

SUBCONTRACT AGREEMENT

PARTIES:

CONTRACTOR: JOHN HYLAND CONST., INC.
P.O. Box 7867
Springfield, OR 97475
Telephone: (541) 726-8081

SUBCONTRACTOR:

Telephone:

Fax: _____

E-mail Address: _____

Federal Taxpayer's I.D. No.: _____

State Taxpayer I.D. No.: _____

Contractor's License No.: _____

DATE: November 22, 2013

RECITALS:

A. Contractor has entered into a contract for construction (the Contract):

Dated:

1. With the Owner:

2. For the following Project (Name & Location):

ARTICLE II - SUBCONTRACTOR'S DUTIES

- 2.1 Performance of Work. Subcontractor shall furnish all supervision, labor, materials, equipment and services necessary for the performance of the Work.
- 2.2 Time of Performance. Subcontractor shall prosecute the Work in a prompt and diligent manner at such time or times as Contractor may direct, so as to cause no delay in the Work or in the activities of the Contractor, other subcontractors, Owner or other persons or entities involved in the construction of the Project.
- 2.3 Standard of Performance. Subcontractor shall perform the Work under the general direction and supervision of Contractor, Owner and Owner's representatives, and shall comply with instructions given by Contractor, Owner and Owner's representatives. Subcontractor shall perform the Work in a proper, efficient and workmanlike manner, and in strict accordance with the Subcontract Documents. Subcontractor shall adequately and continuously supervise its employees, agents and sub-subcontractors, and shall provide sufficient labor, materials, equipment and services, as reasonably determined by Contractor from time to time, to meet Contractor's construction schedule for the Project. The Work will be free from defects not inherent in the quality required or permitted. Materials and equipment furnished by Subcontractor will be good quality and new unless otherwise required or permitted by the Subcontract Documents, and shall be furnished in sufficient time to enable Subcontractor to perform and complete the Work promptly in accordance with the Subcontract Documents. Labor, materials, equipment or services not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective, and may be rejected by Contractor, Owner or Owner's representatives. Subcontractor shall immediately remove from the Project any person, material or equipment determined by Contractor to be inadequate or inappropriate for performance of the Work.
- 2.4 Acceptance of Prior Activities. If any portion of the Work depends upon prior performance of any other activities of Contractor, other subcontractors, Owner or any other person or entity involved in the construction of the Project, then commencement of such portion of the Work by Subcontractor shall be deemed an acceptance of the adequacy and completeness of such other activities.
- 2.5 Cooperation. Subcontractor shall prosecute the Work so as to promote the general progress of the Project, and shall otherwise cooperate with Contractor in scheduling and performing the Work to avoid delay in or interference with the activities of Contractor, Subcontractor, other subcontractors, Owner or other persons or entities involved in construction of the Project. Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by Contractor, specifically noting and advising Contractor of potential conflicts between the Work and activities of others.
- 2.6 Protection of Project. Subcontractor shall fully protect all portions of the Work, including all materials and equipment to be furnished in connection with the Work, until the Work is fully completed and accepted by Contractor and Owner. Until that final acceptance, all risk of loss with respect to the Work shall remain with Subcontractor. Subcontractor will make good or replace, at no expense to Contractor or Owner, any damage to the Work which occurs prior to that final acceptance. Subcontractor shall take necessary precautions to protect the activities of Contractor, other subcontractors, Owner and other persons and entities involved in construction of the Project, from damages caused by performance of the Work or other operation of Subcontractor.
- 2.7 Compliance with Laws. Subcontractor shall comply with all applicable federal, state and local laws, ordinances, rules, regulations and orders affecting the Work or Subcontractor. Specifically, but without limitation:
 - 2.7.1 Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper performance of the Work.
 - 2.7.2 Subcontractor shall comply with all tax laws, social security acts, unemployment compensation acts, workers' compensation acts, occupational safety and health acts and laws governing wage rates payable in connection with the Project.
 - 2.7.3 Subcontractor shall give all required notices.

