



SUPPLEMENTARY CONDITIONS

VERSION 01/17/2019

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GENERAL REQUIREMENTS



1. CONSTRUCTION SCHEDULE

Reference Sample Subcontract Agreement and Project Schedule (Section 3 of this document)

2. SAFETY

Subcontractors shall comply with all applicable provisions of all federal and state government safety laws and codes and MCP BUILD Safety Manual. Subcontractor acknowledges the requirement for positive fall restraint and fall protection for all fall hazards over six feet. Subcontractor acknowledges the requirement for positive fall restraint for its personnel in aerial lifts.

A copy of your company Health and Safety Manual and site specific safety plan shall be on file and available for review at all times when working on site. All Subcontractors will conduct their own safety meetings, make a record of the meetings, and provide copies to MCP.

Subcontractors will be required to re-install any safety railing and/or opening protection that are removed or damaged in connection with his own work.

Subcontractors shall immediately respond and correct any safety deficiency called to their attention. Repeat violations will not be tolerated and Subcontractor's and/or their employees may be removed from site for repeated failure to comply with site safety requirements.

Subcontractor employees will be required to attend a weekly all jobsite safety meeting.

3. INSURANCE REQUIREMENTS

(Reference Sample Insurance Certificate)

SUBCONTRACTOR shall purchase and maintain insurance with an insurance carrier(s) rated A- or better by AM Best. Second tier subcontractors (sub-subcontractors) must comply with the same requirements.

The following types and limits apply unless the Prime contract requires a greater level:

Commercial General Liability	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
	Products/completed Ops aggregate	\$2,000,000

Completed Operations aggregate must be maintained in force for two years following project completion.

Automobile Liability	Combined Single Limit	\$1,000,000
Workers Compensation		Statutory limits
Umbrella	Each Occurrence	\$3,000,000
	Aggregate	\$3,000,000
Professional Liability (required only for design or professional consulting)	Each Occurrence	\$1,000,000
	Aggregate	\$1,000,000



INSURANCE REQUIREMENTS (continued)

SUBCONTRACTOR is required to name the following as a primary non-contributory additional insured on policies, including products and completed operations:

- MCP BUILD
- Project Owner
- Project Architect/Engineer

SUBCONTRACTOR agrees, to the fullest extent permitted by applicable law, to defend, indemnify, and hold harmless MCP and or any other indemnities named and as required by Section 9 of MCP BUILD Subcontract Agreement.

SUBCONTRACTOR is required to provide satisfactory evidence showing that policies do not contain exclusions or endorsements that limit liability insurance protection for subcontracted work or for any work performed under this agreement, such as residential construction, EIFS, or other trade practices applicable to the scope of work.

SUBCONTRACTOR shall furnish MCP with a current Certificate of Insurance on the standard Accord form with a provision for 30 day written notice to MCP prior to cancellation or material modification. Payments will not be made without a current and acceptable Certificate of Insurance.

In the event MCI obtains Builder's Risk coverage, which does protect Subcontractor, Subcontractor agrees to pay all deductible amounts on claims made by Subcontractor against Builder's Risk Policy providing coverage for Subcontractor on the project.

Additional Insured is required at no additional cost to MCP or Owner.

4. PROGRESS PAY ESTIMATES

For Lump Sum agreements, each applicant shall submit a schedule of values to the Contractor for approval prior to the first pay request. No payment applications will be processed without an approved schedule of values. For Cost-Plus-Fee agreements, payment will be based on actual cost for the month being billed (plus fee), including all supporting data as deemed necessary by MCP.

All monthly pay requests shall be submitted on a Progress Payment form AIA G702 and G703, should reflect all work completed through the 30th of the month and be received no later than the 20th of the month (or earlier if required by the Project). A properly completed Waiver and Lien Release must accompany each Application for Payment.

Subject to proof of storage in a bonded and insured warehouse and owner's approval, MCP will consider payment for stored materials when stored off-site. Materials stored on-site will be paid as approved by the project owner or as allowed by the owner.

5. CHANGES TO THE WORK

Change order requests must be itemized to identify material, labor and equipment quantities. Unless noted otherwise in the contract documents or owner/contractor agreement, the maximum allowable total markup is 12% for subcontractors and suppliers, or as defined by the contract with the owner.



6. RETAINAGE

Retainage will be withheld from each payment application on all subcontracts in accordance with the prime contract and/or current law. The retained amount will be 10% and will be withheld until paid or released by the project owner and/or when deemed acceptable to pay at MCP's sole discretion.

7. LIEN WAIVERS

All Subcontractors will execute the Receipt and Release form prior to receiving the final payment on the contract. If bonded, the bonding company must issue Consent of Surety to release final retainage.

8. FIELD COMMUNICATIONS

Subcontractor is to have a supervisor on site at all time work is being performed by that contractor. This supervisor shall be fluent in the English language, capable of communications with his workers, and have authority to control all aspects of Subcontractor's work. Subcontractor's site supervisor must be assigned to the project through-out the duration of the Subcontractor's work.

9. PRE-INSTALLATION MEETING

Prior to mobilization, a pre-installation meeting will be held with each Subcontractor. These meetings will provide a general orientation of the site and related site-specific requirements. The pre-installation meeting will also incorporate a review of the Subcontractor's scope of work, schedule, manpower requirements, submittal status, safety issues and quality control issues. Attendance by Subcontractor's designated project manager and field supervision is required.

10. WEEKLY COORDINATION MEETINGS

MCP will hold weekly meetings with all subcontractors at the jobsite. Each Subcontractor shall have a qualified representative at this meeting each week. The Subcontractor's representative shall have the authority and capability to make financial and schedule decisions concerning the Subcontractor's work. The time and day of these meetings will be established and coordinated by MCP's Project Superintendent.

11. WORKING HOURS

MCP's Project Superintendent will establish the project's working hours. All contractors on the project will start and stop according to the same work hours unless authorized in advance by MCP's site superintendent.

12. CLOSEOUT

Operation & Maintenance information, as-builts, and warranties are required before project completion. Electronic and hard copies of all closeout documents will be required at the cost of the subcontractor/supplier. For trades with multiple material or equipment information, include an index and separate files for each equipment or material type.



CLOSEOUT (continued)

Owner manuals shall be provided to MCP prior to final billing, start up or Owner's training and includes the following:

Owner Manuals and Warranties

- a) Submittal data stating equipment size and selected options for each piece of equipment requiring maintenance.
- b) Operation manuals and maintenance manuals for each piece of equipment requiring maintenance, except equipment not furnished as part of the project. Required routine maintenance actions shall be clearly identified.
- c) Names and addresses of at least one service agency.
- d) HVAC controls system maintenance and calibration information, including wiring diagrams, schematics, and control sequence descriptions. Desired or field-determined set points shall be permanently recorded on control drawings at control devices or, for digital control systems, in programming comments.
- e) A complete narrative of how each system is intended to operate, including suggested set points.
- f) It is preferred that complete air and water balance reports be included as part of the Owner's Manuals. Reports may be provided after Owner's training.

As-Built Documents

Provide marked up as-built drawing information indicating any project changes or other as-constructed information. Include elevations and survey information for hidden information such as site utilities. Submit as-built information in electronic (pdf) format prior to final billing.

MCP will not release final payment or retainage amounts until all final closeout documentation is submitted and approved. This includes owner manuals, as-built documents, spare parts, warranty documentation, and testing reports.

13. SUBMITTAL PROCEDURE

Submittals must be made in a timely and sequential manner in accordance with the project construction schedule. Time must be allowed for review of submittal information prior to purchase and/or installation of the material or equipment.

Architect's/Engineer's and/or MCP's review of shop drawings is for general compliance with the construction documents and does not relieve the Subcontractor/Vendor from the responsibility for errors and for compliance with the Contract Documents.

Submittals shall be in electronic format by the Subcontractor or Supplier and will be submitted through MCP BUILD document management software. To make a submittal electronically, please contact the project assistant to receive instructions.



14. COMMISSIONING

The following standard level of commissioning is required for all equipment and systems in your scope of work for this project. Additional commissioning requirements in the contract documents, drawings and specifications, jurisdictions having authority and/or manufacturers will take precedence over this; however, will not replace these standard requirements:

- a) Submit to MCP BUILD for approval, prior to beginning start up activities:
 - i) Equipment and Systems Index (a comprehensive list taken off the construction documents for your scope of work.)
 - ii) Start up checklists to be used during each piece of equipment start up.
 - iii) I/O point-to-point test sheets to be used to validate control systems Input & Output operation.
 - iv) System functional test sheets to be used to validate control systems sequence of operations.
- b) Project mechanical equipment may be utilized for temporary conditioning for the project and if so, will be started-up early. The warranty on these units shall be extended so the owner will receive full benefit of the 1 year warranty period (or longer warranty period if required by contract or project specifications) from the date of owner acceptance and substantial completion regardless of the specific date of equipment start-up. Any additional costs related to the extended warranty or start-up are the responsibility of the subcontractors.
- c) Submit completed equipment/system start- up checklists, point-to-point test sheets and functional test sheets to MCP BUILD immediately after completing start up and testing for each piece of equipment/system, especially the HVAC Control System.
- d) Complete owner training as required by project requirements. Provide training attendance records with the names and signatures of persons who attended each training session, a written description of the training material covered and the date(s) training occurred. At the discretion of the Owner or MCP, training sessions may be required to be videotaped by subcontractor.
- e) Submit originals of the equipment and systems index, completed start up forms, completed system test sheets and owner training records bound together with final project closeout documents. eferred that complete air and water balance reports be included as part of the Owner's Manuals. Reports may be provided after Owner's training.
- f) Attend and participate in on-site MEP coordination meetings.



15. PROJECT SITE TEMPORARY POWER & LIGHT

(including temporary construction offices and storage facilities)

The Electrical Subcontractor will provide power to distribution points within the building. Each subcontractor shall provide extension cords for their own forces.

At a minimum, general temporary lighting to meet minimum OSHA requirements will be provided and installed by the Electrical Subcontractor. Additionally, task lighting or general lighting required beyond minimum requirements shall be provided and maintained by the Electrical Subcontractor.

MCP BUILD is not responsible for connection to, or power usage of electrical power to subcontractor's temporary offices or storage areas.

16. WATER

Each Subcontractor shall provide ice, water, cups, dispensers, and trash containers for all of their employees during the course of the work. All paper drinking cups shall be properly disposed.

17. TEMPORARY LADDERS / STAIRS

Each Subcontractor shall provide ladders as necessary for work performed by their own forces. Roofing, Steel, Precast, Masonry, and Formwork Subcontractors shall provide temporary access to all areas of work where permanent access is not available or in place. This access will be installed and maintained pursuant to all applicable OSHA standards.

18. MATERIAL STORAGE & DELIVERIES

Storage of materials on site shall be arranged and cleared with the Project Superintendent. Although effort will be made to accommodate on site material storage requirements for each Subcontractor, adequate space and/or continued use of such locations are not guaranteed. Upon request by MCP, the Subcontractor will relocate, at his own expense, his material and equipment as required for building and site work progress.

Arrange deliveries in accordance with the most recent construction schedule. Coordinate time, sizes and weights for all deliveries with the Project Superintendent. All materials must be palletized or bundled, no loose material will be permitted.

Subcontractors are responsible for proper storage and protection of all materials whether stored on site in the building, on-site at a laydown area or offsite. The storage of materials and supplies within the building will be permitted only to the extent approved by MCP. A maximum of three days' supply of building materials will be allowed within the building area. If materials stored in the building obstruct the progress of any portion of the work, they shall be moved upon notification without reimbursement of cost.



19. CLEANUP

Identifiable Debris

Good housekeeping is important to the safe and efficient progress and is the responsibility of each employer. Subcontractors are responsible for their individual work areas and the debris resulting from their work. All work areas, shall be kept orderly and clear of obstructions and debris at all times.

It is each Subcontractor's responsibility to make arrangements to remove all cartons, crates and boxes at the end of each day. All boxes, crates and material are to be reduced to the minimum dimensions to utilize dumpster space.

Dumpsters are provided; however, waste that is not acceptable (petroleum products, tires, batteries, paint products, and hazardous materials) to the hauler is the responsibility of the Subcontractor to properly dispose of off-site.

The Subcontractors shall not cause any dirt or debris to be deposited on any roadways and must immediately clean up same if it occurs. All subcontractors and material suppliers shall comply with the storm water prevention plan with regard to site and roadway care.

If clean-up activities are not performed on a regular (daily) basis, then MCP reserves the right to perform this clean up with all attributable costs charged to Subcontractor.

Unidentifiable Debris

A clean-up crew will be formed (at Subcontractor's expense) with individuals from all contractors on site for the express purpose of general job clean up. This crew will be assembled a maximum of twice a week. The following table will be used to determine the number of workers each contractor shall supply to the composite crew:

SUBCONTRACTOR EMPLOYEES ON SITE	WORKERS TO BE PROVIDED
1-3	1
4-14	2
15-25	3
26-60	4



20. INFECTIOUS CONTROL

If applicable, the project may require an infectious and/or noise control plan. All subcontractors are required to follow the plan accordingly without additional cost or time to the project.

