

WASHINGTON SUPPLEMENTAL TERMS AND CONDITIONS

VERSION 1.1, REVISED JANUARY 1, 2020

The following clauses apply to Work in the State of Washington. To the extent these clauses conflict with any term or condition in the *Standard Terms and Conditions*, the Parties shall (i) endeavor to interpret the clauses in harmony, otherwise (ii) these *Washington Supplemental Terms and Conditions* take precedence.

Subcontractor agrees to flow down and incorporate all applicable clauses to its Lower Tier Subcontractors and its Lower Tier Suppliers.

1. DEFINITIONS.

- 1.1 "L&I" means the Washington State Department of Labor and Industries.
- 1.2 "L&I/OSHA Worker Comp MOD Factor" means that rating applied to the Subcontractor's experience factor associated with the frequency of accidents experienced and that effects the rate charge for Workers Compensation as applied by OSHA/L&I.

2. REVISIONS TO THE STANDARD TERMS AND CONDITIONS.

- 2.1 Change Section 8.2 as follows:

Add to the end of the first sentence "or as provided in this Section 8.2"

Add the following new sentence to the end of Section 8.2:

"Upon Subcontractor's timely compliance with other provisions of this *Subcontract Agreement* regarding claim and dispute procedures and notice, Subcontractor may be entitled to an equitable adjustment for unreasonable delays in the performance of Subcontractor's Work which delay is caused by the acts or omissions of the Contractor or persons acting for the Contractor. For purposes of this Section, persons acting for the Contractor shall not include, among others, the Owner, and its agents, employees, or representatives, including but not limited to architects and engineers."

3. SUBCONTRACTOR EMPLOYEES/AGENTS.

Subcontractor shall enforce strict discipline and good order among Subcontractor's employees, agents, independent contractors, and subcontractors' employees. Subcontractor shall not permit employment of persons not skilled in tasks assigned to them. Subcontractor's employees, agents, independent contractors, and subcontractors' employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner or Contractor may, by written notice, request Subcontractor to remove from the Work or Project site any person Owner or Contractor reasonably deems incompetent, careless, or otherwise objectionable.

4. WORKING CONDITIONS.

- 4.1 **Prior Notice of Excavation.** "Excavation" means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches (12") in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line. Before commencing any excavation, Subcontractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services.
- 4.2 **Protection of Existing Structures, Equipment, Vegetation, Utilities, and Improvements.** Subcontractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Subcontractor. Subcontractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Subcontractor fails or refuses to repair the damage promptly, Owner or Contractor may have the necessary work performed and charge the cost to Subcontractor. Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.
- 4.3 **Assignment of this Agreement to Owner.** Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that: (i) the assignment is effective only after termination of Prime Contract by Owner for cause pursuant to the Contract Documents and only for those Subcontracts which Owner accepts by notifying the

Subcontractor in writing; and (ii) after the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract. The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

- 4.4 **Contractor's License.** Pursuant to WASH. REV. CODE § 39.06, Subcontractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to WASH. REV. CODE § 18.27.

5. WORK FOR A PUBLIC BODY.

When the Owner is a public body, the following clauses also apply to the Subcontractor's Work:

5.1 Prevailing Wage Rates to Be Paid.

5.1.1 The wage rates to be paid all laborers, workers, and mechanics who perform any part of the Work under the *Subcontract Agreement* shall meet or exceed the prevailing wage rates as required by Ch. 39.12 of the WASH. REV. CODE, as amended. This requirement applies to laborers, workers, and mechanics whether they are employed by the Contractor, Subcontractors, Sub-subcontractors, or any other person who performs a portion of the work contemplated by the *Subcontract Agreement*.

5.1.2 The current prevailing wage rates as provided by the Industrial Statistician of L&I are included and incorporated in the Contract Documents. In referencing such rates, the Contractor does not imply or warrant that the Subcontractor will find labor available at those rates. It is the Subcontractor's sole responsibility to determine the wage rates it will actually have to pay.

5.1.3 In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of L&I of the State and the Director's decision therein shall be final and conclusive and binding on all parties involved in the dispute, as provided for by WASH. REV. CODE § 39.12.060, as amended.

5.1.4 In connection with this Agreement, the Subcontractor will be required, pursuant to WASH. REV. CODE § 39.12.040 to file with the Owner a "Statement of Intent to Pay Prevailing Wages" and an "Affidavit of Wages Paid" for itself and all its Lower Tier Subcontractors. The Statements require the "approval" of, and the Affidavits the "certification" of, the industrial statistician of L&I before the Statements or Affidavits are to be presented to the Owner. L&I charges a fee for such approval and certification, which fee shall be paid by the Subcontractor. Any change in the fee will not be grounds for revision in Subcontract Price.

5.1.5 On work funded in whole or in part by federal monies current federal wage determination rates are included in the Contract Documents. If a State of Washington minimum wage rate conflicts with a federal minimum wage rate for the same labor classification, the higher of the two shall govern.

5.1.6 All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, asphalt or other similar materials and all workers removing any materials from the construction site as required by the specifications are subject to the provisions of Ch. 39.12 of the WASH. REV. CODE and are entitled to the appropriate Prevailing Wage Rate. For purposes of this Agreement, such materials are for specified future use and per the WASH. ADMIN. CODE § 296-127-018, delivery and pick-up of the above listed materials constitutes incorporation.

5.1.7 The Subcontractor is required to include this provision in all its subcontracts and shall require that it be placed in all subcontracts at any and every tier.

