. Additional insured coverage must apply as primary insurance with respect to any other insurance afforded to Contractor. Subcontractor must provide Contractor with proof of insurance with a Certificate of Insurance and Additional Insured endorsement at least as broad as ISO endorsements CG 20 10 and CG 20 37 (or substitute forms providing equivalent coverage) for both the premises and operations exposure and products and completed operations exposure. Subcontractor is responsible for maintaining these insurance policies.
- (e) Each certificate of insurance must provide that the insurer must give to Contractor written notice of cancellation and termination of Subcontractor's coverage at least thirty (30) days prior.
- (f) At least two (2) weeks prior to the expiration, cancellation or termination of any policy required by this Agreement, Subcontractor must give to Contractor new and replacement certificates of insurance and additional insured endorsements.
- (g) Subcontractor shall waive rights of subrogation which Subcontractor or any insurer of Subcontractor may acquire against Contractor by virtue of the payment of any loss. Subcontractor will obtain and provide Contractor with any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Contractor has received a waiver of subrogation endorsement from Subcontractor or Subcontractor's insurer(s).
- (h) The insurance coverage required must be of sufficient type, scope and duration to ensure Contractor is covered for the liability related to any manifestation date within the applicable statutes of limitation and/or response to any work performed by or on behalf of Contractor in relation to the project. Subcontractor agrees to maintain the above insurance for the benefit of Contractor for a period of three (3) years or the expiration of any statute of limitation as may be applicable, whichever is later.
- (i) Subcontractor must secure an employers' liability insurance policy to cover the damages that become due in case of bodily injury, occupational sickness or disease or death of Subcontractor's employees. This policy must be written with limits of \$500,000 for each accident, \$500,000 for each disease, and \$500,000 per disease, per each employee.
- (j) Subcontractor must secure a commercial general liability insurance policy to cover the damages that become due in case of bodily injury, property damage and personal or advertising injury arising out of or related to:
 - a. *All Subcontractor's operations and premises;*
 - b. *All Subcontractor's products and completed operations;*
 - c. *All liability or responsibility assumed by Subcontractor in the Indemnity section of this agreement;*
 - d. *All liability assumed in a business contract;*
 - e. *Contractor as an additional insured; and*

- f. *Defense expenses paid in addition to the policy limits.*
- (k) There will be no endorsement or modification of the commercial general liability from risks arising from explosion, collapse, underground property damage or work performed by Subcontractor.
- (l) The coverage available to Contractor as additional insured, in the types of insurance policies mentioned above, must be written in at least the following amounts, unless Contractor specifies higher amounts on a per-project basis:
 - a. \$1,000,000 for each occurrence;
 - b. \$2,000,000 for general aggregate (subject to a per project general aggregate provision applicable to the project);
 - c. \$2,000,000 for products/completed operations aggregate; and
 - d. \$1,000,000 for personal and advertising injury limits.
- (m) Subcontractor must secure an automobile liability insurance policy to cover the damages that become due in case of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of any motor vehicle or trailer owned, hired, leased, used on behalf of or borrowed by Subcontractor. The policy must also include coverage for any equipment subject to motor vehicle laws, Contractor, and any Subcontractor liability or responsibility described in the Indemnity section. Business auto liability insurance must be written in the amount of not less than \$1,000,000 for each accident.
- (n) Subcontractor must secure an umbrella liability insurance policy to cover the damages that become due in case of bodily injury, property damage and personal and advertising injury, written in at least the same amounts as Subcontractor's general aggregate and per-occurrence limits on its commercial general liability policy and with, at least, the same terms and conditions as the policies mentioned above.
- (o) If Subcontractor is to provide Design-Build services, Subcontractor must secure a professional liability insurance policy covering any damages caused by errors, omissions or any negligent acts related to the services to be provided under the Project Contract Documents by Subcontractor and Subcontractor's subcontractors, agents, officers, employees or consultants in an amount not less than \$1,000,000 per claim. The annual aggregate limit of such policy shall be not less than \$2,000,000. Coverage must have an effective date, retroactive date or prior acts date preceding the start of any professional service. Coverage must be continuous or allow for the reporting of claims for three (3) years following completion of the work.
- (p) In addition to the policies mentioned above, Contractor may require Subcontractor to secure any other types of insurance that Contractor deems necessary for the Work on a per-project basis. Subcontractor shall secure and maintain such insurance upon written notification from Contractor, subject to the terms and amounts specified by Contractor.
- (q) Prior to the beginning of the Work, Subcontractor must also provide to Contractor the following documents:
 - a. A copy of Subcontractor's Internal Revenue Service (IRS) Form W-9.
 - b. A copy of Subcontractor's Construction Contractors Board (CCB) License, granted and effective for work in the state in which the Work will be performed.

- c. A copy of Subcontractor's Lead-Based Paint Renovation license from the CCB, if applicable.
- d. Any other documents required by law or which Contractor deems necessary.
- (r) If any exceptions to the above requirements are sought, they must be made in writing to Contractor prior to the Work beginning.

**Article 9
BOND REQUIREMENTS.**

- (a) Pursuant to the Bid Package, or if otherwise required by Contractor in writing, Subcontractor shall provide a performance bond in an amount equal to 100% of the contract price of the applicable Project, including all change orders and alternates. Such bonds shall be secured from a qualified surety company acceptable to Contractor and provided in a form satisfactory to Contractor. The cost of the performance bond must be included in Subcontractor's bid amount. Subcontractor shall supply such bonds to Contractor within three (3) business days from the time of request. If Subcontractor fails to provide or properly maintain such bonds, Subcontractor shall be deemed to be materially in default.
- (b) If specified in the Bid Package, a surety company bid bond must be submitted with Subcontractor's bid. Such bid bond must be on the standard AIA bid bond form or another bid bond form providing equivalent terms, and shall be in an amount not less than five percent (5%) of the bid that may be awarded, including the base bid and any additives and/or alternates. Failure of Subcontractor to provide an acceptable bid bond with each bid shall render the bid non-responsive.