21. JOINT CHECKS

MCI may require joint check agreements with any and all subcontractor suppliers.

22. PROCORE

All Subcontractors/Suppliers awarded will be required to complete the Subcontractor and Supplier Certification Modules through Procore prior to commencement of construction and utilize Procore Project Management on this project. There is no cost to the subcontractor/supplier and the number of users is up to all parties. This tool will be used for the current pre-construction and construction documentation to include, current set, addenda, Submittals, RFI's, ASI's, change orders, applications for payment, As-Built Conditions, QA/QC, Punch Lists and Closeout documents. At a minimum, onsite personnel will be required to use this tool to





SAFETY + QUALITY REQUIREMENTS



INTRODUCTION

The enclosed information addresses performance expectations of subcontractors and tier subcontractors; employees, suppliers or agents of both [herein after called Subcontractors] working on MCP BUILD projects [herein after called MCP]. Through the concentrated efforts of MCP and Subcontractors, a safe and successful project can be achieved.

Each Subcontractor working on MCP projects is obligated to comply with all Federal, State and Local safety requirements, MCP's Safety and Health Program, Site Specific Safety Programs, and any Owner Safety Requirements [herein after called Safety Requirements]. Safety Requirements exceed OSHA standards in several areas but do constitute the minimum level of performance expected from Subcontractors. All Subcontractors shall adhere to Safety Requirements for the performance of their work on McPherson projects. This program is designed to promote and to insure safe completion of the project.

SUBCONTRACTOR COMPLIANCE

In accordance with the OSHA requirements, Subcontractors shall protect each of his employees engaged in construction work by complying with the applicable standards. Subcontractors shall hold each of their agents, vendors, tier subcontractors and suppliers responsible for compliance with Safety Requirements. Subcontractors shall include Safety Requirements in contracts with all tier subcontractors and suppliers. Entry onto project, property, or the job site constitutes acknowledgement by the subcontractor, subcontractor employees or invitee of their obligation to adhere to Safety Requirements.

Subcontractors shall establish and maintain an effective safety and health program that at the least equals that of the MCP Safety and Health Program, including all items outlined in this document. Subcontractor shall be solely responsible for implementing the Safety Requirements and shall have sole responsibility for monitoring the work of its employee, subcontractors, agents, vendors and suppliers to ensure compliance.

VIOLATIONS

MCP will generally oversee the safety performance of Subcontractors. When violations of Safety Requirements are observed, the responsible parties shall be informed orally for immediate correction. It is the sole responsibility of Subcontractor to devise and implement the correction.

Subcontractors shall be given a reasonable amount of time to correct the violation (s). The time period allowed shall reflect the severity of the violation (s) and the urgency to abate, and in some cases the corrective action might be immediate. If Subcontractor fails to correct the violation within the reasonable amount of time specified, MCP will take additional action aimed at insuring compliance:

- A meeting will be conducted with Subcontractor's supervisor and McPherson project team, which includes the safety director and officers of company.
- The meeting should conclude in a documented agreement outlining Subcontractor's intended corrective action and timeframe for implementation.
- Removal of Subcontractor personnel, including field supervision if necessary. Any and all personnel to return ONLY with documented training on the violation.
- A letter of non-compliance stating that the subcontractor is in violation sent to Subcontractor's office with a copy to their insurance company and or bonding company.
- Require the presence of a full time, professionally trained safety person employed or hired by Subcontractor.

If MCP deems it is necessary to stop work due to the nature of a violation, work will be halted until Subcontractor



corrects the violation. Any costs incurred by the stoppage of work due to Safety Requirements violation will be the sole responsibility of the violating Subcontractor.

Compliance with Safety Requirements is the essence of the Subcontract Agreement. Failure to fulfill the Safety Requirements is a breach of contract and will be

THE FOLLOWING VIOLATIONS IN THE WORKPLACE WILL BE GROUNDS FOR IMMEDIATE DISCHARGE OF SUBCONTRACTOR PERSONEL:

- Gross negligence of safety and health rules and regulations, repeated violations or the refusal to follow Safety Requirements.
- Fighting (physical contact), horseplay, or sleeping on the job
- Theft
- Drugs or alcohol (possession or under the influence)
- Willful destruction of property
- Possession of firearms or explosive devices
- Engaging in any inappropriate, unwanted verbal or physical advances to co-workers, visitors or the members of the public.

DESIGNATION OF COMPETENT PERSON

Each Subcontractor shall designate a competent person as a defined by OSHA to implement and enforce the safety requirements. A competent person from each Subcontractor must be onsite whenever they have employees working onsite. Each Subcontractor is required to maintain this position, and a competent person (s) will remain on-site until the completion of their work. Subcontractor shall not relinquish or defer responsibility for project safety at any time under any circumstances. Where the nature and size of the contract warrants, MCP May require Subcontractor to employ a full-time, professionally trained safety representative.

OSHA AND STATE AGENCY INSPECTIONS

If after an inspection, Subcontractor receives any citation (s), a copy of all citations shall be immediately given to MCP.

ATTENDANCE OF MEETINGS

Preconstruction and progress meeting



MCP may request Subcontractor's attendance at a preconstruction meetings and /or progress meeting with MCP project team. The purpose of these meetings is to review expectations, schedule, coordination, quality, safety and other concerns.

Foreman's meeting

Foreman's meetings will be conducted on site. The date and time of these meetings will be determined by MCP project superintendent. Attendance is expected from each Subcontractor unless excused by MCP.

Incident Review

Following an incident, MCP may request a meeting be held with the parties involved to discuss the incident in more detail. Requested Subcontractors shall attend and participate in the investigation, discussion, and to develop an action plan.

EMERGENCY MEDICAL FACILITY

Each Subcontractor is responsible to establish an Emergency Medical Facility for use by their injured employees. The facility to be used shall be communicated to their employees. Subcontractor is responsible for all costs borne out of medical treatment, substance abuse testing and any other associated cost (MCP is not to be charged for any treatment costs).

Each Subcontractor is to provide an appropriate sized First Aid kit that is maintained and adequately stocked. The location of the kit shall be shared with the crew.

DOCUMENT AND REPORTING

- **PROGRAM SUBMITTAL**
- **MSDS 7 Hazard Communication Program**

Each Subcontractor shall maintain a copy of their Hazard Communication Program and Material Safety Data Sheets at the site. Subcontractor shall notify their employees of the location of the Hazard Communication Program and MSDS. They shall also notify the MCP Project Superintendent, in writing, the location of the documents.

MCP shall be notified when Hazardous Materials will be used and what protective methods will be used to protect those employees directly involved and other workers who may become exposed. The competent person for the subcontractor involved will be responsible for monitoring use and compliance by its employees with protective methods devised.

SAFETY PLAN

In accordance with OSHA, each Subcontractor shall maintain a written Safety Plan on site. Subcontractor shall be solely responsible for implementing the Safety Plan. Subcontractor shall notify the MCP Project Superintendent, in writing, the location of the written Safety Plan.



TOOLBOX TALKS

Each Subcontractor shall conduct weekly “toolbox” safety meetings relevant to the work being performed for their employees. A copy of the toolbox talk or a description of the topic discussed along with all attendees names shall be submitted to MCP’s superintendent weekly.

SAFETY INSPECTIONS

In accordance with OSHA, each Subcontractor shall perform frequent and regular safety inspections of their work area (s) by a competent person. A copy of the report or documented inspection shall be submitted to MCP whenever the inspection is completed. Subcontractor supervision shall take immediate action to correct violations, unsafe practices and unsafe conditions. Subcontractor will be solely responsible to review/monitor the work area/location of all their employees on a regular basis during the performance of work.

INCIDENT REPORTING

Subcontractors are responsible to immediately notify MCP of all incidents of employee injury or environmental illness; loss or damage to project property; loss or damages to public property; or any public injury caused by Subcontractor as a result of their operations on site.

Each Subcontractor is required to investigate all incidents incurred by their employees, or incidents that are the result of their operations. Each Subcontractor shall provide to MCP an “Incident Investigation Report” within 24 hours of the occurrence.

MCP may conduct an independent investigation at their own discretion or when they deem it necessary as a supplement to that required of Subcontractor. Upon request, Subcontractors involved in the incident shall participate in any incident review meetings.

SUBSTANCE ABUSE POLICY

MCP is committed to providing a safe work environment. The illegal use or abuse of drugs and or alcohol constitutes a threat to the safety and health of the employees and the general public. The Substance Abuse Policy requires employees to report to work fit for duty, and to perform their work, free of detectable levels of drugs, alcohol or other substances, which may affect their ability to work safely. Each subcontractor shall establish and maintain an effective substance abuse program that at the least equals that of MCP BUILD Program while working on any MCP project. Drug and alcohol testing is required of subcontractor’s employees in the following situations:

- If MCP has reasonable suspicion that the employee is under the influence of drugs or alcohol
- If the employee has sustained a work-related injury requiring outside medical attention
- If the employee has caused or contributed to a work-related incident resulting in, or which has the potential to result in, property damage

All costs associated with any substance abuse testing are the responsibility of the Subcontractor.



SAFETY COMPONENTS

General Requirements

- Subcontractors must report to MCP superintendent/safety director any safety concerns, observed conditions or violations of the safety, regardless of whether they are within the observer's power or responsibility to correct.
- Subcontractors shall assure that supervisory employees have a good working knowledge or applicable safety requirements as they pertain to their areas, and encourage all employees to improve their accident prevention awareness.
- Smoking is prohibited at any time in any project field office or MCP office. In addition, smoking will not be permitted anywhere within the building in the following situations:
 - Any wood framed structure.
 - In a build-out or addition to an occupied building (tie-in to existing structure)
 - When the window installation has begun
 - When any temporary or permanent enclosure is installed (partial or complete) on the building
 - When site-specific requirements prohibit smoking on the project
 - In any other areas identified as "Non-smoking" on the project
- Subcontractors will assure that when required or appropriate, trained

Housekeeping

Each Subcontractor shall be responsible for daily clean up during and after installation of his materials and shall leave their areas broom swept.

Each Subcontractor is responsible to provide manpower to move their trash and debris to an area designated by MCP. If debris is not removed on a timely basis, or after appropriate warning, MCP will provide people to remove debris and the responsible Subcontractor (s) will be responsible for all costs incurred.

Effective housekeeping should not be an assigned task, it is considered to be a part of each employee's responsibility. Keeping the work site clean not only produces a safer job site, but a better place to come to work each day. It is each employee's responsibility to keep their work area in order, cleaning up during and after work is completed.

Personal Protective Equipment

HARD HATS | Hard hats are to be worn 100% of the time, through all phases of construction. Hard Hats shall be worn correctly. Equipment operators working.

HAIR | Hair which falls below that nape of the neck must be put under the hard hat, put in a ponytail, or otherwise controlled.

CLOTHING | Long pants and a shirt are to be worn. No shorts, tank tops, or any inappropriate articles of clothing can be worn. If someone is wearing anything that MCP finds inappropriate, they will ask the individual to remove/cover the article. If they cannot or refuse to do so, they will be removed from the site.

FOOTWEAR | Substantial leather footwear will be worn, preferably full height work boots. "Gym Shoe" style shoes are not permitted.



Personal Protective Equipment (continued)

FALL PROTECTION | Equipment must meet and be maintained in accordance with OSHA Subpart M. MCP fall protection policy for all trades, is any worker above 6' with unprotected sides or edges SHALL be tied off with proper PFAS 100%.

HEARING PROTECTION | Hearing protection will be required in accordance with OSHA standards.

EYE/FACE PROTECTION | Eye protection required 100% of the time. Face protection required when grinding, cutting, or using a hot saw. All must meet applicable ABSI requirements.

RESPIRATORS | If respirators are required, the subcontractor must be in compliance with all applicable OSHA standards. When the use of respirators is required, proof of appropriate fit testing and training will be submitted by each subcontractor, upon MCP request.

EACH SUBCONTRACTOR IS SOLELY RESPONSIBLE TO SUPPLY THEIR EMPLOYEES WITH PPE!

Ladders and Stairways

- No portable metal ladders
- Damaged ladders must be removed from service
- All ladders are to be used correctly
- Job-made ladders must meet ANSI standards
- A ladder or stairway is required at a point of access where there is a change in elevation greater than 19"
- Extension ladders must extend 3' above the landing or have a grab bar provided
- Each subcontractor shall provide ladder training for all employees using ladders
- Stairs and platforms must be used to provide access to office, equipment, and material storage trailers

Scaffolds

All scaffolds shall be erected, used, and dismantled in accordance with OSHA's Subpart L or any jobsite specific rules. Each Subcontractor must have a person designated as the "Competent Person" (as defined by OSHA) to assure compliance with all requirements for scaffolding. No Scaffold shall be erected, moved, dismantled, altered, or work performed from any scaffold except under the supervision of the competent person. All scaffolds must be erected in accordance with manufacturer's specifications and requirements.