- 2.7.4 In the event such laws, regulations, ordinances or orders require this agreement to contain certain provisions, then all of those required provisions are incorporated into this agreement by reference, and Subcontractor shall comply with those provisions.
- 2.8 Safety. Subcontractor shall take reasonable safety precautions with respect to performance of the Work, shall comply with safety measures set forth in the Contract Documents or initiated by the Contractor or Owner, and shall comply with all applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property. Specifically, but without limitation:
- 2.8.1 Subcontractor shall provide such warning signs, signals, lights barricades, fences, shoring, cribbing, traffic control and other safety precautions that are reasonably necessary for the protection of persons and property.
- 2.8.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site in connection with the Work, the Subcontractor shall, prior to harmful exposure of any person on the site to such substance, give written notice of the chemical composition of such substance to Contractor in sufficient detail and time to permit compliance with such laws by Contractor, other subcontractors, Owner and other persons and entities involved in construction of the Project.
- 2.8.3 If Subcontractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless Subcontractor shall immediately report the condition to Contractor in writing.
- 2.8.4 Subcontractor shall immediately report to Contractor any injury to an employee or agent of Subcontractor which occurs at the site.
- 2.9 Clean Up. Subcontractor shall keep the site and surrounding area free from accumulation of waste materials or rubbish caused by performance of the Work, and shall otherwise perform the Work in a manner that keeps the site and the surrounding area in a clean and orderly condition. Upon completion of the Work, Subcontractor shall remove from the site and dispose of all equipment, materials, waste materials, and rubbish remaining from performance of the Work.
- 2.10 Submittals. Subcontractor shall promptly submit shop drawings, product data, samples, schedules, and similar submittals required by the Subcontract Documents, and such modified submittals as may be reasonably required by Owner or Contractor, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor, other subcontractors, Owner, or other persons or entities involved in the construction of the Project.
- 2.11 Schedule of Values. From time to time, upon request of Contractor, Subcontractor shall submit to Contractor a schedule of values allocated to the various parts of the Work, aggregating the Price, made out in such detail as reasonably required by Contractor, Owner or Owner's representatives, and supported by such evidence as Contractor, Owner or Owner's representatives may reasonably direct. Unless objected to by Contractor, this schedule, as revised from time to time, shall be used as a basis for reviewing the Subcontractor's application for payment.
- 2.12 Schedule of Costs. From time to time, upon request of Contractor, Subcontractor shall submit to Contractor a detailed breakdown of the costs of construction allocated to the various parts of the Work, made out in such detail as reasonably required by Contractor, Owner or Owner's representatives, and supported by such evidence as Contractor, Owner or Owner's representatives may reasonably direct. In the event that Subcontractor becomes aware of any change in construction costs which would increase the total cost of construction of the Work shown on the cost breakdown, then Subcontractor shall immediately submit to Contractor a revised cost breakdown. Unless objected to by Contractor, this schedule, as revised from time to time, shall be used as a basis for determining whether the remaining cost of performing the Work exceeds the unpaid balance of the Price.
- 2.13 Schedule of Participants. From time to time, upon request of Contractor, Subcontractor shall submit to Contractor a complete schedule of all persons or entities who have or are scheduled to furnish labor, materials, equipment or services in connection with the Work, and true and correct copies of all contracts with such persons and entities. Each schedule shall contain such information as reasonably required by Contractor, specifically including but not limited to the name, address

and telephone number of each such person or entity; an estimate of the total amount that will be paid to each such person or entity in connection with the Work; the amount paid to each such person or entity as of the date of the schedule; and the amount owing to each such person or entity as of the date of the schedule. Contractor may contact any such person or entity to verify any fact relating to the Work, and all contracts with any such persons or entities must require the disclosure of such information to Contractor.

- 2.14 Accounting; Change in Conditions. Subcontractor will keep true and correct books and records on a cash basis for the performance of the Work, and will maintain adequate reserves for all contingencies. If required by Contractor, Subcontractor will submit to Contractor at such times as Contractor requires a statement which accurately shows the application of all funds expended by Subcontractor to date in connection with the Work and the source of those funds, as well as the Subcontractor's best estimate of the funds needed to complete the Work and the source of those funds. Subcontractor will promptly supply Contractor with any financial statements or other information concerning its affairs as Contractor may reasonably request, and will promptly notify the Contractor of any material adverse change in its financial condition or in the physical condition of the Work.
- 2.15 Progress Reports. From time to time, upon request of Contractor, Subcontractor shall furnish to Contractor, in a form acceptable to Contractor, progress reports on the Work, including information on the status of materials and equipment which may be in the course of preparation or manufacture.
- 2.16 Payments by Subcontractor. Except as otherwise provided in the Subcontract Documents, Subcontractor shall immediately pay in full all payrolls, bills for material and equipment, and all other indebtedness connected with portions of the Work that are covered by progress payments received from Contractor.
- 2.17 Purchase of Materials. No materials, equipment, or articles of personal property purchased by Subcontractor for incorporation into the Work shall be purchased or installed under any security agreement or other agreement where the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider those items personal property after their incorporation into the Project, unless authorized by Contractor and Owner in writing.
- 2.18 Adequate Assurances. Upon request by Contractor, Subcontractor shall furnish to Contractor such evidence as Contractor may require relating to Subcontractor's ability to fully perform the Work in the manner and within the time specified herein.
- 2.19 Labor. Subcontractor shall comply with and be bound by any labor agreements executed by Contractor or on Contractor's behalf to the extent that the provisions of such agreements apply to subcontractors. Contractor is an equal opportunity employer, and complies with all of the requirements of applicable law and the Contract Documents concerning equal employment opportunity, nondiscrimination and affirmative action in hiring policies. Subcontractor shall comply with all requirements of applicable law and Subcontract Documents concerning equal employment opportunity, nondiscrimination and affirmative action in hiring policies. Specifically, but without limitation, if applicable to the Project, subcontractor shall comply with Executive Orders 11246, 11701 and 11758; 41 CFR 60-1.4 (Equal Opportunity Clause); and all laws and regulations relating to the utilization of Small Business Concerns, Small Disadvantaged Business Concerns and Women and Minority Business Concerns; all of which are incorporated into this agreement by reference.
- 2.20 Payment and Performance Bond. Upon Contractor's request, Subcontractor will obtain and contractor will pay for a performance of labor and material payment bond in an amount equal to the Price, for the benefit of Contractor and Owner, and in a form and with a surety acceptable to Contractor, covering the performance of Subcontractor under the Subcontract Documents.
- 2.21 Insurance **See also Minimum Insurance Requirements - Attachment A.**
- 2.21.1 Subcontractor agrees to obtain and continuously maintain during the period this Subcontract Agreement remains in force, such insurance as is required by the Contract and Contract Documents and is required by law, or as Contractor and / or Owner considers necessary for the proper protection of the parties and the public, in form satisfactory to Owner and Contractor. Unless greater insurance coverage is required under the preceding sentence, Subcontractor shall provide and maintain the Minimum Insurance Coverage.

