

	TRACT	AGREEMENT ("Agree	ement" or "Subcont	ract")	Agreement No. 223026TS0001
"Subcontractor":	ARCHER LLC ,	R WESTERN CONSTRUCTION,	Date of Agreement: Project / Job #: "Project":		, 2023 cer Treatment pulatory Surgery Center -
	Phone: Fax:	312-563-5400	Project Address:	1220 Elizab Lexington, I	
		Owner: Architect / Engineer Engineer:	UNIVERSITY OF KE r: HAMMEL GREEN A CMTA, INC		MSON (HGA)
Walsh Construction	n Company	II, LLC ("Contractor") and Subco	ontractor hereby agree a	s follows:	
nd install all <b>Temp</b> lans and specificat	late Subco ions and as	uipment, insurance, taxes, and s <b>ntract</b> as more completely descr directed by Contractor. ubcontract Amount includes all F	ribed in the exhibits atta	ched hereto,	in strict compliance with the
aw.	aubiaat ta F	Detention of 10%			
This Agreement is	-				
		nount, Subcontractor <b>Shall</b> prov an Exhibit of this Agreement.	-		
					this Agreement is in US Dolla total Subcontract Amount of :
The following docu	ments are a	attached and hereby expressly in	· · · · · · · · · · · · · · · · · · ·		otal Subcontract Amount of .
C C		S & CONDITIONS		comont.	
EXHIBIT EXHIBIT EXHIBIT EXHIBIT EXHIBIT EXHIBIT EXHIBIT EXHIBIT EXHIBIT EXHIBIT EXHIBIT EXHIBIT EXHIBIT	B - SCOPE C - CONTE D - INSUR E - STAND F - PROCE G - SAFET H - PAYME H.1 - INTE I - PARTIA J - BUILDII K - INTEN L - INTEN M - SUBCO B.1 - WAL B.2 - TRAD	E, CLARIFICATION, ALTERNAT RACT DOCUMENTS ANCE REQUIREMENTS DARD OPERATING PROCEDUR EDURES FOR PROGRESS PAY Y REQUIREMENTS ENT and PERFORMANCE BONI NTIONALLY OMITTED L and FINAL WAIVER and RELE NG INFORMATION MODELING TIONALLY OMITTED FIONALLY OMITTED ONTRACTOR / SELLER QUALIT SH CONSTRUCTION GENERAL DE SPECIFIC SCOPE	RES MENTS D FORMS EASE FORMS (BIM) TY REQUIREMENTS L CONDITIONS		

enters into this Agreement based upon its investigation of all such matters and is not relying on any opinions or representations of the Contractor. The Subcontractor also understands that this Subcontract is expressly contingent on both the Contractor executing a contract with the Owner for the Project, and the Owner approving the Subcontractor for the Subcontractor's work. Subcontractor is not authorized to perform any Work under this Agreement until Contractor enters into a Prime Contract with the Owner and any Work performed or preparations to perform Work by Subcontractor prior to such time shall be at the sole expense of Subcontractor.

Subcontractor: ARCHER WESTERN CONSTRUCTION, LLC	Contractor: Walsh Construction Company II, LLC
Signed by:	Signed by:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

# THIS CONTRACT CONTAINS PROVISIONS WHICH INDEMNIFY AND/OR RELEASE THE INDEMNIFIED AND/OR RELEASED PARTY FROM THE CONSEQUENCES OF ITS OWN NEGLIGENCE AND OTHER LEGAL FAULT.

Invoices Received Without Agreement Number Will Be Returned Unpaid.

PLEASE SIGN AND RETURN ALL ORIGINALS

Γ

# **EXHIBIT A**

# **TERMS and CONDITIONS**

Walsh Construction Company II, LLC

Contractor for: UNIVERSITY OF KENTUCKY

Owner Number: 2563

"Project": UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon Walsh Construction Company II, LLC Project No. 223026

#### **ARTICLE 1 - SCOPE OF WORK CONDITIONS**

1.1 Subcontractor's Work. Subcontractor shall perform, furnish and be responsible for all work, supervision, labor, materials, layout, hoisting, tools, equipment, supplies, submittals, clean-up, permits, fees, licenses, project records, temporary services, inspection, protection of work, warranty, safety, bonds, insurance, maintenance, indemnification, and all other things necessary for the construction and completion of the work described above, within this Agreement, and work incidental thereto in strict accordance and full compliance with the Contract Documents (the "Contract Documents" consist of this Agreement, the Prime Contract between the Owner and Contractor ("Prime Contract Documents"), and all conditions, requirements, specifications, drawings, and addendum thereto (collectively the "Prime Contract Documents"), and all modifications to any of the Contract Documents) (collectively these requirements of the Subcontractor are referred to as either the "Subcontractor's Work" or "Contract Work"). This Agreement is contingent upon the Contract to perform any Work under this Agreement until Contractor enters into a Prime Contract with Owner and any work performed or preparations to perform work by Subcontractor prior to such time shall be at the sole expense of Subcontractor.

Subcontractor's Work is not limited by any titles on the drawings or headings in the specifications, it being the intention of the parties that all work customarily performed with Subcontractor's Work and required by the Contract Documents shall be performed by Subcontractor, including any and all items and services consistent with, contemplated by and reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein.

1.2 Mutual Obligations. The Subcontractor assumes toward Contractor all of the obligations, risks and responsibilities that Contractor by the Contract Documents, has assumed toward the Owner and the Subcontractor is bound to the Contractor by those obligations in the same manner as the Contractor is bound to the Owner. In addition to the Contractor's rights and remedies set forth in this Agreement, Contractor shall also have the benefit of all rights and remedies against Subcontractor which Owner, under the Contract Documents, has against the Contractor. However, Subcontractor's rights and remedies against Contractor's obligations, risks, responsibilities, itabilities, and limitations) shall be limited solely to the rights and remedies provided to Subcontractor in this Agreement without regard to any of the Contractor's rights and remedies afforded by any of the Contract Documents.

The parties to this Agreement acknowledge that they understand the terms of this Agreement, have entered into this Agreement freely and voluntarily and without coercion or undue influence, that the terms of this Agreement represent a fair bargain, and neither party had an unfair negotiating advantage over the other party.

The parties acknowledge that they participated jointly in the negotiation and preparation of this Agreement and each party represents that it has obtained the advice of legal counsel to review and comment upon the terms and conditions contained herein. Accordingly, it is agreed that no rule of construction shall apply against or in favor of any party. This Agreement shall be construed as if it was jointly prepared by the parties and any uncertainty or ambiguity shall not be interpreted against one party and in favor of the other party. Subcontractor is not, and shall not, be deemed to be a third-party beneficiary of the Prime Contract between the Owner and Contractor or any other agreement relating to the Project to which Subcontractor is not a party.

#### **ARTICLE 2 - SCHEDULE OF WORK**

2.1 Time is of the Essence. Subcontractor shall proceed with Subcontractor's Work in accordance with Contractor's schedules as amended by Contractor from time to time. Contractor shall have the right to direct the sequence and pace of Subcontractor's Work, including overtime, without monetary compensation to Subcontractor. Subcontractor shall supply sufficient labor, equipment and material to enable Contractor, Owner and all other subcontractors to complete the construction of the entire Project in the time required by the Prime Contract between the Owner and Contractor. The Subcontractor shall furnish to the Contractor in such detail and as often as required, full reports of the progress of the Subcontractor's Work irrespective of the location of such Subcontractor's Work. THE TIME OF SUBCONTRACTOR'S PERFORMANCE IS OF THE ESSENCE.

2.2 Work Schedules. Subcontractor shall, immediately after the award of the Subcontract, prepare and submit for Contractor's information an estimated progress schedule for the Subcontractor's Work in a form acceptable to Contractor. The progress schedule shall be related to the entire Project to the extent required by Contractor and the Contract Documents and shall provide for expeditious and practicable execution of the Subcontractor's Work. This schedule shall indicate the dates for the starting and completion of the various stages of the Subcontractor's Work. The schedule shall be in writing and revised by the Subcontractor as required by the Contractor, and shall be subject to Contractor's approval. Subcontractor shall promptly inform Contractor of any delays encountered or anticipated in the schedule and shall be presented at the project meetings. Contractor's receipt, review and/or acceptance of Subcontractor's schedules shall not constitute an amendment to this Agreement nor satisfy any notice requirements of this Agreement or of the Contract Documents.

Subcontractor shall be responsible for and will prepare for performance of the Subcontractor's Work, including without limitation thereto, the submission of shop drawings, samples, tests, field dimensions, determination of labor requirements, and ordering of materials as required to meet the Project schedule.

2.3 Owner-furnished Items. Subcontractor agrees to assist the Owner and Contractor in the expediting and tracking of the Owner-furnished items that Subcontractor is to install to insure that their delivery coincides with the project schedule.

#### **ARTICLE 3 - PAYMENT**

**3.1 Schedule of Values.** Unless Contractor agrees otherwise, the Subcontractor shall provide a schedule of values satisfactory to the Contractor and the Owner within fifteen (15) days after the date of execution of this Agreement. The format of the schedule of values shall be as provided for in the Contract Documents, or in the absence thereof, as directed by the Contractor. Unless stated otherwise, the prices in this Agreement are in United States dollars.

3.2. Progress Payment Application. The Subcontractor's progress payment application shall be submitted to the Contractor in a form and with content and documentation acceptable to Contractor and Owner.

3.3 Retention. Contractor may retain from each progress payment sums otherwise due Subcontractor until final payment. The amount of retention shall be the amount retained from the Contractor's payment from Owner for the Subcontractor's Work; however, if the Owner ceases withholding retention at a certain point in the project and the Subcontractor's Work is performed after that point, the Contractor may withhold retention from the Subcontractor even though the Owner is not withholding retention for the Subcontractor's work. Such retention shall be in addition to such other sums which Contractor has a right to withhold pursuant to this Agreement and the Contract Documents. Retention is applicable to materials stored on and off-site.

3.4 Time of Application. The Subcontractor shall submit progress payment applications to the Contractor no later than the second day of each month for work performed up to and including the last day of the previous month or at such other regular dates as may be directed by Contractor.

An Equal Opportunity Employer, Disability/Veteran Page 3

3.5 Stored Materials. Unless otherwise provided in the Contract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontractor's Work but delivered and suitably stored at the Project site or at some other location agreed upon in writing. Approval of a payment application for such stored items on or off the Project site shall be conditioned upon the satisfaction of the terms of this section of the Subcontract, or such other procedures satisfactory to the Owner and Contractor and in accordance with the Contract Documents to establish the Owner's and Contractor's tille to such materials and equipment or otherwise protect the Owner's and Contractor's interests therein, including transportation to the site. Approval and payment by the Owner to the Contractor for said stored material and stored equipment is an absolute express condition precedent to payment by Contractor to Subcontractor. The Contractor, at its sole discretion, shall require one of the following from the Subcontractor as part of the Stored Material process:

1. Warehouse Agreement and Non-Negotiable Warehouse Receipt. The goods to be stored shall be placed into the possession of a warehouseman subject to a warehouse lease or agreement, which document shall be provided by the Contractor. The warehouseman shall not be in the business of buying and selling the goods of the nature to be stored. The liability of the warehouseman for failure to deliver shall be covered by insurance or a performance bond acceptable to the Contractor. Upon placing the goods into the possession of the warehouseman, a non-negotiable warehouse receipt, in a form acceptable to the Contractor, shall be issued to the Contractor. The warehouse receipt must provide the goods are to be delivered only at the Contractor's written direction and follow the Contractor's written instruction.

2. Bill of Sale with Additional Storage Provisions. Although less desirable, at its sole discretion, the Contractor may allow, in lieu of a Warehouse Agreement and Non-Negotiable Warehouse Receipt, the Subcontractor to provide Contractor a Bill of Sale for the material to be stored and not in the possession of the Contractor, in a form provided by the Contractor. Subcontractor shall separate the stored material from any other goods in the possession of Subcontractor which are either identical or of a similar nature. Subcontractor shall maintain the separate and exclusive storage of the stored material in a open and notorious manner providing public notice that the stored material are the property of Contractor. Subcontractor represents and warrants that the stored material are the property of Contractor. Subcontractor project upon demand of Contractor. Subcontractor represents and warrants that the stored material shall remain free and clear from any security interest, lien, pledge, encumbrance, option, conditional sales contract, lease or other title retention agreement, or any other adverse claim whatsoever. Subcontractor shall specifically, permanently, mark the stored material in a form satisfactory to the Contractor, naming the Contractor subcontractor shall procure insurance on the goods for the full value of the stored material, in a form satisfactory to the Contractor, naming the Contractor and Owner as insured.

3. UCC Financing Statement. At a minimum and least desirable to the Contractor, in lieu of a Warehouse Agreement and Non-Negotiable Warehouse Receipt or a Bill of Sale with Additional Storage Provisions, and in the event title to the stored material will not pass to the Contractor at the time of payment to the Subcontractor, the Contractor may require the Subcontractor to properly file a UCC Financing Statement Form 1 with the Secretary of State's Office.

If required by the Contractor, Subcontractor shall submit a separate invoice for the quantity of material and equipment placed in storage. If required by the Contractor, the quantity of material or equipment for which payment is requested shall be equal to a discrete activity within the Project progress schedule in order that the Contractor may subsequently bill the Owner for said material or equipment. The Owner and/or Contractor shall determine, at their sole discretion, the acceptability of the storage conditions and Subcontractor shall correct any noted deficiencies. By submitting its invoice for stored materials or equipment to Contractor expressly represents and warrants that no security interest by a lending institution or any other entity exists in the stored materials or equipment covered by such invoice.

Regardless of any dispute between Contractor and Subcontractor, if Contractor has partially or fully paid Subcontractor for material or equipment as part of this Agreement, either as stored material or otherwise, upon written demand by Contractor, Subcontractor shall immediately ship, as directed by the Contractor, the material and equipment to be purchased under this Agreement. The Subcontractor acknowledges and agrees that the Contractor may have no adequate remedy at law for Subcontractor's refusal to immediately ship the material or equipment as directed by Contractor, and that Contractor shall be entitled to enforce its demand for immediate shipment against Subcontractor by temporary or permanent injunctive relief or mandamus obtained in any court of competent jurisdiction, without posting any bond or other security, and without prejudice to or diminution of any other rights or remedies which may be available to Contractor at law or in equity, and any attorneys' fees and costs incurred by Contractor.

Invoicing for stored material or equipment off-site must reflect a minimum of ten percent (10%) withholding, in addition to any other retention, for transportation costs associated with delivery to the jobsite, which shall be withheld until the stored material or equipment has been incorporated into the Project and accepted by the Owner.

Regardless of any payment, the risk of loss for stored materials or equipment at all times shall remain upon Subcontractor until final acceptance of the Project by Owner. Notwithstanding that the risk of loss for stored materials or equipment remains upon Subcontractor, and regardless of which entity maintains or controls any location(s) where materials or equipment are stored, Subcontractor acknowledges and agrees that Contractor and/or Owner have and shall be deemed to have exclusive possession of all stored materials or equipment included within any invoice submitted by Subcontractor.

Subcontractor must be prepared, at all times, to prove within commercial norms, the exact quantities and qualities of the materials or equipment purchased, used, or to be used on the Project. Unless authorized by the Owner, Subcontractor shall not be reimbursed by the Contractor or Owner for any of the costs associated with this Stored Material section of this Subcontract.

Subcontractor shall defend, indemnify, and hold harmless Contractor, Contractor's surety, and Owner against all claims, judgments, settlements, damages, losses, demands, suits, actions, liability, fines, penalties, costs and expenses (including but not limited to attorneys and expert fees and costs of litigation, arbitration, or mediation) arising out of or relating in any way to any third party's assertion of a lien, encumbrance or interest in stored materials or equipment.

3.6 Time of Payment. Without impairing Subcontractor's mechanic's lien and payment bond rights, if any, to the fullest extent permitted by law, if Subcontractor is in compliance with this Subcontract and if, and only if, Owner pays Contractor, which is an express condition precedent to Contractor's duty to pay Subcontractor and that the Subcontractor intends to assume the risk of nonpayment, Progress Payments shall be due to Subcontractor no later than fifteen (15) days after receipt of payment from Owner by Contractor provided Subcontractor remains in compliance with the terms of this Agreement. Regardless of whether the forgoing condition precedent is unenforceable in the jurisdiction where the Project is located, Subcontractor and Subcontractor's surety agree that Contractor and Contractor's surety shall have a reasonable period of time within which to tender payment, and such reasonable period includes, but is not limited to, the time necessary for the Owner to process and make a progress or final payment or decide a Pass Through Claim, or for the Contractor to fully adjudicate any disputes, claims, causes of action or other matters associated with or related to the Subcontract Agreement and/or the Prime Contract. For purposes of this section, "fully adjudicate" means the completion of mediations, arbitrations, trials or any combinations thereof, together with such appeals as may be taken from any decisions, orders, judgments, opinions or such similar rulings as may result therefrom. The Subcontractor shall toll, stay, and file no mechanics lien and waives its right to make any claim on the Contractor's payment bond, including a Miller Act bond, for which the Owner has not paid the Contractor whether in regards to progress payments, final payments, claims, or Pass Through Claims. The Owner and Contractor's surety are an express third party beneficiary of this promise. No final or Progress Payment made under this Agreement shall be considered an acceptance of Subcontractor's Work, in whole or in part. Contractor may, at its sole discretion, unilaterally deduct or set off as allowed in this Agreement, or overpay or pay all or any part of the Subcontract price in a greater amount or at an earlier time than otherwise allowed, required, or specified herein, either as an advance or otherwise, in which event, all other terms and conditions hereof, and any bonds furnished hereunder by the Subcontractor, even if such payment or deduction is prejudicial to the Subcontractor's surety, shall be unaffected thereby and shall remain in full force and effect, and the Subcontractor's surety shall not use such overpayment or greater or earlier payment or unilateral deduction or set off as a defense, either partial or otherwise, to any claim by the Contractor.

Payment will be made by Contractor only after: (i) inspection and acceptance of the Subcontractor's Work; (ii) receipt by Contractor of the executed original copy of this Agreement and insurance and bond required from the Subcontractor and warehouseman if payment is for Stored Material; (iii) receipt of Subcontractor's invoice; (iv) receipt of Waivers and affidavits from Subcontractor and Subcontractor's lower tiers as required elsewhere by this Agreement; (v) consent of surety to payment and letters from the unions which state, to the satisfaction of the Contactor, that the Subcontractor is current with its payment obligations to the unions, if required by Contractor; vi) receipt of Subcontractor's updated Project Records required by this Agreement and in a form acceptable to the Contractor; and vii) receipt by Contractor, of payment from Owner, for Subcontractor's Work.

3.7 Unit Price Work. Where this Agreement anticipates that the Subcontractor's Work, or a portion thereof, shall be paid for at an agreed rate per unit of work in place, then the Subcontractor agrees that the unit prices stated shall represent full payment for all such Subcontractor's Work, including Subcontractor's overhead and profit and that the Owner, Architect/Engineer and/or Contractor may make a final and binding determination regarding the quantity of Subcontractor's Work for which payment is to be paid subject to the Pass Through Claims provisions of this Agreement. All quantities stated as unit price quantities are approximate. Actual payment quantities are subject to field verification by Owner and/or Contractor and acceptance of required documentation, and may vary significantly from original estimated quantities, and quantity variation will not be reason to renegotiate a unit price, unless the renegotiation is required by Owner. Contractor's rights shall also include the right to increase or decrease quantities at the unit price shown at any time prior to the Project's final completion. In the event of any overpayments, Subcontractor shall reimburse Contractor for any such overpayments after final quantities have been determined by Contractor or Owner.

3.8 Tariffs, Surcharges, Taxes, & Duties. The prices herein specified shall, unless otherwise expressly stated, include all permits, fees, licenses, tariffs, surcharges, taxes and duties of any kind levied by federal, state, municipal, or other governmental authority, which either party is required to pay with respect to the production, sale or shipment of the materials or equipment covered by this Agreement. In the event of the imposition of any tax on the goods and services herein furnished which must be borne by the Contractor, Subcontractor any reset to the Contractor any taxes collected by the Subcontractor that should be borne by the Contractor. In addition, the Subcontractor agrees to remit to the Contractor any refund which Subcontractor might receive by reason of the collection of such tax.

3.9 Payment Use Restriction. All payments made by Contractor, its surety, or the Owner, to Subcontractor are made to, and accepted by Subcontractor as trustee for the benefit of Subcontractor's employees, material suppliers and lower tier subcontractors. All payments received by the Subcontractor shall first be used to satisfy any indebtedness owed by the Subcontractor to persons or entities furnishing labor or materials for use in performing or incorporation into the Subcontractor's Work. The Contractor shall have the right at all times to contact the Subcontractor's subcontractor shall insure that they are being paid by the Subcontractor for labor and trustee for use in performing to runs owed to or on behalf of its employees are timely paid, including, without limitation, all wages, employee benefits, withholding taxes, and all other amounts.

**3.10 Waivers and Affidavits.** When required by the Contractor, and as a prerequisite for payment, the Subcontractor shall provide, waivers and affidavits from the Subcontractor in forms as shown in an Exhibit of this Agreement, as specified by applicable statute, and as required by the Owner and Owner's lender (Collectively "Waivers"). Subcontractor agrees that if, without the written consent of the Contractor, the Subcontractor has modified the Waivers in any manner ("Modified Waivers") and has received payment from the Contractor in exchange for the Modified Waivers, the language required by the Waivers shall be reinserted into the Modified Waivers, and the Contractor shall not have been deemed to have accepted the Modified Waivers. Subcontractor shall not have been deemed to have accepted the Modified Waivers. Subcontractor shall not have been deemed to have accepted the Modified Waivers. Subcontractor is extended to be paid by Contractor, suppliers, or other entities arising from the Subcontractor's Work for the immediately preceding pay estimate before the Subcontractor is entitled to be paid by Contractor for the current pay estimate. Also as a prerequisite for payment, the Contractor wars that the individual signing the Waivers and affidavits for the Subcontractor varies and suppliers. Subcontractor wars and suppliers. Subcontractor wars and affidavit is correct.

Subcontractor and Subcontractor's surety shall indemnify, defend and hold Contractor, the Owner, the Project funds, Project site and Contractor's surety harmless from and against any claim for, or notice of, lien, encumbrance, payment bond claim, or other claim for payment or notice of non-payment (collectively "Lien"), any suit to enforce or recover or foreclose upon a Lien, and from any costs, expenses, attorney's fees, consultants' fees and litigation costs incurred by Contractor in connection with any Lien, which arises in connection with Subcontractor's Work or is asserted by any of Subcontractor's subcontractor's progress or Final Payment any Subcontractor's Lien Costs incurred to defend and discharge the Lien or withhold from Subcontractor's surety shall reimburse Contractor for any Subcontractor's Lien Costs incurred to defend any Lien if not deducted from a Progress or Final Payment. Subcontractor's surety shall also reimburse Contractor's surety shall also reimburse Contractor's surety shall and cratter or any Contractor's surety bond and all additional amounts paid by Contractor pursuant to any indemnity to Contractor's surety. This Paragraph is solely for the benefit of Contractor and Subcontractor and is not intended to benefit any persons or entities not parties to this Agreement including Subcontractor's surety, creditors, subcontractors or suppliers of any tier and creates no rights in them.

3.11 Subcontractor Payment Failure. In the event Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontractor's Work are not being, or may not be, paid, the Contractor may take any steps Contractor deems necessary to ensure that such obligations are paid and that the Subcontractor is fulfilling its obligations as trustee with respect to the payments earned under this Agreement, including, but not limited to, issuance of checks jointly to Subcontractor and the person or entity to whom Subcontractor owes an obligation, or direct payment to such person or entity unless Subcontractor supplies evidence to the satisfaction of the Contractor that such obligations have been satisfied. Any such payments made by the Contractor shall be credited against funds otherwise due Subcontractor under this Agreement. Subcontractor also agrees, if required by the Owner, to execute the documents provided by the Owner pertaining to the issuance of joint checks to its lower tier subcontractors and suppliers.

3.12 Right of Set Off. Contractor may withhold and unilaterally deduct, and Subcontractor shall reimburse Contractor for, amounts otherwise due under this Agreement, or otherwise due under any other agreement in which either Contractor, Subcontractor, or any of their members, parties, owners, partners, directors, managers, or officers, has an ownership interest, sub-affiliation, or corporate affiliation ("Other Agreements"), to cover the Contractor's reasonable estimate of any costs, damages, or liability (including reasonable overhead, profit and cover), which are in any manner caused or claimed to be caused, by any act or omission of Subcontractor in connection with this Agreement or which are in any manner caused or claimed to be caused, by any act or or its members, parties, owners, partners, directors, managers, or officers in connection with Other Agreements.

**3.13 Final Payment Application.** Upon acceptance of all of Subcontractor's Work by the Owner, the Contractor, and if required by the Contract Documents, the Architect/Engineer, and upon the Subcontractor furnishing evidence of fulfillment of all of the Subcontractor's obligations under this Agreement and the Contract Documents, the Contractor shall forward the Subcontractor's application for final payment to Owner.

**3.14 Final Payment Requirements.** Before the Contractor shall be required to final pay a Subcontractor or be required to forward the Subcontractor's application for final payment to the Owner, the Subcontractor shall submit to the Contractor: (i) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontractor's Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied, and unconditional final Waivers from all of Subcontractor's lower tier subcontractors, suppliers, or other entities arising from the Subcontractor's Work; (ii) consent of surety to final payment, if required by Contractor; (iii) satisfaction of required close-out procedures and documentation; and (iv) other data if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner. If Subcontractor which is an express condition precedent to Contractor's duty to pay Subcontractor and that the Subcontractor intends to assume the risk of nonpayment, final payment shall be due to Subcontractor no later than thirty (30) days after the Contractor's receipt of what the Contractor considers to be its final payment from Owner.

Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontractor's Work. All of Subcontractor's obligations pursuant to this Agreement shall be preserved notwithstanding final payment or termination of this Agreement. Final payment shall not constitute acceptance of Subcontractor's Work.

#### **ARTICLE 4 - CHANGES, CLAIMS AND DELAYS**

4.1 Changes. When the Contractor so orders in writing, the Subcontractor, without nullifying this Agreement, shall promptly and without delay, and whether disputed or otherwise, make any and all changes in the Subcontractor's Work which the Contractor determines are within the general scope of this Agreement. Subcontractor's request resulting from such changes, for an adjustment in the Subcontract Amount or Schedule of Work, must strictly follow the requirements for Claims as found elsewhere in this Agreement. Any such adjustment will be set forth in a Subcontract Change Order pursuant to the Contract Documents. In the absence of total agreement on the terms of a Subcontract Change Order, the Contractor may execute a unilateral Subcontract Change Order which shall be binding on the Subcontractor. No such adjustment shall be made for any such changes performed by the Subcontractor that have not been so ordered by the Contractor in writing. An express condition precedent to payment to Subcontractor on account of changes made or directed by Owner shall be that Contractor shall have received such payment from Owner for Subcontractor's changed Work. Each Payment to Subcontractor. In no event shall the profit percentage charged by the Subcontractor on a change order exceed the profit awarded to the Contractor by the Owner on the change order.

4.2 Changed Work at Time and Material. The Contractor may order changed work to be performed on a time and material basis by written notification to Subcontractor. Upon receipt of such notice, Subcontractor will perform the work and will accept in full payment thereof an amount equal to the direct cost of labor and materials actually and reasonably used to perform such changed work, plus mark up for overhead and profit as allowed in the Contract Documents (15% maximum if not specified) to cover all costs and profit, including but not limited to indirect, consequential and impact costs. Within ten (10) business days of execution of this Agreement, Subcontractor shall provide its time and material labor rates to Contractor. At a minimum, the labor rates shall breakdown the cost between labor, benefits, taxes, and overhead and profit. The Subcontractor will keep written records of the labor, materials and equipment used to perform such changed work for written verification of work done to the Contractor's superintendent. The Subcontractor waives any right for compensation for work performed on a time and material basis on any day for which said written records are not kept and submitted to Contractor's Superintendent for written verification as stated herein.

**4.3 Claims.** A "Claim" is a Subcontractor's demand or assertion seeking, as a matter of right, an increase or decrease in the Subcontract Amount, an extension in the time for performance of Subcontractor's Work, payment for work covered under an insurance policy related to the Project, or relief with respect to the terms of the Contract Documents. The Subcontractor must and is required to provide the Contractor with initial written notice ("Initial Notice") of the Claim, which Initial Notice must be titled "Initial Notice of Claim," must state the nature of the Claim and the anticipated cost and schedule impact on the Subcontractor prior to beginning the claim, and must be received by the Contractor by the earlier of the following dates: (1) if the Claim could not have been foreseen by the Subcontractor prior to beginning the impacted work, including, but not limited to, claims for Delay, the Initial Notice must be received within five (5) days after starting the work impacted by, or which is the subject of, the Claim; or (2) if the Claim could have been foreseen by the Subcontractor by received within five (5) days prior to starting the work impacted by, or which is the subject of, the Claim; or (3) as required under the Prime Contract Documents.

The Claim submission must be received by the Contractor by the earlier of: (1) three (3) days prior to the date by which the Contractor is obligated to submit the Claim to the Owner; or (2) within fifteen (15) days of completion of the Claim work. The Claim must and is required to include: (1) the amount of money and/or time extension sought by the Subcontractor, and the contractual and factual basis for each. A time extension request must be based on a CPM-based time impact analysis; (2) a general statement of the basis for the Claim; (3) the facts underlying the Claim; (4) the Initial Notice to the Contractor; (5) reference to the applicable Contract Documents; (6) all documentation that describes, relates to, and/or supports the Claim and all documents required to be submitted for a Claim under the Prime Contract Documents; and (7) certification that the Claim is made in good faith, and that the supporting data and documentation is accurate and complete to the based to the Subcontractor's knowledge. The certifier must be authorized to certify the Claim on behalf of the Subcontractor, and be made by a senior company official if the Claim is greater than fifty-thousand dollars. Where the Owner or some entity requires further information or documentation of any Claim, Subcontractor shall submit such information or documentation to the Contract or below to the date by which Contractor is obligated to provide such information or documentation to the Owner or entity.