Below are key elements:

- Scaffolds shall be inspected prior to each day's use and whenever altered or repaired documentation of inspections shall be kept by the subcontractor.
- Employees using, erecting, or dismantling scaffolds shall be appropriately trained.
- The working level of a scaffold shall be fully decked or additional fall protection is required.
- Fall protection is required when erecting, moving, or dismantling scaffolds that are higher than 6'. If the subcontractor deems that fall protection is not feasible or would pose a great hazard, they shall submit their justification in writing to MCP BUILD (For Record Keeping purposes).



- Hallway/Narrow Frame (Baker scaffolds) with a working deck above 6', shall have
 - Fall Protection
 - Outriggers erected
 - Wheels locked when occupied
 - Proper access
- Cross bracing cannot be used as access to scaffolds, proper access is required.
- Subcontractors using scaffolds shall adequately guard, barricade or protect areas located below the scaffold.
- Green, Yellow, Red tags shall be put on all scaffolding for its current status. Subcontractor shall be responsible for the cost of the tags and installing properly.

Fall Protection

Unless superseded by a MCP Site Specific Plan, Subcontractors will comply with the fall protection requirements as outlined by the OSHA (1926 Subpart M). Key elements included:

- MCP fall protection policy for all trades, is any worker above 6' with unprotected sides or edges SHALL be tied off with proper PFAS 100%.
- Perimeter/guardrail cabling shall be no less than 3/8" IWRC-Galvanized, with a minimum of two wire rope clamps at each connection. Perimeter cables and guard rail systems are not to be used as attachment points for fall arrest or restraint unless subcontractor accepts the responsibility for the design, installation, inspection and all the other applicable requirements.
- If Subcontractor needs to take down a perimeter cable or guardrail, the Subcontractor is required to obtain permission from MCP, and then is responsible for reinstalling back to its proper location once task is completed.
- Floor openings 2" or more, must be covered, marked to identify a hole, and secured. Covers are to withstand 2 times the intended load.
- Personal fall protection equipment shall be inspected, in accordance with the manufacturer's specifications, daily/prior to each use for signs of wear and damage.
- Any damage equipment or equipment subjected to a fall shall be taken out of service.
- Subcontractor work that necessitates the use of either "Controlled Access Zones" or a "Fall Protection Plan" are required to submit those plans to MCP to beginning work (for recordkeeping purposes).
- When using a monitoring system, the monitor will wear a reflective vest or different color hard hat, so he/she can be easily identified.

Electrical Safety

Each Subcontractor will inspect their power tools and extension cords prior to each use. Only 12 gauge cords and below are allowed on the jobsite, NO 14ga cords and above are allowed. Damaged equipment shall be removed from service. Light gauge cords discovered in use will have the ends cut off to render them unusable.



Temporary Electric and Lighting

- Installation of Temporary electric and lighting must comply with 29 CFR 1926 Subpart K.
- Temporary electric must be protected by a GFCI.
- GFCI breakers and outlets will be tested periodically by the electrical contractor and record of the test kept. The electrical contractor will maintain the record of the test and provide to MCP BUILD upon request.
- Open conductors will be protected in conduit or equivalent within 8 feet of a walking surface.
- Wire for lighting within stairwells will be protected by conduit or wiring design. Unprotected opening conductors are not permitted.
- Temporary lighting will be provided in accordance with OSHA and contract requirements.

Permanent Power

- A GFCI must be used when using permanent power.
- On a permanent outlet, a cover plate must be attached in order for the outlet to be utilized. Plugging into an outlet that does not have a cover plate is not permitted.
- All live circuit panels must have an OSHA compliant panel cover on them. Never leave an unattended live panel open; it must be protected..

Work performed in proximity of overhead utilities

Prior to the start of, and during the course of any work in proximity to overhead utilities, the subcontractor shall make a thorough survey of the entire work site to determine the type and location of all utilities on the work site. The Subcontractor must verify this information with MCP by notifying the project superintendent and shall coordinate construction work in the vicinity of these utilities with the appropriate utility owner.

The Subcontractor shall make employees aware of any precautions and procedures to be followed while working in the proximity of any utility. Appropriate clearance distance shall be maintained throughout the course of the work. If Subcontractor cannot maintain appropriate clearances they must contact the involved utility and discuss alternative methods for addressing the utility and associated hazards.

Subcontractor will be required to investigate any and all contingencies where contacting a utility could adversely affect any operation or render inoperative any protective apparatus in the surrounding area and submit a written procedure for protection or rerouting of critical systems. This plan shall be turned into MCP prior to work being performed.

Working on equipment (Lock-out/Tag-out)

Whenever work is to be done on a piece of equipment, including building equipment and our contractor's equipment, OSHA's Controlled Hazardous Energy standard must be followed.

Each contractor whose work involves working on live equipment shall submit a plan in accordance with NFPA 70 E or a Lock-out/Tag-out program to MCP upon request.



Fire Protection and Hot Work Procedures

Daily, before any burning, welding, brazing, soldering or any other hot work is conducted, a Hot Work Permit must be obtained from MCP project superintendent. Terms of the permit must be adhered to.

- All welding and burning work shall be done in accordance with OSHA standards and industry best practices. The movement, storage, and use of cylinders shall be done in accordance with OSHA standards.
- All personnel using gas welding or burning equipment will be fully trained in the use and maintenance of the equipment.
- At minimum, a 10 pound dry chemical ABC fire extinguisher must be within 20 feet of Subcontractor performing the work.
- A fire watch must be present during, and for no less than 60 minutes after the completion of the work.
- Compressed air or gas shall not be used by an individual to clean their clothing
- Flammable liquids shall be stored and dispensed in accordance with OSHA requirements.
- All containers must be FM approved or UL listed. The container must have a self-closing lid and a wire mesh flame arrester. If the can is damaged, it is to be removed from site.
- In accordance with the Hazard Communication Standard, containers will be clearly marked showing the contents, hazard level and any special use or handling requirements.
- Flammable liquids will not be stored with enclosed structures, i.e.; building under construction, storage trailers, tool sheds, in stairways or building exits/entrances.
- Observe all NO SMOKING or NO OPEN FLAME signs.
- Fire extinguishers which are provided by MCP are available for general use. They are generally located at the entrances, stair wells, and on each floor. If a fire extinguisher is used, return it immediately to the project trailer to the project trailer to replace it with a fresh one. Do not place material in front of, or block extinguishers from view.

Cranes and Rigging

- The Subcontractor in charge of the crane shall ensure that the capacity, ground conditions, and all other conditions are acceptable, and if are not, shall notify MCP BUILD in writing their proposal to implement any corrections or modifications necessary.
- Cranes must have a current annual inspection. If the inspection certificate expires while the crane is on site, it must be re-inspected. Documentation of the inspection shall be submitted to MCP's superintendent upon request.
- Subcontractors may be required to participate in "Pre-Lift" meeting at which time full cooperation is expected. The Subcontractor must be prepared to discuss lifting procedures crane selection and capacities, rigging, load weights and configuration and other pertinent items.
- The swing radius of the crane must be barricaded or otherwise guarded.
- Only one person is to signal the crane operator at a time (hand signals, radio, hardline, etc.)
- Loads shall be tag-lined, unless the use of the tag-line would pose a greater hazard.
- Cell phone use is prohibited while operating a crane.
- When overhead utilities are present, sufficient clearance distances must be maintained in accordance with OSHA.



- Multiple lifts of structural members must be done in accordance with OSHA standards and coordinated with the MCP project team. The maximum number of allowed pieces per lift is three.
- A critical lift checklist shall be completed and submitted anytime.
 - 2 cranes are used to make a lift
 - When a lift exceeds 75% of the load chart (at the specific boom angle and radius)
 - Or any unusual conditions are encountered

Rigging and material handling

- Rigging shall be inspected prior to use and as necessary throughout the course of the day.
- If any rigging is found to be worn or damaged, it shall be removed from service immediately. Each Subcontractor is responsible for complying with rigging requirements set forth by OSHA and rigging manufactures’.
- Rigging equipment should never be used beyond its rated capacity.
- Stacked materials are to be kept neat and orderly. Materials shall be stacked in a manner to prevent tipping, falling, shifting or rolling.

Equipment Requirements

All self-propelled construction equipment shall be maintained, equipped and operated in accordance with OSHA and manufactures’ requirements. Material handling equipment (as defined by OSHA) shall be equipped with Roll-Over Protective Structures (ROPS) and seat Belts.

- Only authorized and trained personnel shall operate equipment.
- Cell phone use is prohibited while operating a piece of equipment.
- Equipment operators and truck drivers shall make a pre-shift safety inspection of their equipment. Any conditions that effect safe operation shall be corrected before use.
- Personnel shall not be transported or ride on equipment or vehicles that are not equipped with seats for passengers. Riding in the back of pickup trucks or on equipment without the use of a seatbelt is prohibited.

Aerial Lifts

Any employee who is operating or using an aerial lifts (scissor or boom) shall be properly trained in the operation, use, and emergency procedures involved with the lift. Documentation shall be made available to MCP upon request.

Earthmoving

Bi-directional earthmoving equipment and motor vehicles with an obstructed view to the rear shall be equipped with a functioning warning horn and/or an automatic back-up alarm.



Forklifts/Sky Track

- Only trained and authorized personnel shall operate forklifts/sky tracks.
- Forklifts/sky tracks shall be operated in accordance with the manufacturer's specifications and requirements.
- Operators will wear seatbelts during forklifts/sky track operations.

Steel Erection

All steel erection activities shall be in compliance with OSHA Subpart R.

- A written "site-specific erection safety plan" (to include fall protection) shall be submitted to MCP prior to the start of work. When special or unusual hazards will be encountered (i.e. work over existing structures, near utilities or water), Subcontractor will clearly address these issues in the "site-specific erection safety plan".
- The "Authorization of Proceed with Steel Erection" written notification shall be provided by MCP to Subcontractor prior to the commencement of steel erection.
- Perimeter cabling shall be no less than a minimum of 3/8" IWRC-Galvanized, with a minimum of two wire rope clamps at each connection.
- Welders shall use appropriate welding hoods and hard hat attachments, not tinted face shields, and other required PPE. Welder's certificates shall be made available upon request from MCP.
- If work is performed within or adjacent to occupied structures, the Subcontractor will be required to make provisions for fire protection, and the safe removal of all welding fumes from the building. The methods shall be submitted to MCP prior to the start of the work.

Excavation Work

All portions of work involving excavation will conform to OSHA requirements of Subpart P Excavation. (29 CFR 1926.650)

- Each Subcontractor engaged in excavation work must have a person designated as the "competent person" (as defined by OSHA) to enforce compliance with the OSHA Standards for Excavations. The name of that person and their qualification will be submitted to MCP.
- No employee shall enter a trench unless it has been determined by the Competent [person to be properly excavated and protected against collapse by means of sloping or benching, shoring, sheeting, the use of a trench box, or by other appropriate system.
- Each employee will have the responsibility to stop work and notify others if they perceive that a problem with the excavation or protection system exists or develops.
- Excavations will be back-filled as soon as possible after the completion of work. If excavations cannot be back-filled, the open trench shall be plated, barricaded, fenced and/or flagged to protect workers, pedestrians and traffic.



Confined Space Entry

All activities involving Confined Space Entry shall comply with all applicable OSHA standards.

- Subcontractors are responsible to train employees who are involved with confined space entry. No one may enter a confined space area until properly trained.
- Prior to the start of such an entry, each Subcontractor involved in the work shall develop a Confined Space Entry Procedure.
- Subcontractors are required to identify all confined space on their project with a sign identifying the area as a confined space.
- Subcontractors are responsible for providing and using all atmospheric testing devices.

Concrete and Masonry

- All concrete and masonry operations shall be performed in accordance with 29CFR 1926 Subpart Q.
- All concrete, masonry or other silica-generating cutting process must be done with wet-methods. Grinding silica will be conducted as to not expose surrounding employees to elevated levels of silica.
- Concrete Subcontractors (or masonry Subcontractors when applicable) are responsible for notifying MCP of any changes or modifications of anchor bolts and any issues related to concrete strength of performance.

Traffic Control

- Signs shall conform to the requirements of 29CFR 1926.200 and ANSI Z35.1-1968.
- Work on or adjacent to roadways must be protected in accordance with State Statutes. KDOT (or similar) Certified Flagger control must be provided.
- Sufficient chain link fencing or orange "barricade" fencing must be installed as appropriate to separate active construction areas or hazardous areas from active occupied work areas and to protect the public. The fence must be sufficiently supported and marked with appropriate signage.
- Signs and barricades must be removed immediately when no longer applicable or required.