- 2.21.2 Subcontractor shall pay all premiums and costs in connection with all insurance subcontractor shall be required to furnish.
- 2.21.3 Contractor may, at its option, place insurance of the character and nature described above to cover the operations of Subcontractor. Subcontractor shall reimburse Contractor for all premiums and costs in connection with insurance furnished by Contractor.
- 2.21.4 Subcontractor shall require all insurance companies issuing any policies of insurance to Subcontractor which Subcontractor is required to procure hereunder, to certify to Contractor and to Owner in writing that such policies have been issued and are in force and will not be canceled or annulled except upon ten (10) days' notice in writing to Contractor and Owner. Subcontractor shall not cancel any policies of insurance required hereunder either before or after completion of the Work, without the written consent of Contractor.
- 2.22 Guaranty of Work. Subcontractor shall guarantee the Work to the same extent that Contractor is obligated to guarantee its work under the Contract Documents, and shall promptly furnish any warranties or guarantees required by the Contract Documents, in a form satisfactory to the Contractor and Owner.
- 2.23 Obligations Under Contract Documents. Subcontractor assumes toward Contractor all obligations and responsibilities that Contractor assumes toward Owner under the Contract Documents, to the extent those obligations and responsibilities apply to the Work.

ARTICLE III - CONTRACTOR DUTIES

- 3.1 Payment. Contractor shall make payments to Subcontractor in accordance with Article IV.
- 3.2 Cooperation. Contractor shall cooperate with Subcontractor in scheduling and performing the Work to avoid conflicts, delay in or interference with the Work.
- 3.3 Information. Contractor shall make available to Subcontractor information which affects the Work and which becomes available to Contractor subsequent to execution of this agreement.
- 3.4 Subcontractor's Employees. Contractor shall not give instructions or orders directly to employees or workers of Subcontractor, except to persons designated as authorized representatives of Subcontractor.
- 3.5 Subcontract Documents. Upon request, Contractor shall furnish Subcontractor with copies of the Subcontract Documents, but Contractor may charge Subcontractor for the cost of reproduction.
- 3.6 Scheduling. Contractor shall provide Subcontractor with copies of Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will assist Subcontractor in planning and performing the Work properly. Contractor shall notify Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.
- 3.7 Contractor's Equipment. Contractor's equipment will be available to Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

ARTICLE IV - PAYMENTS TO SUBCONTRACTOR

- 4.1 Applications for Payment.
- 4.1.1 Contractor shall make progress payments and a final payment on the Price to Subcontractor based upon applications for payment submitted by Subcontractor to Contractor, corresponding to applications for payment submitted by Contractor to Owner or Owner's representatives.
- 4.1.2 The period covered by each application for payment shall be one (1) calendar month ending on the date of the month specified by Contractor from time to time.

- 4.1.3 Provided an application for payment is received by Contractor by the deadline specified by Contractor from time to time, the Contractor shall include that portion of the Work covered by the application in the next application for payment which the Contractor is entitled to submit to the Owner or the Owner's representatives. If an application for payment is received by the Contractor after that deadline, the portion of the Work covered by the application shall be included by the Contractor in the next application for payment submitted by the Contractor to the Owner or the Owner's representatives.
- 4.1.4 Each application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with Section 2.11.
- 4.1.5 Applications for payment submitted by Subcontractor shall indicate the percentage of completion of each portion of the Work at the end of the period covered by the application for payment.
- 4.2 Time for Payment. If all conditions to payment have been fulfilled, the Contractor shall pay Subcontractor each payment within three (3) working days after Contractor receives payment from the Owner for that portion of the Work included in Subcontractor's application for payment.
- 4.3 Amount of Progress Payments. Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:
 - 4.3.1 Take that portion of the Price properly allocable to completed work as determined by multiplying the percentage completion of each portion of the Work by the share of the total price allocated to that portion of the Work in the schedule of values;
 - 4.3.2 Add that portion of the Price properly allocable to materials and equipment delivered and suitably stored at the site by Subcontractor for subsequent incorporation into the Work or, if approved in advance by Contractor and Owner, suitably stored off the site at a location agreed upon in writing;
 - 4.3.3 Subtract from the sum of the amounts specified in subsections 4.3.1 and 4.3.2, above, the applicable percentage Retainage, as set forth in Section 4.4;
 - 4.3.4 Subtract the aggregate of previous payments made by Contractor; and
 - 4.3.5 Subtract amounts, if any, which are related to the Work for which the Owner has withheld payment from Contractor.
- 4.4 Retainage. The applicable percentage of Retainage is the greater of five percent (5%) or the percentage withheld by Owner from Contractor from time to time under the Contract Documents with respect to the Work. Retainage will be retained by Contractor until the final payment conditions set forth in section 4.7 have been fulfilled.
- 4.5 Progress Payment Conditions. The Contractor is not required to make a progress payment to Subcontractor until all of the following conditions are satisfied:
 - 4.5.1 The Work is proceeding diligently, in a proper, efficient and workmanlike manner, and in strict accordance with the Subcontract Documents.
 - 4.5.2 Subcontractor submits evidence satisfactory to Contractor that all payrolls, bills for materials and equipment, and all other indebtedness connected with that portion of the Work covered by prior progress payments have been paid in full.
 - 4.5.3 Subcontractor has delivered to Contractor separate executed lien releases, satisfactory to Contractor, with respect to all portions of the Work covered by prior progress payments.
 - 4.5.4 Subcontractor has delivered to Contractor separate executed lien releases, satisfactory to Contractor, with respect to all portions of the Work covered by pending applications for payment, which lien releases may be conditional upon payment.
 - 4.5.5 Any surety has consented to the payment.
 - 4.5.6 Making the payment does not cause the cost of completing the Work to exceed the