Initial Notice and the Claim must be sent by certified or registered mail, or by courier providing proof of delivery; email or fax are not an acceptable method of delivery. As part of the Claim requirements, the Subcontractor shall keep written records of the labor, materials and equipment used to perform any Claim work and shall submit, by hand-delivery, the written Claim records to the Contractor's superintendent or project manager, on the next business day after any Claim work has been performed, and the Subcontractor waives any right for compensation for Claim work on any day for which said written records are not kept and submitted as required herein. If requested by the Contractor, Subcontractor shall permit Contractor to inspect and copy any of Subcontractor's documents pertaining to the Claim, failure of which shall be deemed a waiver of such Claim. Subcontractor expressly acknowledges, consents, and agrees to the time, content, records, and delivery requirements of both the Initial Notice and Claim, that the Initial Notice and Claim requirements will be strictly enforced, are material terms of this Subcontract, are necessary for the Contractor to mitigate adverse consequences arising out of or related to Subcontractor's Claim, that the Contractor will be prejudiced if the Initial Notice and Claim requirements are not followed by the Subcontractor, and agrees that any failure on the part of the Subcontractor to submit the Initial Notice or the Claim in strict accordance with the requirements contained within this article, will constitute a waiver of the Subcontractor's right to pursue the Contractor or the Contractor's surety for the Claim. Subcontractor agrees that, notwithstanding case law decisions or statutes to the contrary, Contractor's actual or constructive notice of the Claim or the Contractor's knowledge of any facts or circumstances supporting the Claim, does not satisfy the Initial Notice requirements for a Claim, nor prevent Subcontractor's waiver of the Claim. Pending final resolution of a Claim or any other dispute between Subcontractor and Contractor, unless otherwise agreed in writing, the Subcontractor shall proceed diligently with performance of the Subcontractor's Work, including Claim or disputed work, and without interruption, deficiency, or delay. Subcontractor agrees that any cause of action pertaining to the Subcontract or Project which it may have against Contractor, whether sounding in contract, tort, equity, in rem, mechanics lien, or other non-contractual theory or statutory right, or against the Contractor's surety on a payment bond, and including but not limited to causes requesting payment of retention, that the Subcontractor shall agree to a motion for stay filed by Contractor after a claim is filed on the payment bond or any such action is filed in court or arbitration, pending final payment from the Owner. The parties agree that this provision shall not be considered a waiver of Subcontractor's payment bond rights but is an agreement that those rights will be enforced in a court or arbitration only after the Contractor has received final payment from the Owner, to allow Contractor a reasonable period of time within which to tender payment to Subcontractor, and that the Subcontractor, the Contractor and their sureties will enter into a tolling agreement which will provide that for the period of sixty (60) days following the Contractor's exhaustion of its dispute remedies shall not be taken in account in applying any statute of limitations to any suit or claim, pertaining to the Subcontractor's Claim, by either party against the other party or other party's surety. This provision shall be for the benefit of Contractor's surety regardless of whether the Contractor is made a party to the payment bond action. If Contractor's surety is the prevailing party, even partially, against the Subcontractor's Claim, claim against the Contractor's bond or a mechanics lien, Subcontractor shall reimburse all of the Contractor's and Contractor's surety's actual costs incurred in investigating, responding to, defending against (including but not limited to, all actual costs incurred pursuing counter/cross claims or set-offs against Subcontractor or its surety), and resolving such Claims, claims, and mechanics liens including, but not limited to, their reasonably estimated in-house costs, outside attorneys' fees and expert costs, and the cost to bond over the lien. Subcontractor waives its right to recover consequential damages including, but not limited to, loss of use, revenue or profit, actual or anticipated or otherwise, special, incidental, indirect, exemplary, multiple or punitive damages, legal fees and interest arising from this Project or a Claim. Subcontractor acknowledges that in agreeing to the Subcontract Amount is has assessed the potential impact of this article 4.3 of the Agreement on its ability to recover additional compensation in connection with a future Claim, and agrees that these limitations on recovery will apply regardless of the accuracy of Subcontractor's assessment or actual costs incurred by the Subcontractor.

**4.4 Delay.** If the progress of the Subcontractor's Work is substantially delayed, hindered, interfered, made inefficient, disrupted, obstructed, suspended, accelerated, constructively accelerated, or impacted by out-of-sequence work, changes to the unchanged work, cumulative impacts, mismanagement, or other similar event, (collectively referred to as "Delay") through no fault or responsibility of the Subcontractor and the Subcontractor has fully complied with the Initial Notice and Claim provisions of this Agreement, then the Contractor shall either: (i) extend the time for the performance of Subcontractor's Work by Change Order, but such extension shall be limited to that amount of time which will enable Contractor's Work with additional manpower and the expediting of materials, but Contractor shall be obligated to pay only for the costs of expediting material and costs recovered under the Pass Through Claims provisions of this Agreement.

Regardless of whether the Subcontractor has complied fully with the Initial Notice and Claim requirements of this Agreement, the failure of full compliance which the Subcontractor agrees will have caused it to waive its Claim for Delay, except for the costs of expediting materials at the order of Contractor pursuant to the previous paragraph, and except for acts of the Owner or third party for which the Subcontractor's remedy shall be as stated in the article 11.3 Pass Through Claims provisions of this Agreement, the Contractor shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of Delay caused by Contractor; or by reason of fire, casualty, act of God or any other reason beyond the Contractor's control. Subcontractor additional contractor agree that the language in this article 4.4 shall not be interpreted as no damages for delay, pay if paid, or so restrictive so as to be their functional equivalents. Subcontractor acknowledges that in agreeing to the Subcontract Amount it has assessed the potential impact of this article 4.4 of the Agreement on its ability to recover additional compensation in connection with a Delay, and agrees that these limitations on recovery will apply regardless of the accuracy of Subcontractor's assessment or actual costs incurred by the Subcontractor.

Regardless of whether or not the Subcontractor has complied fully with the Initial Notice and Claim requirements of this Agreement, except as stated herein, it is expressly understood and agreed that the Subcontractor's sole and exclusive remedy for any damages or costs arising from or associated with a Delay shall be an extension in the time for performance of the Subcontractor's Work or for the costs of expediting material or costs recovered under the Pass Through Claims provisions of this Agreement.

4.5 Liquidated Damages. If the Contract Documents provide for liquidated damages for delay beyond the completion or other date(s) set forth in the Contract Documents, and such liquidated damages are so assessed or withheld, then the Contractor may assess the same against the Subcontractor in proportion to the Contractor's reasonable opinion of the Subcontractor's share of the responsibility for such delay. Subcontractor waives any defense that such liquidated damages are void as penalties or are not reasonably related to actual damages, regardless of whether the damages were specifically established by Contractor and Subcontractor under this Agreement or were established by the Contract Documents. The amount of liquidated damages assessed shall not exceed the amount assessed against the Contractor. Liquidated damages, as assessed against Contractor for Subcontractor's fault, may be but one item of the actual damages that may be incurred by Contractor, and which the Contractor may assess against Subcontractor. The proportionate assessment of liquidated damages shall not limit Contractor's right to collect from Subcontractor and its surety, and Subcontractor and its surety shall be liable to Contractor for all actual damages incurred by Contractor as a result of Subcontractor's delay or default.

#### **ARTICLE 5 - CONTRACTOR'S OBLIGATIONS**

**5.1 Site Resources.** Subcontractor acknowledges that, in order for Contractor to maintain the optimum Project schedule and to coordinate and manage the work required by the Contract Documents, it will be necessary for Contractor to require Subcontractor to begin Subcontractor's Work before all scheduled predecessor work is complete, to require the re-sequencing of the Subcontractor's Work, to require Subcontractor to complete Subcontractor's Work out of sequence and with multiple mobilizations, and to require that site access, access to work areas, utilities, and storage space at the Project, be allocated and prioritized such that certain trades will be given preference to areas in which the Subcontractor is working (these requirements are collectively referred to herein as "Site Resources"). Accordingly, as long as Contractor acts in good faith with respect to Site Resources and, notwithstanding any other provision of this Agreement or the Contract Documents, Subcontractor waives, except for claims for the costs of expediting material or costs recovered under the Pass Through Claims provisions of this Agreement, any and all claims for damages, extensions of time or for increase to the Subcontract Amount as the result of any Delay, change or other cause arising from Site Resources.

Subcontractor and Contractor agree that the language in this article shall not be interpreted as no damages for delay. Subcontractor acknowledges that in agreeing to the Subcontract Amount it has assessed the potential impact of this article of the Agreement on its ability to recover additional compensation in connection with Site Resources, and agrees that these limitations on recovery will apply regardless of the accuracy of Subcontractor's assessment or actual costs incurred by the Subcontractor.

5.2 Authorized Representative. The Contractor shall designate one or more persons who shall be the Contractor's authorized representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

5.3 Timely Communications. The Contractor shall transmit or make available to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relating to the Subcontractor's Work.

5.4 Digital Files. For the convenience and benefit of Subcontractor, drawings and other Contract Documents may be provided to Subcontractor in CAD, DGN, or any other native file formats and the Contractor may provide Subcontractor access to an electronic document viewing/management system or similar technology related to the Subcontractor's Work ("Digital Files"). Any use of Digital Files, including but not limited to use of Digital Files containing errors, is at the Subcontractor's sole risk, without, liability or legal exposure to Contractor, and Subcontractor shall indemnify, defend, and hold harmless Contractor and Contractor's surety from all losses and damages arising out of or resulting from Subcontractor's use of Digital Files.

#### **ARTICLE 6 - SUBCONTRACTOR'S OBLIGATIONS**

6.1 Temporary Services. The Subcontractor shall furnish all temporary services and/or facilities necessary to perform its Subcontract Work, except as otherwise provided in this Agreement.

6.2 Coordination. Subcontractor will coordinate Subcontractor's Work with the work of Contractor, other subcontractors, and the Owner's separate contractors or employees, including any work of a design-build nature, so that no delays, obstruction, disruption or interference will occur in completion of any part or all of the Project or Contractor's work or the work of other of Contractor's subcontractors or Owner's separate contractors or employees. Subcontractor shall determine whether the work of other subcontractors or of Owner is completed and without defect or variance from the Contract Documents. If there are defects or variances in work of other subcontractor so or of Owner's separate contractors adjacent to or which underlie Subcontractor's Work, Subcontractor shall give prompt written notice to Contractor of such defect. Subcontractor shall be liable for the costs to replace, modify or correct, or for the correction, replacement or modification, at Subcontractor's own cost, of any of Subcontractor's Work or any other work required as a result of the Subcontractor's failure to coordinate Subcontractor's Work or failure to give such prompt written notice to Contractor's Work or any other work required as a result of the Subcontractor's failure to coordinate Subcontractor's Work or failure to give such prompt written notice to Contractor's Work or failure to Subcontractor's failure to Contractor's failure to Contractor's Work or failure to Contractor's Work or failure to Contractor's Work or Contractor's Work or failure to Contractor's failure to Contractor's Work or failure to Contractor's Work or Contractor's Work or failure to Contractor's failure to Contractor's Work or Contractor's Work or failure to Contractor's Work or Contracto

6.3 Authorized Representative/Meetings. The Subcontractor shall designate one or more persons acceptable to the Contractor who shall be the Subcontractor's Authorized Representative(s) both on-site and off-site. Such authorized representative(s) shall be the only person(s) to whom the Contractor shall issue instructions, orders or directions, except in an emergency. Subcontractor shall provide Contractor with the phone number, pager number, and email addresses for its Authorized Representative and all key personnel. Contractor must be able to contact the Authorized Representative and key personnel 24 hours per day, 7 days per week. The Authorized Representative shall attend meetings which may be held at such place and on such intervals as the Contractor designates and shall be deemed to have the authority to commit the Subcontractor to actions as agreed in these meetings, and shall not be changed without the Contractor's consent, which consent shall not be unreasonably withheld.

**6.4 Clean-up.** The Subcontractor shall follow the Contractor's clean-up directions and at all times keep the Project and site free from debris resulting from the Subcontractor's Work, store material and equipment in an orderly manner, and broom clean each floor area prior to discontinuing work in that area. If the Subcontractor fails to commence clean-up duties within 24 hours after receipt from the Contractor of written notice of noncompliance, the Contractor may implement clean-up measures without further notice and deduct the cost plus reasonable overhead and mark-up thereof from any amounts due or to become due the Subcontractor.

6.5 Permits, Fees and Licenses. The Subcontractor represents and warrants that it possesses all licenses, and meets all of the requirements of the Prime Contract Documents, which are required to perform the Subcontractor's Work. The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and secure and pay for all permits, fees, licenses, assessments, inspections, tests and taxes related to the Subcontractor's Work. The Subcontractor shall cooperate with the Contractor in securing building and occupancy permits. The Subcontractor shall immediately notify the Contractor of any deficiency reported by inspection authorities, or denial of applicable permits, licenses, certificates of testing, inspection and occupancy. Upon request of the Contractor, the Subcontractor shall present applicable documentation to the Contractor.

6.6 Submittals. The Subcontractor shall prepare and submit to Contractor shop drawings, product samples, test data and other submittals as may be necessary to describe the details and construction of the Subcontractor's Work within thirty (30) days of the execution of this Agreement, unless stated otherwise in this Agreement. Subcontractor acknowledges that the Contractor's schedule for the Project, unless expressly stated otherwise herein, does not allow for the resubmission of shop drawings and other submittals and that Subcontractor is required to ensure its initial submittals meet the requirements of the Contract Documents. Subcontractor shall be liable for any and all of Contractor's, Owner's, or other subcontractors' added costs or damages resulting from Subcontractor's failure to furnish submittals when and as required by this Agreement. Contractor's review of shop drawings and other submittals shall be for general concept only. Approval of submittals by Contractor will not relieve Subcontractor of its obligation to perform the Subcontractor's Work in strict compliance with the Contract Documents or the proper matching and fitting of the contiguous work.

6.7 Project Records. Subcontractor shall maintain, and upon the request of Contractor, produce the manpower count and a description of the Subcontractor's Work that was performed on each day of work. Subcontractor shall conform to prevailing wage and certified payroll requirements applicable to the Project. Subcontractor shall submit to Contractor at the end of each week, daily payroll records for that week, satisfactory to the Contractor, of all of Subcontractor's employees working on the Project. Such records shall include, at a minimum: (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, provided that all deductions made on written orders of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (7) the name and address of the legal entity that is the employee (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Subcontractor shall maintain construction drawings and other documents at the Project site and update them daily to accurately reflect the current progress of the Subcontractor's Work. Subcontractor shall make such drawings and documents available for the Contractor's review at the Project site upon request of the Contractor, but at least on a monthly basis in connection with the Subcontractor's estimates for payment. Subcontractor shall furnish final as-built drawings to the Contractor as part of its completion of the Subcontractor's Work. Subcontractor's compliance with this article's requirements regarding: (i) manpower counts; (ii) description of the Subcontractor's daily work performed; (iii) certified payroll requirements; (iv) daily payroll records; (v) maintaining construction drawings and other documents; and (vi) and final as-built drawings (collectively "Project Records") are a condition precedent to the Contractor's obligation to make interim progress and final payments to Subcontractor. Subcontractor's records related to the Project and this Agreement shall be subject to audit and shall be made available to the Contract for that purpose upon five (5) days prior written notice. Unless the Contract Documents or applicable law requires a longer period, Subcontractor shall maintain its records related to this Agreement and the Project, financial or otherwise, for a period of three (3) years after the final completion of the Project.

Subcontractor agrees that if any portion of the Subcontractor's Work is further subcontracted ("Sub-subcontractor'), that a copy of this article titled Project Records will be included in any further subcontract. Subcontractor's failure to abide by the terms of this article titled Project Records is a material breach of this Subcontract. Sub-subcontractor agrees that, regardless of whether the Subcontractor has expressly included a copy of this article titled Project Records in its Sub-subcontract, Sub-subcontractor shall be bound by and observe the provisions of this article titled Project Records by incorporation to the same extent as herein required of Subcontractor.

6.8 Labor Conditions. Subcontractor shall not use any class of workmen, materials, or methods, including improper classification of employees as independent contractors, which may cause strikes, bannering, labor disturbances, labor demonstrations, project delay, or which do not comply with the Contract Documents and applicable law. Subcontractor shall do what is reasonably necessary to assure harmonious labor relations relative to the Subcontractor's Work. Subcontractor shall fully abide by all labor agreements, project agreements, and jurisdictional decisions presently in force or subsequently executed with or by Contractor. If directed by Contractor to do so, Subcontractor shall honor, and shall direct all sub-subcontractors and employees, including but not limited to any striking employees, to honor, any and all "reserved gate" or "dual gate" arrangements. Subcontractor shall man the Subcontractor's Work so as to maintain the Project Schedule regardless of any labor activity including strikes, picketing or other labor disturbances. Immediately upon the request of Contractor, Subcontractor shall remove from the Project any employee whom Contractor reasonably determines to be incompetent, undesirable, or presents a threat of risk or harm to others.

Subcontractor agrees that if any portion of the Subcontractor's Work is further subcontracted, that a copy of this article titled Labor Conditions will be included in any further subcontract. Subcontractor's failure to abide by the terms of this article titled Labor Conditions is a material breach of this Subcontract. Sub-subcontractor agrees that, regardless of whether the Subcontractor has expressly included a copy of this article titled Labor Conditions in its Sub-subcontract, Sub-subcontractor shall be bound by and observe the provisions of this article titled Labor Conditions to the same extent as herein required of Subcontractor.

#### **ARTICLE 7 - SUBCONTRACT PROVISIONS**

7.1 Assignment. Subcontractor shall submit a list of proposed sub-subcontractors and material suppliers to the Contractor. The Subcontractor shall not assign this Agreement, nor claims, liens, nor causes of actions for damages arising from this Agreement, nor its proceeds nor subcontract the whole or any part of the Subcontractor's Work without prior approval of the Contractor which shall not be unreasonably withheld, and any assignment not approved by the Contractor is void, and the assignees in such cases shall acquire no rights to the proceeds, claims or causes of action, pertaining to this Subcontract. Assignment by the Subcontractor without the consent of the Contractor is a material breach of this Subcontract.

7.2 Layout Responsibility. The Subcontractor shall layout and be strictly responsible for the accuracy of the Subcontractor's Work. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in proper alignment of finished surfaces.

7.3 Workmanship. All workmanship shall be first-class. All materials and equipment incorporated into the Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Subcontractor's Work, and shall be new except such materials and equipment as may be expressly provided in the Contract Documents to be otherwise.

7.4 Materials and Equipment Furnished By Others. In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to the acts or omissions of the Subcontractor shall be deducted from any amounts due or to become due to the Subcontractor.

7.5 Deliveries. Subcontractor is to schedule all deliveries of materials and equipment with Contractor's on-site superintendent a minimum of two (2) business days, unless Contractor agrees otherwise, in advance, and be prepared to receive and unload said deliveries on site. If the foregoing notification requirements are not adhered to, Contractor reserves the right to refuse, warehouse or return to the carrier the shipment in question. In this case, all costs incurred by Contractor for handling, storage, and protection of said materials and equipment shall be reimbursed by Subcontractor. In the event Contractor chooses to accept the delivery on Subcontractor's behalf, the signature of an employee acknowledging the receipt of such material shall not constitute acceptance of the contents, until an actual inspection of the material has been conducted by Subcontractor. In addition, Contractor does not accept any responsibility or liability in regards to verifying quantities, type of materials and safety of said deliveries.

7.6 Substitutions. No substitutions shall be made in the Subcontractor's Work unless permitted in the Contract Documents and only then upon the Subcontractor first receiving all approvals required under the Contract Documents for substitutions. In the event a substitution results in additional cost to the Contractor and/or other subcontractors, Subcontractor shall be responsible for such additional costs.

7.7 Provision for Inspection. The Subcontractor shall notify the Contractor, in writing, when portions of the Subcontractor's Work are ready for inspection or testing, and the Subcontractor shall be responsible for all of the Contractor's and Owner's costs to re-inspect the Subcontractor's Work. The Subcontractor shall at all times furnish the Contractor and its representatives adequate facilities for inspecting or testing materials at the site or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment. Subcontractor shall promptly replace or correct, as directed by the Contractor, any Subcontractor's Work which Contractor or the Owner shall reject as failing to conform to the requirements of the Contract Documents. Within twenty-four (24) hours after receiving Contractor's written notice rejecting any of Subcontractor's Work, Subcontractor shall remove rejected Subcontractor's Work from the Project site. Subcontractor shall promptly re-perform the rejected Subcontractor's Work and other items as necessary to comply with the requirements of the Contract Documents. If requested by the Contractor, Subcontractor shall also correct any work of Contractor, Owner, or other subcontractors as required in connection with the Subcontractor's rejected Subcontractor's Work (collectively "Related Work"). All costs associated with re-performing, correcting, and replacing rejected Subcontractor's Work and performing Related Work shall be borne by the Subcontractor without any increase in the Subcontract amount or the time for performance of the Subcontractor's Work. If Subcontractor states, or by its actions indicates, that it is unable or unwilling to proceed with correcting the rejected Subcontractor's Work or performing the Related Work in a manner and time acceptable to the Contractor, or if the Contractor deems it inexpedient for Subcontractor to correct the rejected Subcontractor's Work or perform the Related Work, Contractor may immediately, after Subcontractor's receipt of written notice from the Contractor, correct the rejected Subcontractor's Work and perform the Related Work, and the Subcontractor shall be liable for all of the Contractor's costs and damages arising from such action. No inspection, acceptance, or review of the Subcontractor's Work by Contractor, Owner, or their representatives, nor any failure to inspect, accept, review or include on a punchlist, shall relieve Subcontractor from its obligations to perform the Subcontractor's Work in strict accordance with the Contract Documents, nor impair Contractor's right to reject nonconforming goods, to recover damages or exercise any other remedies to which Contractor may be entitled, notwithstanding Contractor's knowledge of the nonconformity, its substantiality, or the ease of is discovery, nor will such knowledge by the Contractor be used by Subcontractor's surety as a defense to the Contractor's claim on the Subcontractor's bond. Contractor has no obligation or duty to Subcontractor to cause Subcontractor's work to satisfy the standards and requirements of the Contract Documents.

7.8 Use of Contractor's Equipment. The Subcontractor, its agents, employees, subcontractors or suppliers shall not use the Contractor's equipment without the express written permission of the Contractor's designated representative.

7.9 Privity. Until final completion of the Project, the Subcontractor agrees not to perform any work directly for the Owner or any tenants thereof, or deal directly with the Owner's representatives in connection with the Project, unless otherwise directed in writing by the Contractor. All work for this Project performed by the Subcontractor shall be processed and handled exclusively by the Contractor.

7.10 Protection of the Work. The Subcontractor shall protect the Subcontractor's Work at all times including after it is complete, and also protect the work, property or materials of the Owner, the Contractor or other subcontractors from damage caused by the Subcontractor's operations, and the Subcontractor shall have primary responsibility and liability for any damages or losses which may be incurred. If the Subcontractor causes damage to the work or property of the Owner, the Contractor or other subcontractors shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may so remedy and deduct the cost thereof plus reasonable overhead and profit from any amounts due or to become due the Subcontractor. Contractor may use Subcontractor's Work, at its option and at no additional expense.

7.11 Warranty Provisions. The Subcontractor warrants the Subcontract Work against all deficiencies and defects in materials and/or workmanship and as called for in the Contract Documents, and shall promptly perform warranty work, whether disputed or otherwise and Subcontractor's failure to correct a deficiency or defect after several attempts to do so, shall also be a default of this Agreement. The Subcontractor agrees to satisfy such warranty obligations which appear with in the guarantee or warranty period established in the Contract Documents without cost to the Owner or the Contractor. If no guarantee or warranty is required of the Contractor in the Contract Documents, then the Subcontractor's Mork as described above for the period of one year from the date(s) of substantial completion of all or a designated portion of the Subcontractor's Work or acceptance or use by the Contract or Owner of designated equipment, whichever is sooner. The Subcontractor further agrees to execute any special guarantees or warranties required in the Contract Documents for the Subcontractor's Work.

In addition to all other warranties set forth in this Agreement or imposed by applicable law, Subcontractor warrants, certifies, and guarantees to the Contractor and Owner that the Subcontractor's Work will be free from defects and performed in strict conformity with the requirements of this Agreement. This warranty, certification, and guarantee survives the termination or suspension of this Agreement, or Subcontractor's final payment, and shall only be extinguished by limitation periods imposed by applicable law and shall not be limited by any other provisions contained in this Agreement.

7.12 Safety. The Subcontractor agrees to comply with the Occupational Safety and Health Act of 1970, as later amended, and all other laws, in the performance of the Subcontractor's Work, and further agrees to abide by and comply with all regulations issued under this Act. In the event the Subcontractor is cited for violations, Subcontractor shall be responsible for all penalties assessed against the Subcontractor. In the event the Contractor is cited or penalized due to the Subcontractor's actions or failure to comply with the Occupational Safety and Health Act, Subcontractor shall hold the Contractor harmless from any costs, expenses, suits, penalties or damages (including legal fees and costs) arising from any such citations or penalties and such sums shall be deducted from amounts due under the Subcontractor shall not be held liable for violations of the Contractor provided the Subcontractor has no liability.

In addition to safety requirements imposed by law, Subcontractor shall comply with all safety requirements imposed by Contractor, Owner or the Architect/Engineer and will conduct operations in a safe manner. Each crane operator shall have a valid certificate of competency issued in accordance with or by an Accredited Certifying entity for the type of crane to be used. Subcontractor shall be liable to Contractor for any additional costs, fines and penalties Contractor incurs as a result of Subcontractor's failure to operate safely. Contractor may conduct safety inspections from time to time. Such inspections shall not relieve Subcontractor from Subcontractor's obligations to adhere to safety requirements nor shall such inspections create any Contractor liability.

If the Subcontractor or any of its subcontractors or any employees thereof fail to comply with a request to work in a safe manner or correct an unsafe condition, the Contractor may withhold payments and/or correct the safety deficiency at the Subcontractor's expense and/or require that unsafe employees be removed from the project site.

7.13 Compliance with Laws. The Subcontractor agrees to be bound by, and at its own cost, comply with all federal, state and local statutes, decisions, orders, directions, instructions, laws, codes, rules, decrees, ordinances and regulations of any government or quasi-government entity having jurisdiction over the Project or project site, the practices involved in the Project or project site, or any Contract Work. (hereinafter collectively referred to as "Laws") applicable to the Subcontractor's Work including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, provisions of Executive Order 13658 and 11246, as amended, and the implementing regulations at 41 CFR Parts 60-1 through 60-50; Section 503 of the Rehabilitation Act of 1973, as amended, and the implementing regulations at 41 CFR Parts 60-1 through 60-50; Section 503 of the Rehabilitation Act of 1973, as amended, and the implementing regulations at 41 CFR Parts 60-1 through 60-50; Section 503 of the Rehabilitation Act of 1973, as amended, and the implementing regulations at 41 CFR Parts 60-1 through 60-50; Section 503 of the Rehabilitation Act of 1973, as amended, and the implementing regulations at 41 CFR Parts 60-30; the Immigration Reform and Control Act of 1986, as amended; Title 1 of the Americans with Disabilities Act of 1990, as amended; Title VII of the Civil Rights Acts of 1866, 1870, 1964, 1991, as amended, and any subsequent years; the Fair Labor Standards Act of 1938, as amended; Executive Order 13950; and such implementing rules and regulations as may be established by the Secretary of Labor, and all other laws and Executive Orders with which the Contractor must comply according to the Contract Documents.

Contractor and Subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. Contractor and Subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

Subcontractor agrees to comply with all laws, ordinances and regulations relating to its supply of goods under this Agreement, including without limitation, any regulations of the storage, transport, disposal or labeling of hazardous substances. If this Project is subject to Federal Highway Authority (FHWA) 1273 or subsequent provision, Subcontractor agrees to comply with the Contract Provisions of FHWA 1273 and to cooperate fully with Contractor, by agreeing to periodic inspections, reviews and submission of documents and/or reports that may be required to ensure Subcontractor's and Contractor's compliance with the Contract Provisions of FHWA 1273.

7.14 Bond and Letter of Credit. Unless noted otherwise in this Agreement, Subcontractor, at its expense, shall immediately upon execution of this Agreement, obtain and furnish surety bonds or a letter of credit, in such form as provided by Contractor or detailed by Exhibit of this Agreement or as required by the Owner. If the Subcontractor does not furnish such surety bonds or letter of credit within three (3) business days of execution of this Agreement, the parties agree that such failure constitutes a material breach and default under Article 8.1 of this Agreement for which the damages shall include but not be limited to termination and the Contractor's cost to secure a replacement subcontractor. Surety bonds shall be individual performance and payment bonds, and each individual performance and payment bond shall be in the amount of one hundred percent (100%) of the subcontract price guaranteeing full performance of this Subcontract and that Subcontractor will promptly and fully pay for all work, labor and materials and other charges or costs in connection with the Subcontractor's Work. A letter of credit shall be in the amount as required by the Contractor. The definition of Contract Work, as defined in this Agreement, shall be incorporated into the Subcontractor's bonds and is the definition of the term Contract Work as it appears in the Subcontractor's bonds. The payment bond shall be considered primary, and non-contributory, to claims which could be paid under either the payment or performance bond. The amount of the bonds shall increase directly with any amendments issued to the Subcontract without requirement of notice to Subcontractor's surety for any such increase or amendment. Payment bonds and performance bonds must be provided by a company listed in Federal Register Circular 570, latest revision, Surety Companies Acceptable on Federal Bonds, and a Financial Rating of A V or better as published by Best's Key Rating Guide, latest edition, and admitted in the state where the Subcontractor's Work is to be performed and shall conform to such other and further restrictions and conditions as Contractor shall require. If the company issuing the Subcontractor's surety bonds falls below the criteria listed herein, the Subcontractor shall immediately notify the Contractor and within fourteen (14) days of the bonds falling below the criteria, or upon demand by the Contractor, replace its surety bonds with bonds which meet the criteria contained herein. No change, alteration or modification in or deviation from this Subcontract, its terms, conditions, plans or specifications, or in the manner, time or amount of payment as provided herein, whether or not made in the manner as herein provided, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract. In the event of any default by Subcontractor, no surety on any performance bond given in connection with this Subcontract shall, without the prior written consent of Contractor (which consent shall not be unreasonably withheld or delayed), have any right to complete Subcontractor's Work hereunder or have any right to hire any other person, partnership or corporation to complete or in any way perform Subcontractor's Work. The Contractor's right of approval hereunder is intended only to insure the proper performance of the Subcontractor's Work and is not intended to interfere with any rights the surety might have under the bond or by operation of law. The surety under any bond provided to Contractor under this provision shall not be relieved of any responsibility under said bond to Contractor if the Subcontractor shall become insolvent or shall make an assignment for the benefit of creditors or be subject to any proceeding in bankruptcy. Subcontractor's surety acknowledges that Subcontractor is obligated under this Agreement to provide its surety with all notices, letters, or email, from the Contractor relating to deficiencies, or alleged deficiencies, in the Subcontractor's performance of this Agreement, and Subcontractor's surety agrees that if the Subcontractor fails to provide the surety with such information, the Subcontractor's surety will not use lack of notice from the Contractor as a defense to any claim by the Contractor on the Subcontractor's bond. All provisions pertaining to indemnification and indemnity in this Agreement shall apply to, and bind, Subcontractor's surety to the same extent the provision applies to, and binds, Subcontractor. All provisions contained within Article 11 of this Agreement shall apply to, and bind, Subcontractor's surety to the same extent the provision applies to, and binds, Subcontractor, and the Contractor's statutes of limitation and repose relative to the Subcontractor's surety shall be the same as those relative to the Subcontractor. Subcontractor's failure to comply with any of the terms of this Article 7.14 shall be deemed a material breach of this Subcontract.