Acknowledgement



MCP provides these Safety Requirements to its Subcontractors as a demonstration of our commitment to safety. It is the Subcontractors sole responsibility to read, understand, and orient its employees and management as to the minimum expectations for site safety which MCP expects from Subcontractors.

These requirements and procedures are not all inclusive of the measures which should be taken by Subcontractors and their employees. They are meant to be a summary of what MCP believes are the most pertinent elements which should be addressed by Subcontractors, and provide a source of information for and outline the minimum requirements and procedures which MCP holds Subcontractors responsible.

Failure to follow safe practices, regardless of whether such requirements or procedures are outlined in writing by MCP in this or any other publication, may result in disciplinary action.

By your acknowledgment of these requirements and procedures, and standards, MCP expects you to abide by its rules and regulations, and provide safety standards for your own which meet or exceed those standards normally practiced in the construction industry.

Make safety a part of the quality of your work.

I hereby acknowledge, with my signature that I have read, understood, or have been briefed on the MCP Safety Requirements and Procedures.

I further acknowledge, by my signature, that my failure to comply with MCP Safety Requirements, may result in a jobsite restriction to work on a MCP jobsite.

This Acknowledgment shall remain in effect for the duration I am working as a Subcontractor on a MCP jobsite.

PLEASE FILL OUT BELOW FIELDS AND TURN IN BEFORE LEAVING

I hereby acknowledge, with my signature that I have read, understood, or have been briefed on the MCP Safety Requirements and Procedures.

I further acknowledge, by my signature, that my failure to comply with MCP Safety Requirements, may result in a jobsite restriction to work on a MCP jobsite.

This Acknowledgment shall remain in effect for the duration I am working as a Subcontractor on a MCP jobsite.

PROJECT | _____

SUBCONTRACTOR | _____

FOREMAN | _____

SAFETY REPRESENTATIVE | _____

SIGNATURE

DATE





SAMPLE SUBCONTRACTOR AGREEMENT



THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES: CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

THIS AGREEMENT, Made this [____] day of [_____], 20 [____], by and between [_____], hereinafter called "Subcontractor", and MCP BUILD, 3501 SW Fairlawn Rd., Suite 100, Topeka, Kansas 66614, (785) 273-3880, FAX (785) 273-1037, hereinafter called "Contractor, General Contractor, or Construction Manager".

WITNESSETH: That the Subcontractor and Contractor for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

SECTION 1: THE PROJECT

1.1 The Contractor has entered into a contract for the construction of

[PROJECT NAME]
[PROJECT ADDRESS]

hereinafter called the "Project", with:

[OWNER NAME]

hereinafter called "Owner", at:

[OWNER ADDRESS]

which contract is referred to as the "Prime Contract." The Project is to be constructed in accordance with the general conditions and special conditions of the Prime Contract between Owner and Contractor, and in accordance with the plans, drawings, and specifications prepared by [_____] hereinafter called "Architect" (Architect shall also refer to Engineer, or any Designer of the Project), all of which general conditions, supplementary conditions, special conditions, plans, drawings, specifications, unit prices, addenda, and alternates which are made a part of the Prime Contract or identified by the Architect are referred to as the "Contract Documents" and are a part of the Subcontract Documents, which are made a part of this Subcontract Agreement.

Amendments & Addenda: [_____]

Alternates: [_____]

SECTION 2: THE SUBCONTRACT DOCUMENTS

2.1 The Subcontract Documents shall consist of this Subcontract Agreement and any addenda, the Prime Contract entered into by the Contractor and the Owner and other Contract Documents identified therein, modifications of the Prime Contract regardless of when made, modifications to this Subcontract, the drawings, plans and specifications, issued prior to and any modifications, change orders, or amendments issued in writing after the execution of this Subcontract.

2.2 The Subcontractor acknowledges that the Subcontract Documents have been made available to it and that Subcontractor has carefully examined the Subcontract Documents or has had an opportunity to examine them and has declined to do so. The Subcontractor shall be furnished copies of the Subcontract Documents upon request, but Contractor may charge the Subcontractor for the reasonable cost of reproduction.



2.3 The Subcontractor agrees to be bound by the applicable provisions of the Contract Documents between the Owner and Contractor, and accepted alternates thereto, and to assume toward the Contractor all of the obligations and responsibilities that the Contractor by the Contract Documents assumes toward the Owner, insofar as they are applicable to the Subcontractor's Work to be performed under this Subcontract.

2.4 Subcontractor shall assume and be responsible for all job site responsibilities that are assumed by the Contractor under the Prime Contract between Owner and Contractor and the Contract Documents, insofar as they are applicable to the Work to be performed under this Subcontract, except as follows:

[enter none or exceptions]

2.5 Subcontractor warrants and agrees that all requisite approvals from the Owner as to its eligibility to serve as a Subcontractor and approval of all materials and performance of work as required by the Contract Documents are obtainable.

SECTION 3: THE SUBCONTRACT WORK

3.1 Subcontractor agrees to furnish all necessary shop drawings, materials, labor, tools, equipment, services, supplies, and other incidentals necessary to perform all work and labor, in conformance with all applicable codes and standards of construction for the following work: **GENERAL SCOPE OF WORK WITH SPEC SECTIONS**

3.2 As part of performing its work under the terms of this Subcontract Agreement, Subcontractor agrees to provide the following: competent project management and competent field supervision fluent in the English language; coordination of its work with other trades; skilled labor; adequate equipment; all necessary hoisting, lifting and unloading equipment necessary to deliver its materials to the final locations; completion of every detail of its work; protection of its work; layout and control of its work; all incidental materials to complete its tasks; daily clean-up of its trade--debris taken outside and deposited in the dumpsters daily; attendance at weekly meetings; adherence to project schedules; adequate manpower to complete its work as quickly as possible; and , conduct weekly or daily safety meetings and adhere to all safety and OSHA standards. As part of performing its work under the terms of this Subcontract Agreement, Subcontractor further agrees to:

(a) Post all plan changes, addenda and change orders on all sets of drawings used in the field, all drawings will be updated with the latest information and AS-Built conditions, all required submittals and shop drawings will be reviewed and submitted within 20 calendar days of the receipt of this contract, or sooner;

(b) Review the shop drawings and submittals to be certain they are complete and accurate and reflect the conditions in the field;

(c) Ensure that its management and workers know and fully understand the Subcontract Documents, including the Contract Documents and perform each and every task assigned by this Subcontract in harmony with others.

3.3 Subcontractor acknowledges that it fully understands that everything on this Project is assigned to the Contractor, and the Contractor has assigned all duties of the Contractor to the Subcontractor as it relates to this Subcontract and it's scope of work (example: note may say "general contractor to paint door"... the painting subcontractor will paint the door.) your firm will have all incidentals necessary to complete all furnishings and installation, of all **GENERAL SCOPE OF WORK** as outlined on the plans, specifications and required by the Subcontractor's Work.

3.4 The Subcontractor's Work includes, but is not necessarily limited to, **DETAILED SCOPE OF WORK** work as outlined or referenced in the Contract Documents, including the Specifications, as indicated in the Drawings, including amendments and addenda thereto, all change orders and change directives, and as required to properly complete construction of the Project and perform the craft or trade identified.



3.5 The Subcontractor shall have a continuing duty to provide and update its list of suppliers.

3.6 The Subcontractor recognizes that revisions in the planned schedules are inherent in the nature of construction and can result in changes to the schedules on which Subcontractor must perform its Work. The Subcontractor acknowledges that the Contractor cannot and does not guarantee either when Subcontractor will be able to begin work or whether Subcontractor will be interrupted in performing its Work. The Subcontractor's Work shall be commenced, performed and completed on the schedules developed by the Contractor and as amended by the Contractor from time to time.

3.7 If any part of Subcontractor's work depends on the work of Contractor or any other subcontractor, Subcontractor shall inspect such work and promptly report to Contractor in writing any defects or inadequate performance, which adversely affects Subcontractor's work. Failure to make such report within twenty-four (24) hours of Subcontractor's discovery of the defect or inadequate performance, whether such discovery is actual or constructive, shall be deemed a waiver of any claim relating to same. If there appear to be any defects, variations or discrepancies of dimensions, quantities or other matters set forth in the plans, specifications and other portions of the Prime Contract and Contract Documents, Subcontractor will promptly notify Contractor of same in writing. Failure to provide such written notice within twenty-four (24) hours of the discovery of same, whether such discovery is actual or constructive, shall be deemed a waiver of any claim related to such defect, variation or discrepancy.

3.8 Contractor reserves the absolute right to delete labor, materials, sections of the specifications or any other part, portion or section of Subcontractor's Work from this Subcontract. In such instance of deleted work, Contractor will provide Subcontractor with a Change Order setting forth the deleted work and the amount to be deducted from the Subcontract amount. The amount to be deducted from the Subcontract amount shall be the greater of the amount specified for the work on Subcontractor's bid or schedule of values or the amount Contractor could reasonably pay for the deleted work.

SECTION 4: THE WORK SCHEDULES

4.1 Subsequent to the execution of this subcontract agreement, the Contractor may, in its discretion, prepare, and from time to time update a schedule that details the timing and sequence of the work to be performed by the Subcontractor on the Project. Subcontractor agrees that such schedule and updates shall be a part of its obligations under this Subcontract. Failure to comply with such a schedule or update, as determined in the Contractor's discretion, shall constitute a breach of this Subcontract.

4.2 Subcontractor shall perform the work in accordance with the schedule or schedules prepared by the Contractor. Subcontractor shall cooperate with Contractor in scheduling and performing Subcontractor's Work to avoid conflicts or interference with the work of other trades and to insure an efficient project. Subcontractor shall be liable to Contractor for failure to adhere to Contractor's schedule, including amendments, even if such schedule differs from schedules set forth in the Contract Documents or the time of completion called for in the Contract Documents. In agreeing to perform the work in accordance herewith, Subcontractor has taken into account and made allowance for delays which should be reasonably anticipated or foreseeable. If requested by Contractor, Subcontractor shall submit detailed schedules for the performance of this Work in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents. Contractor may, from time to time, in its sole discretion, make modifications and revisions to the schedules.



4.3 Subcontractor acknowledges that as construction progresses it may be necessary for Contractor to change the sequential order and duration of the various activities, including those contemplated by this Subcontract to account for unanticipated delays, occurrences and other factors which act to alter Contractor's original schedule. Contractor may require Subcontractor, at no additional cost to Contractor, to prosecute Subcontractor's Work in such sequence as the progress of the other subcontractors and the Project scheduled reasonably dictates. It is expressly understood and agreed that the scheduling and sequencing of the Work is an exclusive right of Contractor and that Contractor reserves such right to reasonably reschedule and re-sequence Subcontractor's Work from time to time as the demands of the Project require without an additional cost or expense to be paid to Subcontractor.

4.4 Subcontractor shall carry on said Work promptly, efficiently and at a speed that will not cause delay in the progress of Contractor's work or work of other subcontractors. If, in the opinion of Contractor, Subcontractor falls behind in the progress of the Subcontractor's Work, Subcontractor may be directed to take such steps as deemed necessary to improve the rate of progress. These steps may include, without limitation, requiring Subcontractor to increase the number of shifts, personnel, overtime operation, days of work, equipment, plant, or other remedies. Subcontractor shall submit to Contractor for Contractor's approval a schedule demonstrating how the required rate of progress necessary to meet the schedule will be implemented and monitored without additional cost to Contractor or Owner. In no event, however, shall Subcontractor be entitled to any inefficiency, impact or other special or indirect charges or damages of any kind as a result of any acceleration or other schedule or sequence modifications.

4.5 For purposes of this provision, Subcontractor's failure to perform shall include the failure of its lower tier subcontractors to perform. If Subcontractor is, in Contractor's opinion, behind schedule with the Subcontractor's Work, Subcontractor shall, at its own expense, work such overtime as Contractor may deem necessary to comply with the schedule and complete the Work. Subcontractor shall pay all extra costs resulting from his lack of diligence or failure to provide needed labor or materials to meet the schedule of Work. In the event Subcontractor is behind schedule, Contractor shall be entitled to withhold payments under the Subcontract until Subcontractor corrects the deficiency and complies with the Schedule. Should Subcontractor at any time refuse or neglect to supply sufficient skilled workmen or material of proper quality, or refuse to follow plans and specifications, or fail to pay for labor and materials for which it has received payment from the Contractor, fail in any respect to prosecute the work on its part to be performed, or fail in any other respect to comply with the terms of this Subcontract, the Contractor shall have the right, immediately upon written notice to Subcontractor to terminate Subcontractor's right to proceed in whole or in part. In such event, notwithstanding anything in this Agreement to the contrary, Subcontractor shall not be entitled to any further payments hereunder, whether due or not, and Contractor shall have the right to retain the entire subcontract balance, earned or not, due or yet to become due, until the completion of the project. The Contractor may finish Subcontractor's work by whatever method it may deem expedient and Subcontractor and its surety, if any, shall be liable to the Contractor for any cost occasioned thereby. Contractor shall be entitled to deduct all costs as a result of Subcontractor's default from any and all funds withheld from Subcontractor, including, but not limited to Contractor's general conditions and costs, costs of completion, costs of supervisions, costs of correction, all acceleration costs, attorney's fees, architects fees, inspection or re-inspection charges, and clean-up costs. In the event the costs of completion exceed the Subcontract Agreement balance, the difference shall be paid by Subcontractor to Contractor with Contractor having the express right to pursue a prejudgment garnishment action to freeze said funds. In the event the Subcontract Agreement balance exceeds the costs of completion, Subcontractor shall be paid the difference. Contractor's administrative costs shall be included in the calculation of costs of completion.