unpaid balance of the Price.

- 4.5.7 Subcontractor is not in default under the Subcontract Documents.
- 4.5.8 Owner has paid Contractor for that portion of the Work covered by Subcontractor's application for payment.
- 4.6 Amount of Final Payment. The final payment shall equal the entire unpaid balance of the Price.
- 4.7 Final Payment Conditions. The Contractor is not required to make final payment to Subcontractor until all of the following conditions are satisfied:
 - 4.7.1 The Work is fully performed strictly in accordance with the requirements of the Subcontract Documents, and has been accepted by Contractor and Owner.
 - 4.7.2 Subcontractor submits evidence satisfactory to Contractor that all payrolls, bills for materials and equipment, and all other indebtedness connected with the Work have been paid in full.
 - 4.7.3 Subcontractor has delivered to Contractor separate executed lien releases, satisfactory to Contractor, with respect to all portions of the Work.
 - 4.7.4 Any surety has consented to the payment.
 - 4.7.5 Subcontractor is not in default under the Subcontract Documents.
 - 4.7.6 Contractor has received full payment from the Owner with respect to the Work.
- 4.8 Waiver of Payment Conditions. Any waiver by Contractor of any condition of payment must be expressly made in writing. The making of a payment prior to fulfillment of one or more conditions shall not be construed as a waiver of such conditions, and Contractor reserves the right to require their fulfillment prior to making any subsequent payments.
- 4.9 Disbursement of Payments.
 - 4.9.1 Contractor, in Contractor's sole discretion, may disburse payments:
 - 4.9.1.1 Directly to Subcontractor;
 - 4.9.1.2 By joint check or directly to any person or entity that furnished labor, materials, equipment or services in connection with the Work;
 - 4.9.1.3 By joint check or directly to any other person or entity to whom Subcontractor is indebted in connection with the Work; or
 - 4.9.1.4 By setting off amounts owing to Subcontractor against any amounts that are or will become due from time to time to Contractor in connection with the Work, or otherwise.
 - 4.9.2 Payments made directly to Subcontractor shall be used by Subcontractor first to pay all sums owing by Subcontractor in connection with the Work.
 - 4.9.3 All payments will be considered to have been advanced to and received by Subcontractor upon disbursement as described in Section 4.9.1.
- 4.10 Nonpayment by Owner. As set forth above, the right of Subcontractor to receive any payment from Contractor with respect to any portion of the Work is expressly conditioned upon Contractor's receipt of payment from Owner with respect to that portion of the Work. Subcontractor expressly assumes the risk of nonpayment by Owner to Contractor, regardless of the cause for such nonpayment.
- 4.11 Effect of Payment. Payment for or acceptance of any portion of the Work shall not constitute a waiver of any claim Contractor or Owner may have against Subcontractor, specifically including, but not limited to, any claim under Article VII. As between Contractor and Subcontractor, all portions of the Work covered by any payment (specifically including, but not limited to, stored materials) shall be the sole property of Contractor. Final payment shall fully discharge all obligations of

Contractor and Owner to Subcontractor in connection with the Project, specifically including but not limited to all obligations under the Subcontract Documents.