If (a) the bank issuing the Letter of Credit (the "Issuing Bank") ceases to remain a "Qualified Bank" (as defined herein) or (b) Contractor has reasonable grounds to believe that Issuing Bank may, due to recent reported events or information concerning it that has come to the attention of Contractor, ceases to remain a Qualified Bank, then: (i) Contractor may require Subcontractor to replace the Letter of Credit within fourteen (14) days of demand for its replacement with another Letter of Credit (a "Replacement Letter of Credit") issued on the same terms (with the Replacement Letter of Credit to be in form and substance satisfactory to Contractor by a Qualified Bank) which, when issued and accepted by Contractor, shall become the Letter of Credit under this Agreement and (ii) If Subcontractor fails to cause a suitable Replacement Letter of Credit to be insued by a Qualified Bank acceptable to Contractor within such fourteen (14) day period, Contractor shall be entitled to draw on the Letter of Credit. Notwithstanding the foregoing, Contractor may draw on the Letter of Credit is contractor or if (a) Contractor has grounds to believe that the Issuing Bank may be declared insolvent, placed into receivership, nationalized or its contracts or letters of credit otherwise impaired within less than fourteen (14) days or (b) Subcontractor has grounds to believe that the Issuing Bank may be declared insolvent, placed into receivership, nationalized or its contracts or letters of credit otherwise impaired within less than fourteen (14) days or (b) Subcontractor has filed for and has had a petition in bankruptcy filed against it.

For purposes of the foregoing provisions, the term "Qualified Bank" means a federally insured state or national bank which is well capitalized under FDIC capital adequacy guidelines and is not under any supervisory order or subject to supervisory proceedings and is otherwise acceptable to Contractor as reasonably determined by it. To the extent Contractor issues a bond on this Project which is broader or more lenient in coverage or notice provisions than required by statute, the statutory provisions shall supersede the language on the bond. Contractor's surety is an express third party beneficiary of this provision in this Agreement.

7.15 Subcontractor Qualification Process. If Subcontractor has engaged in the Subcontractor Qualification Process, then Subcontractor recognizes a continuing duty to update the qualification process annually and with any material changes to the representations contained therein or at the request of the Contractor. Failure to maintain qualification shall be a violation of this Agreement. Failure of the Contractor to secure any requested or required information shall not be considered a waiver of this requirement.

7.16 Subcontractor Default Insurance. If the Contractor elects a Subcontractor Default Insurance program for the Project, Subcontractor shall identify and remove any and all bond costs should it be requested or pursuant to enrollment in the Subcontractor Default Insurance Program. Subcontractor further recognizes that the Subcontractor Default Insurance is for the sole benefit of Contractor and Subcontractor shall not seek nor be entitled to any benefit therefrom. Furthermore, under no circumstances shall any waiver or subrogation or other term of this Agreement diminish the rights of the Contractor or its insurer to pursue contractual or other remedies in any claim on any Subcontractor who is enrolled in the Subcontractor Default Insurance who is held in default pursuant to the terms of this Agreement.

7.17 Confidentiality. Subcontractor acknowledges and agrees that it will execute any confidentiality or nondisclosure agreement required by the Prime Contract and requested to be executed by the Contractor. Contractor may disclose Project-related information to Subcontractor which the Contractor and/or the Owner considers to be confidential ("Confidential Information"). In the absence of more stringent requirements contained in the Prime Contract, when Contractor and/or the Owner discloses any information designated as Confidential Information to Subcontractor, Subcontractor agrees that: (i) the Confidential Information shall be used solely for the purpose of performance of this Agreement and disclosed only to the Subcontractor's employees who have a need to know the information for that purpose; (ii) Subcontractor shall not disclose the Confidential Information to any other party without the Contractor's written consent; (iii) Subcontractor will take precautions, at least as stringent as it employs to preserve the secrecy of its own confidential information, and in no event less than reasonable precautions; and (iv) within one (1) month of completion of the Subcontractor's Work, Subcontractor will return all documents containing Confidential Information to the Contract, these Confidentiality provisions shall remain in force and effect for a period of seven (7) years after substantial completion of the entire Project. Subcontractor agrees that in the event of its breach or threatened breach of the Confidentiality provision of this Agreement, Contractor shall be entitled to equilable relief in order to restrain any continued or threatened breach.

7.18 Stormwater Discharge. If required by the Contractor, the Subcontractor shall sign a certification confirming that they will comply with the Project-wide General Permit for Stormwater Discharges. If required by the Contractor, earthwork Subcontractors shall also sign the NPDES and E&S Permits.

7.19 Penalties, Fines, Liquidated Damages, Disincentives. Subcontractor shall be responsible for penalties, fines, liquidated damages, and disincentives, or any other withholding or forfeiture of money, as assessed by the Owner, arising from Subcontractor's Work or workforce.

7.20 Special Work Areas. When Subcontractor's Work requires lane or road closures, and the Contractor is responsible for traffic control, Subcontractor shall schedule its work to allow reasonable time for Contractor to set up and remove the closures. When the Subcontractor's Work is adjacent to or on railroad property or right-of-way, or other third-party property, the Subcontractor shall comply with the Prime Contract and any third-party rules or regulations associated with working in such areas at no additional cost to the Contractor.

7.21 Small or Disadvantaged Business Enterprises. For the purposes of this Agreement, "Small or Disadvantaged Business Enterprise" includes, but is not limited to, small business enterprise, small business concern, minority business enterprise, women owned business enterprise, disadvantaged business enterprise and any other socioeconomically disadvantaged entity or enterprise identified within the Prime Contract Documents. Subcontractor hereby acknowledges that it is thoroughly familiar with all Small or Disadvantaged Business Enterprise requirements pertaining to the Project. If the Subcontractor claims status as a Small or Disadvantaged Business Enterprise, including but not limited to, the performance of a commercially useful function on the Project. In the event that any lower tier subcontractor or supplier of the Subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor agrees to be responsible for ensuring that said lower tier subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractors or material supplicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractors or material supplicable requirements. A Small or Disadvantaged Business Enterprise, and that misrepresentation. In the event of the status of material misrepresentation of the status of the status of the subcontractor as a Small or Disadvantaged Business Enterprise, subcontractor shall not be instead on the result of material misrepresentation of the status of the status of the status of the subcontractor as a Small or Disadvantaged Business Enterprise, Subcontractor shall not be entitled to any compensation not already paid, and shall be liable for all damages to Contractor caused by Subcontractor's misrepresentation and breach.

7.22 Alternates. If alternate pricing or scope are provided for in this Agreement, such alternates can be accepted only in writing by the Contractor, and at the Contractor's sole discretion.

7.23 Ethics. Subcontractor warrants that none of its officers, employees, agents or other representatives has made any gift, payment, award, or promise of any value, either directly or indirectly, for the purpose of illegally or improperly influencing any person's or entity's actions toward the Subcontractor or others relative to this Project ("Ethics Breach"). Subcontractor shall indemnify, defend, and hold harmless the Contractor from any losses arising from the Ethics Breach.

7.24 Publicity and Recordings. Subcontractor shall not make news releases, publicize or issue advertising pertaining to the Work, the Project, or this Agreement, without first obtaining the written approval of Contractor. Neither party shall disparage the other in any type of public forum pertaining to the Work, the Project, or this Agreement. Subcontractor shall not make audio or video recordings of the Contractor or other parties associated with the Project, without prior written permission of each party being recorded, and Subcontractor agrees that any recording made without such consent cannot be used in any manner or matter, whether legal, administrative or otherwise, even if such use would otherwise be allowed by law. Subcontractor shall include these restrictions in all its contracts relating to the Work, the Project, or this Agreement.

#### **ARTICLE 8 - RECOURSE BY CONTRACTOR**

8.1 Failure of Performance and Default. If the Contractor determines at its sole discretion that the Subcontractor has: (i) refused or failed to supply enough properly skilled workers, proper materials, or maintain the schedule for the Subcontractor's Work as required by the Contractor; (ii) failed to make prompt payment for, or failed to prevent claims of non-payment from, its workers, subcontractors or suppliers of any tier; (iii) disregarded Laws or orders of any public authority having jurisdiction; (iv) otherwise materially breached, a provision of this Agreement; (v) refused to pay undisputed amounts owed by Subcontractor to Contractor or accept a reasonable adjustment in the Subcontract Amount or Schedule of Work proposed by the Contractor; (vi) taken actions which cause the Contractor to file a claim, counter-claim, crossclaim, or third-party claim against the Subcontractor in court, arbitration, or other dispute resolution process; or (vii) if Contractor has a reasonable doubt that this Agreement can be completed for the balance then unpaid or if the Subcontractor owes funds to the Contractor due to Set-off or otherwise at any time, including but not limited to after substantial or final completion, then the Subcontractor shall be in default of this Agreement. If the Subcontractor fails within seventy-two (72) hours after receipt of written notice (the Contractor's facsimile, email, or letter, shall constitute sufficient written notice and declaration of default) to commence and continue satisfactory correction of such default with diligence and promptness, the Subcontractor shall have materially breached this Agreement, and the Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies: (i) supply such number of workers and quantity of materials, equipment and other facilities to perform all or such part of the Subcontractor's Work as the Contractor shall determine will provide the most beneficial completion of the project, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and all actual attorney's fees and expert costs; (ii) contract with one or more additional contractors to perform all or such part of the Subcontractor's Work as the Contractor shall determine will provide the most beneficial completion of the project and charge the cost thereof to the Subcontractor who shall be liable for the payment of same including reasonable overhead, profit and all actual attorney fees and expert costs; (iii) discharge the claim of non-payment; (iv) withhold payment of any moneys due the Subcontractor pending corrective action to the extent required by and to the satisfaction of the Contractor, Owner, and the Architect/Engineer; and (v) cover. Any costs and damages, regardless of reasonableness, incurred by Contractor under Article 8.1 or the Agreement, including reasonable overhead, profit, and all actual attorney fees and expert costs, shall be unilaterally deducted from funds otherwise due Subcontractor under this Agreement, and the Subcontractor and its surety shall be liable for the payment to the Contractor of the amount by which such costs and damages exceed the unpaid balance of the Subcontract Amount. Contractor may use any materials, implements, equipment, appliances or tools furnished by or belonging to the Subcontractor to complete the Subcontractor's Work. Subcontractor shall provide its surety with all notices, letters, or email, from the Contractor relating to deficiencies, or alleged deficiencies, in the Subcontractor's performance of this Agreement, including but not limited to those referred to in this paragraph, and Subcontractor's surety agrees that if the Subcontractor fails to provide the surety with such information, the surety will not use lack of notice from the Contractor as a defense to any claim by the Contractor on the Subcontractor's bond. In instances where the Subcontractor is failing or having difficulty in fulfilling its obligations under the Agreement, the Contractor, either prior to or after Subcontractor's default, may allow the Subcontractor to continue performance under this Agreement, and such actions by the Contractor may not be used by the Subcontractor's surety as a defense, either partial or otherwise, to a claim by the Contractor on the Subcontractor's bond. In the event of, or subsequent to, an emergency affecting the safety of persons or property, the Contractor may proceed as outlined above without notice or an opportunity to cure the default.

If Contractor shall have reasonable grounds to question Subcontractor's intent or ability to perform, Contractor may, in writing, demand that Subcontractor give adequate assurance, in writing, of its intent or ability to perform. If such a demand is made and no written assurance adequate to the Contractor is given within five (5) calendar days, Contractor may treat this failure to give such adequate assurance as a default or an anticipatory repudiation of the contract. In the event of a default, the Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the remedies stated above.

8.2 Failure of Performance-Termination for Default by Contractor. If the Subcontractor fails to commence and satisfactorily continue correction of a default within seventy-two (72) hours after the notice is issued under Paragraph 8.1, then the Contractor may, in lieu of or in addition to the remedies provided therein, terminate this Agreement or a portion thereof, and use any materials, implements, equipment, appliances or tools furnished by or belonging to the Subcontractor to complete the Subcontractor's Work. The Contractor also may furnish those materials, equipment and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the work.

In the event of Termination for Default, Subcontractor shall immediately discontinue performance of the Subcontractor's Work and demobilize from the Project. Subcontractor shall take the steps necessary to preserve and protect the Subcontractor's Work in progress and mitigate its damages, if any. Subcontractor shall receive no further payment of any unpaid portion of the Subcontract Price until such time as the Subcontract Work is completed, at which time Subcontractor will be entitled to the unpaid portion of the Subcontract Price, less all of the costs incurred by the Contractor in so performing the Subcontractor's Work, including reasonable overhead, profit, liquidated or consequential damages, and attorney's fees, which shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor and its surety shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount.

8.3 Insolvency, Receivership, Changes In Title To Assets, Bankruptcy - Termination. Upon the Subcontractor becoming insolvent, upon the appointment of a receiver for the Subcontractor, or upon the Subcontractor making an assignment for the benefit of creditors, this Agreement shall, without notice or right to cure, be terminated unless Contractor waives its right to such automatic termination, in a written and properly executed document, delivered to Subcontractor, and Contractor shall be deemed to have declared, and Subcontractor agrees, that Subcontractor is in default of this Agreement. If an order for relief is entered under Title 11 of the United States Code (i.e. the Bankruptcy Code) at the behest of or with respect to the Subcontractor, the Contractor and termination to the Subcontractor and/or, if applicable any examiner or trustee appointed pursuant to or in accordance with the Bankruptcy Code, it being the agreement of the parties hereto that, in addition to whatever other requirements were imposed upon and/or undertaken by the Subcontractor and agreed to by the Contractor that made and/or make it uniquely suited to the needs of the Contractor and/or the Owner with respect to the completion of the Project. The Contractor reserves all of its rights and remedies, at law and equity, with respect to this Agreement and its nature, including the right of recoupment, and including, but not limited to, whether or not it is an executory contract, may be assumed and/or assigned, and whether or not the Subcontractor, any receiver, assignee, examiner, trustee, custodian, or other appointed or to be appointed or approved, by law, equity or court of competent jurisdiction, including any proposed successor to the Subcontractor, can provide adequate assurances of future performance.

Upon the Subcontractor becoming insolvent, upon the appointment of a receiver for the Subcontractor, upon the Subcontractor making an assignment for the benefit of creditors, or upon the entry of an order for relief at the behest of or with respect to the Subcontractor under the Bankruptcy Code, the Subcontractor shall, in addition to any and all other remedies to which the Contractor is or becomes entitled, compensate the Contractor within a reasonable time for any and all actual pecuniary loss resulting from such event(s) as well as any and all reasonable attorney's fees and legal cost incurred by the Contractor in connection therewith.

8.4 Bankruptcy-Interim Remedies. If the Subcontractor is not maintaining the schedule for the Subcontractor's Work as required by the Contractor at the time of entering an order for relief, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Article 8 as are reasonably necessary to maintain the Contractor's schedule.

The Contractor has the right of recoupment and may also offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided herein, including, but not limited to, reasonable overhead, profit, loss, and reasonable attorney's fees and legal costs. The Subcontractor and/or any successor(s) thereto, including any estates, Bankruptcy or otherwise, and Subcontractor's surety shall be liable to Contractor for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount.

8.5 Suspension/Termination of Prime Contract. Should the Prime Contract between the Contractor and the Owner be suspended or terminated, or should any part of the Contractor's work which includes the Subcontractor's Work be suspended or terminated, or should Owner direct the Contractor to terminate the Subcontractor's Agreement, the Contractor shall so notify the Subcontractor in writing and upon receipt of said notice, this Agreement shall be, as directed by the Contractor at Contractor's sole option, either assigned to another person or entity, suspended, terminated or reaffirmed (either in full or for a specific time period, as determined by Contractor). If the Contractor notifies the Subcontractor. To the extent the Agreement is reaffirmed, all rights and obligations under the Agreement will remain in full force and effect during the period of time following the termination/suspension but prior to the reaffirmation. In the event of such Owner suspension or termination, the Contractor's liability to the Subcontractor's liability to the S

8.6 Termination for Convenience by Contractor. Contractor shall have the right to terminate for convenience Subcontractor's performance of all or a part of the Subcontractor's Work by providing Subcontractor with a written notice of termination of convenience which shall be effective upon receipt by Subcontractor. Subcontractor shall immediately discontinue performance of the Subcontractor's Work and demobilize from the Project. Subcontractor shall take the steps necessary to preserve and protect the Subcontractor's Work in progress and shall use its best efforts to mitigate its costs in connection with the termination. If Contractor's contract with Owner has not been terminated and the Subcontractor is not in default on any provision of this Agreement, Subcontractor shall be paid the reasonable value to Contractor of Subcontractor's Work performed prior to termination plus reasonable direct close-out costs if and when payment therefore is received by Contractor from Owner, less setoffs, less the Contractor's cost (plus a reasonable markup for overhead and profit) to repair work previously completed by the Subcontractor, less the cost to complete work (plus a reasonable more) which the Subcontractor is not event shall Subcontractor is entitled to unabsorbed overhead, lost profits, or indirect or consequential damages of any kind.

8.7 Wrongful Exercise of Termination. If Contractor wrongfully exercises Contractor's remedy options under any of the provisions of Article 8, that action shall be treated as a deductive change. If Contractor wrongfully exercises Contractor's termination options under any of the provisions of Article 8, that termination shall be considered a termination for Contractor's convenience and Subcontractor shall be entitled to the applicable compensation provided for in the Termination for Convenience by Contractor provisions of this Agreement. Subcontractor's remedies under this paragraph shall be exclusive.

**8.8 Conditional Assignment.** Subcontractor, by execution of this Agreement, contingently assigns to Contractor all Subcontractor's subcontracts and purchase orders relating to the Project, and consents to this Subcontract being assigned to the Owner in accordance with the terms of the Prime Contract Documents. The assignment of each of Subcontractor's subcontracts and purchase orders shall take effect only upon Subcontractor's termination or default under this Article 8 and Contractor's affirmative acceptance of the assignment of the specific subcontractor or purchase order by written notice to Subcontractor's subcontractor's subcontractor or material supplier. Contractor shall have no liability to any of Subcontractor's subcontractors or material suppliers unless and until Contractor's acceptance of the assignment after Subcontractor's termination. Subcontractor shall ensure that each of its subcontracts and purchase orders relating to the Project are assignable to Contractor.

8.9 Contractor's Rights Survive Termination. Termination of this Agreement by Contractor or abandonment by Subcontractor shall not relieve Subcontractor from Subcontractor's obligations in connection with Subcontractor's Work performed prior to termination or abandonment nor will such termination or abandonment abrogate any obligations of Subcontractor under, or rights or remedies afforded to Contractor by this Agreement or the Contract Documents including without limitation, Subcontractor's indemnity obligations.

#### **ARTICLE 9 - INDEMNIFICATION**

9.1 Indemnification. To the fullest extent permitted by law, Subcontractor shall indemnify, defend (with counsel reasonably satisfactory to Contractor), and save harmless Owner, Owner's Representative, Architect/Engineer, Contractor, and Contractor's surety, as well as any individual and/or entity that Contractor is required by contract to indemnify, defend and/or hold harmless, and their partners, insurers, parents, members, subsidiaries, related corporations, officers, directors, agents and employees, and each of them, (hereafter collectively "Indemnified Parties" and individually "Indemnified Party") from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, including but not limited to consequential, incidental, special, punitive, direct and indirect damages, liabilities, judgments, fines, penalties, interest, all actual attorney's fees and expert costs, costs and expenses of whatever kind or nature (hereafter "Indemnified Claims") and whether they may arise before, during or after performance of Subcontractor's Work which are in any manner directly or indirectly caused, generated, occasioned or contributed to, in whole or in part, or claimed to be caused, generated, occasioned, or contributed to, in whole or in part, through any act, omission, fault or negligence whether active or passive of Subcontractor, or anyone acting under its direction, control, or on its behalf or for which it is legally responsible, in connection with or incident to the Subcontractor's Work or arising out of any failure of Subcontractor to perform any of the terms and conditions of this Subcontract and including Indemnified Claims resulting from the Indemnified Parties' own negligence; without limiting the generality of the foregoing, the same shall include Department of Labor and other governmental investigations and determinations arising from this Agreement, and shall also include injury or death to any person or persons (including Subcontractor's employees) and damage to any property, regardless of where located, including the property of Owner and Contractor. Subcontractor's obligation to provide a defense for an Indemnified Party shall arise regardless of the merits of the matter and shall continue until a final determination of fault is made. Subcontractor's obligation to indemnify, defend and hold harmless an Indemnified Party shall apply regardless of any allegations of active and/or passive negligent acts or omissions of an Indemnified Party. Subcontractor, however, shall be relieved of and shall have no further obligation to indemnify an Indemnified Party under the Subcontract Documents upon a final determination that the Subcontractor was not liable or any determination by the court that any single indemnitee is solely negligent, which shall not include any dismissal pursuant to settlement regardless of the entry of an order of dismissal pursuant to said settlement. Contractor shall be entitled to recover actual attorney fees and court costs and all other costs, expenses and liabilities incurred by Contractor in an action brought to enforce all or any part of this Indemnification Article 9.1. Subcontractor's indemnity obligations shall be limited to the extent necessary to comply with governing state and federal law ("Governing Law") and to the extent any such Governing Law limits the indemnity provided herein, Subcontractor's obligations shall be deemed to be limited so as to comply with such Governing Law. Subcontractor's obligations described in this paragraph shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. Subcontractor shall maintain such insurance as is necessary to fully cover Subcontractor's indemnity obligations hereunder.

All provisions pertaining to indemnification and indemnity in this Agreement shall apply to, and bind, Subcontractor's surety to the same extent the provision applies to, and binds, Subcontractor.

9.2 No Limitation Upon Liability. In any and all claims against the Indemnified Parties, by any employees of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the Subcontractor's indemnification obligations under this Agreement shall not be diminished or limited in any way by any limitation on the amount or type of costs, damages, compensation or benefits payable by or for the Subcontractor or any of its subcontractors under worker's compensation acts, disability benefit acts or other employee benefit acts.

9.3 Indemnity for Equipment Utilized. In the event that Subcontractor or any of Subcontractor's agents, employees, suppliers, or lower-tier subcontractors utilize any machinery, equipment, tools, ladders, scaffolding, hoists, lifts or similar items belonging to or under the control of any of the Indemnified Parties, Subcontractor agrees to indemnify, defend and save harmless the Indemnified Parties from and against any and all claims, damages, losses, demands, suits, actions, judgments, liability, fines, penalties, expenses and costs (including but not limited to attorneys and expert fees and costs of litigation, arbitration, or mediation) arising out of or resulting from such use, except to the extent such loss or damage is caused by the negligence of any of the Indemnified Parties' employees operating any of the Indemnified Party-owned or Indemnified Party-leased equipment.

9.4 Intellectual Property. Except as otherwise provided by the Contract Documents, the Subcontractor shall indemnify and defend and save harmless the Indemnified Parties, and each of them, from and against all claims, royalties, damages, liabilities, costs and expenses of whatever kind or nature (including attorney's fees) in any manner resulting, or claimed to result from any alleged infringement of any letters patent or patent rights by reason of the Subcontractor's Work or materials or processes used by Subcontractor, its lower tier subcontractors and/or suppliers or others acting on its behalf, in the performance of the Subcontractor's Work.

9.5 Work. Subcontractor hereby assumes the entire responsibility and liability for all work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of Subcontractor's Work by the Owner as defined by the Contract Documents, as well as liability arising from warranty, indemnity, and latent defects associated with Subcontractor's Work. All equipment and tools provided or used by the Subcontractor shall be in good working condition for the protection of the health and safety of all personnel and the public. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's sole cost. At any time prior to final completion of the Project, Contractor may temporarily take possession of and use any part of the Subcontractor's Work. Contractor shall reimburse Subcontractor for the Subcontractor's direct costs, if any, to return the possessed work to its condition prior to the Contractor taking temporary possession. Contractor may withhold and unilaterally deduct amounts otherwise due under this Agreement, and Subcontractor shall reimburse Contractor for, the Contractor's reasonable estimate of any costs cover, damages, or liability Contractor's Work or for which Subcontractor may be responsible for under this Agreement.

9.6 Duty to Defend. Subcontractor shall: (i) at Subcontractor's own cost, expense and risk, defend all claims defined in this Article 9 that may be brought or instituted by third persons, including, but not limited to, governmental, state, or local agencies, or employees of the Subcontractor against the Indemnified Parties; (ii) pay and satisfy any judgment or decree that may be rendered against Indemnified Parties arising out of any such claim; and, (iii) reimburse the Indemnified Parties for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Article 9.

9.7 Indemnification Independent from Insurance and Survive Termination. Subcontractor's indemnification obligations shall survive termination of this Subcontract, shall extend to claims occurring after termination of this Subcontract, and are independent from, and not limited in any manner by the Subcontractor's insurance coverage required by this Agreement.

#### **ARTICLE 10 - INSURANCE**

**10.1 Subcontractor's Insurance.** Prior to start of the Subcontractor's Work, the Subcontractor shall procure for the Subcontractor's Work and maintain in force Worker's Compensation and Employer's Liability Insurance, Automobile Liability Insurance, Commercial General Liability Insurance and all insurance required of the Subcontractor under the Contract Documents. Prior to the execution of the Agreement, and at all renewal periods which occur prior to Final Acceptance of the entire Project, Subcontractor shall provide, and require its sub-subcontractors to provide, Certificates of Insurance evidencing coverages required herein. After Final Acceptance of the entire Project, Subcontractor shall provide proof of insurance for 3 years, or longer as required by this Agreement. Contractor shall be entitled to recover all actual attorney fees and court costs and all other costs, expenses and liabilities incurred by Contractor in an action brought to enforce all or any part of this Insurance Article 10 or any such other insurance-related Articles or Exhibits to this Agreement.

The Contractor (its parents, subsidiaries, and related entities), Owner and Architect/Engineer, and others as provided in the Contract Documents, shall be named as Additional Insured on each of these policies except for Worker's Compensation pursuant to an ISO form CG 20 10 10 01 Additional Insured Endorsement, or equivalent coverage for damages arising out of the Subcontractor's Work, with no other endorsements relating to "Sole Negligence". Failure by the Contractor to request Subcontractor to fulfill this requirement is not a waiver of this requirement. Subcontractor's insurance policies shall state that they are primary and not additional to, or contributing with, any other insurance carried by, or for the benefit of the Additional Insured. Any such insurance maintained by an Additional Insured shall be excess of that maintained by Subcontractor. Each liability policy of Subcontractor shall contain a "separation of insureds" provision stating that, except for liability, the policies shall operate as though separate policies had been issued to each insured. Subcontractor hereby acknowledges that its Subcontract Amount for this Agreement includes any and all expenses related to the procurement of required insurance, including but not limit to procuring the required Additional Insured status required herein, and that the Contractor, through payment under this Agreement, has compensated the Subcontractor for compliance with the required insurance procurement.

Subcontractor may provide the coverage required herein through the use of a primary liability policy or through a combination of primary liability and umbrella liability policies. However, the total limit of liability shall not be less than the limits set forth in the Contract Documents or greater if required by law.

Commercial General Liability Insurance shall include as minimum coverage: (i) Premises - Operations Liability; (ii) Products and Completed Operations Liability; (iii) Broad Form Property Damage Liability; (iv) Blanket Contractual covering indemnity obligations herein; (v) Personal Injury Liability, with Employment Exclusion deleted; (vi) Property Damage Liability Insurance shall provide "X, C, and U" (explosion, collapse, and underground hazard) coverage as applicable; (vii) Products and Completed Operations; and (viii) Cross-Liability Extension endorsement.

**10.2 Cancellation, Renewal or Modification.** The Subcontractor shall maintain in effect all insurance coverage required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. Coverage shall be maintained without interruption until date of final payment, except for Products and Completed Operations coverage which shall be maintained for three years after final payment.

Subcontractor shall ensure that any cancellation or non-renewal of the policies required by the Agreement or the Contract Documents shall not occur unless the Subcontractor has first given thirty (30) days' notice to the Contractor of such cancellation, non-renewal or change in policy. Failure to provide the necessary notice will constitute a material breach of this Agreement.

Certificates of Insurance, or certified copies of policies acceptable to the Contractor shall be filed with the Contractor prior to the commencement of the Subcontractor's Work, and again with any renewal, extension or alteration of all or any part of the insurance, by way of a Certificate of Insurance or Certified Copy of the Policy. Contractor's failure to request a Certificate of Insurance shall not be a waiver of Subcontractor's duty to procure insurance. Subcontractor shall produce a certified copy of the applicable insurance policy within (15) days of any request by Contractor. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage and charge the expense thereof to the Subcontractor, or terminate this Agreement.

Non-conforming insurance does not relieve Subcontractor of the obligation to provide insurances as specified herein. Nonfulfillment of the insurance conditions shall constitute a breach of this Agreement.

**10.3 Property Insurance.** The Contractor and Subcontractor waive all rights against each other and the Owner, the Architect/Engineer, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance or the enforcement of the provisions of this Article 10.

Subcontractor acknowledges and understands that the Builder's Risk or other physical damage insurance which may be in effect for the Project will include deductibles and that, in the event of any loss for which Subcontractor may be entitled to a recovery under said insurance, the amount of such recovery may be diminished or completely offset by such deductibles, and Subcontractor shall have no right of recovery against the Owner or Contractor on account thereof. **10.4 Carrier Qualifications.** All insurance policies purchased shall be maintained with insurance companies licensed to do business in the state where the Project is located and shall have a policyholder rating of "A" or better in the most current Best's Key Rating Guide.

**10.5 Pollution Liability.** Subcontractors and sub-subcontractors performing Environmental Work shall maintain Pollution Liability covering the contractor's liability for bodily injury, property damage, remediation and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the Subcontractor's Work or services to be performed under this Agreement. Coverage shall be provided for both Subcontractor's Work performed on site, as well as during the transport of hazardous materials. Limits of not less than \$5,000,000 shall be provided. The policy shall name the Additional Insureds and any parents, subsidiaries, and related entities, but only insofar as the operations under the Agreement are concerned.