5.1.8 The most current Apprenticeship Wage Rates can be obtained from the L&I website at: <https://fortress.wa.gov/lni/wagelookup/ApprenticeWageLookup.aspx>

5.1.9 *Hours of Labor.* Subcontractor shall comply with all applicable provisions of WASH. REV. CODE § 49.28 and they are incorporated herein by reference. Pursuant to that statute, no laborer, worker, or mechanic employed by Subcontractor, its Lower Tier Subcontractors, or any other person performing or contracting to do the whole or any part of the Work, shall be permitted or required to work more than eight (8) hours in any one calendar day, provided, that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight (8) hours of each calendar day shall be not less than one and one-half times the rate allowed for this same amount of time during eight (8) hours' service. Notwithstanding the preceding paragraph, WASH. REV. CODE § 49.28 permits a subcontractor in any public works contract subject to those provisions, to enter into an agreement with its employees in which the employees work up to ten (10) hours in a calendar day. No such agreement may provide that the employees work ten-(10) hour days for more than four (4) calendar days a week. Any such agreement is subject to approval

by the employees. The overtime provisions of WASH. REV. CODE § 49.28 shall not apply to the hours, up to forty (40) hours per week, worked pursuant to any such agreement.

5.2 **Nondiscrimination.**

5.2.1 Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, WASH. REV. CODE § 49.60, and Gubernatorial Executive Order 85-09. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Subcontractor must meet.

5.2.2 During performance of the Work: (i) Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam-era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in WASH. REV. CODE § 49.60; (ii) Subcontractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability; (iii) Subcontractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents and WASH. REV. CODE § 49.60; (iv) Subcontractor shall permit access to its books, records, and accounts, and to its premises by Owner, Contractor, and by the Washington State Human Rights Commission, for the purpose of investigation to ascertain compliance with this section of the Contract Documents; and, (v) Subcontractor shall include the provisions of this section in every subcontract.

5.3 **L&I Public Works Training Requirement.** As required by WASH. REV. CODE §§ 39.06.020 & 39.04.350(f) and unless the Subcontractor is exempt from the training requirement, The Subcontractor shall "have received training on the requirements related to public works and prevailing wage" under WASH. REV. CODE § 39.04.350 & ch. 39.12. Centennial will rely on data provided by L&I in determining whether a Subcontractor is exempt from and has completed this training. The Subcontractor has included all costs and time associated with completing this training in the Subcontract Price. The Subcontractor understands and agrees that it will not be able to request any change to the Subcontract Price or Subcontract Time for completing this training. Subcontractor further agrees that the Subcontractor's failure to complete this training within three (3) days of the date Subcontractor signs the Subcontract Agreement is a basis for Termination for Cause without further notification and that Subcontractor will be liable to Contractor as described in the *Standard Terms and Conditions*.

6. **RECORDS RETENTION.**

The wage, payroll, and cost records of Subcontractor, and its subcontractors, and all records subject to audit in accordance with this *Subcontract Agreement*, shall be retained for a period of not less than six (6) years after the date of Final Acceptance.

7. **ANTITRUST ASSIGNMENT.**

Contractor and Subcontractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Subcontractor hereby assigns to Owner and Contractor any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Subcontract Price is established and which are not passed on to Contractor under a Change Order. Subcontractor shall put a similar clause in its subcontracts, and require a similar clause in its subcontracts, such that all claims for such overcharges on the Work are passed to Owner through Contractor.

8. **STATE AND LOCAL TAXES.**

All or a portion of the labor and materials furnished under this Agreement may be subject to retail sales taxes and other state and local taxes, which taxes are payable by the Subcontractor.

8.1 **State Taxes.** The Washington State Department of Revenue ("**Department of Revenue**") has issued special rules designed to assist the Subcontractor in accurately reporting to the Department of Revenue the Subcontractor's tax liability. Although information may be included in the Contract Documents regarding the application of state taxes to a particular contract or Bid Item, it shall be the Subcontractor's responsibility as to the correct interpretation of the laws and regulations relating to

such taxes. Adjustments will not be made in the Subcontract Price under the Subcontract Agreement because of any misunderstanding by the Subcontractor as to the Subcontractor's liability for, or the amount of, any taxes. If the Subcontractor is in doubt as to the tax procedures in any particular case, the Subcontractor shall consult with the Department of Revenue.

- 8.2 **State Sales Tax - Rule 170.** WASH. ADMIN. CODE 458-20-170, and its related rules, applies to the constructing and repairing of new or existing buildings, or other structures, upon real property. For work performed in such cases, the Contractor will automatically add this sales tax to each payment to the Subcontractor and the Subcontractor shall timely remit this sales tax to the Department of Revenue. The Subcontractor shall not include the retail sales tax in the schedule of prices, or in any other contract amount subject to Rule 170.
- 8.3 **State Sales Tax - Rule 171.** WASH. ADMIN. CODE 458-20-171, and its related rules, apply to building, repairing, or improving streets, roads, etc., which are owned by a municipal corporation, or political subdivision of the state, or by the United States, and which are used, primarily, for foot or vehicular traffic. For work performed in such cases, the Subcontractor shall include Washington State Retail Sales Taxes in the various schedules of prices, or other contract amounts, including those that the Subcontractor pays on the purchase of materials, equipment, or supplies used or consumed in doing the Work.

9. WORKER'S COMPENSATION RECIPROCITY.

Where Subcontractor provides out-of-state worker's compensation insurance for Work within the State of Washington under a reciprocity agreement, Subcontractor must provide (i) proof of insurance for home state, (ii) proof of participation in reciprocity agreement, (iii) proof of coverage under reciprocity agreement, and (iv) any additional evidence of coverage. Prior to Work under a *Subcontract Agreement*, Subcontractor must also provide a letter attesting to valid worker's compensation coverage for Work in the State of Washington from either (a) the Subcontractor's worker's compensation insurance carrier; or (b) the Subcontractor's worker's compensation insurance broker/agent.