ARTICLE V - CHANGES IN THE WORK

- 5.1 Changes by Owner. Owner may make changes in the Work by issuing modifications to the Contract Documents. Upon receipt of such a modification issued subsequent to the execution of this agreement, Contractor shall promptly notify Subcontractor of the modification. Unless otherwise directed by Contractor, Subcontractor shall not thereafter order labor, materials, equipment or services which would be inconsistent with the changes made by the modification.
- 5.2 Changes by Contractor. Subcontractor may be ordered in writing by Contractor, without invalidating this agreement, to make changes in the Work within the general scope of this agreement consisting of additions, deletions or other revisions, including those required by modifications to the Contract Documents issued subsequent to the execution of this agreement.
- 5.3 Adjustments; Damages. Upon any change in the Work, or if Subcontractor's performance of the Work is delayed or interfered with by acts of Contractor, other subcontractors, Owner, or any other person or entity involved in the construction of the Project, then either party may submit to the other a written claim for adjustment to the Price or the time for performance, or for damages. However, Subcontractor shall not be entitled to any increase in the Price or extension of the time for performance, or to damages, as a consequence of any changes, delays or interferences, except to the extent that the Contract Documents entitle Contractor to increases, extensions and damages, and then only to the extent of any increases, extensions or damages that Contractor may, on behalf of Subcontractor, recover from Owner as a result of such changes, delays or interference. Specifically, but without limitation, Subcontractor waives any claim against Contractor for increases, extensions or damages as a result of any changes, delays or interference, except to the extent the same is allowed to Contractor by Owner.
- 5.4 Subcontractor Claims. Subcontractor shall make claims promptly to Contractor for adjustments and damages resulting from changes, delays, interference or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Contract Documents within a specified time period or in a specified manner shall be made in sufficient time to permit Contractor to satisfy the requirements of the Contract Documents. Such claim shall be received by Contractor not less than five (5) working days before the time when Contractor's claim must be made. Failure of Subcontractor to make such a timely claim shall bind Subcontractor to the same consequences as those to which the Contractor is bound.
- 5.5 Continuation of Work. The fact that a claim for adjustment of the Price or the time for performance or for damages has not been resolved shall not be grounds for Subcontractor discontinuing performance of the Work. Upon direction from Contractor, Subcontractor shall proceed with the Work or any changed Work.
- 5.6 Avoidable Delays and Interference. Notwithstanding anything in this agreement to the contrary, no claim shall be made by Subcontractor when Subcontractor, by the exercise of reasonable diligence and judgment, could have anticipated and avoided the delay or interference.

ARTICLE VI - INSPECTION

- 6.1 Contractor, Owner and Owner's representatives shall have the right at any reasonable time to inspect the Work and all other matters relating to the Work. Contractor, Owner and Owners representatives will also have the right to examine, copy and audit the books, records, accounting data and other documents of Subcontractor relating to the Work. If Contractor, in good faith, determines that any portion of the Work does not conform to the Subcontract Documents, or otherwise departs from any of the requirements of this agreement, Contractor may require Subcontractor to immediately correct the Work. In such an event, Subcontractor will correct the Work to Contractor's satisfaction. No such action by Contractor will affect the Subcontractor's obligation to complete the Work promptly in accordance with the Subcontract Documents. Neither Contractor Owner nor Owner's representatives are under any duty to supervise or inspect the Work or examine any books and records. Any

inspection or examination by Contractor, Owner or Owner's representatives is for the sole purpose of protecting and preserving the rights of Contractor, Owner and Owner's representatives. No default of Subcontractor will be waived by any inspection. In no event will any inspection be a representation that there has been or will be compliance with the Subcontract Documents or that the Work is free from defective materials or workmanship.

ARTICLE VII - INDEMNIFICATION

- 7.1 Indemnity. Subcontractor shall indemnify and hold harmless Owner and Contractor, and their respective agents and employees, from any and all loss, liability or expense, including attorney fees, arising out of or resulting from:
- 7.1.1 Performance of the Work, specifically including but not limited to any defective workmanship or materials occurring in the performance of the Work;
 - 7.1.2 Any default by Subcontractor under the Subcontract Documents; and
 - 7.1.3 The acts or omissions of Subcontractor, its agents and employees, and any sub-subcontractor or other independent contractor hired by Subcontractor.
- 7.2 Claims by Employees and Agents. In claims by an employee of Subcontractor, the Subcontractor's sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's sub-subcontractors under worker's compensation acts, disability benefit acts or other employee benefit acts.
- 7.3 Upon demand by the Contractor, the Subcontractor will defend any action or proceeding brought against the Contractor to which Subcontractor's indemnity obligations apply, or the Contractor may elect to conduct its own defense at the expense of Subcontractor.
- 7.4 The provisions of this article will survive the termination of this agreement.

ARTICLE VIII - DEFAULT AND REMEDIES

- 8.1 Default by Subcontractor. Subcontractor will be in default under this agreement if:
- 8.1.1 If Subcontractor fails to begin to correct any portion of the Work that does not conform with the Subcontract Documents within three (3) working days after written notice from Contractor, Owner or Owner's representatives specifying the nonconformity, or if Subcontractor thereafter fails to diligently complete the correction.
 - 8.1.2 If Subcontractor fails to comply with any other covenant contained in the Subcontract Documents and does not cure that failure within the period of time, if any, that Contractor may elect at its discretion to grant in writing to Subcontractor to cure that failure.
 - 8.1.3 If, in Contractor's good faith opinion, Subcontractor is delaying, interfering with or jeopardizing the timely or satisfactory completion of the Project.
 - 8.1.4 If construction of the Work is halted prior to completion for any period of two (2) consecutive working days for any cause which is not beyond the reasonable control of Subcontractor and its sub-subcontractors.
 - 8.1.5 If performance of the Work is abandoned.
 - 8.1.6 If at any time Contractor has reasonable grounds for insecurity with respect to the performance by Subcontractor of its obligations under the Subcontract Documents.
 - 8.1.7 If Subcontractor repudiates the Subcontract Documents with respect to any performance not yet due.
 - 8.1.8 If Subcontractor makes an assignment for the benefit of Subcontractor's