**10.6 Asbestos Abatement Liability.** Subcontractors and sub-subcontractors performing work involving asbestos abatement and transportation operations shall provide insurance coverage for liability arising from asbestos, including claims for bodily injury, including wrongful death, property damage and environmental cleanup. Said insurance shall not exclude asbestos abatement, asbestos disease or transportation. The policy or policies shall be written by insurance companies with an A.M. Best rating of not less than A- V. The insurance shall have a per occurrence limit of not less than \$5,000,000, and all deductibles shall be borne by Subcontractor and shall not exceed \$500,000 without written consent of Contractor. If Subcontractor becomes aware of claims or potential claims that would erode 25% of more of the aggregate limit of the policy, Subcontractor shall notify Contractor immediately and provide such information as Contractor shall request to assess the risk of a future claim being uninsured or underinsured. If the policy is "claims-made", it shall include an Extended Claims Discovery Period of not less than 2 years. Said insurance shall cover the Subcontractor's contractual liability for asbestos claims.

#### **ARTICLE 11 - DISPUTE RESOLUTION**

11.1 Law and Effect. This Agreement shall be governed by the law of the state, Washington, D.C., or United States territory, ("collectively called the "State") in which the Project is situated. The Subcontractor hereby agrees to accept jurisdiction of and service of process in the State in which the Project is situated and any action or proceeding under or in connection with this Subcontract or bond issued pursuant to the Project shall, unless stated otherwise in this Agreement, be brought in the local state courts or United States Courts within the State in which the Project is situated. Subcontractor agrees to file no litigation or claim pertaining to this Agreement or the Subcontractor's Work on this Project, whether sounding in contract, tort, in equity or other non-contractual theory, until such time as the Contractor has: (1) exhausted its dispute provisions with the Owner or third-party; and (2) the Owner has declared the Project to be substantially complete, or made some similar declaration. Subcontractor further agrees to consent to the recognition and enforcement of any final order or final judgment issued by a court of competent jurisdiction as described herein in any other state, country, territory, tribal or other legal system, without regard to sovereign immunity or other defense. The Subcontractor also consents that the Contractor has standing to bring and pursue an award of judgment in the court system of the Subcontractor's home country, and that the Subcontractor waives all statutory defenses which the Subcontractor may have in the court system of its home country against Contractor pursing collection on the judgment, including, but not limited to, Contractor's standing, jurisdiction, venue, Subcontractor's lack of due process, lack of notice, or inability to defend in previous proceeding in the United States court system. If the Project is located in more than one state, then the Contractor shall solely decide the state applicable for purposes of this paragraph. Subcontractor agrees that if for any reason this Agreement is not completed as contemplated herein or if any dispute shall arise over the entitlement or the rights of Subcontractor, that no action shall lie in favor of Subcontractor in the nature of unjust enrichment, quantum meruit, quantum valebant, quasi-contract, or any other theory of law, tort, or equity. FURTHER, THE PARTIES HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY AND ALL DISPUTES OR CLAIMS ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR BOND PROVIDED BY THE CONTRACTOR, INCLUDING A MILLER ACT BOND, OR IN RELATION TO THE HANDLING OF A CLAIM ON THE BOND BY THE CONTRACTOR'S SURETY, AND REGARDLESS OF WHETHER THE CLAIM SOUNDS IN CONTRACT, TORT, EQUITY, OR OTHERWISE. In the event of a material breach of this Agreement by one party, the other party possesses independent and distinct breach of contract and breach of warranty actions against the breaching party. Subcontractor agrees to make these conditions a part of each contract for materials, supplies, labor or equipment entered into by Subcontractor in regard to the Subcontractor's Work ("Sub-subcontract"). All provisions pertaining to Article 11, Dispute Resolution, in this Agreement shall apply to, and bind, Subcontractor's surety and any entity which has entered into a Sub-subcontract, to the same extent the Article 11 provisions applies to, and binds, Subcontractor, and the Contractor's statutes of limitation and repose relative to the Subcontractor's surety shall be the same as those relative to the Subcontractor.

**11.2 Arbitration.** Any controversy or claim of Contractor against Subcontractor or Subcontractor against Contractor or its surety pertaining to the Project, shall, at the option of Contractor or Contractor's surety and at any time, be resolved by arbitration, after the Contractor has exhausted its dispute provisions with the Owner or third-party and the Owner has declared the Project to be substantially complete. Any arbitration shall be pursuant to the rules provided below or rules from an established arbitration, at a location, and selected from a pool of neutral arbitrators from Chicago or elsewhere, with substantial experience in the field of construction law, all as determined by Contractor, except that arbitrations also involving the Owner or third-party shall be pursuant to the timing and rules required in the agreements with those parties.

Arbitration involving less than \$600,000 in dispute, and not involving the Owner or a third-party, shall be decided pursuant to the following rules: 1) each side will identify a single businessperson and a single lawyer, to handle its communications and attend each meeting. The business person shall have full authority to settle; (2) within 14 days of invoking these rules, a single decision-maker will be agreed upon by the parties; (3) within 14 days of the decision-maker agreeing to serve, the parties shall initially meet with the decision-maker and the following will occur: (a) the parties will agree on the date the arbitration will occur. The arbitration must be within 60 days of the initial meeting; (b) the parties can ask the other for up to 10 things, for example, specific documents, precise, limited categories of emails, sales or accounting records or other business records. During the initial meeting, each party will agree to produce the requested items or object. Any objections, problems or uncertainties will be resolved by the decision-maker that day during the meeting, using the standard of whether the requested document is needed to evaluate the dispute. If the decision-maker decides the document should be produced and it is not produced, the decision-maker should presume that the document hurts the refusing party; (c) each party identifies no more than two people on the other side, by name, title or area of knowledge, that it wants to depose. Each deposition is limited to two hours and must take place within two weeks of the production of documents. (4) At the arbitration hearing: (a) each side has one hour to present its case to the decision-maker and the opposing party and each party has one-half hour to cross-exam; (b) one hour after the end of that process, each side provides the decision-maker only its proposal for resolution in a sealed envelope, at which time outside counsel shall leave the building; (c) the decision-maker adjourns to make a decision, which is to accept one proposal. There is no middle ground available to the decision-maker. The decision-maker shall endorse one proposal and place the accepted resolution in a sealed envelope; (d) regardless of the time the decision-maker returns its sealed decision to the parties, the envelope shall not be opened before 4:30 pm. The parties commit to spending a minimum of two hours negotiating. At 4:30 pm, if the parties have not resolved the matter on their own, the sealed envelope is opened, and the endorsed proposal stands as the decision resolving the dispute. It is binding and non-appealable.

The Contractor and Subcontractor agree to equally split the administrative costs, fees, and other similar expenses charged by the arbitrator or arbitration agency. Subcontractor irrevocably submits to the jurisdiction of the federal, state, or United States territory courts located in the state or United States territory of the Project for the purpose of proceedings with respect to the arbitration. At the Contractor's or its surety's option, the arbitration may be consolidated with any arbitration between the Contractor and Owner or other entity associated with the Project. Subcontractor waives to the fullest extent permitted by law any objection that they may now or may hereafter have to having arbitration proceedings conducted in the state or United States territory in which the Project is located, including any claim that it is an inconvenient forum for such arbitration or court proceedings. The award rendered by the arbitrator(s) shall be conclusive and binding upon the parties and shall be enforceable in any court of competent jurisdiction of any Contracting State pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (330 UNTS 3; 9 U.S.C. 201, et seq.).

11.3 Pass Through Claims. In case of any dispute or Claim between Contractor and Subcontractor or any of their sureties, which in the Contractor's sole opinion, is in any way allegedly and whether partially or fully: (1) relating to or arising from any act or omission of the Owner or third-party; or (2) should Owner or third-party present a claim against Contractor allegedly relating to or arising out of, in whole or in part, the performance or non-performance of Subcontractor's Work (such disputes or claims are collectively referred to as a "Pass Through Claim"), Subcontractor agrees to be bound to Contractor and the Contractor's surety to the same extent that Contractor is bound to Owner or third-party, by the terms of the Contract Documents, and by any and all preliminary and final decisions, determinations or agreements made by or between Contractor, third-party or Owner or so authorized in the Contract Documents or by the court or arbitrator designated in the Contract Documents whether or not Subcontractor is a party to such agreement or proceeding. In the event of any such dispute, Subcontractor shall continue to perform the Subcontractor's Work, disputed or otherwise, without interruption, deficiency or delay in a diligent manner. The Subcontractor shall submit its Pass Through Claim in the manner and by the date directed by the Contractor, and shall also certify its Pass Through Claim in the same manner that the Contractor is required to certify a claim to the Owner. Subcontractor shall defend, indemnify, and hold harmless Contractor's Pass Through Claim of false claim or similar allegations of who contractor's Pass Through Claim, regardless of whether the Contractor has certified the Subcontractor's Pass Through Claim. If the Subcontractor does not submit its Pass Through Claim in the manner directed by the Contractor, or if the Contractor cannot in good faith certify or submit the Subcontractor's Pass Through Claim, Contractor shall not be required to submit the Subcontractor's Pass Through Claim, and in such case Subcontractor waives its right to seek compensation from Contractor or Contractor's surety for the Subcontractor's Pass Through Claim. Contractor's submission of Subcontractor's Pass Through Claim is not an admission, and does not mean, that the Contractor agrees that Subcontractor is entitled to the additional time and/or money the Contractor has submitted on behalf of the Subcontractor; rather, the submission is simply the Contractor's recognition that the Subcontractor has an unliquidated claim and that the Subcontractor feels it is entitled to additional time and/or money. Contractor and Contractor's surety shall not be liable to Subcontractor in excess of any sum actually received from Owner or third-party on behalf of Subcontractor for a Pass Through Claim and Contractor and Contractor's surety shall only be required to pay Subcontractor: (i) if the Owner or third party has stated to Contractor in writing that the Subcontractor is entitled to additional payment; and (ii) if, and only if, Owner or third-party pays Contractor that additional amount, which are both express conditions precedent to Contractor's and its surety's duty to pay Subcontractor and that the Subcontractor intends to assume the risk of nonpayment. Contractor shall have the sole and full authority to settle, prosecute, or appeal the Subcontractor's Pass Through Claim.

In the event the Contractor has a claim with the Owner or third-party which includes the Subcontractor's Pass Through Claim, and which is resolved on a global basis, Subcontractor's recovery for the Subcontractor's Pass Through Claim will be computed on a pro-rata basis after the Contractor adjusts the Subcontractor's Pass Through Claim, as submitted by the Contractor, to an amount the Contractor later determines is equitable and after the Contractor's costs (including but not limited to attorney, consultant, and expert fees and costs) arising from pursuing the Contractor's claim with the Owner or third-party, and Contractor's overhead and profit markup on the Subcontractor's Pass Through Claim are subtracted from the offer or award. In the event Contractor's contract balance is included in the global offer or award, the Contractor's contract balance will be subtracted from the global offer or award prior to the pro-rata computation. In the event the Subcontractor's Pass Through Claim is resolved for a specific dollar amount, Subcontractor's recovery for the Subcontractor's Pass Through Claim will be computed after the Contractor's costs (including but not limited to attorney, consultant, and expert fees and costs) arising from pursuing the Subcontractor's Pass Through Claim with the Owner or third-party, and Contractor's overhead and profit markup on the specific dollar amount are subtracted from the specific dollar amount. Subcontractor agrees that any cause of action pertaining to the Pass Through Claim which it may have against Contractor, whether sounding in contract, tort, in rem, mechanics lien, equity, or other non-contractual theory or statutory right, or against the Contractor's surety on a payment bond, and including but not limited to causes requesting payment of retention, that the Subcontractor shall agree to a motion for stay filed by Contractor after a claim is filed on the payment bond or any such action is filed in court or arbitration, pending exhaustion of the Contractor's dispute remedies with the Owner or third-party. The parties agree that this provision shall not be considered a waiver of Subcontractor's payment bond rights but is an agreement that those rights will be enforced in a court or arbitration only after the Contractor's dispute remedies with the Owner or third-party are exhausted, to allow Contractor a reasonable period of time within which to tender payment to Subcontractor, and that the Subcontractor, the Contractor and its surety will enter into a tolling agreement which will provide that for the period of sixty (60) days following the Contractor's exhaustion of its dispute remedies shall not be taken in account in applying any statute of limitations to any suit or claim, pertaining to the Pass Through Claim, by either party against the other party or other party's surety. This provision shall be for the benefit of Contractor's surety regardless of whether the Contractor is made a party to the payment bond action. In the event Contractor or Contractor's surety is required to pay the Subcontractor or Subcontractor's lower-tiers for Subcontractor's Pass Through Claim prior to the Contractor resolving the Pass Through Claim with the Owner or thirdparty, Subcontractor shall reimburse Contractor for the amount paid by Contractor or Contractor's surety to Subcontractor or Subcontractor's lower-tiers, which is in excess of the amount later received by the Contractor from the Owner or third-party for the Subcontractor's Pass Through Claim, and in such a case Contractor and Subcontractor mutually waive against the other, their defense of res judicata or similar defenses.

Contractor may, at Contractor's option, (i) present to the Owner, third-party or any court or arbitrator, in Contractor's name, or (ii) authorize Subcontractor to present to the Owner, third-party or any court or arbitrator in Contractor's name, all or some of Subcontractor's Pass Through Claim, and to answer the claims of third-party or the Owner involving Subcontractor or Subcontractor's Work. If the Subcontractor's Pass Through Claim is presented, prosecuted or defended by Contractor, the Subcontractor, at Subcontractor's own expense, agrees to furnish all documents, statements, witnesses, and other information required by Contractor and to pay or reimburse Contractor for all costs incurred by Contractor in connection with the dispute including, without limitation, attorneys', experts' and consultants' fees. Subcontractor acknowledges that in agreeing to the Subcontract Amount it has assessed the potential impact of this article 11.3 of the Agreement on its ability to recover additional compensation in connection with these limitations on recovery will apply regardless of the accuracy of Subcontractor's assessment or actual costs incurred by the Subcontractor.

#### **ARTICLE 12 - DESIGN-BUILD WORK**

**12.1 Scope.** To the extent the Contractor has contracted with Owner to provide the services necessary for the design and construction of the Project or a portion thereof as set forth in the Contract Documents, whether the services are designated as design-build, design-assist, delegated-design, or contain some other permutation of involvement with design, Subcontractor, through itself, design consultants and sub-subcontractors, agrees to provide all design, construction and other aspects of the Contract Work consistent with the Contract Documents. Contractor and Subcontractor agree that to the extent applicable to the design of the Contract Work hereunder, Subcontractor shall have the same responsibilities and obligations as to Contractor as Contractor by the Prime Contract has to Owner, except as may be modified herein.

Subcontractor acknowledges that the documents included with this Agreement are incomplete and represent only the design intent. The Subcontractor assumes the risk that the Contract Documents may be defective and acknowledges that the Amount of this Agreement includes that risk. As such the pricing included with this Agreement reflects the work required for a complete and operational system in accordance with the intent of the Contract Documents and the Prime Contract. Subcontractor will coordinate throughout the design process with Contractor's design team and provide input and recommendations related to the final design to be submitted and constructed in accordance with the requirements of the Contract Documents. It remains the responsibility of Subcontractor to coordinate the final design requirements reflective and scope of Subcontractor's Contract Work included with this Agreement. The pricing included within this Agreement includes the final scope reflective and required of the Contract Documents and is not subject to any change orders between Contractor and Subcontractor unless the changes are made by Owner and is a Pass Through Claim, or directed in writing by Contractor and the Subcontractor has strictly followed the requirements for a Claim.

**12.2 Subcontractor's Services and Responsibilities.** Subcontractor shall promptly report to Contractor any errors, inconsistencies, omissions, or violations of Laws which Subcontractor discovers in the Contract Documents. Subcontractor shall be liable to Contractor for any damages resulting from any such errors, inconsistencies, omissions, or violations of Laws which Subcontractor discovers and fails to report to Contractor.

Subcontractor shall, consistent with applicable state licensing laws, provide the architectural, engineering and other design professional services required to perform the Contract Work. Subcontractor agrees that such services shall be provided through qualified, licensed design professionals who are either (i) employed by Subcontractor or (ii) procured by Subcontractor from qualified, licensed design consultants. Subcontractor shall not engage the services of any design consultant without first obtaining the approval of Contractor, which approval shall not be unreasonably withheld. Subcontractor agrees that each design consultant shall be fully bound to Subcontractor in the same manner as Subcontractor is bound to Contractor for all the requirements of the Contract Documents which are applicable to the design consultant's scope of services. Subcontractor's obligations under the Contract Documents. Nothing in this Agreement shall relieve Subcontractor from responsibility for the services performed by its design consultants, or create any legal or contractual relationship between Contractor and any design consultant.

The standard of care for all design professional services performed by Subcontractor and its design consultants pursuant to this Agreement shall be as stated in the Contract Documents or in the absence thereof, the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. The Subcontractor implicitly warrants that its design will be sufficient to construct its Contract Work. Notwithstanding the preceding sentences, if the Contract Documents contain specifically identified performance standards for aspects of the Services, Subcontractor agrees that all Services shall be performed to achieve such standards.

Subcontractor shall assist Contractor regarding the selection of building systems, materials, and equipment, as well as cost, schedule, and construction feasibility assistance, for the Contract Work. Such assistance shall include providing advice relative to, among other things, labor availability, construction costs, procurement strategies (including scheduling the procurement of items with long-lead times) related to the requirements set forth in the Contract Documents for the Contract Work.

In accordance with the times set forth in the Contract Documents (including the Contractor's Project schedule), Subcontractor shall submit to Contractor all interim design submissions and revisions for the Contract Work as required by the Contract Documents. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. The submissions shall also show the relationship of the Contract Work to the overall Project design. Contractor and Subcontractor and Entry to the scheduled date for submitting all design submissions to Owner, Contractor, Subcontractor and designer (if not otherwise employed by Contractor) will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Contractor's budget and pricing assumptions.

In accordance with the Contract Documents and with the times set forth in the Contractor's Project schedule, Subcontractor shall submit to Contractor construction documents setting forth in detail drawings and specifications describing the requirements for construction of the Contract Work, and showing the relationship of the Contract Work to the overall Project. The construction documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. Subcontractor shall provide the construction documents in the form and quantity called for in the Contract Documents. Subcontractor shall perform agreed upon revisions and submit revised construction documents to Contractor's and Owner's approval.

If requested by the Contractor, Subcontractor shall attend and participate in such meetings as are held between and among Owner, Contractor and designer (if not otherwise employed by Contractor) to discuss interim design submissions and the construction documents for the Contract Work. If requested, Subcontractor shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Contractor and provided to all attendees for review.

In addition to the interim design submissions and construction documents, if requested by Contractor, Subcontractor shall prepare (i) those design documents and pricing information for the Contract Work that may be necessary for the establishment of a guaranteed maximum exhibit or guaranteed maximum proposal and (ii) interim design submissions and Construction Documents for the Contract Work required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

Contractor's and Owner's approvals of interim design submissions and the construction documents are for the purpose of mutually establishing a conformed set of construction documents for the Contract Work compatible with the requirements of the Contract Documents. The review and/or approval by either Contractor or Owner of any interim design submission or the construction documents shall not be deemed to transfer any design liability from Subcontractor to Contractor or Owner.

Subcontractor will, at its own cost, revise any interim design submission or construction document it has provided to correct any errors, mistakes or omissions. Such revisions shall be performed timely and so as not to jeopardize the Contractor's Project schedule.

Government Approvals and Permits: Subcontractor shall obtain and pay for the necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Contract Work as set forth in the Contract Documents. Subcontractor shall provide reasonable assistance to Contractor in obtaining those permits, approvals and licenses, if any, that are the responsibility of Owner or Contractor and related to the Contract Work. Subcontractor shall make any revisions to the construction documents necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the construction documents to meet the Laws.

**12.3 Contractor's Services and Responsibilities.** Contractor shall provide timely reviews and approvals of all interim design submissions, construction documents and submittals, consistent with the turnaround times set forth in the Contractor's Project schedule, or as agreed to by the parties. The Owner, through Contractor, shall review and approve submittals, including shop drawings, product data and samples, submitted by Subcontractor in accordance with the Contract Documents.

Unless expressly stated to the contrary in the Contract Documents, and to the extent Contractor has received such items from Owner, Contractor shall, upon request, provide for Subcontractor's information the items listed below. Contractor does not warrant the accuracy or completeness of such items provided, however, that Subcontractor is entitled to rely on these items to the same extent Contractor is entitled to rely upon such items in the Prime Contract: (i) surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines; (ii) geotechnical studies describing aubsurface conditions, and other surveys describing other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable Subcontractor to perform the Contract Work; (iv) a legal description of the Site; (v) as-built and record drawings of any existing structures at the Site; (vi) environmental studies, reports and impact statements describing the environmental conditions, including any materials, wastes, substances and chemicals deemed to be hazardous under applicable Laws, or the handling, storage, remediation, or disposal of which are regulated by Law, in existence at the Site; (vii) Contract Documents; (viii) all permits, approvals, and licenses set forth in the Owner's Permit List attached as an exhibit to the Prime Contract; and (ix) test and inspection reports.

Upon Subcontractor's reasonable request, Contractor shall provide Subcontractor with information in Contractor's possession regarding: (i) Owner's financial ability to pay for the Contract Work set forth in this Agreement; and (ii) interim design documents and construction documents for portions of the Project that are not being designed by Subcontractor. Contractor shall obtain those permits, approvals and licenses that are not required to be provided by Owner pursuant to the Prime Contract or by Subcontractor. Contractor shall provide reasonable assistance to Subcontractor in obtaining those permits, approvals and licenses that are Subcontractor's responsibility. The Contractor shall, as Contractor deems appropriate, afford Subcontractor and its Sub-Subcontractors the opportunity to attend all necessary design meetings with Owner, Designer or others furnishing portions of the design for the Project.

Contractor shall notify Subcontractor of any errors, inconsistencies, or omissions Contractor discovers in the Contract Work. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall relieve Subcontractor of responsibility for errors, inconsistencies, or omissions in the Contract Work.

12.4 Ownership and Use of Documents. Ownership and use of the design and construction plans, drawings, specifications and other documents furnished or created by the Subcontractor shall be as stated in the Contract Documents.

If not addressed in the Contract Documents, the design and construction plans, drawings, specifications and other documents furnished by the Subcontractor shall be considered Work Made for Hire under the Copyright Act of 1976, 17 U.S.C. 101, and ownership of the entire right, title and interest in all such documents furnished by the Subcontractor, including, but not limited to any copyrights therein, shall reside in the Owner. If any document(s) cannot be considered a work made for hire under 17 U.S.C. 101, then the parties agree that the entire right, title and interest in the documents, including, but not limited to any copyrights the educements in any manner whatsoever, shall be and hereby are assigned by Subcontractor to the Owner. Subcontractor warrants and represents that all persons who produce or create all or a portion of the documents at the direction of Subcontractor will do so in the course of their employment with Subcontractor, or alternatively, pursuant to written agreements with Subcontractor, confirming and effecting an assignment of all rights in and to the documents, including but not limited to any copyrights therein, to the Owner. Subcontractor shall provide the Contractor with copies of all such written agreements in any manner what solve the documents at the direction of Subcontractor will do so in the course of their employment with Subcontractor, or alternatively, pursuant to written agreements with Subcontractor, confirming and effecting an assignment of all rights in and to the documents, including but not limited to any copyrights therein, to the Owner. Subcontractor shall provide the Contractor with copies of all such written agreements immediately upon execution.

**12.5 Insurance.** Subcontractor's and its design consultants and Sub-Subcontractors' insurance coverage set forth in the Contract Documents shall specifically delete any design-build or similar exclusions that could compromise coverage because of the design-build or design related nature or requirements of the Project.

To the extent Contractor requires Subcontractor to provide professional liability insurance for claims arising from the negligent performance of design services by Subcontractor, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Contract Documents. Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build or design related nature or requirements of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

#### **ARTICLE 13 - MISCELLANEOUS PROVISIONS**

**13.1 Inconsistencies and Omissions.** The drawings, specifications, and other Contract Documents shall be construed as supplementing one another. Any of the Subcontractor's Work shown in the specifications and not on the drawings, or shown on the drawings and not in the specifications shall be performed by the Subcontractor as part of this Agreement. Dimensions given on the drawings and the specifications are approximations only, and the Subcontractor shall take such measures at the Project site as will insure the proper matching and fitting of the Subcontractor's Work with contiguous work. Omissions from the drawings or specifications or the misdescription or insufficiency of details relating to the Subcontractor's Work, or which are necessary for the Subcontractor to carry out the intent of the drawings and specifications, or that are customarily performed by the Subcontractor's Work at no additional cost. The Subcontractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

Subcontractor represents and warrants that it has received and has reviewed, or had the opportunity to receive and review, all of the Contract Documents in advance of the execution of this Agreement. Any error, ambiguity, inconsistency or omission therein, of which Subcontractor had, should, or could have had, knowledge prior to the execution of this Agreement, is considered a patent ambiguity for which the Subcontractor had a pre-execution duty to inquire, and may not be a basis for an increase in the Subcontract Amount or time to perform the Subcontractor's Work or any other relief under the Contract Documents. If errors, ambiguities, inconsistencies or omissions exist in the Contract Documents, of which Subcontractor did not have, and should not have had knowledge before execution of this Agreement, it shall be the duty of the Subcontractor to notify Contractor in writing thereof within seventy-two (72) hours of the discovery of such errors, ambiguities, inconsistencies or omissions. Upon receipt of said notice, Contractor shall instruct Subcontractor as to the actions to be taken.

**13.2 Severability and Waiver.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision, and any invalid provision shall be modified so as to be valid but give the Contractor the maximum protection allowed by law pertaining to the provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

**13.3 Interpretation.** In the event of a conflict between or among the terms of this Agreement, the higher standard, shorter notice period, or greater requirement for Subcontractor shall prevail; and in the event of a conflict between or among the terms of the Contract Documents, the higher standard, shorter notice period, or greater requirement for Subcontractor shall prevail. The deletion, by rider or otherwise, of any standard term within this Agreement, shall not add to this Agreement, by implication, maxim, common law or otherwise, language contrary to the deleted language. Standard terms which remain, but which are similar to, identical to, or impact or are related to, deleted terms, shall be given full force and effect.

**13.4 Titles.** The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose, nor in any manner affect the construction, meaning or effect of anything contained herein, nor govern the rights and liabilities of the parties.

**13.5 Entire Agreement.** This Agreement is solely for the benefit of the signatories hereto and the Contractor's surety, the Owner, and the Indemnified Parties, and represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. Terms on any other written documents, whether signed by representatives of the parties or not, such as signed delivery tickets, etc., are not binding on the Contractor and Subcontractor. This Agreement may be executed by identical counterparts, and each counterpart shall be deemed to be an original and all of which together shall constitute one and the same Agreement.

**13.6 Contractor's Surety and Third Party Beneficiaries.** Except as expressly provided herein, no party is a third-party beneficiary to this Agreement. Notwithstanding the preceding sentence, the Contractor's surety is an express third-party beneficiary to this Agreement, and Contractor's surety has, notwithstanding any statutes, case law decisions, or laws to the contrary, all defenses, rights and remedies the Contractor has toward the Subcontractor. Subcontractor's execution of this Agreement evidences Subcontractor's awareness of, or its right to inquire as to, any and all statutes, case law decisions, laws or judicial opinions that may otherwise prevent the Contractor's surety from enjoying all defenses, rights and remedies of the Contractor, and Subcontractor nonetheless knowingly consents to the Contractor's surety receiving all such defenses, rights and remedies of the Contractor.

**13.7 Joint and Several Liability.** In the event the Subcontractor is a joint venture or partnership, references to Subcontractor shall be deemed to include each and every entity in the joint venture or partner in the partnership such that the obligations undertaken and warranties and covenants given by Subcontractor shall be deemed to be given by each and every entity in the joint venture or partner in the partnership, jointly and severally.

13.8 Defined Terms. Each term that is defined in one article, section or subsection of this Agreement shall have the same meaning in every other article, section, or subsection of this Agreement.

End of Exhibit A

# <u>EXHIBIT D</u>

# INSURANCE REQUIREMENTS - Controlled Insurance Program ("Wrap-Up")

## Walsh Construction Company II, LLC

Contractor for: UNIVERSITY OF KENTUCKY Owner Number: 2563 "Project": UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon Walsh Construction Company II, LLC Project No. 223026

## This Project has a Contractor Controlled Insurance Program [CCIP]

#### Incorporation of Controlled Insurance Program

All Subcontractors, whether enrolled or not enrolled in the OCIP or CCIP, shall be bound by certain provisions of the Insurance Program which are contained in the program Manual, which is hereby incorporated into the Agreement and made a part hereof. The Manual should be attached to this Agreement as an Exhibit. However, failure to provide the Manual does not waive the requirements of compliance with said Manual. If Subcontractor is not in possession of the Manual, one should be requested prior to execution of this Agreement.

#### Enrollment

Subcontractors who meet the enrollment criteria shall provide any and all required and necessary documentation and information necessary to complete enrollment. Any and all Subcontractors who do not meet the enrollment criteria or are otherwise determined by the controlling entity to not be a participant in the insurance program shall retain all coverage required by this Exhibit or the Manual. For each line of coverage required by either the Manual and/or this Exhibit, the greater limit and broader coverage required shall be the requirement, and shall trump the lesser standard or lower limit.

#### **Prevailing Insurance Requirements**

The limits and terms of this Exhibit D or any minimum coverages required of enrolled Subcontractors in the Manual shall apply to any and all off-site or Completed Operations exposure. The provision of this insurance program shall not diminish the requirements of the Subcontractor to secure the required coverages and terms contained in Exhibit D and/or the Manual.

#### **Incorporation in Downstream Contracts**

Subcontractor shall incorporate the terms of the Manual and the insurance requirements within all subcontracts and purchase orders, and require all subcontractors to do the same. The terms and conditions of the Manual shall apply to all entities that perform work on-site or are otherwise contemplated by the Manual, regardless of whether they are enrolled or not enrolled.

## **Disclaimer of Third Party Beneficiaries**

Nothing contained herein is meant to confer any rights to any third parties in relation to the insurance requirements contained herein. The provision of the Controlled Insurance Program is meant for the protection of the enrolled contractors, and is no way intended to benefit the general public or any claimant against any contractor, enrolled or not enrolled. Nothing herein is meant to confer any rights to any party not signatory to this Agreement.