4.6 In the event the Prime Contract is terminated, suspended, or halted under its terms, or by the Owner, or by the terms of a consent to assignment of the Prime Contract, or by an order of court or other public authority, or Contractor elects to take action pursuant to Section 13, Contractor shall, at its sole option, have the right to terminate or suspend any of the Subcontractor's Work as of the date of such action. In the event that work is terminated, Subcontractor shall only be entitled to the lesser of (i) the actual, direct costs of all labor and material expended on the job prior to the effective date of the termination or suspension plus a sum equal to ten percent (10%) of all such labor and material to cover overhead and profit, or, (ii) whatever sum Owner or Owner's assignee has paid Contractor for the work performed by Subcontractor up to the time of termination or suspension. In no event shall Subcontractor be entitled (a) to anticipatory profit, consequential damages or other forms of damages for any termination or suspension; (b) to assert a claim in quantum meruit or any other measure of damages other than that stated herein; or (c) to receive a sum in excess of what Owner pays to Contractor for such work of Subcontractor. In the event of suspension of the work, Subcontractor shall receive such adjustment to its Subcontract as is allowed under the Prime Contract.

4.7 Contractor shall not be liable to Subcontractor for any damages (consequential, actual or otherwise) or additional compensation as a consequence of acceleration or delays caused by the Owner or any other person or event unless Contractor has recovered damages on behalf of Subcontractor from said person, it being understood and agreed by the Subcontractor that apart from recovery from said person, Subcontractor's sole and exclusive remedy for delay shall be extension of time for performance of Subcontractor's work under the guidelines and restrictions set forth herein. Contractor shall have no duty or obligation to pursue any claim for delay damages from any third party on behalf of Subcontractor. Extension of time shall be Subcontractor's sole remedy for delay, inefficiencies or loss of productivity incurred as a result of delay or as a result of schedule amendments.

SECTION 5: PERFORMANCE OF THE WORK

5.1 The work to be performed under this agreement shall be commenced immediately upon notice. Subcontractor will provide the required manpower, material and equipment to comply with the Construction Schedule. Subcontractor shall begin work, and shall carry the same forward promptly, efficiently, and at a speed as determined by Contractor. Subcontractor recognizes that revisions in the planning schedule are inherent in the nature of construction, which may result in revisions to the schedule of work during construction. Subcontractor acknowledges that Contractor cannot guarantee that Subcontractor will be able to start on any particular date, or continue without interruption once started. In the event that Subcontractor falls behind schedule, due to events not the fault of Contractor, Subcontractor shall work additional required hours, bring in additional materials or equipment, or take such other steps as may be deemed necessary in the opinion of Contractor to get back on schedule at no additional expense to Contractor.

REQUIRED PROJECT COMPLETION: [_____]

5.2 The Subcontractor shall prosecute the work undertaken in a prompt and diligent manner when such work or any part of it, becomes available, or at such other time or times as the Contractor may direct, in accordance with the schedule provided by the Contractor and as amended from time to time, and so as to promote the general progress of the entire construction, and shall not, by delay or otherwise, interfere with or hinder the work of other subcontractors or the Contractor. Any materials that are to be furnished by the Subcontractor shall be furnished in sufficient time to enable the Subcontractor to perform and complete his work within the time or times provided for herein. Should the Subcontractor fail to complete the work or deliver its materials within the time established, or otherwise fail to comply with the terms of this Subcontract or the Subcontract Documents resulting in delay of the Project so that substantial completion is delayed beyond the date required by the Contract Documents, Subcontractor shall be liable to Contractor for liquidated damages. The amount of the liquidated damages shall be the same amount provided for in the Contract Documents or \$1,000.00 per calendar day, whichever amount is greater.



The parties agree that liquidated damages as provided for herein would be appropriate because of the difficulty of determining the actual damages that the Contractor will suffer and that they are not a penalty. It is further agreed that the liquidated damages shall be deducted as such from the balance due the Subcontractor, or in the event such damages exceed the sum due or to become due to the Subcontractor, the Subcontractor shall be liable to the Contractor for such difference. In addition, Subcontractor shall indemnify and hold harmless Contractor from any and all liquidated damages or other delay damages assessed or charged to Contractor by the Owner as the result in whole or in part of any act or omission of Subcontractor. Whenever Contractor reasonably believes that it will be entitled to payment from Subcontractor pursuant to this paragraph, then Contractor is entitled, but not required, to withhold from amounts otherwise due Subcontractor an amount then believed by Contractor to be adequate to recover such payment.

5.3 Subcontractor shall be responsible for proper coordination of his work with that of the Contractor and other Subcontractors and when not actively engaged on the project shall keep informed of the progress of the work and shall be available, or have a representative available, at project meetings and at other times as necessary to assist with this coordination. Attendance at regularly scheduled jobsite, foreman, progress, scheduling, or safety meetings is mandatory. Subcontractor is responsible for any item discussed at any of these meetings even if Subcontractor has not attended meetings.

5.4 Should the Owner, Contractor or other Subcontractor delay the Subcontractor's work, the Contractor shall owe the Subcontractor therefore only an extension of time equal to the delay caused and only then if the Subcontractor makes written claim for delay to the Contractor within 48 hours of the start of the delay.

5.5 Subcontractor may be ordered in writing by Contractor, without invalidating this Subcontract to make changes in the Subcontractor's Work (consisting of additions, deletions, or other provisions). As part thereof, and to the extent permitted by the Prime Contract and Contract Documents and agreed to by the Owner, the contract sum and the contract time may be adjusted. Subcontractor, shall submit promptly, when requested, and prior to the commencement of such changed or revised work, a written statement of any claim or adjustment to the Subcontract sum or Subcontract time which the Subcontractor intend to claim because of the revised work. The written statement shall be consistent with the requirements of the Contract Documents. If approved, a written change order shall be executed in accordance with the Contract Documents. No change order shall be valid unless Contractor's designated Project Manager has signed it.

5.6 If Subcontractor requests a proper written Change Order but there is a dispute as to any part of the change, including but not limited to, the price of and time to complete such changed work, Contractor shall be entitled to issue a written directive to Subcontractor to perform such change and Subcontractor, shall be obligated to proceed with such change, without either party admitting liability for the change or waiving its rights under this Subcontract. To the extent permitted by applicable law, it shall be an express condition precedent that Owner pay Contractor for said work before any payment shall be due Subcontractor for said work and Subcontractor hereby accepts the risk of non-payment as a result of the Owner's refusal to pay. Subcontractor shall file with the Contractor within three (3) days from the date of commencing performance of said work, its written itemized estimate for the cost and time needed to perform the alleged extra work or changes to be made. Contractor agrees to submit Subcontractor's itemized estimate to Owner for payment. If Subcontractor fails to submit the itemized estimate for cost or time associated with the change as required herein, Subcontractor waives all claims associated with the change and agrees to perform the change at no additional cost or time.

5.7 A request by the Subcontractor for any additional payment because of a claimed change in the Subcontractor's Work will not be honored unless the change in the Work was authorized in writing by the Contractor.



SECTION 6: SUBCONTRACTOR'S ADDITIONAL OBLIGATIONS

6.1 Subcontractor shall perform all work in accordance with the Contract Documents, the instructions of the Contractor, and in a workmanlike manner. Subcontractor warrants its Work to Contractor on the same terms, and for the same period, as Contractor warrants the work to the Owner under the Contract Documents, but in no event shall such warranty be for any term less than twelve (12) months from the date of substantial completion of the entire Project. Subcontractor warrants that its labor and materials will not be defective, will comply with the Contract Documents, will be new (unless the Contract Documents specifically state otherwise), will be suitable for their intended use and will be constructed and installed in a good and workmanlike manner. Subcontractor's warranty shall apply to all work and material performed by Subcontractor unless the Contract Documents contain a stricter standard in which case the stricter standard shall control. Upon demand of Contractor or Owner Subcontractor, shall immediately honor all warranties and correct any defective work or materials. In the event this subcontract is terminated for any reason, Subcontractor's warranties, guaranties and indemnities shall survive such termination and be in full force and effect for the period of time prescribed in the Contract Documents.

6.2 To the fullest extent permitted by the applicable law, the Subcontractor agrees to indemnify and hold harmless the Contractor from any and all loss or damage, including personal injury and property damage, occasioned wholly or in part by any intentional or negligent act or omission of the Subcontractor or that of anyone directly or indirectly employed by the Subcontractor or performing work or supplying services or materials at the request of or under the direction of the Subcontractor or arising from the Subcontractor's breach of any obligation existing under the terms of this Subcontract Agreement, whether or not caused in part by any other party, including the Contractor, its officers, agents or employees.

6.3 The Subcontractor agrees to promptly pay when due for all labor, equipment, materials and supplies used or consumed in completing this contract and to indemnify and hold harmless the Contractor from any claim, lien, judgment, court costs and expenses, including attorney's fees, and litigation expenses, including expert fees, incurred on account of Subcontractor's failure to comply with the terms of this contract. Subcontractor agrees that all funds received shall be used first for payment of labor, material, equipment, supplies and services related to this work and said monies shall not be diverted to satisfy obligations of Subcontractor on other contracts until all obligations under or in connection with this Subcontract are satisfied in full. Contractor may withhold any payment or pay directly or by joint check to sub-subcontractors or suppliers unless Subcontractor has furnished Contractor with evidence satisfactory to it that Subcontractor has paid such debts in full and performed all other obligations incumbent on Subcontractor.

6.4 Subcontractor agrees to not assign this contract or subcontract any of the work hereunder without the prior written consent of the Contractor.

6.5 Subcontractor shall give notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Subcontractor's Work under this Subcontract including but not limited to: The Occupational Safety and Health Act of 1970; Fair Labor Standards Act; building codes: federal, state and local tax laws; and Workers' Compensation Acts. Subcontractor shall also defend and hold harmless Contractor and Owner from any and all liability, damages, fines, and costs arising out of Subcontractor's failure to comply with all laws, regulations and ordinances applicable to the work.

6.6 Insofar as the Contractor has any obligation, for affirmative action or otherwise, under applicable Equal Employment Opportunity Rules and Regulations and various other state and federal non-discrimination laws, as they apply to the various forms of non-discrimination in employment, and as they apply to the employment of handicapped, as well as that of Vietnam Era Veterans, then this obligation shall extend also to the employment practices of the Subcontractor.



6.7 Subcontractor shall effectively secure and protect his materials and Work at its sole expense.

6.8 In carrying out its Work, Subcontractor shall take any and all necessary precautions to protect properly the finished work of other trades and the Owner from damages caused by his operations. Subcontractor shall promptly reimburse Contractor and/or other subcontractors for damages caused to their materials and work caused by Subcontractor or anyone under its control or authority. Should Subcontractor fail to pay promptly for such damages, Contractor is hereby authorized to withhold an amount to cover such damages from any payments that become due hereunder or any other amounts Contractor may owe Subcontractor. If Subcontractor deems that surface of work to which his work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to Contractor before proceeding or taking on remedial action, otherwise Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, or damages resulting from said condition and Contractor shall be relieved of all liability in connection therewith.

6.9 In accordance with the Hazardous and Toxic Substance Act, Subcontractor must submit to contractor two (2) copies of Subcontractor's Hazard Communications Program and Material Safety Data Sheets for any hazardous chemicals Subcontractor may be using on the Project. Subcontractor is responsible for complying with all OSHA requirements included in the Hazardous and Toxic Substance Act, including but not limited to providing information to any workman on the project who may request the information. Subcontractor is responsible for verifying that all information included within the Hazard Communications Program and Material Safety Data Sheets is current and in compliance with OSHA at all times.

6.10 Subcontractor shall promptly amend and make good any defective or non-complying materials and/or workmanship to the entire approval and acceptance of Contractor and Owner and their representatives. Should Subcontractor refuse or neglect to proceed at once with the correction of rejected or defective materials and/or workmanship after receiving notice to do so, it is agreed that Contractor may have the defects remedied or changes made at the sole expense of Subcontractor. Alternatively, should Contractor so elect, Contractor is hereby authorized to withhold any amount which Contractor in its sole discretion deems necessary to cover such costs from Subcontractor's subcontract balance or from any payment due Subcontractor. In the alternative, Subcontractor shall pay Contractor the costs of repairs upon demand of Contractor. The remedies described above shall not be exclusive, but shall be in addition to all others provided by this Subcontract and by law.