creditors of all or any portion of the assets of Subcontractor; or if Subcontractor proposes or consents to a composition with unsecured creditors of Subcontractor; or if any interest of Subcontractor hereunder is levied upon by legal process or the enforcement of any debt of Subcontractor, individually or jointly; or if Subcontractor becomes insolvent.

- 8.2 Default by Contractor. Contractor will be in default if Contractor fails to comply with any duty owed to Subcontractor under this agreement and does not begin to cure that failure within (5) working days after written notice from Subcontractor specifying the noncompliance, or thereafter fails to diligently correct that failure.
- 8.3 Contractor's Remedies. If Subcontractor is in default under this agreement, Contractor may exercise any right or remedy it has under this agreement or any other Subcontract Documents, or otherwise available at law or in equity or by statute, and all of Contractor's rights and remedies will be cumulative. Contractor's remedies include, but are not limited to, the following:
- 8.3.1 Contractor shall be entitled to recover from Subcontractor any and all damages arising out of Subcontractor's default.
- 8.3.2 In addition to any other damages, Contractor shall have the right to recover from Subcontractor any and all liquidated damages that may be assessed against Contractor which are attributable to or caused by Subcontractor.
- 8.3.3 Contractor may elect to terminate this agreement and any and all interest and claim of Subcontractor by virtue of the Subcontract Documents, and all interest of Subcontractor in the Work. Such termination shall, at the election of Contractor, also terminate any sub-subcontracts by Subcontractor, whether or not Contractor has theretofore consented to such sub-subcontract. If Contractor elects to terminate this agreement, rights and obligations accruing under this agreement at or prior to the effective date of termination shall not be affected.
- 8.3.4 Contractor may elect to complete construction of the Work as an agent for Subcontractor.
- 8.3.5 If Contractor elects to terminate this agreement, or elects to complete construction of the Work as the agent for Subcontractor, Contractor shall have the right in its discretion to take any and all action necessary in its judgment to complete construction of the Work, including but not limited to making changes in the labor, materials, equipment and services furnished in connection with the Work, subject to the Contractor's right at any time to discontinue performance of the Work without liability. Contractor may take possession of all materials, tools and equipment of Subcontractor at the site for the purpose of completing the Work. If Contractor elects to complete the Work, it will not assume any liability to Subcontractor for completing the Work or for the manner or quality of construction of the Work, and Subcontractor expressly waives any such liability. The Subcontractor irrevocably appoints Contractor as its attorney-in-fact, with full power of substitution, to complete the Work in the Subcontractor's name.
- 8.3.6 If Contractor elects to terminate this agreement and complete construction of the Work, then in addition to any other damages, Contractor shall have the right to immediately recover from Subcontractor any amount by which the cost of completing the Work (including a reasonable allowance for overhead and profit) exceeds the unpaid balance of the Price.
- 8.3.7 If Contractor elects to complete the Work as agent for Subcontractor, then in addition to any other damages, Contractor shall have the right to recover from Subcontractor the entire cost of completing the Work (including a reasonable allowance for overhead and profit).
- 8.3.8 Contractor may deduct from any amounts due or to become due Subcontractor any sum or sums owed by Subcontractor to Contractor.
- 8.3.9 Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under the Contract Documents, has against the Contractor.

ARTICLE IX - SUSPENSION OR TERMINATION OF WORK

- 9.1 Suspension by Owner. Should Owner suspend the Project or any part of the Project which includes the Work. Contractor shall notify Subcontractor in writing and upon receipt of such notice Subcontractor shall immediately suspend the Work. In the event of such Owner suspension, Contractor's liability to Subcontractor is limited to the extent of Contractor's recovery on Subcontractor's behalf under the Contract Documents. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension. Contractor shall permit Subcontractor to prosecute said claim, in the name of Contractor, for the use and benefit of Subcontractor or, at Contractor's sole discretion, Contractor shall assign the claim to Subcontractor.
- 9.2 Termination by Owner. Should Owner terminate the Project or any part of the Project which includes the Work, Contractor shall notify Subcontractor in writing and upon receipt of said notice, this agreement shall also be terminated and Subcontractor shall immediately stop the Work. In the event of such Owner termination, Contractor's liability to Subcontractor is limited to the extent of Contractor's recovery on Subcontractor's behalf under the Contract Documents. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination. Contractor shall permit Subcontractor to prosecute said claim, in the name of Contractor, for the use and benefit of Subcontractor or, at Contractor's sole option, Contractor shall assign the claim to Subcontractor.
- 9.3 Termination for Convenience. Contractor may order Subcontractor in writing to suspend, delay or interrupt all or any part of Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of Contractor. In addition, Contractor has the right, at any time, to terminate this agreement with or without cause. If this agreement is terminated for convenience, Subcontractor shall be entitled to be paid a portion of the Price based on the reasonable value of the Work properly performed prior to termination plus reasonable direct close out costs, less progress payments previously made, except that if there is also a termination for convenience of the Contract, termination settlement shall be as provided in the Contract Documents.