#### **Insurance Requirements**

Prior to the execution of this Agreement, and at all renewal periods which occur prior to Final Acceptance of the Work, and during any time the Subcontractor or its sub-subcontractor returns to the project to perform warranty, repair, or additional work, Subcontractor shall provide, and require its sub-subcontractors to provide, Certificate of Insurance evidencing coverages with the following minimum per occurrence limits. After final acceptance, Subcontractor shall provide proof of insurance for 3 years, or longer as depicted by Agreement. Subcontractor shall provide insurance with minimum limits as listed in the column below that corresponds to their contract value, or those limits which are required of Subcontractors by the Owner in the contract between the Owner and Contractor, whichever are higher. Subcontractor policy limits, if greater, shall control over minimum limits required herein. The limits required by this endorsement are minimum requirements, and the actual limits of any Policy that exceed these minimums shall be considered the required limit of this Exhibit. The following minimum requirement shall apply on a "Per Occurrence" basis, with an aggregate which shall apply at no less than twice the "per occurrence" limit of the policy, with the exception of the Professional Liability insurance (if applicable), wherein the requirement shall be remaining, uneroded limit required on a claims made form. If the general liability policies are written on a blanket basis, the general aggregate limits must be written on a "per project basis."

#### Walsh Construction Company II. LLC MINIMUM POLICY LIMITS

Insurance	Subcontract Amount	Subcontract Amount	Subcontract Amount
Description	Under \$500,000	\$500,000 to \$1,000,000	\$1,000,000 to \$5,000,000*
Workers' Compensation	Statutory	Statutory	Statutory
Employers' Liability	\$500,000	\$1,000,000	\$2,000,000
Commercial General Liability	\$2,000,000	\$3,000,000	\$5,000,000
and Excess (combined) **			
Automobile Liability ***	\$1,000,000	\$2,000,000	\$2,000,000
Professional Liability ¥	\$2,000,000	\$2,000,000	\$5,000,000
Pollution Liability ¥¥	\$5,000,000	\$5,000,000	\$5,000,000
Asbestos Insurance ¥¥¥	\$5,000,000	\$5,000,000	\$5,000,000

If the Subcontract Value is greater than \$5,000,000, the Subcontractor shall carry the limit which the Owner requires of the Contractor, or the amount shown in the \$1,000,000 to \$5,000,000 column, which ever is greater.

The primary policy must be no less than \$1,000,000. However, this shall be the minimum limit, and the actual policy limit shall control when greater.

 \*\* Policy must include in declarations schedule "Any Auto" or - "All Owned Autos, Hired Autos, Autos and Non-Owned Autos", as those terms are defined by ISO.
 ¥ Not required of subcontractors whose scope does not include design work. Subcontractor is required to provide professional liability insurance for claims arising from the negligent performance of professional engineering or design services by Subcontractor. The coverage limits, duration and other specifics of such insurance shall be as set forth in the Contract Documents, but in no case shall the limits and other specifics be less than the requirements indicated herein. Subcontractor has the obligation to replenish the policy or policies for such insurance (hereinafter the "Policy") so that the limits are not compromised by other claims (excepting any claim related to this Subcontract) at any time. In the event that Subcontractor does not satisfy this replenishment obligation, Subcontractor shall be responsible to pay any and all amounts which would have been covered by the replenished Policy had it been obtained. The Policy shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build nature of the Project. To the extent available, the Policy shall include coverage for claims attributable to the Subcontractor in connection with delay, acceleration, disruption, and remedial damages which are the Subcontractor's responsibilities, as well as coverage for Copyright or trademark infringement. The Policy shall additionally provide that: i) punitive damages are covered where not prohibited by law; ii) a retroactive date shall apply to the date of project's first contract for design/professional services; and iii) waiver of subrogation applies in favor of the Owner, Owner's lenders and other parties that may be required by Owner. The Policy shall be provided prior to the commencement of any design services hereunder. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the commencement of any work on the project. A claims-made policy which is not renewed or replaced must have an extended reporting period of five (5) years.

¥ Pollution Liability is required for those subcontractors performing environmental remediation work and must cover bodily injury, property damage, remediation and clean-up costs of known and unknown pollution events.

¥¥¥ Asbestos abatement liability is required for subcontractor's performing any work with or around asbestos, and must cover bodily injury, property damage, remediation and clean-up costs.

Subcontractor shall name and require its sub-subcontractors to name the following (and any parents, subsidiaries, and related entities) as Additional Insured on all policies of insurance, except Workers' Compensation and the Professional Liability Policy, with respect to liability arising out of Subcontractor's operations:

GENERAL CONTRACTOR : Walsh Construction Company II, LLC (also Certificate Holder) OWNER : UNIVERSITY OF KENTUCKY ARCHITECT / ENGINEER : HAMMEL GREEN AND ABRAHAMSON (HGA) **ENGINEER : CMTA, INC** 

> "Cert Holder": Walsh Construction Company II, LLC Project Address: 929 W. Adams Street Chicago, IL 60607

Certificate must state that coverage is primary and non-contributory with respect to any other insurance carried by any of the Additional Insureds. Additional insured endorsement shall be ISO CG 20 10 10 01 or equivalent coverage for damages arising out of the Work, with no other endorsement or language relating to "sole negligence" or "independent acts". Completed Operations coverage must be provided per ISO CG 20 37 10 01 or equivalent form. Subcontractor shall be responsible for any deductible or self-insured retention with respect to coverage afforded Additional Insureds. Any Self-Insured Retention shall be identified on the Certificate of Insurance. with the endorsement attached to the Certificate of Insurance. Any Self-Insured Retention which applies to the Additional Insured by the language of the endorsement or which disclaims any obligation of defense of a claim against an Additional Insured shall be considered a breach of these requirements, regardless of whether it is objected to by the Contractor, and failure to object by the Contractor or Owner shall not be considered a waiver of these requirements. Subcontractor waives any and all rights of subrogation against the Contractor, Owner and all other parties listed above on all policies. Subcontractor must provide 30 days written notice for any policy changes and/or cancellations

#### SUBCONTRACTOR AND ITS SUB-SUBCONTRACTORS SHALL NOT BE ALLOWED ENTRY TO SITE PRIOR TO SUBMITTING EVIDENCE OF INSURANCE FOR UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon.

#### PLEASE MAIL EVIDENCE OF INSURANCE TO:

# SUBCONTRACTOR DEFAULT INSURANCE

<u>Subcontractor Qualification Process</u> - Subcontractor hereby affirms any and all information supplied or submitted in relation to the Subcontractor Qualification process and recognizes a continuing duty to apprise the Contractor of any and all variations from said information, including but not limited to any alteration in information regarding the financial health of the Subcontractor. Subcontractor further agrees that regular compliance with annual updating of the Subcontractor Qualification Process shall be an affirmative obligation, and a failure to do so may interrupt payment of invoices until such updating is secured.

**Subcontractor Default Insurance** - Should Contractor enroll this project in a Subcontractor Default Insurance Program, the Subcontractor agrees to cooperate as necessary for the procurement of the program, including with the Subcontractor Qualification Process outlined herein. Subcontractor further agrees to identify and credit back any and all costs contained within their bid which relate to the cost of providing the necessary Performance and Payment Bonds as required by the Agreement. The provision or procurement of the Subcontractor Default Insurance is solely for the benefit of the Contractor and shall confer no rights to the Subcontractor or of their agents or assigns, including any subcontractors, vendors, or employees. No Waiver of Subrogation shall apply to any claim made under the Subcontractor Default Insurance.

**Enrollment** - Subcontractors who meet the enrollment criteria, determined by the Subcontractor Qualification Process, shall provide any and all requested information to complete enrollment. Any and all Subcontractors who do not meet the enrollment criteria or are otherwise determined by the controlling entity to not be a participant in the default insurance program shall immediately obtain and furnish surety bonds in such form as provided by the Contractor or detailed by Exhibit of this agreement.

End of Exhibit D

# EXHIBIT E

# STANDARD OPERATING PROCEDURES

#### Walsh Construction Company II, LLC Contractor for: UNIVERSITY OF KENTUCKY Owner Number: 2563 "Project": UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon Walsh Construction Company II, LLC Project No. 223026

These Standard Operating Procedures, by execution of the Agreement between the Subcontractor/Supplier and Walsh Construction Company II, LLC ("Contractor"), are incorporated into and made a part of that Agreement. The Subcontractor agrees to be bound by the conditions for jobsite administration as set forth herein.

## 1. General

The terms and acceptance of this agreement are contingent upon the terms and execution of the Contract between the Owner and the Contractor. This document is intended to assist the Subcontractors/Suppliers in fulfilling the administrative requirement of this Contract, as well as to prescribe certain rules of conduct of all employees assigned to the jobsite.

## 2. Shop Drawings, Cut Sheets, Catalogs, Samples

A) All correspondence, submittals, calculations, etc. shall be processed through the Contractor. This material can be hand delivered or mailed to the Contractor's Office at:

Walsh Construction Company II, LLC Job# 223026 929 W. Adams Street Chicago, IL 60607

> Attn: Chris Zarvas, Phone: 312 563-5400 Fax: 312 563-5402 Email: czarvas@walshgroup.com

B) Furnish subject material in the following quantities:

Working Drawings	-	Electronic Copy in PDF Format Sent Via E-Mail or Electronic Media and Six (6) Printed Copies (upon request)
Shop Drawings	-	Electronic Copy in PDF Format Sent Via E-Mail or Electronic Media and Six (6) Printed Copies (upon request)
Product Data/Cut Sheets Catalogs/Calculations Certifications	-	Electronic Copy in PDF Format Sent Via E-Mail or Electronic Media and Six (6) Printed Copies (upon request)
Samples Manuals	-	Samples - Six (6) Electronic Copy in PDF Format Sent Via E-Mail or Electronic Media and Six (6) Printed Copies (upon request)

C) Your Standard letter of transmittal should identify the specification section and paragraph for which the submittal is made, or the drawing referenced appropriate to the submittal. Only submitted material furnished as noted in this paragraph will be reviewed and processed. Non-conforming submittals will be returned to the sender without action.

- D) Prior to submission of any materials for the Architect's review, the Subcontractor/Supplier shall affix a label or title block citing the information called for in (C) above to each and every submittal item per specification. Submittals not bearing this label will be returned for correction.
- E) The Contractor's review is to assist the Subcontractor/Supplier, and in no way relieves them from any of their obligations under their contract with the Contractor. No waiver of responsibility for taking field measurements is warranted by this review, nor does the Contractor take or guarantee such measurements for Subcontractors/Suppliers. No time extension shall be granted due to the Subcontractors/Suppliers refusal or failure to meet the above requirements.
- F) A third submittal for any item that has already been submitted and corrected twice, that is not the direct result of a change in the contract documents, will result in back-charges for the Architect's and Contractor's time.
- G) Subcontractor/Supplier shall allow a minimum of 30 calendar days from date of receipt by Contractor for review and return of any submitted item for approval. "Large submittals" or submittals received later than scheduled may require additional review time.

## 3. Project Manager- Direct Correspondence

The Contractor's interest will be represented at the Project Site by a Project Manager. All job related correspondence generated including, but not limited to bills, invoices, statements, routine correspondence and written inquiries by the Subcontractor/Supplier should be directed to the Contractor as in 2 (A) above. Any agreements, changes, extras, etc resulting from the Subcontractor/Supplier direct dealing with other consultants or the Owner will not be recognized or paid by the Contractor.

## 4. Field Offices / Storage / Deliveries / Parking

A limited number of Subcontractor's/Supplier's field offices or storage space can be accommodated at the Project Site. Before any occupancy of such space is scheduled, you must receive the specific approval and location assignment from the Contractor's Project Manager. If granted, storage space should be kept clean, neat and presentable. No area can be set aside for continuous storage space. Any field offices, storage space, or materials stored on site must be removed or relocated at the Subcontractor's/Supplier's cost when requested by the Contractor's Project Superintendent. Protection and security of any materials or equipment stored at the site is the responsibility of the Subcontractor/Supplier. Contractor's Field Office telephones, fax machines, copy machines, and document copiers are not available to Subcontractors except in emergency situations.

Prior to accessing the jobsite, the Project Superintendent must be contacted for access routes and restrictions. Material deliveries are to be scheduled with the Contractor's Project Superintendent with <u>5</u> business days advanced notice. Deliveries must be to the designated jobsite delivery entrance/staging area.

Subcontractor/Supplier is responsible for flagmen and traffic control as required for access and deliveries. To ensure the safety of the motoring public, pedestrian traffic and other trades, Subcontractor/Supplier is to maintain existing perimeter fencing, safety fencing, erosion control devices, jersey barriers, etc. on a daily basis as it pertains to the Subcontractor's/Suppliers scope of work. Subcontractor's/Supplier's vehicles (including but not limited to work trucks, delivery vehicles, and personal vehicles) must be free of mud or debris prior to leaving the jobsite. Any expenses or fines incurred due to tracking mud or debris outside the project site will be charged to the responsible Subcontractor/Supplier.

There are no parking spaces available on site. Subcontractor/Supplier parking, if available, must be coordinated with the Project Superintendent. Vehicles parked in areas of active or planned work operations will be towed at the vehicle owner's expense. Security of vehicles at parking locations (if available) is the responsibility of the subcontractor/supplier.

## 5. Utilities

The Subcontractor/Supplier shall be responsible for providing all necessary facilities as needed to accommodate the installation for their work. The availability of the temporary utilities on the jobsite is as follows:

Temporary power will not be available on site. Portable restrooms will be available on site. Drinking water will not be available on site. Sewer will not be available on site. Water will not be available on site. Telephone will not be available on site.

If available, cost for hook-up and usage of any utilities (electrical power, telephone, etc.) to Subcontractor's/Supplier's field operations will be at Subcontractor's/Supplier's own expense. Under no circumstance will electrical welding equipment be permitted for use on the temporary electrical system. If provided, temporary lighting by the Contractor will be the minimum required to meet OSHA standards. Any additional task lighting required for the Subcontractor's/Supplier's work is the responsibility of the Subcontractor/Supplier.

## 6. Conduct of Employees

The Contractor's Project Management reserves the right to bar access to the site to any worker or employee who carries on in such a way as to inhibit the safe and timely progress of the construction operation. Specifically enforced will be prohibitions which bar the use of alcohol and / or drugs on the jobsite before, during and after working hours.

Absolutely no visitors are permitted on site. Personnel meeting someone for lunch or being picked up / dropped off must do so offsite.

Weapons of any type will not be permitted or tolerated.

Any Subcontractor/Supplier employee that does not use sufficient caution when working around finished areas of the project will be required to leave the project site. Subcontractor/Supplier shall be responsible for repair of any damage caused.

Any Subcontractor/Supplier employee that does not use proper washroom facilities will be required to leave the project site. Subcontractor/Supplier shall be responsible for the cost of any clean-up or damage caused.

Loud radios and music players are not allowed to be used on the project site. Wearing of earphones or headphones is not allowed.

Normal work hours are Monday thru Friday from 7:00 a.m. to 3:30 p.m., Saturday as needed, and Sunday as needed, national holidays excluded. These hours are subject to change as required by the project schedule.

Smoking is not allowed at or near the worksite.

## 7. Safety

Contractor will require each Subcontractor/Supplier to conduct regular "Tool-Box" meetings with the field employees at not more than weekly intervals. Employees who flagrantly disregard safety practices will be barred from the project site. <u>ANSI APPROVED HARD HAT, SAFETY GLASSES, HIGH-VISIBILITY VEST</u> (SHIRT OR JACKET), AND GLOVES WILL BE WORN AT ALL TIMES BY ALL PERSONNEL WHILE INSIDE THE CONSTRUCTION AREA! Gloves shall have a minimum rating of ANSI Cut level 4 (A4) unless an accepted noted exception has been written into the work plan due to greater hazard. Personal protective equipment is to be supplied by each Subcontractor/Supplier to their employees. For tasks involving flying particles which endanger eyes and face, employees shall be required to wear approved-type face shield in addition to safety glasses. All safety equipment required in work performance shall be furnished to their employees by the Subcontractor/Supplier. Each work crew shall be provided with a charged 10 lb. fire extinguisher by the Subcontractor/Supplier. When or if an injury, incident or near miss occurs, the Subcontractor/Supplier, including lower tier subcontractor/suppliers must notify Contractor immediately and furnish to Contractor an Incident Report within 24 hours of the occurrence.

Subcontractor is to submit its Site Specific Safety Program to Contractor prior to beginning work on site. The Subcontractor/Supplier shall have a formal written Hazard Communication Program including all SDS documents and shall submit to Contractor.

All electric equipment used at the site must meet OSHA and NEC specifications. All electrical equipment being used on 110 - 120 volt circuits shall be ground-fault protected.

## 8. Job Progress Meeting

Job Progress Meetings will be conducted at the Jobsite Trailer. The frequency of meetings will be As Coordinated by Contractor (subj to change). It is expected that all Subcontractors/Suppliers who either have active work underway, or are preparing to commence work at the site, will be in attendance. Failure to attend requested job progress meeting(s) may cause the Subcontractor/Supplier, at the Contractor's option, to be liable for other's expenses resulting from Subcontractor's/Supplier's failure to follow agreements made in the meeting. Subcontractors/Suppliers will be held responsible for the content of the meetings regardless of their attendance. Minutes may, at the Contractor's option, be kept and issued by the Contractor's Project Manager. Exceptions to items summarized in the Meeting Minutes must be filed in writing within 5 calendar days unless noted otherwise, from the date of receipt.

## 9. As-Built Drawings, Operation Manuals, Warranties, Spare Parts, Attic Stock, Etc.

Each Subcontractor will maintain at the Project site a current set of Contract Documents updated to reflect as-built deviations from shown locations, dimensions, or details. Instruction Manuals and/or parts lists are to be furnished as and when described in the specifications. Release of progress payments to the Subcontractor will be predicated on the satisfaction of the Contractor's Superintendent that as-builts are being updated as construction progresses. Final payment will not be made to the Subcontractor/Supplier until all project close-out documents (formal as-built drawings, O&M manuals, warranties, spare parts, attic stock, etc. of the quantity and/or duration as required by the Contract Documents) are delivered to the address in 2 (A) above and approved by the Contractor, the Architect/Engineer and the Owner.

## 10. Clean-Up

Subcontractors/Suppliers are required on a daily basis to maintain high standards of neatness within their areas of work responsibility and on public streets adjacent to the jobsite. The labor necessary to collect, shovel, sweep and dispose of job generated debris is the responsibility of the Subcontractor/Supplier. If unclean conditions persist following appropriate notice thereof, the Contractor will effect such cleaning with its own forces and back-charge the cost, including 15% overhead, against the offending Subcontractor(s)/Suppler(s). This will only occur when, 24 hours after written or verbal notice, the Subcontractor/Supplier fails to cure the unclean condition. Only one notice per area or floor rather than a daily notice is required. This provision will be strictly enforced by the Contractor's Management.

## 11. Project Schedule

Subcontractor/Supplier shall perform work per the Contractor's CPM schedule. Contractor shall strictly monitor the progress of the Project via Critical Path Method (CPM). The cooperation of each Subcontractor/Supplier will be required in assisting with maintenance of the schedule and conformance with scheduled target dates. The updated CPM will serve as the agenda for each Job Progress Meeting. The schedule is a guideline and may be modified periodically for the benefit of the project.

If required by Contractor, the Subcontractor/Supplier shall accelerate work or perform reasonable out-ofsequence work to permit coordination of with trades. It is understood that scheduling may require temporary omissions of Subcontractor/Supplier work at locations determined by Contractor. All patching, repairs, fill-in, and "comeback" as related to the proper completion of Subcontractor/Supplier work shall be completed at the direction of Contractor and will be included as part of this contract.

In order to meet schedule objectives due to normal conditions and/or non-performance of the Subcontractor/Supplier, Subcontractor/Supplier will be expected to perform premium time or multiple shift work with no increase in Contract Price. Premium time and multiple shift work are likewise expected for final tie-ins and system adjustments.

The Subcontractor/Supplier will furnish a detailed procurement and work activity schedule to Contractor within 2 weeks of award. The required schedule information shall include, but is not limited to, the following:

1) Detailed listing of all major material and equipment submittal packages. Submittal List shall include target submittal dates and lead times (in weeks) for fabrication, manufacture, and delivery of each item, after

approval.

2) Detailed breakdown of each work activity with duration in work days, including crew size for each activity indicated.

- 3) Projected monthly manpower and project monthly billing.
- 4) Additional information required by the Prime Contract.

## 12. Subcontractor Daily Reports

Subcontractor's field representative shall furnish, daily, to the Contractor's Project Manager a copy of their Daily Log Report. Pertinent information to be furnished shall include: Daily manpower strengths by trade and classification, tasks accomplished, equipment on site, and an informal annotation as to anticipated short range unusual requirements or peculiar conflicts. Internal corporate data may be stricken or omitted. Monthly Pay Requests will not be processed unless and until the Subcontractor's Daily Log Reports are furnished to the Contractor in completed form on a timely basis.

## 13. Extra and / or additional work

Subcontractors/Suppliers are referred to Article 4 - Changes, Claims and Delays in The Exhibit A - Terms and Conditions for contractual clarifications on extras and/or cost impacts. The Project Manager and Superintendent will represent the Contractor's interests and will have the only authority to obligate the Contractor to onsite decisions. The Contractor's Project Manager is the only individual who can obligate the Contractor to financial decisions. The Contractor's Superintendent will only sign for verification of work performed.

Payment for any extra work will not occur until all costs have been finalized, an appropriate change order has been prepared / executed, and the extra work has been properly invoiced in the monthly pay process. Partial payments will not occur on any extra work unless previously agreed prior to the start of extra work. For extra work billed to the Owner (by Contractor on behalf of Subcontractor/Supplier), payments will be per the terms of the contract with the owner and mark-ups are to be equal to those specified in the Contract Documents. For work billed to the Contractor (and not billed to Owner by Contractor on behalf of Subcontractor/Supplier), a maximum of 10% overhead and profit will be allowed for extra work performed by your subcontractor/supplier. No mark-up will be allowed on third tiered subcontractors/suppliers.

Unit prices will be utilized when appropriate and will be for additive or deductive work (with no adjustment for overhead and profit if deductive). The utilization of unit prices will be decided by the Contractor and not by the Subcontractor. For other changes, Subcontractor shall provide itemized lump sum pricing with backup found acceptable by Contractor. For conditions where work must proceed prior to finalization of the lump sum, Contractor may request that work proceed on a time and material basis with daily tickets signed by the Contractor Superintendent. The daily tickets shall only reflect the amount of material and/or labor utilized for the work. Rates for material and/or labor can only be approved by the Contractor's Project Manager.

## 14. Permits / Licenses / Inspections

Subcontractor shall be responsible for obtaining all permits necessary to perform its work. If multiple permits are required due to the different municipalities within which this project is contained, the Subcontractor will be required to obtain permits from each municipality.

Subcontractors, who through their failure to secure or produce the necessary permits and licenses as required by Article 6.5 in Exhibit A and cause stoppage to construction operations for any reason, shall be considered as improper interferer in the Contractor's right to prosecute the work in a timely fashion.

Subcontractor is responsible to coordinate and schedule all required inspections related to Subcontractor's work.

## 15. Coffee Breaks

No formal stoppage of work will occur for "Coffee Breaks". Subcontractors'/Suppliers' employees will be expected to clean-up and deposit in trash cans and dumpsters on the site, any rubbish or debris arising from jobsite consumption of food and beverages. See Item #10 for clean-up responsibilities. Food Service Vendors will not be allowed onsite, unless specifically authorized by the Contractor. If, in the opinion of the

Contractor's Project Manager, the Food Service Vendor causes undue disruption of the work or contributes to the accumulation of debris or trash in or near the Project Site, the food service may be terminated or suspended until such time as the violations are corrected to the satisfaction of the Contractor's Project Manager.

## 16. Hoisting

Unless otherwise agreed to in Exhibit B, the Subcontractor/Supplier is responsible for loading, unloading, rigging and placement of own materials / equipment. The Contractor will not provide any hoisting or unloading for the Subcontractor/Supplier unless otherwise stated. If the Contractor has unloading equipment available, its rental may be negotiated with the Project Manager.

Subcontractor/Supplier shall coordinate any necessary leave outs of walls, windows, doors, barrier wall, fence, etc for material access far enough in advance for the Contractor's review and approval. Subcontractor/Supplier shall pay for the removal and replacement required for access points after its final installation.

All Subcontractor/Supplier crane operators shall be qualified to operate the size and type of crane for the work to be performed. Effective January 1, 2011 each crane operator shall have a **valid certificate of competency** issued in accordance with or by an Accredited Certification entity for the type of crane to be used. The Subcontractor will provide verification that operators have received Certification. This requirement will apply only to contracts that have been agreed upon after September 1st, 2010. All rigging equipment must comply with all OSHA requirements and must be in proper working order with manufacturer's labels intact. Subcontractor/Supplier will submit for approval proposed scheme for the hoisting and conveying of all major equipment, including any required shop drawings, sketches, and load distribution diagrams.

## 17. Excavation and Utility Locates

Subcontractor/Supplier shall assure that utilities are not damaged by its excavation, trenching, augering, drilling, hoisting, or other operations. Subcontractor/Supplier shall contact the appropriate utility/utility locator service to inspect work area in order to locate/mark underground utilities in advance of the commencement of work. Subcontractor/Supplier shall preserve markings, or have locations marked again, so that equipment operators know where the utilities are located. Contractor will not be responsible for the procurement of any utility locates for any excavation performed by Subcontractor or any of its subcontractors. Utilities shall be exposed by hand digging first. Contractor will not be responsible for any damage, delay, or subsequent repair cost for any damage to an existing utility (whether located or not) that is cause by a Subcontractor/Supplier or one of its subcontractors/subsuppliers. Prior to any excavation a pre-excavation check list (attached and/or available upon request) must be completed and submitted to Contractor upon completion of the days excavation activities.

## 18. Labor

All Subcontractors/Suppliers shall be required to have a preconstruction conference with the applicable trades involved with their scope of work. This document shall be presented at this preconstruction conference to outline the Contractor's standard operating procedures. The Subcontractor/Supplier shall follow area practices on work assignments agreed to by the Contractor.

## 19. Precipitation

Each Subcontractor/Supplier will remove, if requested by the Contractor, snowfall or precipitation as required to perform their work. Subcontractors/Suppliers are not to remove snowfall or precipitation into the work area of another Subcontractors or Suppliers. Contractor will not be responsible for removing snowfall or precipitation for any Subcontractor/Supplier. Subcontractor/Supplier is responsible for dewatering due to rain or snow in order to continue their work and maintain the schedule. Dewatering effort must be sufficient to maintain schedule or Contractor may elect to supplement the process with its own forces and back-charge the Subcontractor/Supplier accordingly.

## 20. Water/Mold Policy

Subcontractor/Supplier shall abide to the Contractor's Water Response and Mold Prevention Program.

## 21. General Construction

Subcontractor shall provide all required cutting, patching, and coring as required for the installation of subcontractor's work, including X-ray inspection as necessary.

Subcontractor shall provide sleeves box-outs and / or necessary coring or cutting in order to complete their work. A UL listed fireproofing system material is required for all fire-rated wall and floor penetrations. Single firestopping manufacturer for entire project shall be chosen by the Contractor.

Subcontractor shall provide all field measurements as required for the proper completion of work and verify existing conditions prior to starting. Field measurements should be kept to a minimal reasonable amount so as to avoid any possible delays to fabrication and delivery of materials.

Subcontractor shall be responsible for coordination of any testing services required for Subcontractor's scope of work.

#### 22. Protection of Work

Subcontractor/Supplier shall provide for the temporary protection of adjacent finishes during the entire operation, including, but not limited to transporting, on-site storing, installation, and final adjustment. Subcontractor/Supplier shall provide for the protection of installed finish products against moisture, mud, dust, etc. Subcontractor/Supplier is responsible for the repair or replacement of any damage to the completed work caused by their work.

If required by Contractor, and at no additional cost to the Contractor, all scaffolding, ladders and power lifts used inside of buildings are to have white non-skid tires once concrete floor slabs have been poured. Duct taping or tire wraps are not acceptable.

## 23. Escalation / Fuel Surcharge

Subcontractor/Supplier has included all necessary labor and material escalation costs for the entire duration of this project unless noted otherwise. No reimbursement will be made for any fuel surcharges unless noted otherwise.

#### 24. Survey / Layout

Unless noted otherwise in Exhibit B, the Subcontractor/Supplier will be provided with a benchmark survey point for major axis/control lines, radii working points and elevation within reasonable proximity of the subcontractor's/Supplier's work. All further engineering layout required for the Subcontractor/Supplier to perform their work is the responsibility of the Subcontractor/Supplier to provide.