6.11 Subcontractor shall clean up and remove from the site, on a daily basis or as and when directed by Contractor, all rubbish and debris resulting from its work. Subcontractor shall also clean up to the satisfaction of the Contractor all dirt, grease, marks, etc., on the walls, ceilings, floors, fixtures, etc. deposited or placed thereon as a result of the execution of this Subcontract Agreement. If Subcontractor refuses or fails to perform this cleaning as and when directed by Contractor, the Contractor shall have the right and power to proceed with said cleaning and Subcontractor will, on demand, pay to Contractor the actual cost of said labor, plus a reasonable percentage of such costs to cover supervision, insurance, overhead, and other costs. Should Contractor so elect, Contractor is hereby authorized, in the alternative, to withhold an amount to cover such cost from any payments that become due hereunder or any other amounts Contractor may owe Subcontractor.

6.12 Subcontractor shall deliver to Contractor copies of shop drawings, cuts, samples, material lists, and other submissions, including mock-ups and temporary structures required by Contractor or the Contract Documents within sufficient time so as not to delay performance of the Project and within sufficient time for Contractor to submit the same within the time stated in the Contract Documents. Contractor's review or approval of any shop drawings, cuts, samples, material lists and other submissions, including mock-ups or temporary structures, shall not to any extent, under any circumstances, alter the requirements of the Contract Documents for quality, quantity, finish, dimension, design or configuration or constitute acceptance by Contractor of any method, material or equipment not ultimately acceptable to Owner or relieve Subcontractor from responsibility for errors of any sort or from the necessity of furnishing any work required by the Contract Documents.



SECTION 7: PAYMENT

7.1 The Contractor shall pay the Subcontractor for the complete performance of the Subcontractor’s Work, subject to authorized additions and deductions, the Contract Sum of [_____], all applicable sales tax is included.

The contract sum is determined as follows:

Base Bid =	\$ [_____]
Alternates =	\$ [_____]
TOTAL =	\$ [_____]

The Subcontract price includes, and Subcontractor shall pay for, all labor; materials; tools; equipment; supplies; state, federal, local and all other applicable taxes; transportation; storage facilities; offices; telephones; shop drawings; competent supervision; temporary facilities and all other things necessary for performance of the Work covered by this Subcontract Agreement. Subcontractor shall give timely notices to authorities and secure and pay for all permits and governmental fees, licenses, inspections, testing and taxes necessary for the proper execution and completion of Subcontractor’s Work.

7.2 The Contractor shall pay the Subcontractor monthly progress payments based upon the Subcontractor’s estimates for partial payment as are approved by the Contractor less retainage in the amount specified in the Prime Contract or Contract Documents, or if none be so specified, then in the amount of 10%. Except as otherwise provide in this Subcontract, payment to Subcontractor is due within seven business days after receipt of payment from Owner. The acceptance of any such work and payment therefore shall not relieve Subcontractor from liability for defects in such work, which may thereafter be discovered.

To the extent permitted by applicable law, the Subcontractor agrees that the Contractor shall be under no obligation to pay the Subcontractor for any work done on the Project until the Contractor has been paid therefore by the Owner and the provisions of this agreement stating the time and progress and final payments and the amount of them are subject to the condition precedent that the Contractor shall receive from the Owner progress or final payments in, at least, the amounts payable to the Subcontractor on this Project; otherwise the time when payment shall be due the Subcontractor shall be postponed until the Contractor has received same from the Owner. The Subcontractor hereby acknowledges that to the extent permitted by applicable law, payments to it are contingent upon the Contractor receiving payment from the Owner, and the Subcontractor expressly agrees to accept the risk that it will not be paid for work performed by it if the Contractor, for whatever reason, is not paid by the Owner for such work. The Subcontractor represents that payment for work performed will be based primarily on the credit and ability to pay of the Owner, and not on that of the Contractor, and the Subcontractor agrees that payment by the Owner to the Contractor for work performed by the Subcontractor shall be a condition precedent to any payment obligation for the Contractor to the Subcontractor.

7.3 Applications for monthly progress payments shall be in writing on the form AIA, G702 and G703 and in accordance with this Subcontract, shall state the estimated percentage of the Subcontractor’s Work in the Subcontract that has been satisfactorily completed and shall be submitted to the Contractor on or before the **20TH DAY** of each month. Contractor, Architect and/or Owner shall have the right to receive from Subcontractor such data, vouchers, receipts, invoices or other documents or information as they may require in order to verify the information contained in Subcontractor’s estimate, Materials purchased for the Project in accordance with approved shop drawings but not yet incorporated into the Project may be included in the application in accordance with the Contract Documents but shall at least be supported by detailed invoices from the material supplier and warehouse bonds or certificates of insurance. Material must be suitably stored at the Subcontractors expense, clearly marked for use on this project and segregated from other material in inventory. Failure of Subcontractor to make a timely submittal may result in said submittal being deferred for presentation to the Owner until the following month.



7.4 Prior to submitting its first application for payment, the Subcontractor shall submit an itemized schedule of values and a list of suppliers and subcontractors. The schedule of values shall be categorized according to the principal elements of the work with labor, material and lower tier subcontract cost assigned to each element. This schedule, after approval by the Contractor, shall be used as the basis of payment. The list of subcontractors and suppliers shall include the names, addresses and telephone numbers of all suppliers and lower-tier subcontractors to be used by the Subcontractor on the Project. That list shall be immediately supplemented as new suppliers and/or lower-tier subcontractors become known to the Subcontractor. Applications based on valuation of work done shall meet the terms of contract between Owner and Contractor.

7.5 Subcontractor, if required, shall submit receipts or other vouchers showing payment of labor and material to the previous month's date of estimate for partial payment. In the event Subcontractor does not furnish receipts and vouchers upon Contractor's request, Contractor is authorized to pay said bills directly and deduct such sums from the estimate for partial payment.

7.6 When the Subcontractor's Work or a designated portion thereof is complete, accepted by the Contractor and in accordance with the Contract Documents, the Contractor shall, upon application by the Subcontractor, make prompt application for payment of such Work. Within seven working days following receipt of payment by the Contractor from the Owner covering such completed Work, subject to the other provisions of this Subcontract, the Contractor shall, to the full extent provided in the Contract Documents, make payment to the Subcontractor of the entire unpaid balance of the contract sum or of that portion of the contract sum attributable to the completed work if the Subcontractor has supplied all requested releases and waivers.. Provided however, the Contractor shall not be required to make any payment that would not leave a sufficient balance of the Subcontract Sum to cover all obligations of the Subcontractor for labor, materials, equipment or other obligations not paid for or to be furnished by the Subcontractor pursuant to the requirements of this Subcontract.

7.7 Final acceptance of any such work and payment therefore shall not relieve Subcontractor from liability for defects in such work, which may thereafter be discovered.

7.8 Contractor may withhold amounts otherwise due under this Subcontract or any other agreement between the parties to cover estimates of costs of liability Contractor has incurred or may incur for which Subcontractor may be responsible under this Subcontract or any other agreement between the parties. Contractor hereby reserves the right to settle, in its sole and absolute discretion, any and all claims arising out of Subcontractor's Work with the Owner, Architect, or other subcontractor. If there are not sufficient amounts due Subcontractor under this Subcontract to cover all expenses related to the settlement of claims, Subcontractor shall pay Contractor for such expenses immediately upon demand.

7.9 Payment to Subcontractor is specifically agreed not to constitute or imply acceptance by Contractor or Owner of any portion of Subcontractor's Work that fails to comply with the Contract Documents or is in any way unacceptable to Owner or Contractor.

7.10 Subcontractor agrees and covenants that all monies received by it for performance of this Subcontract shall first be used for, and that such sums constitute trust funds for, the payment of all labor and materials used in the Work, Subcontractor shall insure that all of its subcontractors, laborers, suppliers and employees are at all times timely paid all amounts due in connection with the Work. Contractor shall have the absolute right to withhold any payments due Subcontractor until Subcontractor submits evidence satisfactory to Contractor that all amounts owed in connection with the performance of this Subcontract have been fully paid. If Subcontractor does not: (a) supply evidence to the satisfaction of Contractor that the monies owing have been paid, or (b) post a bond indemnifying Owner, Contractor and the premises from an actual or potential claim or lien, then Contractor shall have a right to retain out of any payments due or to become due to Subcontractor a reasonable amount to protect Contractor from any and all loss, damage or expense, including attorneys' fees, arising out of or relating to any such claim or lien, until actual or potential claim or lien has been satisfied by the Subcontractor.



7.11 Contractor shall have the express right of setoff for any sums due Subcontractor under this Subcontract Agreement against sums owed or claimed to be owed to Contractor by Subcontractor under this Subcontract Agreement or by virtue of any other agreement or contract by and between Contractor and Subcontractor or by operation of law. If Contractor elects, at Contractor's option, to pay sums to cover labor payrolls, freight, express or material bills which Subcontractor has failed to pay promptly when due, then Contractor may deduct the amount of the payment plus an administrative charge of ten percent (10%) from any amounts due or that may become due to Subcontractor. Contractor reserves the absolute right, but shall be under no obligation, to pay suppliers or laborers of Subcontractor directly and Contractor may deduct same from Subcontractor's Subcontract balance. Contractor maintains the absolute right, in its sole discretion, to issue joint checks made payable to the supplier, laborer or subcontractor and Subcontractor or to issue checks directly to the supplier, laborer or subcontractor of Subcontractor, any such payments constituting payment to Subcontractor under this Subcontract. Payments otherwise due Subcontractor may be withheld by Contractor on account of defective work not remedied, claims filed, evidence indicating probability of filing of claims, failure of Subcontractor to make payments to its subcontractors, laborers or suppliers, a doubt that the subcontract can be completed for the balance then unpaid or within the established schedule, or upon Contractor's belief that it has incurred or is likely to incur damages due to Subcontractor's Work or lack of performance of the Work.

7.12 If Subcontractor or any supplier, laborer, subcontractor or other claimant under Subcontractor should file any claim, lien notice or affidavit or bond claim against the Project, the Owner, Contractor or their respective sureties, Subcontractor shall immediately cause such lien, bond or claim to be released in full. Subcontractor shall provide Contractor an original, recordable release within three (3) days of demand of Contractor. If Subcontractor should fail to provide such original, recordable release, Contractor shall be authorized to take whatever action is necessary to remove such claim, including but not limited to providing a bond to indemnify against the claim or paying the claim, and Subcontractor shall be liable for all such costs including, but not limited to, bond premiums, interest, attorney's fees and claims paid. The cost may, at Contractor's option, be either deducted from Subcontractor's remaining Subcontract balance, withheld from any payment due Subcontractor or payable on demand to Contractor.

7.13 Subcontractor agrees to pay its workmen not less than the scale of wages prescribed in the Contract Documents, or not less than the scale prescribed by law in case the Contract Documents provide no such scale, and to make payments at the times prescribed by the Contract Documents or by law. Should Subcontractor fail to observe this covenant, Contractor shall have the option to proceed with termination pursuant to Article 13 or exercise such other remedies as provided for in this Subcontract.

7.14 Subcontractor expressly agrees that as further consideration for the establishment of this Subcontract, and as an express condition precedent to receiving partial payment from Contractor for work performed pursuant to this Subcontract Agreement, Subcontractor and all of its suppliers and sub-subcontractors shall execute and deliver to Contractor with Subcontractor's request for partial payments a full and complete release of all claims and causes of action Subcontractor may have or claim to have against Contractor through the date of the execution of said release, SAVE and EXCEPT for those claims which Subcontractor shall specifically list on said release and describe in a manner sufficient for Contractor to identify such claim with certainty. Such release shall also state that Subcontractor has paid all laborers, material suppliers and subcontractors through the date of the Release and will indemnify Contractor from any claims arising out of any such claims.

7.15 Title for all materials and work covered by estimates shall pass to the Contractor (or to the Owner, if the arrangements between the Contractor and Owner so provide). However, this provision shall not be considered as relieving Subcontractor from the sole responsibility for all materials and work for which payments have been made, the restoration of any damaged work or the maintaining of insurance thereon, if required by the Contract Documents: nor shall it be considered as a waiver of the right of Contractor or Owner to require fulfillment of all the terms of the Contract Documents.



7.16 Unless otherwise agree in a writing signed by the Contractor, Subcontractor shall continue to perform the Subcontract Work and meet the work schedule provided by the Contractor during any dispute resolution proceedings.

SECTION 8: PERFORMANCE AND MATERIAL BONDS

8.1 A Payment and Performance Bond **will or will not** be required. If required, the Subcontractor shall provide said bonds in forms and through a surety agreeable to Contractor and the bonds shall secure the faithful performance if the Subcontractor's Work and to satisfy the Subcontractor's payment obligations related to the Subcontractor's Work.