ARTICLE X - ASSIGNMENT OF SUBCONTRACT

- 10.1 Assignment by Contractor. In the event of termination of the Contract by Owner, the Contractor may assign this agreement to the Owner, subject to the provisions of the Contract Documents and to the rights of the surety, if any, obligated under bonds relating to the Contract.
- 10.2 Assignment by Subcontractor. This is a personal services contract, and Subcontractor acknowledges that Contractor is relying on the skill and expertise of Subcontractor to perform the Work. Subcontractor shall not assign all or any portion of its rights or obligations under the Subcontract Documents, or assign or subcontract all or any portion of the Work, without the written consent of Contractor. If any portion of the Work is subcontracted, Subcontractor shall cause its subcontractor to assume and fully comply with all obligations of the Subcontractor under the Subcontract Documents.

ARTICLE XI - SUBCONTRACTOR REPRESENTATIONS

- 11.1 Familiarity with Project. Subcontractor represents and warrants that it is fully familiar with:
- 11.1.1 All of the terms and conditions of the Subcontract Documents.
 - 11.1.2 Local and general conditions concerning the Project.
 - 11.1.3 All of the conditions under which the Project is to be performed, including but not limited to:
 - 11.1.3.1 The nature and character of the Project.
 - 11.1.3.2 Availability of labor, materials, equipment and services.
 - 11.1.3.3 Storage, disposal, transportation and utility facilities.

11.1.3.4 Uncertainties of weather and physical conditions at the site of the Project.

11.1.3.5 The risks and hazards inherent in the Project.

11.2 Cost Data. Subcontractor represents that any cost or pricing data furnished to Contractor in connection with the Work (including any changes in the Work) shall be accurate and complete.

11.3 Subcontractor acknowledges that:

11.3.1 This agreement is accepted and executed on the basis of Subcontractor's own examination and personal knowledge of the Project and evaluation of the Work; that no attempt has been made to influence the judgment of Subcontractor; and that except as specifically set forth in the Subcontract Documents, no representation relating to the Project or the Work has been made by Contractor, Owner or any agent of either Contractor or Owner.

11.3.2 Contractor is not an insurer or guarantee of the Project or any part thereof; of the performance by Owner under the Contract Documents; or of the sufficiency of any of the Contract Documents (specifically including, but not limited to, any plans, specifications and drawings).

ARTICLE XII - MISCELLANEOUS

12.1 Conflict in Terms. In the event of any conflict between the terms of this agreement and the terms of the Contract Documents, the terms of this agreement shall govern.

12.2 Time of Essence. Time is of the essence of this agreement.

12.3 Notices. Any notice required or permitted to be given under this agreement shall be deemed given if such notice is mailed with postage prepaid to the address of Contractor or Subcontractor shown on Page 1 of this agreement, or to such other address as either party may designate in writing prior to the time of the giving of such notice.

12.4 Binding Effect. All of the covenants, agreements, conditions and terms contained in this agreement shall be binding upon, apply and inure to the benefit of the successors and assigns of the parties. However, nothing in this paragraph shall be construed as modifying in any way any restrictions on assignment or transfer provided in this agreement.

12.5 Waiver. Any waiver by Contractor must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure by Contractor to take action on account of any default of Subcontractor. Consent by Contractor to act or omission by Subcontractor will not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Contractor's consent to be obtained in any future or other instance.

12.6 Integration. This agreement constitutes a final and complete statement of the agreement between the parties, and fully supersedes all prior agreements and negotiations, written or oral.

12.7 Legal Proceedings. In the event any legal or arbitration proceeding is commenced for the purpose of interpreting or enforcing any provision of this agreement, the prevailing party in such proceeding shall be entitled to recover a reasonable attorney's fee in such proceeding, or any appeal thereof, to be set by the court or arbitrator without the necessity of hearing testimony or receiving evidence, in addition to the costs and disbursements allowed by law.

12.8 Applicable Law. The applicable law for the purpose of interpretation of this agreement, or the enforcement of any rights or obligations hereunder, shall be the laws of the State of Oregon.