## 25. Miscellaneous Requirements

End of Exhibit E - Except Pre-excavation Checklist is attached hereafter and/or available upon request

## Daily Pre-Excavation Planning Checklist

Projec	t Name :				Company :			
Projec	t Number :				Completed By :			Date:
Ex	cavation: Shall be defined as	any activity	that creates	a cavity bel	ow existing grade	created by digg	ging, scoopi	ing, cutting and stabbing.
	Important - You must	000			and review them w			cavation begins.
	Has the appropriate	Contacted?	Date / Tin	ne	By Whom	Dig Numbe	r	One Call Contact #(s)
	underground locating	YES / NO				#1-		
А	service been notified of the planned Excavation	Expiration D	ate:/		Renew Every	_Calendar / W	Vorking Day	s-or-Marks Destroyed
	(One Call, DOT, RR,	YES / NO				#2-		
	MUNICIPALITY)	Expiration D	ate:/		Renew Every	_Calendar / W	Vorking Day	/s-or-Marks Destroyed
	Are any below listed			Circle	Are Marks			he tolerance zone? (10' both
	utilities within the	Owi	ner	One	Present?	Circle One		tility in proposed excavation
	area of excavation?	-		VEC (NO		50000000000000000000000000000000000000	rinuings	1
	1. Electrical Power	-		YES / NO		YES / NO		
	2. Telephone Lines			YES / NO		YES / NO		
	3. Gas Lines	<i>a</i>		YES / NO		YES / NO		
	4. Cable Lines			YES / NO		YES / NO		
в	5. Fiber-Optic			YES / NO		YES / NO		
	6. Sewer			YES / NO		YES / NO		
	7. Water			YES / NO		YES / NO		
	8. Utility-Other			YES / NO		YES / NO		
	9. Are overhead utility lines present near excavation?	Yes / No	Warning Sign Posted?	Yes / No	Minimum 10' clea over 50 KV, add 0 each 1 KV		Clearance /	Protection:
	10. Is there any utility ex may need support?	posed that	Yes / No	How will u	tility be support	ed?		
	1. Type of Excavation:			2. Location	of Excavation:			
С	3. Depth of excavation? (excavations deeper than 5'		ctivo moss	uroc)	Protective Measure	(Shoring / Sloping	g) - Protective s	shielding certification required on sit
				Purpose:				
	4. What is the purpose 5. Soil Classification (		avation	How Determin	ed:			
_	Have the drawings and		litions		Date	By Whom	Deccrib	e Protective Measures
	been reviewed to iden			In Conflict?	Date	By whom	Describ	e Frotective measures
	1. Traffic - Vehicular	,		Yes / No				
-	2. Traffic - Pedestrian					-		
D	3. Existing Structures			Yes / No Yes / No				
	•		Area	12-10-12-20-20-20-20-20-20-20-20-20-20-20-20-20				
	4. Other Construction	Activity in	Area	Yes / No				
	5. Hazard(s) - Other	01 1 1 1		Yes / No				
	Protective Shielding Designed By?	Sketch of E (Indicate S						
E	NOTE: All excavations 20' in depth or greater shall be designed by a registered professional engineer.							
F	NOTE: <u>YOU MAY NOT STAF</u> existing utility, and/or an ur	2.0 0.00000	ST 75 - 50				2.0 2.00	
G	Who is the Competent for this excavation?	Person	Name / T	itle:				

NOTE: This document must be filled out completely and attached to the plans that have been reviewed by the entire crew that will be digging. The back of this document must have the employees name and signature. By signing this document that employee has reviewed the plans and pre-excavation form and has a complete understanding of the area they will perform work. This document will be turned into management at the end of each shift. This document does not replace the required daily Task Hazard Analysis (THA). **SEE BACK OF PAGE FOR MORE INFORMATION** 

		Site	e Contact Information	
Utilities:				
<b>.</b>				
Safety:				
Superinter	ndents:			
In the c	vent of utility damage	and/or evr	osure or if there is any question that relates to the locates	s vou must
in the e			mmediately and contact the site supervisor.	you must
F	\$35	ans and the P	re-Excavation Work Sheet employees must print and sign their name	
<u>.</u>	PRINT NAME		SIGNATURE TITL	.E
2		8		
-		21 28		
-				
-				
-				
Return th	s work sheet with the p	lans attached	d to the field office at the end of shift or when excavation has bee	n completed.
		Name	Date	Time
Signature section if for Walsh Group Excavation	Approved by Superintendent			
Signature section if for Walsh Group Excavation	Approved by			
Inatu or Wa oup E	Engineer Reviewed by Safety			
Sig if fi Gre	Department			
for actor				
Signature section if for Subcontractor Excavation	Approved By Subcontractor			
Sigr sect Sub Exca	Competent Person			

# Exhibit F

# PAYMENT PROCEDURES

# UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon 223026

This package needs to be completed in its entirety or your billing will be rejected; this is without exception. No forms may be substituted. If desired, the forms may be computer generated, but must be the exact same format.

The "record" billing package must always include (1) copy of the following:

- Exhibit F.1: AIA G702
- Exhibit F.2: AIA G703 (# of Pages as required)
- Exhibit F.3: Sub-Subcontractor/Supplier Application Breakdown Form
- Original Unconditional Lien Waiver
- 1. Subcontractor shall submit monthly pay applications for months in which work is performed by utilizing <u>AIA G702 & AIA G703</u> forms (See attached Exhibit F.1 & F.2).
- Pencil Copy: Due by the 20th day of the month, for work projected through the last day of the month. Pencil copies need only to include the proposed G702 & G703 documents; all other forms should be included in the record.
- 3. Record Copy: Due upon approval.
- 4. In addition to AIA Documents G702 & G703, a "<u>Sub-Subcontractor / Supplier Application</u> <u>Breakdown Form</u>" must be completed and submitted with each Monthly Progress Draw Request. (See attached Exhibit F.3). You must list each and every Sub-Subcontractor and/or Supplier employed by your firm to perform work and/or supply materials for this project. **MONTHLY PROGRES DRAW REQUESTS NOT SUBMITTED WITH THIS FORM WILL BE CONSIDERED INCOMPLETE AND WILL BE REJECTED.**
- 5. It is anticipated that the funding of Contractor's pay application by Owner will take approximately <u>45</u> days from the last day of the month. Subcontractor acknowledges that its pay application is being submitted in advance and agrees to this anticipated funding schedule. Payment to sub shall be due within 15 days upon Contractor's receipt of payment from Owner.
- 6. In exchange for Payment, sub shall provide Contractor with unconditional lien waiver on attached forms (Partial & Final).
- All invoices and/or pay applications must be sent via email to Chris Zarvas <u>czarvas@walshgroup.com</u>) Archer Western Construction, LLC is not responsible for pay requests lost or missing that are not sent to the emails addresses above.

APPLIC	APPLICATION AND CERTIFICATION FOR PAYMENT	R PAYMENT	AIA DOCUMENT G702	PAGE ONE OF PAGES
TO GC:	Archer Western Construction, LLC 929 W. Adams Chicago, IL 60607	PROJECT: UKHC Cancer Treatment Center/ Ambulatory Surgery Center Precon	nter/ APPLICATION NO: Precon	Distribution to:
FROM:	>	VIA ARCHITECT: N/A	PERIOD TO: PROJECT NO: 223026	ARCHITECT
CONTRACT FOR:	ST FOR:		CONTRACT DATE:	
<b>CONTR</b> Application Continuatio	CONTRACTOR'S APPLICATION FOR PAYMENT Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.	YMENT tion with the Contract.	The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment ha in accordance with the Contract Documents, that all amounts have been p for Work for which previous Certificates for Payment were issued and payr from the Owner, and that current payment shown herein is now due.	The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.
<ol> <li>ORIGINAL CO 2. Net change by 3. CONTRACT (</li> <li>4. TOTAL COMF (Column G</li> <li>5. RETAINAGE</li> </ol>	ORIGINAL CONTRACT SUM Net change by Change Orders CONTRACT SUM TO DATE (Line 1 ± 1 ∴	0% 80 80	Contractor: By:	Date:
Δ 0	% of Completed Work \$0       % of Completed Work		State of: Subscribed and sworn to before me this Notary Public: My Commission expires:	county of: day of
Tol 6. TOTAL 6 (Lin 7. LESS PF PAYN 8. CURREI 9. BALANC	<ol> <li>Total in Column 1 of G703).</li> <li>TOTAL EARNED LESS RETAINAGE.</li> <li>(Line 4 Less Line 5 Total)</li> <li>LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certific</li> <li>BURRENT PAYMENT DUE</li> <li>BALANCE TO FINISH, INCLUDING RETAINAGE</li> </ol>	00 00 00 00 00 00 00 00 00 00 00 00 00	ARCHITECT'S CERTIFICATE FOR PAYMENT In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the of the Work is in accordance with the Contract Documents, and the Contractor is entitled payment of the AMOUNT CERTIFIED.	ARCHITECT'S CERTIFICATE FOR PAYMENT In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.
(Li	(Line 3 less Line 6)		AMOUNT CERTIFIED\$	
CHAN Total chi in previo	CHANGE ORDER SUMMARY ADDITIONS Total changes approved in previous months by GC	DEDUCTIONS	(Attach explanation if amount certified differs Application and on the Continuation Sheet th ARCHITECT:	(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.) ARCHITECT:
Total ap	Total approved this Month \$0	\$0	By:	Date:
TOTALS NET CH	TOTALS so NET CHANGES by Change Order	\$0	This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.	NT CERTIFIED is payable only to the and acceptance of payment are without actor under this Contract.

Exhibit F.1 UKCH Cancer Treatment Center/Ambulatory Surgery Center Project 223026

AIA DOCUMENT 6702 · APPLICATION AND CERTIFICATION FOR PAYMENT · 1992 EDITION · AIA · ©1992

THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, DC 20006-5292

Exhibit F.2 UKCH Cancer Treatment Center/Ambulatory Surgery Center Project 223026

ш
ш
T
S
7
5
¥
4
$\leq$
Z
0
11

S	223162	-	RETAINAGE (IF VARIABLE RATE)	i	ï	1	L	1	1	Ē	I	1	•	ĩ	1	ı	ĩ	1	ı	Ĩ	1	T	î	I	1	ĩ	ı	1	ì	1	1	
PAGE OF PAGES	APPLICATION NO: APPLICATION DATE: PERIOD TO: PROJECT NO:	н	BALANCE TO FINISH (C - G)																													ı
	APPLICAT APPLICAT P		% (G + C)																													ı
		U	TOTAL COMPLETED AND STORED TO DATE (D+E+F)																													•
AIA DOCUMENT G703		۱L	MATERIALS PRESENTLY STORED (NOT IN D OR E)																													1
AIA DOCUN	aining	ш	MPLETED																													ì
	k PAYMENT, cont s may apply.	٩	WORK COMPLETED FROM PREVIOUS THIS PE APPLICATION (D + E)																													'
Т	TIFICATION FOF nearest dollar. nage for line item	υ	SCHEDULED																													1
<b>CONTINUATION SHEET</b>	AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.	В	DESCRIPTION OF WORK																													TOTAL
CON	AIA Docum Contractor's In tabulation Use Column	A	ITEM NO.																													

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

Sub-Subcontractor/Supplier Application Breakdown Form Exhibit F.2 UKCH Cancer Treatment Center/Ambulatory Surgery Center Project 223026

NAME, ADDRESS AND PHONE	CONTRACT FOR	R AMOUNT OF TOTAL PREVIOUS CONTRACT REQUESTS	TOTAL PREVIOUS REQUESTS	AMOUNT OF THIS REQUEST	BALANCE TO COMPLETE
2					
	<u> </u>				
9					
				<u> </u>	- 41
2					
8					

Exhibit F.2 UKCH Cancer Treatment Center/Ambulatory Surgery Center Project 223026

# EXHIBIT G

# SUBCONTRACTOR/SELLER SAFETY REQUIREMENTS

Walsh Construction Company II, LLC Contractor for: UNIVERSITY OF KENTUCKY Owner Number: 2563 "Project": UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon Walsh Construction Company II, LLC Project No. 223026

These safety requirements by execution of the Agreement between the Subcontractor/Seller and Contractor are incorporated into and made a part of that Agreement. The Subcontractor/Seller agrees to be bound by the conditions for jobsite safety as set forth herein.

All Subcontractors/Sellers must adhere to the following:

# A. Laws and Regulations

All Federal, State, and Local Laws and Regulations shall be adhered to completely. These Laws and Regulations include but are not limited to those of OSHA 29 CFR 1926 and 1910 regulations and such state or local laws and regulations as applicable.

# B. Subcontractor's/Seller's Site Specific Safety Program

Subcontractors/Sellers are required to have a formal written Health and Safety Program in effect, which shall be implemented, monitored and enforced by the Subcontractor/Seller on this project through frequent and regular inspections and interventions. Subcontractor/Seller is to provide a copy of their Site Specific Safety Program to Contractor prior to beginning work on site. However, failure to provide their Site Specific Safety Program shall not be construed as a waiver of this requirement.

# C. Lower Tier Subcontractors and Suppliers

The Subcontractor/Seller is responsible for the adherence to all Health and Safety Regulations of all lower tier subcontractors and suppliers that they employ.

## D. Subcontractor's/Seller's Supervision

Subcontractor/Seller is required to designate in writing, and have on the site whenever work is in progress, a qualified person with authority to monitor and enforce its Safety Program. This Representative shall be responsible to inspect the Subcontractor's/Seller's work areas on a frequent and regular basis as required by OSHA, the state or other authority having jurisdiction; and immediately implement corrective action to eliminate any unsafe conditions/acts observed or brought to their attention.

# E. Crane Safety

The Subcontractor/Seller shall be responsible for providing scheduled crane arrival time, general crane information including type, size, owner, and anticipated lifts, a *minimum of 72 hours* prior to scheduled arrival date of any crane. Also, Critical Pick Plans are required prior to all critical lifts being performed.

**Operator Requirements:** 

All Subcontractor/Seller crane operators (including operators hired on a short-term basis) shall be experienced, trained and qualified to operate the size and type of crane used. Subcontractors/Sellers shall ensure that any rental crane operator contracted by the Subcontractor/Seller shall meet the requirements of this section. Each operator shall have a valid **certificate of competency** issued in accordance with or by an Accredited Certification entity for the type of crane to be used. The Subcontractor/Seller will provide verification that operators have received Certification from an Accredited Certification entity.

Furthermore, the Subcontractor/Seller must provide documentation that the operator has passed a US DOT examination within the past 2 years, conducted by a physician that includes criteria specified by the ASME B30.5-2000 Standard. When required by manufacturer specifications and pursuant to OSHA incorporation of said requirement Pursuant to the requirements contained in the ASME 30.5 2000 standard and incorporated by OSHA, the state or other authority having jurisdiction and manufacturer specifications.

Subcontractor/Seller must provide a written evaluation for each operator documenting the operator's knowledge of equipment, skills and abilities for each crane they will operate while on the project.

### F. Mobile Elevated Work Platforms (MEWPs) Safety

The Subcontractor/Seller shall be responsible to ensure that each aerial boom lift (Articulated Boom Lift) used by the Subcontractor/Seller will have appropriate primary or secondary guarding systems installed and activated at all times. These systems are designed as anti-crush protection and are installed by the manufacturer.

### **Operator Requirements:**

All Operators, Riders, and Supervisors of Operators will have undergone full Operator training and possess appropriate level of practical competence enabling safe operation of associated Mobile Elevated Work Platform (MEWP) equipment. Operators, Riders, and Supervisors of Mobile Elevated Work Platform (MEWP) must possess a valid user's certification card (Including emergency rescue procedures). Copies of training or cards to be provided to Contractor.

A written Fall Protection Plan and Rescue Plan is required for all Mobile Elevated Work Platforms (MEWPs) operations. All employees shall be trained according to the written plans and familiar with the lower level controls and emergency lowering procedures.

### G. Hazard Communication Program

Subcontractor/Seller shall have a formal written Hazard Communication Program in effect and shall provide Contractor with an inventory list of the Hazardous Materials that are brought onto the site. The Subcontractor's/Seller's Hazard Communication Program and SDS's are to be submitted to Contractor upon starting work on the site.

### H. New Hire Orientation

Subcontractor/Seller shall conduct New Hire safety orientation training for all employees that are assigned to the project. Orientation shall include, but not be limited to, information regarding injury reporting, general safety, project regulations and information, use of PPE and information pertaining to the inherent hazards of their trade, anti-harassment training, etc. The Subcontractor/Seller will require the new employee to apply **sticker(s)** to their hard hat that would clearly show the **name of the company** and the **name of the employee**.

In addition, all Subcontractor/Seller employees will be required to attend Contractor's Site Specific Safety Orientation and receive hard hat sticker before beginning work or entering the construction area.

### I. Alcohol/Drugs

Possession or use of alcoholic beverages and or illegal drugs, or being under the influence of either on the project site is strictly prohibited. Personnel found with either substance in their possession on the project will be removed from the project.

### J. Injury Reporting:

When or if an injury, incident or near miss occurs, the Subcontractor/Seller, including lower tier subcontractors/sellers must notify Contractor immediately and furnish to Contractor an Incident Report within 24 hours of the occurrence. Incident report shall include general data (who, what, where, when, how), witness statement(s), photo(s), and action(s) to prevent future incidents.

### K. Subcontractor/Seller is Responsible for the Following:

- 1. Plan and execute all work in a manner which complies with the stated objectives of their Company Health and Safety Program and Site Specific Safety Plan.
- 2. Cooperate fully with Contractor to promote safety on the project and a safe working environment for all employees.
- 3. Report all unsafe site conditions to Contractor for which the Subcontractor/Seller does not have the resources or is not responsible to implement corrective action.
- 4. Provide and enforce the proper use of personal protective equipment (PPE) as required by applicable laws, standards and site specific rules.
- 5. Maintain housekeeping in all areas of work on a daily basis. Debris shall be properly disposed of in a safe and efficient manner.
- 6. Material shall be properly stored so as not to be a potential hazard to others.
- 7. Provide fire protection for its own areas and Hot Work operations (burning and welding, etc.) as well as a fire watch when required for safe operation or by appropriate OSHA regulations.
- 8. Only authorized and properly trained employees shall operate forklifts, machinery, equipment, tools, and vehicles. All equipment shall be operated in accordance with manufacturer's specifications and all other applicable laws or standards. Copies of training or cards to be provided to Contractor for each operator.
- 9. Guardrails and floor opening covers will be maintained at all times. The

Subcontractor/Seller must inform the Contractor's superintendent whenever guardrail protection is to be removed. If a guardrail must be removed, it will be immediately replaced upon the completion of the work. All employees exposed to a fall potential while the guardrail is not in place must provide an acceptable fall protection system for their own employees. A warning system must be provided to cordon off the area while a fall hazard is present.

- 10. Subcontractors/Sellers who are required to dig as a component of their work must provide in their Site-Specific Safety Program an underground utility damage prevention plan that includes performing an underground utility location check prior to digging operations and follow applicable statutes relating to underground work and utility protection. If public utility locating service is unavailable, a 3rd party locating service must be used before performing digging operations.
- 11. Subcontractor/Seller is required to immediately notify Contractor of all its employees' on the job injuries, near miss incidents, or accidents and provide Contractor with copies of all investigation and state first report of injury forms.

### L. Competent Person

The Subcontractor/Seller shall have a Competent Person on the project for operations that are required by OSHA Standards, the state or other authority having jurisdiction. For example, when excavation operations are in progress, a competent person must ensure that the OSHA Excavation Standards are adhered to.

### M. Subcontractor/Seller Employee-Specific Safety Requirements

Subcontractors/Sellers must require all employees' assigned to their project to work safely and in accordance with the requirements of this exhibit and the regulations, standards, and laws incorporated herein. Contractor reserves the right to remove and bar any worker from this project for unsafe behavior or failure to follow the safe work practices. All workers must wear proper work attire and an ANSI approved hard hat, safety glasses, high-visibility vest (shirt or jacket), and gloves. Gloves shall have a minimum rating of ANSI Cut level 4 (A4) unless an accepted noted exception has been written into the work plan due to greater hazard.

### N. Planning For Safety

Subcontractor/Seller will utilize a Job Hazard Analysis (JHA) or Activity Hazard Analysis (AHA) as part of the planning process prior to starting any major tasks. The JHA or AHA will, at a minimum, include each step of the task, the hazards associated with each step of the task, measures to address the risks and the responsible person to insure the risks are being addressed.

Subcontractor/Seller shall also utilize a daily Task Hazard Analysis (THA) to plan each days task prior to the beginning of work. Copies of all JHA or AHA plans shall be provided to the Contractor before beginning work. Copies of all THAs shall be provided to Contractor at the end or each shift.

### O. Stretch and Flex

Subcontractor/Seller and its employees of any tier shall participate in the Contractor's daily Stretch and Flex program, as well as any additional corporate or project specific safety program requirements, as requested or required by Contractor.

### P. Owner Safety Requirements

Per Contract Documents

End of Exhibit G

# EXHIBIT H

# PAYMENT and PERFORMANCE BOND FORMS

### Walsh Construction Company II, LLC Contractor for: UNIVERSITY OF KENTUCKY

Contractor for: UNIVERSITY OF KENTUCKY Owner Number: 2563 "Project": UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon Walsh Construction Company II, LLC Project No. 223026

Attached is the required bond form, subject to change at the Contractor's / Buyer's option.

End of Exhibit H - except PAYMENT and PERFORMANCE BOND FORMS are attached hereafter and/or available upon request.

Walsh Construction Company II, LLC (Bond for 1st Tier)

Bond Number:

# PERFORMANCE BOND ("Bond")

### KNOW ALL PERSONS BY THESE PRESENTS; that

SUBCONTRACTOR / SELLER	ARCHER WESTERN CONSTRUCTION, LLC
Address	_
	<u>,                                     </u>
as Principal (the "Principal"), and	
SURETY (or Sureties) Address	

as Surety or Co-Sureties (hereinafter collectively referred to as "the Surety"), and

Walsh Construction Company II, LLC, 929 W Adams Street, Chicago, IL 60607, as Obligee (hereinafter "Obligee"),

WHEREAS, Principal has by written agreement dated October 05, 2023 entered into Subcontract or Purchase Order number 223026TS0001 ("Contract") with Obligee, in the amount of \$\_\_\_\_\_US ("Contract Amount") pertaining to the UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon project ("Project") for the performance of the work as detailed in the Contract ("Contract Work"), which Contract, in its entirety is by reference expressly made a part hereof and incorporated herein. The amount, value, and penal sum of this Bond is

DOLLARS (\$

\_\_\_\_\_) ("Penal Sum").

NOW THEREFORE, Surety and Principal are held and firmly bound unto Obligee for the payment of the Penal Sum, and agree to bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents and as follows:

1. If Principal well and truly performs all of the obligations, undertakings, covenants, terms, conditions, and agreements of the Contract within the time provided therein and any extensions thereof that may be granted by the Obligee, and well and truly performs all of the obligations, undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the Contract that may hereafter be made, and indemnifies and saves harmless Obligee of and from any and all loss, damage, and expense, including costs and attorney's fees arising out of or related to any default by Principal under the Contract, which the Obligee may sustain by reason of failure so to do, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

2. The Surety agrees that no change, extension of time, alteration, addition, deletion, amendments or other modification of the terms of either the said Contract or the Prime Contract between Obligee and the Project Owner, or both, or in the said work to be performed, or in the specifications, or in the plans, and whether material, cardinal or otherwise, or in the manner, time or amount of payment as provided therein and whether or not made in the manner as therein provided, shall in any way relieve them of their obligations on this Bond, and that the Penal Sum of this Bond shall increase, but not decrease, directly with any Contract amendments issued or executed at any time, and whether issued or executed bilaterally or unilaterally, by

the Obligee to the Principal or Surety; and it does hereby waive notice of, and consents to, any such changes, extensions of time, alterations, additions, deletions, amendments, and other modifications.

- 3. Whenever Obligee has declared Principal to be **IN DEFAULT OF THE Contract**, the Surety shall, regardless of any bankruptcy, receivership, or similar proceedings involving the Principal, within fifteen (15) calendar days of its receipt of notice from Obligee that Principal is in default, respond in writing by choosing one of the following options, failure of which shall be a material breach of the Bond:
  - a. Complete the Contract Work itself, or through its agents or contractors, in accordance with the Contract terms and conditions in a manner acceptable to the Obligee; or
  - b. Obtain bids or offers from contractors with or without cooperation from the Obligee, which are acceptable to Obligee for completing the Contract in strict accordance with its terms and conditions, and upon determination by Obligee and the Surety jointly of the lowest responsible bidder or offeror, arrange for such a contract between such completion contractor and the Obligee, and which contract shall include new performance and payment bonds for such completion contractor in a form and from a surety as required by the Contract, and all of which must be completed prior to the expiration of the response period. Upon execution of such a contract between the completion contractor and the Obligee, within five (5) days or less of execution, the difference between the cost to complete the Contract Work and the Balance of the Contract Amount; or
  - c. Tender to Obligee the Penal Sum of the Bond.
  - d. Having made an independent investigation, with or without cooperation from the Obligee, of the facts and circumstances of the alleged default, deny its liability in whole or in part and notify and explain to the Obligee the reasons why the Surety believes a default did not occur.
- 4. Surety may request an extension of up to fifty (50) calendar days in the time to respond as required by the Bond by financing performance of the Contract Work during the extension period on a schedule and in a manner acceptable to Obligee. Upon the expiration of the extension period, the Surety shall inform the Obligee as to the response option it has chosen, and the surety shall have no additional time past the extension period to complete its chosen response option.
- 5. Upon declaration that Principal is in default and whether before or after the Surety responds in writing, Obligee may immediately proceed to perform all or a portion of the Contract Work. Obligee's cost to perform Contract Work shall be credited against the Balance of the Contract Amount. To the extent the Obligee's cost to perform the Contract Work exceeds the Balance of the Contract Amount, Surety shall, as the Contract Work progresses, promptly and without deduction reimburse Obligee for such shortage. Reimbursement by Surety shall reduce the Penal Sum of this Bond by the amount of reimbursement to Obligee.
- 6. Upon the issuance of written notice by Surety to Obligee of its commitment to remedy the Principal's default through the option set forth in Paragraph 3a, Obligee shall make available to Surety as Contract Work progresses, the Balance of the Contract Amount in accordance with the terms of the Contract. The term "Balance of the Contract Amount" as used in this Bond, is the Contract Amount, as adjusted by any executed amendments to the Contract, less the amount paid by Obligee to Principal or others in accordance with the terms of the Contract, and less any other amounts for which Surety or Principal is liable under this Bond or Contract.
- 7. The Surety shall be liable for:
  - a. The responsibilities of the Principal for correction of defective work, warranty work, latent defects, indemnity, and completion of the Contract Work.
  - b. The responsibilities of the Principal for additional legal and design professional costs resulting or arising from the Principal's default, or resulting or arising from the actions or failure to act of the Surety under Paragraph 3 herein.
  - c. The responsibilities of the Principal for damages and set-offs in accordance with the Contract.

- 8. If the Surety elects to act under Section 3b, 3c, or 3d, the Surety's liability is limited to the amount of this Bond.
- 9. Neither Surety's payments made for work performed prior to the Surety's written response, nor Surety's payments to entities performing consulting, professional services, project management, supervision or other work which is not directly, physically, required to complete the Contract Work, nor Surety's payments made to Claimants as defined in the payment bond issued by the Surety as a companion payment bond to this Bond, shall be credited against the Penal Sum of this Bond.
- 10. Surety shall reimburse Obligee for Obligee's attorney, expert, consultant, and other fees and costs, associated with a claim on this Bond, which fees and costs shall not be credited against the Penal Sum.
- 11. It is understood that all information provided by the Obligee to the Surety, whether before or after the issuance of this Bond, is provided by the Obligee voluntarily as a matter of courtesy and is merely an expression of opinion, and that in furnishing such information, no guaranty or warranty of accuracy or correctness is made by the Obligee and no responsibility or liability is assumed by Obligee as a result of providing such information to the Surety, and Surety agrees that it has not, and will not, rely on such information in any manner and, in that regard, Surety waives and releases Obligee and Obligee's surety from any such claims.
- 12. No right of action shall accrue on this Bond to or for the use of any person or corporation other than Obligee or the heirs, executors, administrators, assigns or successors of Obligee. Obligee's lawsuit or arbitration against the Surety may, at the Obligee's option, be consolidated with the Obligee's lawsuit or arbitration against the Principal.

IN WITNESS WHEREOF, the Principal and	d Surety have hereunto caused	I this Bond to be duly executed and
acknowledged as set forth below this	day of	, 20

(Impress Corporate Seal) ATTEST:	ARCHER WESTERN CONSTRUCTION, LLC (Name of Principal)		
	By: (Officer's Signature)		
(Name)			
	(Title)		
(Impress Corporate Seal)		, Surety	
ATTEST:	(Name of Surety)		
(Name)	By: (Attorney-in-Fact's Signature)		
(Impress Corporate Seal)		, Co-Surety	
ATTEST:	(Name of Surety)	(if applicable)	
(Name)	By: (Attorney-in-Fact's Signature)		
(name)			

Walsh Construction Company II, LLC (Bond for 1st Tier)

Bond Number:

# **PAYMENT BOND ("Bond")**

### KNOW ALL PERSONS BY THESE PRESENTS; that

SUBCONTRACTOR / SELLER Address ARCHER WESTERN CONSTRUCTION, LLC

as Principal (the "Principal"), and

SURETY (or Sureties)

Address

as Surety or Co-Sureties (hereinafter collectively referred to as "the Surety"), and

,

Walsh Construction Company II, LLC, 929 W Adams Street, Chicago, IL 60607, as Obligee (hereinafter "Obligee"),

WHEREAS, Principal has by written agreement dated <u>October 05, 2023</u> entered into Subcontract or Purchase Order number <u>223026TS0001</u> ("Contract") with Obligee, in the amount of <u>UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon</u> project ("Project") for the performance of the work as detailed in the Contract ("Contract Work"), which Contract, in its entirety is by reference expressly made a part hereof and incorporated herein. The amount, value, and penal sum of this Bond is

\_ DOLLARS (\$

\_\_\_\_) ("Penal Sum").

NOW THEREFORE, Surety and Principal are held and firmly bound unto Obligee for the payment of the Penal Sum, and agree to bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents and as follows:

- 1. If Principal shall promptly make payment to all Claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect.
- 2. The Surety agrees that no change, extension of time, alteration, addition, deletion, amendments or other modification of the terms of either the said Contract or the Prime Contract between Obligee and the Project Owner, or both, or in the said work to be performed, or in the specifications, or in the plans, and whether material, cardinal, or otherwise, or in the manner, time or amount of payment as provided therein and whether or not made in the manner as therein provided, shall in any way relieve them of their obligations on this Bond, and that the Penal Sum of this Bond shall increase, but not decrease, directly with any Contract amendments issued or executed at any time, and whether issued or executed bilaterally or unilaterally, by the Obligee to the Principal or Surety; and it does hereby waive notice of, and consents to, any such changes, extensions of time, alterations, additions, deletions, amendments, and other modifications.
- 3. A Claimant is defined as one, supplying labor, material, or both, used or reasonably required for use in the performance or completion of the Contract, labor and material being construed to include, but not be limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment directly

applicable to the Contract. Claimant is further defined as anyone possessing a right to file a lien on the Project arising out of the Principal's work or anyone hired, or which incurs expenses, to perform or complete the Principal's work after the Principal has been declared to be in default by the Obligee (collectively referred to herein as "Claimant").

- 4. The Principal and Surety hereby jointly and severally agree with the Obligee that every Claimant, including the Obligee, may sue Surety on this Bond, in their own names, for the unpaid portion of labor, material, and other costs and expenses, used or reasonably required for use in the performance or completion of the Contract, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant or Obligee, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit. Surety shall not use its Principal's lack of receipt of payment from Obligee as a defense to Claimant's claim.
- 5. If Principal and Surety shall indemnify Obligee, Obligee's surety, and the Project's owner for any payments made by Obligee, Obligee's surety, and the Project's owner to any Claimant, or if Principal and Surety shall indemnify and defend Obligee, Obligee's surety, and the Project's owner, from claims made by any Claimant, whether due to a lien or payment bond claim, demand, pay request, invoice, suit, notice, or otherwise ("Claims"), including all legal expenses necessarily incurred by Obligee or its surety in connection with such payments or Claims, then this obligation shall be void, otherwise it shall remain in full force and effect. If both the Surety and the Obligee's surety are obligors with respect to the same underlying obligation, their relationship is that of subsuretyship; the Surety is the principal surety, and the Obligee's surety is the subsurety. Obligee's surety is an express third party beneficiary of these provisions.
- 6. The amount of this Bond shall be reduced by and to the extent of any payment or payments made by Surety to a Claimant in good faith hereunder.