SECTION 9: INSURANCE REQUIREMENTS and INDEMNIFICATION AGREEMENT

9.1 Commercial General Liability Insurance. Subcontractor shall obtain and maintain Commercial General Liability Insurance with at least an "A-" rated carrier per A.M Best, on an occurrence form for the hazards of (i) construction operation, (ii) subcontractors and independent contractors, (iii) products and completed operations (with completed operations to remain in force for two years following project completion), (iv) explosion and collapse-, (v) contractual liability, and (vi) the insurance will not contain exclusion(s) or endorsement(s) that limits insurance protection for work performed under this agreement, such as Residential Construction Exclusion or Subcontracted Work Exclusion (CG 2294 or its equivalent). Minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate will be maintained including a per project aggregate endorsement.

9.2 Business Automobile Liability Insurance. Subcontractor shall maintain automobile Insurance with at least an "A-" rated carrier per A.M Best covering all owned, non-owned and hired automobiles used in conjunction with the services or other work hereunder and shall have minimum bodily injury and property damage combined single limit of \$1,000,000 per occurrences.

9.3 Workers Compensation and Employers Liability Insurance. Subcontractor shall maintain Workers Compensation Insurance with at least an "A-" rated carrier per A.M Best to cover the statutory limits of the Workers Compensation laws of the state in which any work is to be performed and when applicable to Federal Laws, USL&H if applicable and Employers Liability (including occupational disease) coverage with limits not less than:

\$500,000 Each Accident
\$500,000 Policy Limit for Disease
\$500,000 Each Employee for Disease

9.4 Excess Liability. Subcontractor shall maintain Excess Liability coverage with Minimum limits of \$3,000,000 per occurrence and \$3,000,000 aggregate.

9.5 Professional Liability. Subcontractor shall maintain coverage for Design-Build, Contractors Errors and Omissions and/or Contractors Professional Liability whereas the subcontractor is performing or subcontracting engineering, design-build, architectural and/or professional consulting services with minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate.



9.6 To the extent permitted by the applicable law, the Contractor and Subcontractor waive all rights against each other and against the Owner, the Architect and/or the Engineers, separate contractors, and all other subcontractors, to the extent permissible under their respective and appropriate policies of insurance, for damages caused by fire or other perils to the extent covered by property insurance, except such rights as they may have to the proceeds of such insurance. The deductible portion of any claim against the Builders Risk Policy, if provided, is the responsibility of the subcontractor making the claim.

9.7 Additional Insured. Subcontractor furnished insurance (except Workers Compensation) shall name Contractor and all its assigns, subsidiaries and affiliates as, additional insured as their respective interests may appear including products and completed operations. Form CG 2010 11 85 if available or Forms CG 20 37 07 04 or CG 20 37 10 01 may be used in combination with CG 2010 07 04 or their equivalents. All coverage for additional insured shall be written on a primary and noncontributory basis. Sub-subcontractors shall also name Contractor as additional insured.

9.8 Sub-subcontractor's Insurance. Subcontractor shall require all those sub-subcontractors providing equipment, materials or services directly to Subcontractor in connection with this Subcontract to obtain, maintain and keep in force coverage in accordance with these insurance requirements set forth herein. Subcontractor shall obtain certificates of insurance evidencing such coverage and provide Contractor with such certificates. Subcontractor shall not be excused from its obligations to cause such subcontractor to meet the insurance coverage requirements set forth under this section unless Sub-contractor shall have obtained in writing from Contractor a waiver, which shall be effective only as to such requirements and for such sub-subcontractor specifically identified therein.

9.9 Certificates of insurance acceptable to Contractor shall be filed with Contractor prior to commencement of the Work. If any of the foregoing insurance coverages are required to remain in force after final payment, then an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Similarly, the Contractor, if requested by the Subcontractor, shall furnish satisfactory evidence of builders risk type insurance if required by the contract documents.

9.10 Indemnification Agreement: Subcontractor agrees to indemnify and save harmless the Contractor from any and all claims, loss, or expense, including attorney's fees and litigation expenses, including expert fees which may arise directly or indirectly from the performance or failure of performance by Subcontractor of his obligations under this contract.

SECTION 10: COMPLIANCE WITH SAFETY REQUIREMENTS

10.1 Subcontractor shall take all necessary precautions for the safety of the employees on the Project and shall comply with all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injuries to persons or damage to property on or about or adjacent to the Project. Contractor and Subcontractor agree that Contractor does not owe a duty to ensure that Subcontractor performs its work in a safe manner. Subcontractor acknowledges and agrees that Contractor does not retain any actual or constructive control over the manner in which the Subcontractor performs its work. Subcontractor and not Contractor is responsible for constant supervision and monitoring of all its employees and laborers. Issues specifically requiring Subcontractor's constant supervision and immediate correction in the case of unsafe conditions include, but are not limited to, cleaning of the project site; wearing of hard hats; keeping railings, barricades and covers in the proper place and in good repair; wearing all necessary protective equipment; keeping scaffolding and ladders in good repair and in proper use; and using power tools properly and keeping all tools in good repair.

10.2 The Subcontractor agrees to take all reasonable safety precautions with respect to its Work, to comply with all safety measures initiated by the Contractor for the safety of persons or property, and to perform all work in accordance with the requirements of the Contract Documents. The Subcontractor shall report to the Contractor within three days any injury to any other subcontractor's employees at the site.



10.3 Subcontractor agrees, in performance of this contract, to observe and comply (1) with the Occupational Safety and Health Act of 1970, as amended, and with the standards and rules issued thereunder and (2) with other federal, state, and local laws, ordinances and regulations. Subcontractor agrees to indemnify and hold Contractor harmless for, of, and from any loss including attorney's fees and litigation expenses, including expert fees Contractor may sustain by reason of Subcontractor's failure to comply with said laws, rules and regulations or the requirements of the Subcontract in connection with the performance of said contract.

SECTION 11: COMPLIANCE WITH CIVIL RIGHTS ACTS

11.1 Subcontractor agrees in the performance of this contract, to observe and comply with all applicable federal and state laws against discrimination including the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans With Disabilities Act, and the Equal Pay Act, as well as all rules and regulations promulgated under the aforesaid acts, and require the same of its subcontractors and vendors.

11.2 Subcontractor agrees to indemnify and hold Contractor harmless for, of, and from any loss including attorney's fees and litigation expenses, including expert fees Contractor may sustain by reason of Subcontractor's failure to comply with said laws, codes, rules and regulations in connection with the performance of said contract.

SECTION 12: COMPLIANCE WITH EMPLOYMENT SECURITY ACT

12.1 The Subcontractor agrees to furnish the Contractor, if required, an affidavit of the Department of Labor of the State of Kansas (or equivalent agent from other states having jurisdiction) that the Subcontractor has paid all contributions, penalties, and interest which Subcontractor is obligated by the Employment Security Laws of Kansas (or other states having jurisdiction) to pay on account of the work covered by this subcontract.

12.2 Subcontractor, in the event said affidavit is required, agrees that the Contractor may withhold final payment to Subcontractor until such date as Subcontractor furnishes to Contractor said affidavit of the Department of Labor of the State of Kansas (or equivalent agent from other states having jurisdiction)

12.3 Subcontractor further agrees that if it is necessary for Contractor to make any payment on behalf of the Subcontractor under the Employment Security Laws, and that if the amount so retained pending receipt of an affidavit from the Department of Labor of the State of Kansas (or other equivalent agent from other states having jurisdiction) is inadequate to make full payment thereof, Subcontractor shall be liable for, and shall pay to the Contractor such additional amount together with interest at the highest legal rate from the date of such payment.



SECTION 13: REMEDIES ON SUBCONTRACTOR'S BREACH

13.1 In the event of the breach by Subcontractor of any of the terms of this Subcontract, and its failure to correct such breach within three (3) days after receipt of written notice thereof from Contractor, or in the event that a petition under any of the provisions of the Bankruptcy Act of The United States is filed by or against the Subcontractor, or the Subcontractor makes an assignment for the benefit of creditors, or the Subcontractor becomes insolvent or a receiver of his property is appointed or in the event Subcontractor should otherwise become disabled from complying with the provisions hereof, including, without limitation, the stoppage of his work due to a labor dispute involving Subcontractor or otherwise arising out of the subcontract work, then the Contractor, without further notice to the Subcontractor, shall have the right to any or all of the following remedies without prejudice to any other right or remedy he may have under this agreement or by law:

(1) Contractor may supply such number of workers and quantity of material, equipment and other facilities as the Contractor deems advisable for the completion of the Subcontract Work, or any part thereof, which Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for payment of same;

(2) Contractor may contract with one or more additional contractors or subcontractors to complete such portion of the Subcontract Work as Contractor shall determine will be necessary to complete the total Subcontract Work, and charge the cost to the Subcontractor, who shall be liable for payment of same; or

(3) Contractor may terminate the subcontract and finish the work by whatever method he may deem expedient either by himself or through other contractors or subcontractors, and charge the cost thereof to the Subcontractor, who shall be liable for payment of the same.

Contractor may deduct all costs incurred by him in the pursuance of any of the above remedies together with Contractor's reasonable overhead and direct job expenses incurred in pursuing such remedy or remedies, including attorney's fees and, at Contractor's discretion, a reasonable profit not to exceed fifteen percent (15%) from any sums due or to become due hereunder. Subcontractor shall be liable and pay to the Contractor any amount such costs exceed the unpaid balance of total subcontract amount set forth in paragraph 3.1 heretofore mentioned.

In the event Contractor exercises any of its available remedies, as set forth herein, Contractor may take possession of and have a lien upon all materials, equipment, tools and machinery at the construction site owned by or in the possession of the Subcontractor for the purpose of completing the work on the Project and securing any amounts which may be due to the Contractor. The Contractor shall have no obligation to protect or insure such materials, equipment, tools or machinery.

In the event Contractor exercises any of its available remedies, as set forth herein, the Subcontractor shall not be entitled to any further payment, if at all, until all of Subcontractor's Work is completed and accepted and any potential claim for delay is resolved.

It is further specifically agreed that in the event Contractor exercises any of its available remedies, as set forth herein, the Subcontractor shall not be entitled to any further payment, if at all, until the warranty period for the Subcontract Work has fully expired regardless of whether the work has been paid for by the Owner.



SECTION 14: ADDITIONAL PROVISIONS

14.1 Any failure or delay by the Contractor in enforcing the obligations of Subcontractor shall not waive the obligation in the future or the Contractor's right to insist on prompt performance of such obligation in the future. Any obligation placed upon the Subcontractor may be waived or modified only in writing signed by both the parties.

14.2 The subcontract agreement has been executed by the Contractor in the State of Kansas and shall be interpreted and governed by the laws thereof. The Contractor and the Subcontractor, for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants of this Subcontract Agreement.

14.3 Notwithstanding any inconsistent provision in the contract documents, all actions, suits or proceedings arising directly or indirectly from this subcontract shall be litigated only in the District Court of Shawnee County, Kansas, and the Subcontractor hereby consents to the jurisdiction of that court. Provided, however, if a claim, action, suit, arbitration or proceeding is brought against the Contractor by the Owner or some other third party in some other jurisdiction or forum, the parties consent to litigation or arbitration of any claims one has against the other in such forum or jurisdiction and in such proceeding to facilitate resolution of all issues involving all parties in one proceeding.

14.4 In the event that provisions of the Prime Contract or Contract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of any dispute between the Subcontractor and the Contractor shall be stayed pending resolution of the dispute between the Contractor and the Owner.

14.5 All words in this Subcontract Agreement shall be deemed to include any number or gender as the context or sense of this Subcontract requires. Although drafted by Contractor, this Subcontract shall in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against either party.

14.6 All notices required under this Subcontract Agreement shall be sent via certified mail return receipt requested to the address set forth in the Subcontract Agreement, via facsimile number listed on the Subcontract Agreement or via hand delivery to the office set forth on the Subcontract Agreement. Verbal notification to Contractor will not satisfy the notice requirements herein. To the extent any notice provision of this Subcontract violates applicable law in that it is too strict or restrictive, the provision shall be automatically modified to the standards mandated by the applicable law and shall not be void.

14.7 In the event one or more of the provisions of this Subcontract Agreement or any application thereof shall be invalid, unenforceable, or illegal, the validity, enforceability and legality of the remaining provisions and any other application thereof shall not in any way be impaired thereby.

14.8 This Subcontract Agreement contains and includes all the entire understanding of the parties. Any oral agreements, prior proposals, understandings, and correspondence are hereby superseded by this Subcontract Agreement. In addition, Subcontractor waives any claim for fraudulent inducement with respect to this Subcontract. This Subcontract may be amended only by an instrument in writing signed by the parties hereto.