**Article 10
INDEMNIFICATION.**

- (a) The work performed by Subcontractor shall be at its exclusive risk. To the fullest extent permitted by law, Subcontractor will defend, indemnify and hold harmless all indemnified parties from any and all claims for bodily injury and property damage (other than damage to the work itself), including the loss of use of property resulting therefrom, which arise or are in any way connected with the work performed, materials furnished or services provided by Subcontractor, Subcontractor's subcontractors or anyone employed directly or indirectly by any of them under this Agreement.
 - a. Indemnified parties include the Contractor, Owner, Developer, Property Manager and affiliated companies, partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors and their assigns.
 - b. Claims include any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and consultants' fees).
- (b) Subcontractor is not obligated to indemnify and defend Contractor or Owner for claims due to the sole negligence or willful misconduct of indemnified parties. Any obligations assumed pursuant to this Agreement will not be construed to negate, abridge or reduce other rights or obligations of indemnity, which otherwise exist as to a party or person described in this Agreement.

- (c) Subcontractor's indemnification and defense obligations hereunder shall extend to claims occurring after this Agreement is terminated, as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the indemnified parties for such matters which are indemnified hereunder are fully and finally barred by applicable laws.

Article 11

WARRANTY. Subcontractor warrants its work against all deficiencies and defects in materials and/or workmanship and agrees to satisfy same without cost to Owner or Contractor for a period of (1) year from the date of Substantial Completion of the Project. Subcontractor further agrees to enforce and extend to Owner and Contractor any other special or extended warranties covering materials, services or products, as specified in the Project Contract Documents or per manufacturers' warranty, whichever is longer.

Article 12

SPECIAL PROVISIONS.

- (a) Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
- (b) If any dispute, controversy or claim arises out of or relates to this Agreement, or the breach thereof, the parties agree to first try in good faith to settle the dispute, controversy or claim promptly through direct, in-person negotiation between the parties. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties, before resorting to mediation, arbitration, litigation, or some other dispute resolution procedure.
- (c) If any dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by a mutually agreed-upon mediator (subject to any applicable state laws or rules governing the selection thereof), before resorting to arbitration, litigation, or some other dispute resolution procedure.
- (d) If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind

this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorneys' fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and, if any appeal is taken from such decision, reasonable attorneys' fees as determined on appeal.

- (e) This Agreement may not be assigned. While Subcontractor may contract out the work necessary to fulfill the services necessary for provision of the scope, Subcontractor retains all such responsibilities and requirements as outlined within this Agreement.
- (f) Each party shall be excused from the performance of its obligations under this Agreement to the extent that such performance is prevented by force majeure (defined below) and the non-performing party promptly provides notice of such prevention to the other party. Such excuse shall be continued so long as the condition constituting force majeure continues. The party affected by such force majeure shall notify the other party of the anticipated duration of such force majeure, any actions being taken to avoid or minimize its effect after such occurrence, and shall take reasonable efforts to remove the condition constituting such force majeure. For purposes of this Agreement, "force majeure" means conditions beyond the control of the parties including, but not limited to, acts of terrorism, voluntary or involuntary compliance with any regulation, law or order of any government (whether local, state or federal), war, acts of war (whether war be declared or not), labor strike or lock-out, civil commotion, epidemic, pandemic, destruction by fire, earthquake, storm, flood, lightning, other similar catastrophe, or partial or entire loss of market.
- (g) Facsimile signatures or similar digital transmission of any signed original documents, and subsequent retransmission of any signatures, shall be the same as delivery of an original.
- (h) Should any portion or provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

In witness whereof, the parties have executed this Agreement under Seal, the day and year first written above.

CONTRACTOR

By: Registered Agent of Skyline Builders, LLC

Name: Skyline Builders, LLC Sign: _____

SUBCONTRACTOR

By: _____ Name: _____

Title: _____ Sign: _____



1280 Fir St. S
Salem, OR 97302

INSURANCE CONTACT & AUTHORIZATION FORM

- Subcontractor authorizes Skyline Builders LLC to contact its insurance provider(s), listed below, for the purpose of requesting copies of Certificates of Insurance and endorsements relating to the insurance requirements in this Agreement. **Notwithstanding this authorization, Skyline Builders LLC is not an authorized agent of Subcontractor and will never activate or place a new policy in force, or finalize any policy change, on behalf of Subcontractor.**
- Subcontractor does not authorize Skyline Builders LLC to contact its insurance provider(s), listed below, for the purpose of requesting copies of Certificates of Insurance and endorsements relating to the insurance requirements in this Agreement.

Initials: _____

COMMERCIAL GENERAL LIABILITY

COMPANY: _____

PRIMARY CONTACT / INSURANCE AGENT NAME: _____

PRIMARY CONTACT / INSURANCE AGENT EMAIL ADDRESS: _____

PRIMARY CONTACT / INSURANCE AGENT PHONE NUMBER: _____

COMMERCIAL AUTO LIABILITY

COMPANY: _____

PRIMARY CONTACT / INSURANCE AGENT NAME: _____

PRIMARY CONTACT / INSURANCE AGENT EMAIL ADDRESS: _____

PRIMARY CONTACT / INSURANCE AGENT PHONE NUMBER: _____

WORKERS' COMPENSATION

COMPANY: _____

PRIMARY CONTACT / INSURANCE AGENT NAME: _____

PRIMARY CONTACT / INSURANCE AGENT EMAIL ADDRESS: _____

PRIMARY CONTACT / INSURANCE AGENT PHONE NUMBER: _____