IN WITNESS WHEREOF, the Principal a	and Surety have hereunto caused this	Bond to be duly executed and
acknowledged as set forth below this	day of	, 20

(Impress Corporate Seal) ATTEST:	ARCHER WESTERN CONSTRUCTION, LLC (Name of Principal)		
(Name)	By: (Officer's Signature)		
	(Title)		
(Impress Corporate Seal) ATTEST:	(Name of Surety)		
(Name)	By: (Attorney-in-Fact's Signature)		
(Impress Corporate Seal) ATTEST:	(Name of Surety) (if applicable)		
(Name)	By: (Attorney-in-Fact's Signature)		

# **IRREVOCABLE LETTER OF CREDIT**

		1)	NAME OF ISSUING IN	ISTITUTION)	
		(AE	DDRESS OF ISSUING	INSTITUTION)	
(TELE	PHONE NO. OF	ISSUING INSTITUTION)		(TELEFA	AX NO. OF ISSUING INSTITUTION)
		(SW	/IFT NO. OF ISSUING	INSTITUTION)	
DATE OF ISSUA	NCE:				
	Walsh Os				
BENEFICIARY: ADDRESS:		nstruction Compa ams Street		APPLICANT: ADDRESS:	
	Chicago,				
ATTN:	<u>CHIEF FI</u>	NANCIAL OFFICE	<u>ER</u>	ATTN:	
STANDBY LETTE	ER OF CRE	DIT NUMBER:			
AMOUNT ("AMO	UNT"):				
,	(\$			) US	
EXPIRATION DA	TE THE LA	ER OF:			OR 12
MONTHS FROM					~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~
PLACE OF EXPI	RY: OUR CO	UNTERS			
LADIES AND GE	NTLEMEN:				
WE HEREBY EST	ABLISH THIS	IRREVOCABLE LE	TTER OF CRED	T NO	("CREDIT") IN YOUR OR YOUR") AND AUTHORIZE YOU TO
YOUR SUCCESSO	ORS FAVOR A	S BENEFICIARY (F		HEREIN AS "YOU" OR "Y	YOUR") AND AUTHORIZE YOU TO CATED ABOVE. THIS CREDIT IS
					OUR OFFICE AT
			ACSIMILE TRAN	ISMISSION TO	, IF MADE OR ATION DATE OR ANY EXTENSION
OF THE EXPIRATI	ON DATE WI	HICHEVER IS LATE	R. WE HEREBY	UNDERTAKE TO ADVI	ISE YOU OF ANY CHANGE IN OUR
					ER THAN FIVE (5) DAYS PRIOR TO JATURE EVIDENCING RECEIPT.
		• •	,		F RECEIVED BEFORE NOON TIME, EACH OF
YOUR DEMANDS	FOR PAYME	NT IN THE FORM O	OF EXHIBIT A HE	RETO COMPLETED AN	ID EXECUTED BY AN AUTHORIZED
					THE PRECEDING PARAGRAPH ON ICALLY EXTENDED EXPIRATION
		IT A SHALL REFER			
PARTIAL DRAW(S	) ARE ACCEI	PTABLE.			
IT IS A CONDITION	N OF THIS CI	REDIT THAT IT SHA	ALL BE DEEMED	TO BE AUTOMATICAL	LY EXTENDED WITHOUT

AMENDMENT FOR SUCCESSIVE ONE (1) YEAR PERIODS FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS THIS CREDIT IS RELEASED BY YOU IN WRITING OR OTHERWISE DRAWN UPON BY YOU IN ITS ENTIRETY.

THIS CREDIT IS SUBJECT TO AND GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS AND THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE (PUBLICATION NO. 590), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF ILLINOIS SHALL CONTROL.

EXCEPT AS PROVIDED HEREIN, THIS CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENTS, INSTRUMENTS OR AGREEMENTS REFERRED TO HEREIN. ALL PAYMENTS MADE BY US HEREUNDER SHALL BE MADE FROM OUR OWN FUNDS BUT IN NO EVENT SHALL SUCH PAYMENT BE MADE WITH FUNDS OBTAINED FROM THE APPLICANT.

[	
(NAME OF ISSUING INSTITUTION),	

BY: \_\_\_\_\_

## EXHIBIT A

# DEMAND FOR PAYMENT UNDER LETTER OF CREDIT

DATE:			
NAME A	AND ADDRESS OF ISSUING BANK:		
FAX NL	JMBER:		
RE:		, DATED mpany II, LLC (THE "LETTER OF CREDIT")	,
THE UN UNDER	DERSIGNED HEREBY MAKES DEMAND F THE LETTER OF CREDIT AND IN SUPPOR	DR PAYMENT IN THE AMOUNT OF \$ U T THEREOF STATES AS FOLLOWS:	S
1. THE	UNDERSIGNED IS AN AUTHORIZED OFFI	ER OF THE BENEFICIARY.	
2. BENE	EFICIARY IS AUTHORIZED TO MAKE THIS	DEMAND UNDER THE LETTER OF CREDIT.	
3. PAYN	MENT OF THIS DEMAND SHOULD BE MAD	E BY YOU BY WIRE TRANSFER TO THE FOLLOWING ACCOUNT:	
ACCOL BANK: ABA RC	DF ACCOUNT:		
BANK ( TELEPI	CONTACT:		
	Walsh Construction Company II, LL	с	
BY:			
ITS:			
DATE:			

# EXHIBIT I

# PARTIAL and FINAL WAIVER and RELEASE FORMS

Walsh Construction Company II, LLC

Contractor for: UNIVERSITY OF KENTUCKY Owner Number: 2563 "Project": UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon Walsh Construction Company II, LLC Project No. 223026

As stated in Article 3.10 - Waivers and Affidavits, in Exhibit A, attached are representative samples of the project specific waivers and affidavits required for this Project, subject to change at the Contractors option.

End of Exhibit I - except representative sample PARTIAL and FINAL WAIVER and RELEASE FORMS required for this Project are attached hereafter and/or available upon request

## PARTIAL WAIVER AND RELEASE OF CLAIMS FOR PAYMENT

CONDITIONAL Walsh Construction Company II, LLC

STATE OF COUNTY OF \_ (use for all tiers)

("Contractor") to furnish and install

### TO WHOM IT MAY CONCERN:

WHEREAS, the undersigned ("Undersigned") has been employed by for the project known as UKHC Cancer Treatment Center/Ambulatory Surgery Center

("Project")

of which UNIVERSITY OF KENTUCKY is the owner ("Owner")

and on which Walsh Construction Company II, LLC is a contractor (herein referred to as the "Prime Contractor").

Upon receipt by the Undersigned of a check in the sum of \_

(\$ \_) Dollars, payable to the Undersigned and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, the Undersigned, for and in consideration of such sum and other good and valuable considerations, do(es) for itself, its heirs, executors, and administrators, hereby waive and release the Prime Contractor, the Prime Contractor's surety, the Contractor, the Contractor's surety, the Owner,

and each of their insurers, parents, subsidiaries, related entities, affiliates, members, past and present officers, and directors, from any and all demands, causes of action and claims for payment, whether known or unknown, including claims under the laws of the municipality, State or Federal Government relating to Payment Bonds and Prompt Payment, the Miller Act, or Bonds relating to the Project, and in addition all lien, or claim of, or right to, lien, under municipal or State laws, relating to Mechanics' Liens, with respect to and on said above-described Project, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the Owner, on account of labor, services, material, fixtures, equipment, apparatus or machinery furnished by the Undersigned, on the above-described Project from the beginning of time through the date signed below, including Extras as defined below unless specifically reserved within this waiver and release, regardless of the amount of money actually received through that date by the Undersigned.

Extras are defined to include, but are not limited to, paid or unpaid changes, both oral and written, to the Undersigned's contract with the Contractor, and Claims, disputes, and additional work, as defined or discussed in the Undersigned's contract with the Contractor ("Extras"). Undersigned acknowledges that, prior to executing this waiver and release, it has assessed the potential impact of the broad scope of this waiver and release on its ability to recover additional compensation in connection with its Extras, and agrees that this waiver and release will apply to all Extras as of the date signed by the Undersigned, regardless of the accuracy of the Undersigned's assessment of the potential impact to the Undersigned. The Undersigned expressly acknowledges and agrees that the Contractor is relying on the Undersigned's variance of Extras, and the Undersigned expressly acknowledges and agrees that the Contractor is relying on the Undersigned's certification in exchange for payment to the Undersigned. A party's failure, in the past or otherwise, to enforce the Undersigned's waiver and release of Extras contained within this document, shall not be construed as a waiver or relinquishment of the party's right to enforce such waiver and release at any time against the Undersigned, and upon demand the Undersigned shall immediately return such payment for waived Extras to the Contractor.

All waivers and releases must be for the full amount paid. If waiver and release is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver and release should be set forth: if waiver and release is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.

\* \* \* \* \* \* \* \* \* \* \*

The Undersigned certifies and warrants that:(1) it has received payment of \$\_\_\_\_ \_ prior to this payment; (2) that all waivers and releases are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers or releases; (3) that the following are the names of all parties who have furnished or will furnish material, equipment, services, or labor for the Undersigned's work and all parties having contracts or subcontracts for specific portions of the Undersigned's work or for material entering into the construction thereof and the amount due or to become due each, and that the amounts listed below include all labor, equipment, services, and material required to complete said work according to plans and specifications. The Undersigned agrees to indemnify, defend, and hold harmless.

### the Prime Contractor, the Prime Contractor's surety, and the Owner

from any and all claims or demands for payment made by the Undersigned's suppliers or subcontractors pertaining to the Project, whether or not listed below. The Undersigned agrees that no information it provides below will be used to challenge or rebut the validity or enforcement of the Undersigned's waiver and release contained herein and the Undersigned waives its right to use the information provided below in such a manner. The Undersigned understands and agrees that the Contractor has relied upon the Undersigned's waiver and release of its Extras contained herein in exchange for payment to the Undersigned. The Undersigned agrees to promptly pay the companies the amounts listed below, or promptly return the funds to the Contractor.

NAMES	WHAT FOR	CONTRACT PRICE	AMOUNT PAID PREVIOUSLY	THIS PAYMENT	BALANCE DUE
TOTAL LABOR, EQUI MATERIAL TO COMP	PMENT, SERVICES, AND				

Date:	Name of Company:
Signature:	(Undersigned)
Printed Name:	Subscribed and sworn before me this day of, 20
Title of Person Signing:	Notary Signature and Seal:

### FINAL WAIVER AND RELEASE OF CLAIMS FOR PAYMENT

CONDITIONAL Walsh Construction Company II, LLC

STATE OF COUNTY OF \_ (use for all tiers)

### TO WHOM IT MAY CONCERN:

WHEREAS, the undersigned ("Undersigned") has been employed by ("Contractor") to furnish and install for the project known as UKHC Cancer Treatment Center/Ambulatory Surgery Center

("Project")

of which UNIVERSITY OF KENTUCKY is the owner ("Owner")

and on which Walsh Construction Company II, LLC is a contractor (herein referred to as the "Prime Contractor").

Upon receipt by the Undersigned of a check in the sum of \_

(\$ \_) Dollars, payable to the Undersigned and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, the Undersigned, for and in consideration of such sum and other good and valuable considerations, do(es) for itself, its heirs, executors, and administrators, hereby waive and release the Prime Contractor, the Prime Contractor's surety, the Contractor, the Contractor's surety, the Owner,

and each of their insurers, parents, subsidiaries, related entities, affiliates, members, past and present officers, and directors, from any and all demands, causes of action and claims for payment, whether known or unknown, including claims under the laws of the municipality, State or Federal Government relating to Payment Bonds and Prompt Payment, the Miller Act, or Bonds relating to the Project, and in addition all lien, or claim of, or right to, lien, under municipal or State laws, relating to Mechanics' Liens, with respect to and on said above-described Project, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the Owner, on account of labor, services, material, fixtures, equipment, apparatus or machinery furnished by the Undersigned, on the above-described Project from the beginning of time or any time hereafter, including Extras as defined below unless specifically reserved within this waiver and release, regardless of the amount of money actually received through that date by the Undersigned.

Extras are defined to include, but are not limited to, paid or unpaid changes, both oral and written, to the Undersigned's contract with the Contractor, and Claims, disputes, and additional work, as defined or discussed in the Undersigned's contract with the Contractor ("Extras"). Undersigned acknowledges that, prior to executing this waiver and release, it has assessed the potential impact of the broad scope of this waiver and release on its ability to recover additional compensation in connection with its Extras, and agrees that this waiver and release will apply to all Extras as of the date signed by the Undersigned, regardless of the accuracy of the Undersigned's assessment of the potential impact to the Undersigned. The Undersigned expressly acknowledges and agrees that the Contractor is relying on the Undersigned's variance of Extras, and the Undersigned expressly acknowledges and agrees that the Contractor is relying on the Undersigned's certification in exchange for payment to the Undersigned. A party's failure, in the past or otherwise, to enforce the Undersigned's waiver and release of Extras contained within this document, shall not be construed as a waiver or relinquishment of the party's right to enforce such waiver and release at any time against the Undersigned, and upon demand the Undersigned shall immediately return such payment for waived Extras to the Contractor.

All waivers and releases must be for the full amount paid. If waiver and release is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver and release should be set forth: if waiver and release is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.

\* \* \* \* \* \* \* \* \* \* \*

The Undersigned certifies and warrants that:(1) it has received payment of \$\_\_\_\_ \_ prior to this payment; (2) that all waivers and releases are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers or releases; (3) that the following are the names of all parties who have furnished or will furnish material, equipment, services, or labor for the Undersigned's work and all parties having contracts or subcontracts for specific portions of the Undersigned's work or for material entering into the construction thereof and the amount due or to become due each, and that the amounts listed below include all labor, equipment, services, and material required to complete said work according to plans and specifications. The Undersigned agrees to indemnify, defend, and hold harmless.

### the Prime Contractor, the Prime Contractor's surety, and the Owner

from any and all claims or demands for payment made by the Undersigned's suppliers or subcontractors pertaining to the Project, whether or not listed below. The Undersigned agrees that no information it provides below will be used to challenge or rebut the validity or enforcement of the Undersigned's waiver and release contained herein and the Undersigned waives its right to use the information provided below in such a manner. The Undersigned understands and agrees that the Contractor has relied upon the Undersigned's waiver and release of its Extras contained herein in exchange for payment to the Undersigned. The Undersigned agrees to promptly pay the companies the amounts listed below, or promptly return the funds to the Contractor.

NAMES	WHAT FOR	CONTRACT PRICE	AMOUNT PAID PREVIOUSLY	THIS PAYMENT	BALANCE DUE
TOTAL LABOR, EQUIPME MATERIAL TO COMPLET					

Date:	Name of Company:
Signature:	(Undersigned)
Printed Name:	Subscribed and sworn before me this day of, 20
Title of Person Signing:	Notary Signature and Seal:

## PARTIAL WAIVER AND RELEASE OF CLAIMS FOR PAYMENT

UNCONDITIONAL Walsh Construction Company II, LLC

STATE OF COUNTY OF \_ (use for all tiers)

("Contractor") to furnish and install

### TO WHOM IT MAY CONCERN:

WHEREAS, the undersigned ("Undersigned") has been employed by

for the project known as UKHC Cancer Treatment Center/Ambulatory Surgery Center

#### ("Project")

of which UNIVERSITY OF KENTUCKY is the owner ("Owner")

and on which Walsh Construction Company II, LLC is a contractor (herein referred to as the "Prime Contractor").

#### The Undersigned, for and in consideration of

) Dollars, and in consideration of such sum and other good and valuable considerations, the receipt whereof is hereby acknowledged, do(es) for itself, its heirs, executors, and administrators, hereby waive and release

### the Prime Contractor, the Prime Contractor's surety, the Contractor, the Contractor's surety, the Owner,

and each of their insurers, parents, subsidiaries, related entities, affiliates, members, past and present officers, and directors, from any and all demands, causes of action and claims for payment, whether known or unknown, including claims under the laws of the municipality, State or Federal Government relating to Payment Bonds and Prompt Payment, the Miller Act, or Bonds relating to the Project, and in addition all lien, or claim of, or right to, lien, under municipal or State laws, relating to Mechanics' Liens, with respect to and on said above-described Project, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the Owner, on account of labor, services, material, fixtures, equipment, apparatus or machinery furnished by the Undersigned, on the above-described Project from the beginning of time through the date signed below, including Extras as defined below unless specifically reserved within this waiver and release, regardless of the amount of money actually received through that date by the Undersigned.

Extras are defined to include, but are not limited to, paid or unpaid changes, both oral and written, to the Undersigned's contract with the Contractor, and Claims, disputes, and additional work, as defined or discussed in the Undersigned's contract with the Contractor ("Extras"). Undersigned acknowledges that, prior to executing this waiver and release, it has assessed the potential impact of the broad scope of this waiver and release on its ability to recover additional compensation in connection with its Extras, and agrees that this waiver and release will apply to all Extras as of the date signed by the Undersigned, regardless of the accuracy of the Undersigned's assessment of the potential impact to the Undersigned. The Undersigned certifies that it has carefully read and understands this document, including but not limited to the Undersigned's waiving and releasing of Extras, and the Undersigned expressly acknowledges and agrees that the Contractor is relying on the Undersigned's certification in exchange for payment to the Undersigned. A party's failure, in the past or otherwise, to enforce the Undersigned's waiver and release of Extras contained within this document, shall not be construed as a waiver or relinquishment of the party's right to enforce such waiver and release at any time against the Undersigned, and upon demand the Undersigned shall immediately return such payment for waived Extras to the Contractor.

All waivers and releases must be for the full amount paid. If waiver and release is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver and release should be set forth: if waiver and release is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.

\* \* \* \* \* \* \* \* \* \* \*

The Undersigned certifies and warrants that:(1) it has received payment of \$\_\_\_\_ \_ prior to this payment; (2) that all waivers and releases are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers or releases; (3) that the following are the names of all parties who have furnished or will furnish material, equipment, services, or labor for the Undersigned's work and all parties having contracts or subcontracts for specific portions of the Undersigned's work or for material entering into the construction thereof and the amount due or to become due each, and that the amounts listed below include all labor, equipment, services, and material required to complete said work according to plans and specifications. The Undersigned agrees to indemnify, defend, and hold harmless.

### the Prime Contractor, the Prime Contractor's surety, and the Owner

from any and all claims or demands for payment made by the Undersigned's suppliers or subcontractors pertaining to the Project, whether or not listed below. The Undersigned agrees that no information it provides below will be used to challenge or rebut the validity or enforcement of the Undersigned's waiver and release contained herein and the Undersigned waives its right to use the information provided below in such a manner. The Undersigned understands and agrees that the Contractor has relied upon the Undersigned's waiver and release of its Extras contained herein in exchange for payment to the Undersigned. The Undersigned agrees to promptly pay the companies the amounts listed below, or promptly return the funds to the Contractor.

NAMES	WHAT FOR	CONTRACT PRICE	AMOUNT PAID PREVIOUSLY	THIS PAYMENT	BALANCE DUE
TOTAL LABOR, EQUIPME MATERIAL TO COMPLET					

Date:	Name of Company:
Signature:	(Undersigned)
Printed Name:	Subscribed and sworn before me this day of, 20
Title of Person Signing:	Notary Signature and Seal:

### FINAL WAIVER AND RELEASE OF CLAIMS FOR PAYMENT

UNCONDITIONAL Walsh Construction Company II, LLC

STATE OF COUNTY OF \_ (use for all tiers)

("Contractor") to furnish and install

### TO WHOM IT MAY CONCERN:

WHEREAS, the undersigned ("Undersigned") has been employed by

for the project known as UKHC Cancer Treatment Center/Ambulatory Surgery Center

#### ("Project")

of which UNIVERSITY OF KENTUCKY is the owner ("Owner")

and on which Walsh Construction Company II, LLC is a contractor (herein referred to as the "Prime Contractor").

#### The Undersigned, for and in consideration of

) Dollars, and in consideration of such sum and other good and valuable considerations, the receipt whereof is hereby acknowledged, do(es) for itself, its heirs, executors, and administrators, hereby waive and release

### the Prime Contractor, the Prime Contractor's surety, the Contractor, the Contractor's surety, the Owner,

and each of their insurers, parents, subsidiaries, related entities, affiliates, members, past and present officers, and directors, from any and all demands, causes of action and claims for payment, whether known or unknown, including claims under the laws of the municipality, State or Federal Government relating to Payment Bonds and Prompt Payment, the Miller Act, or Bonds relating to the Project, and in addition all lien, or claim of, or right to, lien, under municipal or State laws, relating to Mechanics' Liens, with respect to and on said above-described Project, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the Owner, on account of labor, services, material, fixtures, equipment, apparatus or machinery furnished by the Undersigned, on the above-described Project from the beginning of time or any time hereafter, including Extras as defined below unless specifically reserved within this waiver and release, regardless of the amount of money actually received through that date by the Undersigned.

Extras are defined to include, but are not limited to, paid or unpaid changes, both oral and written, to the Undersigned's contract with the Contractor, and Claims, disputes, and additional work, as defined or discussed in the Undersigned's contract with the Contractor ("Extras"). Undersigned acknowledges that, prior to executing this waiver and release, it has assessed the potential impact of the broad scope of this waiver and release on its ability to recover additional compensation in connection with its Extras, and agrees that this waiver and release will apply to all Extras as of the date signed by the Undersigned, regardless of the accuracy of the Undersigned's assessment of the potential impact to the Undersigned. The Undersigned certifies that it has carefully read and understands this document, including but not limited to the Undersigned's waiving and releasing of Extras, and the Undersigned expressly acknowledges and agrees that the Contractor is relying on the Undersigned's certification in exchange for payment to the Undersigned. A party's failure, in the past or otherwise, to enforce the Undersigned's waiver and release of Extras contained within this document, shall not be construed as a waiver or relinquishment of the party's right to enforce such waiver and release at any time against the Undersigned, and upon demand the Undersigned shall immediately return such payment for waived Extras to the Contractor.

All waivers and releases must be for the full amount paid. If waiver and release is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver and release should be set forth: if waiver and release is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.

\* \* \* \* \* \* \* \* \* \* \*

The Undersigned certifies and warrants that:(1) it has received payment of \$\_\_\_\_ \_ prior to this payment; (2) that all waivers and releases are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers or releases; (3) that the following are the names of all parties who have furnished or will furnish material, equipment, services, or labor for the Undersigned's work and all parties having contracts or subcontracts for specific portions of the Undersigned's work or for material entering into the construction thereof and the amount due or to become due each, and that the amounts listed below include all labor, equipment, services, and material required to complete said work according to plans and specifications. The Undersigned agrees to indemnify, defend, and hold harmless.

### the Prime Contractor, the Prime Contractor's surety, and the Owner

from any and all claims or demands for payment made by the Undersigned's suppliers or subcontractors pertaining to the Project, whether or not listed below. The Undersigned agrees that no information it provides below will be used to challenge or rebut the validity or enforcement of the Undersigned's waiver and release contained herein and the Undersigned waives its right to use the information provided below in such a manner. The Undersigned understands and agrees that the Contractor has relied upon the Undersigned's waiver and release of its Extras contained herein in exchange for payment to the Undersigned. The Undersigned agrees to promptly pay the companies the amounts listed below, or promptly return the funds to the Contractor.

NAMES	WHAT FOR	CONTRACT PRICE	AMOUNT PAID PREVIOUSLY	THIS PAYMENT	BALANCE DUE
TOTAL LABOR, EQUIPME MATERIAL TO COMPLET					

Date:	Name of Company:
Signature:	(Undersigned)
Printed Name:	Subscribed and sworn before me this day of, 20
Title of Person Signing:	Notary Signature and Seal:

# EXHIBIT M

# SUBCONTRACTOR / SELLER QUALITY REQUIREMENTS

### Walsh Construction Company II, LLC

Owner Number: 2563 "Project": UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon Walsh Construction Company II, LLC Project No. 223026

The following Quality Assurance / Quality Control ("Quality") provisions are to supplement other Quality related requirements of this Agreement.

- A. Subcontractor/Seller is solely responsible for the quality, workmanship, and adherence to the Contract requirements for all materials, equipment, and work provided in their Scope(s) of Work.
- B. Subcontractor/Seller shall provide all Quality Assurance and Quality Control required of this Agreement in accordance with the requirements of the Contract Documents and this Exhibit.
- C. Subcontractor/Seller warrants they are properly qualified to perform their Scope(s) of Work and will provide required equipment calibrations, company certifications, and personnel certifications prior to start of work and maintain required calibrations and certifications through the Scope(s) of Work completion.
- D. Subcontractor/Seller shall follow the Contractor's/Buyer's project specific Quality Plan where established (may be referred to by other names) and also submit for review (as required or upon request by Contractor/Buyer) a project specific Quality Plan, as a supplement, for its own Scope(s) of Work.
- E. Subcontractor/Seller shall develop work plans for its Scope(s) of Work (broken down into Definable Features of Work) and provide them to Contractor/Buyer prior to commencing its Definable Features of Work.
- F. Subcontractor/Seller shall work with Contractor/Buyer to use the Three Phases of Control process (preparatory meeting, initial inspection, and follow-up inspections) for its Definable Features of Work.
- G. Subcontractor/Seller shall hold pre-installation (Preparatory) meetings for its Definable Features of Work in accordance with the requirements of the Contract Documents or as requested by the Contractor/Buyer. Subcontractor's/Seller's onsite Competent Person(s) shall attend Preparatory Meetings for their Definable Features of Work and for other works as requested by Contractor/Buyer.
- H. The Subcontractor/Seller shall document all installations and testing records, in addition to / or supplementing the requirements of the Contract Documents. A copy of all quality documentation shall be submitted to the Contractor/Buyer, upon completion, for review.
- I. Subcontractor/Seller to provide all required documentation related to their Scope(s) of Work; including but not limited to; certifications; plant testing; delivery inspection, including mill test reports, certifying compliance that all products supplied meet Contract requirements. Release of

progress payments, to the Subcontractor/Seller, will be predicated on the satisfactory submission of these documents.

- J. Subcontractor/Seller shall furnish, install, and demolish mock-ups as required per the Contract Documents, or as directed, for their Scope(s) of Work. Where allowed and approved in writing by the Contractor/Buyer, mock-ups may be constructed in the field with finished products or separate from finished products.
- K. Subcontractor/Seller will designate personnel to be responsible for the Quality of work for this Agreement, including a Quality Competent Person(s) designee, and coordinate all Quality requirements of Subcontractor's/Seller's Scope(s) of Work.
- L. Subcontractor/Seller is responsible for timely notification for any testing, inspection, verification, witness, or oversight to be performed by others. Failure to provide timely notification may require inspection and/or rework at the cost of the Subcontractor/Seller.
- M. Subcontractor/Seller is responsible for any and all costs due to Subcontractor's/Seller's failure to follow the Quality Plan as defined in item D, Contract requirements, or failure to provide a quality product meeting the requirements of the Contract. Costs include rework, reinspection, retesting, and/or any other associated costs.

End of Exhibit M

# EXHIBIT M.1

WORK PLAN	#	DATE LAST F	REVISED:	SUB	BCONTRACTOR PROJECT NAME:		PROJECT NAME:		TOP FIVE SAF	ETY CHALLENGES			SAFETY MITIGATONS	
REVISION #		NEXT REVIE	W DATE:	V	ORK PLAN	PROJECT NO:		1				1		
								3				3		
DFOW:								4				4		
LOCATION:					PLANNED TIME:	REGULAR TIME	OFF HOURS	5				5		
PRECEDING W	/ORK:				POST WORK:				TOP FIVE QUAL	ITY CHALLENGES			QUALITY MITIG	ATIONS
NAME OF CRE	W/ SUB:				SPEC SECTION:			1				1		
OTHER COO		TIES: SCOPE	CREW / SUB		SURVEY: DESC. (AS BUILT, LAYO		STEP REQUIRED FOR	2 3				2		
	-							4			,	4		
								5				5		
								CONF		T CONTRACT DOCUMENTS, RFIS, A		192	YES	NO
								5011		, N. 10, A				
	HOLD POINT			WORK PLAN	PROCEDURE (STEP-BY-STEP)		CREW / SUBCON	TRACTOR	DRAWING / ATTACHMENT	SAFETY HAZARD	SAFETY CO	NTROL	INSPECTION / TEST / DOCUMENT	TOLERANCE / CONTROL MEASURE
1														
2														
3														
4														
5														
6														
7														
8														
9														
10														
11														
12														
13														
14														
15														





THIS WORK PLAN FORMAT SATISFIES JHA REQUIREMENTS

VER. DATE: 08/20/2019



EQUIPMENT, TOOLS, AND SPECIALIZED RIGGING: DESCRIPTION	QUANTITY	TRAINING	INSPECTION		ED / ATTACHED DOCUMEN TEM		N/A		SUPCONTE						
				CRANE PICK DRAWINGS / CRITICAL LIFT PLAN			SUBCONTRACTOR WORK PLAN REVIEW & APPROVAL								
				SPECIALIZED RIGGING TRAINING			REVIEW AND SIGN-OFF PRIOR TO HOLDING PREP / PRE-ACTIVITY MEETING								
				CONFINED SPACE TF					WORK PLAN REVIEW CHECKLIST						
				HAND SIGNAL TRAIN					ARE SAFETY HAZARDS IDENTIFIED AND	D MITIGATION MEASURES DISCUSSED THAT ARE SPECIFI	C TO THE TASK? ARE QUAL	IFIED YES / NO			
				ENVIRONMENTAL CH	ECKLIST / CONTROLS			1	PERSONNEL / TRAINING DESIGNATED?						
				SDS FOR MATERIALS				2		ND TOLERANCES NOTED WITH THE STEPS? UBMITTALS / MATERIALS AND OTHER KEY DOCUMENTS A	PPROVED. AVAILABLE. AND	REFERENCED			
				SITE LAYOUT AND/OF OTHER:	R ACCESS PLAN			3	IN THE STEPS?						
				OTHER:											
				OTHER:				5 IS STEP BY STEP COMPLETE, DETAILED ENOUGH TO KNOW WHAT'S NEEDED AND IS NOT MISSING ANY STEPS?							
	1			APPROVED SUBMITTAL #         SPECIAL HANDLING OR STORAGE         7         FOREMAN PARTICIPATED IN WORK PLAN DEVELOPMENT?											
PERMANENT MATERIALS: DESCRIPTION			APPROV	ED SUBMITTAL #	SPECIAL HANDLING	JR STURA	GE								
								8	PAST LESSONS REVIEWED AND INCOR	PORATED INTO WORK PLAN INCLUDING PAST SAFETY LE	SSONS AND SUBJECT MATT	FER EXPERTS?			
										WORK PLAN SIGN OFF BY SUBCONTRACTOR					
								SUI	BCONTRACTOR SUPERINTENDENT	SUBCONTRACTOR FOREMAN	(	OTHER			
								_							
								ST	OP! REVIEW T	HE WORK PLAN WI	TH WALSH	H / AWC AT			
									THF PRFP	/ PRE CONSTRUCT	<b>ON MEET</b>	ING			
								0		, REVIEW THIS DOCUMENT WITH THE FIELD					
										CREW REVIEW & SIGN-OFF					
TASK-SI	PECIFIC TRAINING 8	QUALIFICATIONS:	DESCRIPTION						PRINT NAME	SIGNATURE		DATE			
			Is (ATTACH IF APPLIPA												
	DESCRIPTION	JUNIT TAEO, AND IN			OVED DATE <b>(IF</b> APPLICABI	-E)									
ACCESS—COMPETENT PERSON / TEMPORARY STRUCTURE			APPLICABL	E LESSONS LEARNED INC	ORPORATED										



THIS WORK PLAN FORMAT SATISFIES JHA REQUIREMENTS

VER. DATE: 08/20/2019

# EXHIBIT N

# **TEXTURA ® PAYMENT MANAGEMENT SYSTEM**

### Walsh Construction Company II, LLC

Owner Number: 2563 "Project": UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon Walsh Construction Company II, LLC Project No. 223026

The following provisions supplement the payment provisions contained elsewhere in this Subcontract:

Unless otherwise directed or authorized, in writing, by Contractor, all Applications for Payment and all supporting documents (including but not limited to lien waivers, sworn statements, and the like) for Subcontractor and its sub- subcontractors and suppliers, shall be in electronic format and shall be submitted to Contractor using the Textura® Corporations' ("Textura® ") Construction Payment Management system ("CPM"). Subcontractor agrees to execute the Textura® standard terms and conditions for its CPM in effect as of the effective date of this Subcontract. Sample CPM standard terms and conditions are included as part of this exhibit; however the current CPM terms and conditions may differ from the sample. Upon written request of the Subcontractor, Contractor will provide the Textura® standard terms and conditions for the Textura® all fees and costs owed or associated with Subcontractor's use of the Textura® CPM; Textura® is a third-party beneficiary of Subcontractor's agreement as stated in this sentence. Subcontractor shall include a similar provision in its sub-subcontracts and purchase orders.