14.9 Contractor has no control nor seeks any control over the labor relations policy of Subcontractor; however, Subcontractor agrees that if pickets are established by local unions at the job site, that its employees will either cross those picket lines or will enter the job site through a different entrance. Subcontractor agrees to establish a separate entrance to the job site as directed by Contractor. Failure of Subcontractor to man the job with a sufficient number of skilled workmen during a labor dispute shall not be a defense to Contractor's remedies under any provision of this Subcontract. Subcontractor agrees that Contractor may take all remedies provided in Articles 4, 7 or 13 of this Subcontract should Subcontractor delay the Project as the result of a labor dispute of any nature.

14.10 In the event that labor only is furnished by Subcontractor, Subcontractor agrees to use Contractor's materials without waste and agrees to reimburse Contractor for any material ruined or damaged on account of its negligence or carelessness. Material furnished by Contractor shall be considered as delivered to Subcontractor when placed at the curb line of the building on the job site in which it is to be used or any other place designated by Contractor. Quantities of material used daily shall be reported to Contractor.

14.11 Subcontractor shall neither purchase materials nor incur other debts in Contractor's name without Contractor's prior written authorization.

14.12 Subcontractor shall not assign or transfer this Subcontract or any part or interest therein, including but not limited to the right to the proceeds therefrom without express written consent from Contractor, such consent to be granted or withheld in Contractor's sole discretion.

14.13 Unless otherwise provided in a writing signed by the Contractor, all materials needed to perform the Subcontractor's Work that are shipped to the Project site shall be shipped F.O.B. the Project site. If a carrier requests that the Contractor pay any shipping or delivery costs, the Contractor shall, at its option, be entitled to do so and deduct all amounts paid from the Subcontract Sum.

14.14 Notwithstanding any other provision of this Subcontract, the risk of loss or damage to materials or equipment provided pursuant to this Subcontract, shall remain with the Subcontractor until incorporated into the Subcontractor's Work. Any damage to materials or equipment during transit or storage shall be the responsibility of the Subcontractor regardless of the manner in which the material or equipment was shipped or who paid the freight or delivery costs.

14.15 The Subcontractor agrees to perform and be responsible for all design and engineering services required by the Subcontract Documents to be performed by the Subcontractor as part of the Subcontract Work. Subcontractor agrees to defend, indemnify and hold harmless the Owner and the Contractor from and against all claims, damages, losses, or expenses, including attorney's fees, resulting from Subcontractor's performance or failure to perform such design or engineering services.

14.16 This project **is or is not** exempt from payment of sales tax.



14.17 All requirements for Contract Closeout are to be met before submission of final Application for Payment or Reduction of Retainage. The Subcontractor will be required to provide all Closeout information in an electronic and hard copy format.

14.18 MCP BUILD Supplemental Conditions shall be considered a part of this agreement. Copies of this document will be made available upon request.

IN WITNESS WHEREOF, we have hereunto set our hands this day and year first above written.

[_____]
SUBCONTRACTOR

By: _____
SIGNATURE

PRINTED NAME

TITLE

DATE

MCP BUILD
CONTRACTOR

By: _____
SIGNATURE

PRINTED NAME

TITLE

DATE





SAMPLE PURCHASE ORDER



(DATE)

(PO ADDRESSEE)

(ADDRESS)

(CITY, STATE, ZIP)

Ph: (PHONE)

Via Fax or Email: Purchase Order and Attachments

Project: (PROJECT NAME)

Re: Purchase Order

PURCHASE ORDER

Enclosed is the Purchase Order for your review and signature for the above referenced project. Please sign and return one copy via fax or email. Fax or email signatures on the purchase order will be accepted by all parties as original.

TAXES

This project **is/ is not** exempt from sales tax. Accordingly, the tax exemption certificate is enclosed. Please complete and return the "W-9 Request for Tax Payer Identification Number and Certification" (enclosed) and the "Supplier's Project Contact Information" form (enclosed).

CHANGE ORDERS

Be aware that MCP onsite personnel, including the Superintendent and onsite Project Manager, do not have authority to order or approve extra work. All Change Orders must be billed separately from the base subcontract and include a copy of the signed Change Order.

PAYMENTS

Invoices are due in our office on or before the 20th day of each month, either by email, submission on ProCore, or mailed hard copy. An unconditional waiver of lien will accompany each payment, and is to be signed and returned to our office before the next payment can be processed. If this project requires conditional lien waivers, one will be provided for you.

PROJECT DOCUMENTS

All submittals, ASIs, RFIs, Meeting Minutes, etc. will be coordinated through ProCore for this project. Within a few days of receiving the subcontract, you should receive an invitation to sign on to the project and upload your submittals through app.procore.com. There are online tutorials available by clicking the "Support" icon, but please contact me if you do not receive your invitation, or have any problems accessing and using the website.

SAFETY

All MCP BUILD jobsites are hard hat required areas. All equipment must be OSHA compliant and be checked by a competent person each day. You will need to provide your jobsite foreman and our superintendent a manual with your Hazardous Communication Written Program and Material Safety Data Sheets for the materials you will be using on this project. Periodically, OSHA inspectors will make a visit to the jobsite and review our procedures for handling hazardous materials/equipment and our policies for the training of employees in safety practices to be followed. Unsafe practices will not be tolerated.

CHECKLIST - RETURN BACK TO OUR OFFICE (prior to commencement of work and before any payments can be processed):

1. Signed purchase order.
2. Completed "W-9 Request for Tax Payer Identification Number and Certification" form
3. Completed "Supplier's Project Information" form

We look forward to working with you on this project. Please feel free to contact me if you have any questions.

Sincerely,

(YOUR NAME)

Project Coordinator

Enclosures:, Purchase Order, MCP Project Contact Information, Supplier's Project Information, Change Order Breakdown Form, W-9

C: File

Project Contact Information

SUPERINTENDENT

Name: _____ (SUPERINTENDENT) _____ Phone Number(s): _____

Email: _____

PROJECT MANAGER

Name: _____ (PROJECT MANAGER) _____ Phone Number(s): _____

Email: _____

PROJECT COORDINATOR

Name: _____ (PROJECT COORDINATOR) _____ Phone Number(s): _____

Email: _____

Supplier's Contact Information

SUPERINTENDENT

Name: _____ (SUPERINTENDENT) _____ Phone Number(s): _____

Email: _____

PROJECT MANAGER

Name: _____ (PROJECT MANAGER) _____ Phone Number(s): _____

Email: _____

PROJECT COORDINATOR

Name: _____ (PROJECT COORDINATOR) _____ Phone Number(s): _____

Email: _____

Change Management Breakdown

SUBCONTRACTOR/SUPPLIER NAME

DATE

PROJECT NO.

SUBCONTRACTOR/SUPPLIER PHONE
NUMBER

PROJECT MANAGER

SUBCONTRACTOR/SUPPLIER FAX NUMBER

BULLETIN # AND/OR ASI #

Description of Work to be performed or deleted

Item	Description	Qty.	Material Unit Cost	Labor Unit Cost	Material Cost	Labor Cost	TOTAL
1							
2							
3							
4							
5							
						SUB TOTAL	
						OVERHEAD & PROFIT	
						TOTAL	



Purchase Order No. _____

Project Title: _____

January 18, 2019

TO: MCP BUILD
3501 SW Fairlawn Rd., Suite 100
Topeka, Kansas 66614
785.273.3882

ATTN:
=====

Project Name: _____
Project Owner: _____
Project Number: _____
Project Architect: _____

Ship to: _____ Bill to: MCP BUILD
3501 SW Fairlawn Road
Topeka, Kansas 66614

In Care of: MCP BUILD
Attention:

Delivery Date: Please contact Superintendent 24 Hrs. prior to delivery.

Delivery is required in accordance with the Project Schedule, Contract Documents and the direction of the Project Superintendent. All Freight is prepaid unless otherwise specified below.

Includes the Bid Documents and Architectural Specifications dated March 2013 and any and all referenced codes and standards. Submittals shall be submitted for review within 10 days of issuance of this Purchase Order. Electronic submittals are required.

Upload Submittals to Procore. Your contact for help is:

Addenda Addendum No. 1 Alternates were accepted. Provide all materials required to complete all work per the contract documents and MCP BUILD Front End Requirements, including but not limited to 03300 and Scope of Work known as:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10

← note, you can add ten lines of "scope" here before the signatures are moved to another page

(Purchase Order **Includes** KS Sales Tax).

Total: _____

We accept the above order, including the terms and conditions hereon and those included below.

MCP BUILD
By: _____
Name: _____
Title: _____

MCP BUILD
By: _____
Name: _____
Title: _____



CONDITIONS OF PURCHASE

1. This order may only be accepted on the exact terms set forth herein and no additional terms or modifications will be agreed to. The conditions and provisions of this order shall constitute the entire agreement of the parties as to the goods, materials and products described herein, and shall supersede all previous agreements, conditions, proposals or offers of the party as pertains to the performance of this purchase order.

2. Vendor acknowledges he is bound to the Contractor by all terms of all contract documents that form a part of the contract, by reference or otherwise, and assumes toward the Contractor all the obligations and responsibilities that the Contractor assumes therein toward the owner, insofar as they are applicable to the materials, equipment, workmanship and transportation furnished under this purchase order.

3. Vendor warrants that materials and equipment furnished under this purchase order fully meet the requirements of the contract or said materials and equipment have been specifically approved as provided for in said contract.

4. In the event any materials or equipment delivered under this purchase order are unacceptable under the contract, the contractor may, at its option in addition to any other remedies provided by law:

- a. Reject the defective materials or equipment, return the same to Vendor at Vendor's expense and cancel all or any portion of this purchase order with no liability on the part of the contractor.
- b. Require Vendor to remove and replace the defective materials or equipment or to make the necessary corrections or modifications to completely satisfy the contract all at Vendor's expense.
- c. Make the necessary corrections or modifications to the defective materials or equipment, or replace them, to completely satisfy the contract all at Vendor's expense if Vendor does not act promptly to satisfy the contract. The contractor will be the sole judge of the promptness required to prevent delay in the completion of the work in the contract. Vendor shall pay to the Contractor all loss or damage resulting from Vendor's failure to supply materials or equipment acceptable under the contract. All such charges may be withheld by the Contractor from amounts due Vendor, at the Contractor's option.

5. Vendor shall provide guarantees as specified in the contract, or if no guarantee is specified therein, then provide a guarantee to replace without cost to the Contractor or to the Owner, any defective or non-conforming material or equipment or remedy without cost to the Contractor or to the Owner any latent defects not due to ordinary wear and tear or not due to improper maintenance or operation, which may develop within one year of acceptance by the Owner. Said acceptance by the Owner and/or payment for materials or equipment by the Contractor shall not relieve Vendor from guarantee provisions.

6. Time is of the essence of this purchase order. Shop drawings, samples and other items required by the contract shall be submitted to the Contractor in accordance with the schedule specified in the purchase order.

Materials and equipment shall be shipped so as to be received by the Contractor by the date or dates specified in the purchase order. In the event that Vendor fails to meet those schedule dates or delivery dates, the Contractor may, at its option, in addition to any other remedies provided by law:

- a. Cancel all or any portion of this purchase order with no liability on the part of the Contractor, and purchase on the open market the materials or equipment which have not been delivered by the specified date or dates, (or for which the shop drawings, samples, or other items have not been received on schedule). Any and all costs to the Contractor over and above the price specified in this purchase order shall be reimbursed to the Contractor by Vendor,
- b. Require Vendor to reimburse to the Contractor any and all liquidated damages collected from the Contractor by the Owner, which are attributable to or caused by Vendor's failure to meet the specified delivery date or dates; and in addition, whether or not such liquidated damages are so collected, require Vendor to pay to the Contractor any and all other additional damages the Contractor may sustain, attributable to or caused by Vendor's failure to meet his obligations under this purchase order, including, but not limited to, the cost of improvisations in the performance of his work, and additional overhead and expense and equipment rental related to such delay.

7. Prices stated in this purchase order are not subject to escalation unless so stated.

8. Vendor shall not assign this purchase order nor subcontract any portion of the work hereunder, to include shop drawings, without prior written consent of the Contractor.

9. Vendor warrants that there are no known claims against it for unpaid labor, materials, equipment or other charges, for which payment is sought from the Contractor. Contractor may, at its option make payments for labor or material jointly to the Vendor and any person, firm, or corporation to whom the Vendor is indebted for labor performed or material furnished in the performance of this purchase order.

10. The Contractor and Vendor agree to be bound by the mandatory contract provisions as required by K.S.A. 44-1030(a) paragraphs (1)-(4) and the same shall be incorporated herein as if set out fully. (The provisions of this paragraph are only applicable to contracts of the State of Kansas or other political subdivisions of the State of Kansas as defined in K.S.A 44-1030(a).

11. PATENT RIGHTS. The Vendor, by acceptance of this order agrees to indemnify and hold the purchaser harmless from all liability direct or indirect for patent infringement and from any other claim for damages in which the Vendor may be involved affecting the material herein specified, and to defend all suits against the purchaser involving any such claims.

12. Other conditions: -----