12.9 Partial Invalidity. If any provision of this agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

- 12.10 Captions. The captions are inserted only for convenience and are not part of this agreement nor a limitation on the scope of the particular paragraph to which each refers.
- 12.11 Warranty of Authority. The person or persons executing and delivering this agreement on behalf of Subcontractor represents and warrants that each of them is duly authorized to do so and that the execution and delivery of this agreement is the lawful and voluntary act of Subcontractor.
- 12.12 No Third Parties Benefited. This agreement is made and entered into for the sole protection and benefit of Contractor and Subcontractor and their successors and assigns. No trust fund is created by this agreement and no other person or entity will have any right of action under this agreement.
- 12.13 Authority to File Notices. Subcontractor irrevocably appoints Contractor as its attorney-in-fact, with full power of substitution, to file for record, at Subcontractor's cost and expense and in the Subcontractor's name, any notices of completion, notices of cessation of labor, or any other notices that the Contractor considers necessary or desirable.
- 12.14 Relationship of Parties. The relationship of Subcontractor to Contractor is that of an independent contractor. Subcontractor shall not, for any propose, be or be deemed to be a partner, joint venture, agent or servant of the Contractor. Subcontractor shall not have authority to bind Contractor in any contractual obligation of incur any liability for or on behalf of the Contractor.
- 12.15 Waiver of Subrogation Rights. Each of the parties hereto hereby releases the other, and the agents, employees and successors of such other party, from all claims, demands and liabilities arising from unintentional acts or omissions of the other party which result in loss for which the party sustaining such loss is indemnified under a policy or policies of insurance.
- 12.16 Amendments. This agreement may not be modified or amended except by written agreement signed by the parties.
- 12.17 Additional Provisions. The attached Exhibit(s) A contain additional provisions which are incorporated into this agreement.

CONTRACTOR

SUBCONTRACTOR

JOHN HYLAND CONST., INC.

«COMPANY_NAME»

BY: _____

BY: _____

TITLE: Shaun Hyland / Vice-President

Title: _____

ATTACHMENT A – SUB-CONTRACTOR INSURANCE REQUIREMENTS

1) Types of Insurance: Sub-Contractor shall obtain the following insurance to Contractor's reasonable satisfaction, which shall be maintained at all times during the terms of this Agreement and for two years from substantial completion, except as more specifically provided hereinafter: Prior to any policy's cancellation or expiration, Sub-Contractor will provide Contractor evidence of continued coverage.

a) Worker's Compensation and Employer's Liability Insurance with limits of liability, which shall be not less than Five Hundred Thousand Dollars (\$500,000.00).

b) Commercial General Liability for bodily injury and property damage liability, covering all of the operations of Sub-Contractor and Sub-Contractor's officers, agents and employees, including but not limited to personal injury liability, blanket contractual liability covering liability assumed herein, products/completed operations liability which shall specifically cover liability for the Work and materials, whether or not incorporated into the units, provided for herein in forms satisfactory to Contractor and with limits of liability which shall be not less than One Million Dollars (\$1,000,000.00) per occurrence and no less than a Two Million Dollar (\$2,000,000) general aggregate and Two Million Dollar (\$2,000,000) products completed operations aggregate. The policy will be endorsed with a "per project aggregate" endorsement.

c) Automobile Liability Insurance for bodily injury and property damage liability covering owned, non-owned and hired automobiles with limits of liability which shall not be less than One Million Dollars (\$1,000,000.00) combined single limit per accident.

2) Certificates of Insurance: Sub-Contractor shall furnish Contractor with certificates of insurance naming Owner and its members and Contractor as Additional Insureds on all policies (except Workers Compensation), including without limitation for completed operations, under form CG 2010 11/85 or a combination of forms CG 2033 and CG 2037 before commencement of work hereunder, and the certificate must be current and on file with Contractor prior to Contractor's obligation to pay any amounts due under this Agreement. Each insurance policy shall be in a form and issued by insurance companies satisfactory to Contractor for each policy. Owner and Contractor shall be included by specific endorsement as an additional insured under the General Liability, Automobile Liability and in the event of claims being made by one insured for which another insured is or may be liable, the policies shall cover such insured against whom a claim is made or may be made as if separate policies had been issued to each hereunder. For Worker's Compensation coverage, Sub-Contractor shall secure a Waiver of Subrogation against Owner and Contractor and its insurance carrier.

3) Primary Insurance: The Sub-Contractor's policies shall be primary and any insurance carried by Contractor or owner shall be excess. Any other insurance, which Contractor or Owner may have to insure loss, shall not contribute to a loss to which the insurance provided herein by the Sub-Contractor is applicable.

4) No Modification of Obligation: Sub-Contractor's obligation to carry insurance as herein provided shall not limit or modify in any way any other obligation of Sub-Contractor under this Agreement.

5) Failure to Obtain Insurance: Sub-Contractor grants the Contractor the right to contact Sub-Contractor's insurer to confirm coverage and make a claim under this Agreement. If Sub-Contractor fails to secure and/or pay the premium for any of the policies of insurance as required herein, Contractor may, in addition to any other action it may have at law or in equity, procure such policy or policies of insurance and charge Sub-Contractor for the premiums paid therefore, or withhold the amount thereof from such sums otherwise due from Contractor to Sub-Contractor. Neither the Contractor's right to secure such policies or the securing thereof by Contractor shall constitute an undertaking by the Contractor on behalf of or for the benefit of Sub-Contractor or others to determine or warrant that such policies are in effect.

6) Other Insurance: Sub-Contractor shall be obligated to provide its own insurance for equipment losses.

7) Compliance by Sub-Subcontractors: Sub-Contractor shall ensure that each of its Sub-contractors complies with all requirements in this section.