Contractor, Contractor's surety, and the Owner are express third-party beneficiaries of the CPM agreement between Subcontractor and Textura®.

Subcontractor agrees to be legally bound by the electronic signatures generated through and utilized by the Textura® CPM System. If notarization of any documents is required, Subcontractor also agrees to accept electronic notarization of documents provided through the Textura® CPM System. Subcontractor agrees not to contest the validity of any e- signature or e-notarization on the basis that the signature or notarization is performed electronically. Subcontractor agrees that electronic signatures are a valid form of execution of contracts and other documents. Subcontractor also agrees that any such contracts and documents signed electronically by other participants using the Textura® CPM System, including all invoices, sworn statements, change orders, and lien waivers, are validly executed. Subcontractor agrees that each user of the Textura® CPM, designated by Subcontractor as a signer in the Textura® CPM System, is authorized to sign on behalf of Subcontractor and legally bind Subcontractor. Textura® may use any suitable electronic signature service, such as, for example, the services provided by AlphaTrust Corporation. Contractor, Contractor's surety, and the Owner, are not responsible for the services provided by the AlphaTrust Corporation or any other third party electronic signature service used by Textura® and such services may be provided under a separate agreement.

Subcontractor agrees to use the security required by the electronic signature service, such as usernames, passwords, and/or PINs. Subcontractor agrees to keep sole control and not give the usernames, passwords, and/or PINs to anyone who is not an authorized User.

DISCLAIMER OF WARRANTIES:

THE TEXTURA® CPM WEBSITE AND ITS CONTENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. TO THE Report EXN\_SC\_A Ver. Date: 01-NOV-2012 Exhibit N - Page 1 of 7 Printed on: 12/14/2023

MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR, CONTRACTOR'S SURETY, AND THE OWNER, EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THE TEXTURA® CPM WEBSITE, ITS CONTENTS AND THE USE THEREOF, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, ACCURACY AND FREEDOM FROM COMPUTER VIRUSES OR OTHER HARMFUL COMPONENTS.

### LIMITATION OF LIABILITIES:

IN NO EVENT SHALL CONTRACTOR, CONTRACTOR'S SURETY, OR THE OWNER, ITS AFFILIATES OR SUBSIDIARIES OR RELATED ENTITIES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, SHAREHOLDERS, REPRESENTATIVES, SUPPLIERS OR CONTENT OR SERVICE PROVIDERS BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DIRECT, INDIRECT, COMPENSATORY, SPECIAL, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES EVEN IF MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION UNDER CONTRACT, NEGLIGENCE OR OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH THE TEXTURA CPM, INCLUDING BUT NO LIMITED TO, THE USE, INABILITY TO USE OR PERFORMANCE OF THE TEXTURA® CPM WEBSITE AND/OR ANY MATERIALS, PRODUCTS OR SERVICES AVAILABLE AT THE TEXTURA® CPM WEBSITE.

Subcontractor warrants and represents that all information submitted by Subcontractor through the Textura® CPM System is accurate, and that Subcontractor has taken reasonable steps to ensure the accuracy of such information. Subcontractor agrees to indemnify, defend, and hold harmless Contractor, Contractor's surety, Textura®, the Owner, and their officers, directors, members, managers, related entities, employees, agents, shareholders, representatives, suppliers and content and service providers from and against all losses, expenses, damages and costs, including reasonable attorneys fees, resulting from any violation by Subcontractor, Subcontractor's users and its subcontractors and suppliers of any tier, of the Textura® CPM standard terms and conditions or any activity related to their use of the Textura® CPM website.

### Sample Textura® Corporation CPM standard terms and conditions

### TEXTURA CORPORATION CONSTRUCTION PAYMENT MANAGEMENT WEBSITE TERMS AND CONDITIONS OF USE

Welcome to the Textura® Construction Payment Management ("CPM") System. By clicking the I AGREE button at the bottom of these Terms and Conditions, you represent that (i) you have read and understand all of the provisions of these Terms and Conditions; (ii) you accept these Terms and Conditions on behalf of your organization (the "Subscriber"); and (iii) you have authority to contractually bind the Subscriber to these Terms and Conditions. Your organization must accept these Terms and Conditions through an individual with proper authority before it can authorize its representatives (its "Users") to use the Textura® CPM System. All Users are subject to these Terms and Conditions of Use and Privacy Policy.

### INTELLECTUAL PROPERTY NOTICE:

This website is proprietary to Textura Corporation ("Textura") and includes information that is the property of Textura and its licensees/users. This website, its content, and all proprietary information of Textura or its licensors on the website (collectively "Materials") are protected by the copyright and/or trade secret laws of jurisdictions throughout the world. No party shall copy the Materials or use the Materials other than as permitted by Textura, or disclose the Materials to others, without the prior written consent of Textura. This website and the operations thereof are covered under U.S. patents and patent applications, as well as patents and patent applications pending in other countries, including specifically, U.S. Utility Pat. No. 7,490,064, and South Africa Patent No. 2007/02149. TEXTURA is a registered trademark of Textura Corporation. Textura has registered its trademarks in the United States and in countries throughout the world.

### LICENSE:

Textura grants to Subscriber a limited, non-exclusive, non-transferable license ("License") to use the Textura® CPM System. Subscriber acknowledges that the software of the Textura® CPM System may contain copyrighted material, trade secrets, or other proprietary information which belongs to Textura, or is licensed by Textura from third parties, or may embody patented subject matter owned by Textura or such third parties. Subscriber agrees to maintain and protect the confidentiality of the Textura® CPM System including related software or its contents to third parties or use the Textura® CPM System for any purpose other than authorized herein. Subscriber will not use and will not authorize others to use the Textura® CPM System for any unlawful purpose.

Textura reserves the right to terminate this License and Subscriber's use of the Textura® CPM System for violation of any of the terms of this License.

### PRICING AND PAYMENT OF FEES:

Subscriber is subject to and agrees to pay the fees set forth in the linked SCHEDULE OF PRICING AND FEES (the "Fees"). Subscriber gives permission for Textura to automatically deduct Subcontractor Transaction Fees from payments processed through the Textura® CPM System and for Textura to collect Subcontractor Usage Fees, Subcontractor Deferral Fees, and Subcontractor Service Fees (collectively, the "Subcontractor Fees") by electronic payment, in accordance with the schedules set forth in the linked SCHEDULE OF PRICING AND FEES.

Textura reserves the right to change the Fees with three months prior notice. Projects already in progress on the Textura® CPM System at the time of a change in the Fees will continue at the existing level of Fees through completion of the project.

### ELECTRONIC PAYMENT:

Subscriber is responsible for providing the contact and payment information necessary to effect electronic payments between parties participating in the Textura® CPM System. Textura does not accept responsibility for failure by any participant in the Textura® CPM System to accurately and correctly enter contact or payment information and Textura makes no warranties or representations as to the accuracy of such information. Subscriber is responsible for updating the contact and payment information. Textura is not responsible for any participant not receiving payment due to a failure by any Subscriber to update contact or payment information. Subscriber is responsible for and agrees to ensure that electronic credits and debits are authorized to be made on its bank account and to maintain sufficient funds in its bank account for payment of the Fees.

### **ELECTRONIC SIGNATURES:**

Subscriber agrees to be legally bound by the electronic signatures generated through and utilized by the Textura® CPM System. If notarization of any documents is required, Subscriber also agrees to accept electronic notarization of documents provided through the Textura® CPM System. Subscriber agrees not to contest the validity of any e- signature or e-notarization on the basis that the signature or notarization is performed electronically. Subscriber agrees that electronic signatures are a valid form of execution of contracts and other documents. Subscriber also agrees that any such contracts and documents signed electronically by other participants using the Textura® CPM System, including all invoices, sworn statements, change orders, and lien waivers, are validly executed. Subscriber agrees that each User designated by Subscriber as a signer in the Textura® CPM System is authorized to sign on behalf of Subscriber and legally bind Subscriber. Textura may use any suitable electronic signature service, such as, for example, the services provided by AlphaTrust Corporation. Textura is not responsible for the services provided by the AlphaTrust Corporation or any other third party electronic signature service and such services may be provided under a separate agreement. Subscriber agrees to use the security required by the electronic signature service, such as usernames, passwords, and/or PINs. Subscriber agrees to keep sole control and not give the usernames, passwords, and/or PINs to anyone who is not an authorized User.

### LIEN WAIVERS:

Subscribers may use the Textura® CPM System for the electronic exchange of conditional and unconditional lien waivers.

TEXTURA MAY RELEASE UNCONDITIONAL LIEN WAIVERS ONLY AFTER PAYMENT TO WHICH THE WAIVER(S) RELATE HAS BEEN COMPLETED TO THE RELEASING SUBSCRIBER (PAYEE), UNLESS OTHERWISE EXPRESSLY SPECIFIED IN THE PAYOR'S CONTRACT WITH THE RELEASING SUBSCRIBER (PAYEE) (SUBJECT TO REASONABLE VERIFICATION BY TEXTURA OF THE EXISTENCE OF SUCH CONTRACTUAL PROVISIONS) AND THEN, ONLY IF EXPRESSLY INSTRUCTED BY THE PAYOR. A PAYMENT IS "COMPLETED" FORTY-EIGHT HOURS AFTER PAYMENT INSTRUCTIONS HAVE BEEN TRANSMITTED TO PAYOR'S BANK UNLESS TEXTURA IS NOTIFIED IN WRITING WITHIN THAT PERIOD THAT THE PAYMENT WAS NOT RECEIVED BY THE RELEASING SUBSCRIBER. TEXTURA IS NOT RESPONSIBLE FOR PAYMENT OF FUNDS ONCE INSTRUCTIONS HAVE BEEN TRANSMITTED. TEXTURA IS NOT RESPONSIBLE FOR PAYMENT OF FUNDS ONCE INSTRUCTIONS HAVE BEEN TRANSMITTED. TEXTURA MAY NOT BE HELD RESPONSIBLE FOR RELEASING AN UNCONDITIONAL LIEN WAIVER PRIOR TO A RELEASING SUBSCRIBER'S ACTUAL RECEIPT OF PAYMENT IF, BEFORE THE LIEN WAIVER WAS RELEASED, THE APPLICABLE PAYMENT WAS "COMPLETED" AS DEFINED HEREIN. RELEASING SUBSCRIBERS AGREE TO PROMPTLY CARRY OUT SUCH ACTIONS AS MAY BE NECESSARY FOR THE PAYMENT INSTRUCTIONS TO BE PROCESSED BY THE RELEASING SUBSCRIBERS' BANK, NOT TO ALTER OR DELETE ANY INFORMATION CONTAINED IN THE PAYMENT INSTRUCTIONS. OR TO OTHERWISE IMPEDE OR UNNECESSARILY DELAY THE PROCESSING OF THE PAYMENT INSTRUCTIONS BY THE BANK WITHOUT WRITTEN NOTIFICATION TO TEXTURA WITHIN 24 HOURS OF THEIR HAVING DONE SO. TEXTURA IS NOT RESPONSIBLE FOR ENSURING THAT THE RELEASING SUBSCRIBER COMPLIES WITH THESE REQUIREMENTS. SUB TIER LIEN WAIVERS SUBMITTED USING THE TEXTURA® CPM SYSTEM BY SUBSCRIBERS WHO ARE NOT USING THE SYSTEM FOR INVOICING AND PAYMENT WILL BE RELEASED IMMEDIATELY. TEXTURA IS NOT RESPONSIBLE FOR ENSURING THAT THESE SUBSCRIBERS. ARE PAID.

In all transactions and processes carried out using the Textura® CPM System, Textura is and acts as a neutral third party, and is not an agent of or affiliated with any party using the Textura® CPM System. Neither use of the Textura® CPM System nor any provision of these Terms and Conditions creates an agency relationship with Textura or between Users or Subscribers of the Textura® CPM System.

### SECURITY AND CONFIDENTIALITY:

Textura takes security seriously and will take commercially reasonable steps, including the use of usernames, passwords, and encryption, to keep the information provided to Textura secure and confidential from third parties that are not using the Textura® CPM System. HOWEVER, TEXTURA DOES NOT GUARANTEE THAT IT WILL NOT BE THE SUBJECT OF A SECURITY BREACH AND MAKES NO WARRANTY THAT INFORMATION GIVEN TO TEXTURA AND/OR STORED IN THE TEXTURA® CPM SYSTEM WILL BE COMPLETELY SECURE. Textura will

keep all payment information (including any bank account numbers) provided to the Textura® CPM System confidential from third parties and from other Users or Subscribers of the Textura® CPM System.

### **PRIVACY POLICY:**

Textura understands that privacy is an important concern of our Subscribers. The linked PRIVACY POLICY sets forth our privacy policy. We reserve the right to change our Privacy Policy at any time, without notice. Any change may apply retroactively to information we previously gathered. If you have additional questions not covered here, please contact us.

### **DISCLAIMER OF WARRANTIES:**

THE SITE AND ITS CONTENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TEXTURA EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO THE SITE, ITS CONTENTS AND THE USE THEREOF, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT, TITLE, ACCURACY AND FREEDOM FROM COMPUTER VIRUSES OR OTHER HARMFUL COMPONENTS.

### LIMITATION OF LIABILITIES:

IN NO EVENT SHALL TEXTURA, ITS AFFILIATES OR SUBSIDIARIES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SHAREHOLDERS, REPRESENTATIVES, SUPPLIERS OR CONTENT OR SERVICE PROVIDERS BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION. DIRECT. INDIRECT. COMPENSATORY, SPECIAL, INCIDENTAL. PUNITIVE AND CONSEQUENTIAL DAMAGES EVEN IF MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION UNDER CONTRACT, NEGLIGENCE OR OTHER Report EXN SC A Ver. Date: 01-NOV-2012 Exhibit N - Page 5 of 7

THEORY, ARISING OUT OF OR IN CONNECTION WITH THE USE, INABILITY TO USE OR PERFORMANCE OF THE SITE AND/OR ANY MATERIALS, PRODUCTS OR SERVICES AVAILABLE AT THE SITE.

Subscriber specifically acknowledges and agrees that Textura is not liable for any defamatory, offensive or illegal conduct of any User or Subscriber of the Textura® CPM System.

If Subscriber is dissatisfied with this site or any materials contained in this site, or with these terms and conditions, Subscriber's sole and exclusive remedy is to discontinue use of this site.

Subscriber agrees and acknowledges that no relationship other than that of independent contractor is established between Subscriber and Textura by either use of the Textura® CPM System or by agreement with these Terms and Conditions. Subscriber is not an employee, agent, joint venturer or partner of or with Textura, and neither use of the Textura® CPM System nor agreement with these Terms and Conditions create any agency between Subscriber and Textura. No party shall represent to any third party that it is the employee, agent, joint venturer or partner of the other or make any representation or warranty on behalf of or in the name of the other or conduct any business or accept payment or service of legal process for the other.

TEXTURA'S AGGREGATE LIABILITY (INCLUDING LEGAL FEES) TO SUBSCRIBER, IF ANY, FOR ANY CLAIM WHATSOEVER, SHALL IN NO EVENT EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID TO TEXTURA BY SUBSCRIBER FOR USE OF THE TEXTURA® CPM SYSTEM IN CONNECTION TO WHICH THE APPLICABLE CLAIM AROSE.

TEXTURA SHALL HAVE NO LIABILITY WHATSOEVER FOR OR IN CONNECTION WITH THE ACTIONS OR OMISSIONS OF ANY SUBSCRIBER OR USER, THEIR USE OF THE TEXTURA® CPM SYSTEM, OR THEIR FAILURE TO COMPLY WITH APPLICABLE LAWS INCLUDING APPLICABLE CONSTRUCTION LIEN LEGISLATION.

### THIRD PARTY LINKS AND FRAMES:

Textura may provide links to websites operated by third parties. Textura makes no representations whatsoever about any third party websites that you may access through this site. Textura is not responsible for the privacy practices or the content of such websites. Textura prohibits the framing of any materials available through this site. Textura reserves the right to disable any unauthorized frames and specifically disclaims any responsibility for the contents of any other websites linked to this site.

### SUBSCRIBER WARRANTIES AND INDEMNITY:

Subscriber warrants and represents that all information submitted by Subscriber through the Textura® CPM System is accurate, and that Subscriber has taken reasonable steps to ensure the accuracy of such information. Subscriber agrees to indemnify, defend, and hold harmless Textura, its officers, directors, employees, agents, shareholders, representatives, suppliers and content and service providers from and against all losses, expenses, damages and costs, including reasonable attorneys fees, resulting from any violation of these terms and conditions or any activity related to the use of this site by Subscriber or Subscriber's Users.

### ABOUT THESE TERMS AND CONDITIONS:

Textura reserves the right to change, alter or modify these terms and conditions for any reason at any

time without prior notice. When we do so, changes in these terms and conditions will posted on our site and will be effective immediately. If you are a regular visitor to this the Textura® CPM System, we recommend that you check these terms and conditions on a regular basis.

These Website Terms and Conditions of Use and Privacy Policy shall be governed by and construed in accordance with the laws of the United States of America and the State of Illinois, without giving effect to any principles of conflicts of law. If any portion of any provision of these Website Terms and Conditions of Use and Privacy Policy shall be deemed unlawful, void or for any reason unenforceable, then that provision or portion thereof shall be deemed severable from the remainder and shall not affect the validity and enforceability of any remaining provisions. By agreeing to these Terms and Conditions of Use you are consenting to jurisdiction in the State of Illinois. Any dispute related to Subscriber's use of the Textura® CPM System shall be venued in the state courts located in Lake County, Illinois or the United States District Court for the Northern District of Illinois. The Textura® CPM System website content is maintained by Textura Corporation located at 1405 Lake Cook Road, Deerfield, IL 60015. We can be reached by e-mail at: customerservice@texturacorp.com.

© 2005-2010 Textura Corporation. All rights reserved.

End of Exhibit N

# EXHIBIT P

# DESIGN TERMS AND CONDITIONS

### Walsh Construction Company II, LLC

Owner Number: 2563 "Project": UKHC Cancer Treatment Center/Ambulatory Surgery Center - Precon Walsh Construction Company II, LLC Project No. 223026

### Article 1 - General

### 1.1 General

1.1.1 Contractor has contracted with Owner to provide the services necessary for the design and construction of the Project or a portion thereof as set forth in the Subcontract Agreement. Subcontractor, through itself, design consultants and sub-subcontractors, agrees to provide all design, construction and other aspects of the Work consistent with the Contract Documents. Contractor and Subcontractor agree that to the extent applicable to the design of the Work hereunder, Subcontractor shall have the same responsibilities and obligations as to Contractor as Contractor by the Owner Contract has to Owner, except as may be modified herein.

1.1.2 Subcontractor acknowledges that the documents included with this Subcontract are incomplete and represent only the design intent. As such the pricing included with this Subcontract reflects the work required for a complete and operational system in accordance with the intent of the Contract Documents and the Owner Contract. The pricing included within this Agreement includes the final scope reflective and required of the Contract Documents and is not subject to any change order between Contractor and Subcontractor unless said changes are made by Owner or directly by Contractor after notice from Subcontractor. Subcontractor will coordinate throughout the design process with Contractor's design team and provide input and recommendations related to the final design to be submitted and constructed in accordance with the requirements of the Contract Documents. It remains the responsibility of Subcontractor to coordinate the final design requirements reflective of the pricing and scope of Subcontractor's Work included with this Subcontract.

1.2 Basic Definitions. Terms used in this Agreement shall have the meanings set forth in the Contract Documents unless otherwise provided herein, with the following specific terms defined as follows:

1.2.1 Agreement refers to the executed subcontract between Contractor and Subcontractor and all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

1.2.2 Contract Documents are defined in the Agreement.

1.2.3 Owner Contract refers to the contract between Contractor and Owner for the design and construction of the Project and all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

1.2.4 Hazardous Conditions are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.5 Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.6 Sub-Subcontractor is any person or entity retained by Subcontractor as an independent contractor to perform a portion of the construction or design aspects of Subcontractor's Work and shall include materialmen and suppliers.

### Article 2 - Subcontractor's Services and Responsibilities

2.1 Subcontractor shall promptly report to Contractor any errors, inconsistencies, omissions, or violations of Legal Requirements Subcontractor discovers in the Contract Documents. Subcontractor shall be liable to Contractor for any damages resulting from any such errors, inconsistencies, omissions, or violations of Legal Requirements which Subcontractor discovers and fails to report to Contractor.

2.2 Subcontractor shall, consistent with applicable state licensing laws, provide the architectural, engineering and other design professional services required to perform the Work. Subcontractor agrees that such services shall be provided through qualified, licensed design professionals who are either (i) employed by Subcontractor or (ii) procured by Subcontractor from qualified, licensed design consultants.

2.3 Subcontractor shall not engage the services of any design consultant without first obtaining the approval of Contractor, which approval shall not be unreasonably withheld. Subcontractor agrees that each design consultant shall be fully bound to Subcontractor in the same manner as Subcontractor is bound to Contractor for all the requirements of the Contract Documents which are applicable to the design consultant's scope of services. Subcontractor shall at all times be responsible for the services performed by its design consultants, and shall coordinate the services of its design consultants to satisfy Subcontractor's obligations under the Contract Documents.

Nothing in this Agreement shall relieve Subcontractor from responsibility for the services performed by its design consultants, or create any legal or contractual relationship between Contractor and any design consultant.

2.4 The standard of care for all design professional services performed by Subcontractor and its design consultants pursuant to this Agreement shall be as stated in the Contract Documents or in the absence thereof, the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. The Subcontractor implicitly warrants that its design will be sufficient to construct its Work. Notwithstanding the preceding sentences, if the Contract Documents contain specifically identified performance standards for aspects of the Services, Subcontractor agrees that all Services shall be performed to achieve such standards.

2.5 Subcontractor shall assist Contractor regarding the selection of building systems, materials, and

equipment, as well as cost, schedule, and construction feasibility assistance, for the Work. Such assistance shall include providing advice relative to, among other things, labor availability, construction costs, procurement strategies (including scheduling the procurement of items with long-lead times) related to the requirements set forth in the Contract Documents for the Work.

2.6 In accordance with the times set forth in the Contract Documents (including the Project schedule), Subcontractor shall submit to Contractor all interim design submissions and revisions for the Work as required by the Contract Documents. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. The submissions shall also show the relationship of the Work to the overall Project design. Contractor and Subcontractor agree that prior to the scheduled date for submitting all design

submissions to Owner, Contractor, Subcontractor and designer (if not otherwise employed by Contractor) will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Contractor's budget and pricing assumptions.

2.7 In accordance with the Contract Documents and with the times set forth in the Project Schedule, Subcontractor shall submit to Contractor construction documents setting forth in detail drawings and specifications describing the requirements for construction

of the Work, and showing the relationship of the Work to the overall Project. The construction documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting.

Subcontractor shall provide the construction documents in the form and quantity called for in the Contract Documents. Subcontractor shall perform agreed upon revisions and submit revised construction documents to Contractor for Contractor's and Owner's approval.

2.8 If requested by the Contractor, Subcontractor shall attend and participate in such meetings as are held between and among Owner, Contractor and designer (if not otherwise employed by Contractor) to discuss interim design submissions and the construction documents for the Work. If requested, Subcontractor shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Contractor and provided to all attendees for review.

2.9 In addition to the interim design submissions and construction documents, if requested by Contractor, Subcontractor shall prepare (i) those design documents and pricing information for the Work that may be necessary for the establishment of a guaranteed maximum exhibit or guaranteed maximum proposal and (ii) interim design submissions and Construction Documents for the Work required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.10 Contractor's and Owner's approvals of interim design submissions and the construction documents are for the purpose of mutually establishing a conformed set of construction documents for the Work compatible with the requirements of the Contract Documents. The review and/or approval by either Contractor or Owner of any interim design submission or the construction documents shall not be deemed to transfer any design liability from Subcontractor to Contractor or Owner.

2.11 Subcontractor will, at its own cost, revise any interim design submission or construction document

it has provided to correct any errors, mistakes or omissions. Such revisions shall be performed timely and so as not to jeopardize the Project Schedule.

### 2.12 Government Approvals and Permits

2.12.1 Subcontractor shall obtain and pay for the necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work as set forth in the Contract Documents.

2.12.2 Subcontractor shall provide reasonable assistance to Contractor in obtaining those permits, approvals and licenses, if any, that are the responsibility of Owner or Contractor and related to the Work.

2.12.3 Subcontractor shall make any revisions to the construction documents necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the construction documents to meet Legal Requirements.

### Article 3 - Contractor's Services and Responsibilities

3.1 Contractor shall provide timely reviews and approvals of all interim design submissions, construction documents and submittals, consistent with the turnaround times set forth in the Project Schedule, or as agreed to by the parties.

3.2 Unless expressly stated to the contrary in the Contract Documents, and to the extent Contractor has received such items from Owner, Contractor shall, upon request, provide for Subcontractor's information the items listed below. Contractor does not warrant the accuracy or completeness of such items provided, however, that Subcontractor is entitled to rely on these items to the same extent Contractor is entitled to rely upon such items in the Owner Contract:

3.2.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable Subcontractor to perform the Work;

3.2.4 A legal description of the Site;

3.2.5 As-built and record drawings of any existing structures at the Site;

3.2.6 Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;

3.2.7 Contract Documents;

3.2.8 All permits, approvals, and licenses set forth in the Owner's Permit List attached as an exhibit to the Owner Contract; and

3.2.9 Test and inspection reports.

3.3 Upon Subcontractor's reasonable request, Contractor shall provide Subcontractor with information in Contractor's possession regarding Owner's financial ability to pay for the Work set forth in this Agreement.

3.4 Contractor shall provide Subcontractor with the Project Schedule and appropriate updates thereto.

3.5 Contractor shall, upon request of Subcontractor, provide Subcontractor with interim design documents and construction documents for portions of the Project that are not being designed by Subcontractor.

3.6 Contractor shall obtain those permits, approvals and licenses that are not required to be provided by Owner pursuant to the Owner Contract or by Subcontractor. Contractor shall provide reasonable assistance to Subcontractor in obtaining those permits, approvals and licenses that are Subcontractor's responsibility.

3.7 Contractor shall notify Subcontractor of any errors, inconsistencies, or omissions Contractor discovers in the Work. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall relieve Subcontractor of responsibility for errors, inconsistencies, or omissions in the Work.

3.8 Contractor shall, as Contractor deems appropriate, afford Subcontractor and its Sub-Subcontractors the opportunity to attend all necessary design meetings with Owner, Designer or others furnishing portions of the design for the Project.

3.9 Owner, through Contractor, shall review and approve submittals, including shop drawings, product data and samples, submitted by Subcontractor in accordance with the Contract Documents.

### Article 4 - Ownership and Use of Documents

4.1 Ownership and use of the design and construction plans, drawings, specifications and other documents furnished by the Subcontractor shall be as stated in the Contract Documents.

4.2 If not addressed in the Contract Documents, the design and construction plans, drawings, specifications and other documents furnished by the Subcontractor shall be considered Work Made for Hire under the Copyright Act of 1976, 17 U.S.C. 101, and ownership of the entire right, title and interest in all such documents furnished by the Subcontractor, including, but not limited to any copyrights therein, shall reside in the Owner. If any document(s) cannot be considered a work made for hire under 17 U.S.C. 101, then the parties agree that the entire right, title and interest in the documents, including, but not limited to any copyrights therein, the right to register and renew the copyrights throughout the world, and the right to use the documents in any manner whatsoever, shall be and hereby are assigned by Subcontractor to the Owner. Subcontractor warrants and represents that all persons who produce or create all or a portion of the documents at the direction of Subcontractor will do so in the course of their employment with Subcontractor, or alternatively, pursuant to written agreements with Subcontractor, confirming and effecting an assignment of all rights in and to the documents, including but not limited to any copyrights therein, to the Owner. Subcontractor shall provide the Contractor with copies of all such written agreements immediately upon execution.

### Article 5 - Insurance

5.1 Subcontractor's and its design consultants and Sub-Subcontractors' insurance coverage set forth in the Contract Documents shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build nature of the Project.

5.2 To the extent Contractor requires Subcontractor to provide professional liability insurance for claims arising from the negligent performance of design services by Subcontractor, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Contract Documents. Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build nature of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

End of Exhibit P