



P.O. Box 2909, Kirkland, WA 98083-2909
Tel: (425) 202-3600 Fax: (425) 202-3610

Supply Agreement

Supply Agreement No.: _____

Project Number: _____

Name of Project: _____ (“Project”).

Project Address: _____

Project Owner: _____ (“Owner”).

This Agreement is made and entered into this ____ day of _____, 20____

By and between:

Buyer: _____
MidMountain Contractors, Inc

_____ P.O. Box 2909, Kirkland, Washington 98083-2909

[Contact] _____

[Phone] 425-202-3600

[Fax] 425-202-3610

[Email] _____

Seller: [Company Name] _____

[Address] _____

[Phone] _____

[Fax] _____

[Email] _____

MidMountain Contractors, Inc. (“Buyer”) and _____ (“Seller”) agree as follows:

Material to Be Provided:

Seller shall furnish and deliver the material described in **Exhibit A** to this Agreement at the prices set forth opposite each item and on or before the dates stated in **Exhibit A**, together with any field measurements, shop drawings, product data, samples, and other submittals and incidental work required in connection with furnishing such material. Seller assumes all risks regarding the price of materials. Seller shall not be entitled to an adjustment in price due to changes in material costs occurring after the execution of this Agreement.

Seller shall furnish the material described in **Exhibit A** in accordance with this Agreement. This Agreement consists of the terms and conditions provided here, the attached exhibits, and the Contract Documents, which are hereby incorporated by reference. The Contract Documents consist of: (1) the contract between Buyer and Owner (the “Prime Contract”); (2) the general, special, and any other conditions of the Prime Contract; and (3) the drawings, specifications, addenda, supplemental

instructions, and any other changes or additions issued by Buyer or Owner for the Project, all of which have been and remain available to Seller. Seller agrees to be bound by all laws and government regulations, and all terms and conditions of the Contract Documents.

Commencing performance, delivering materials, or any acknowledgement of this Agreement by Seller shall constitute Seller's acceptance of this Agreement. Buyer is bound only by the terms and conditions of this Agreement notwithstanding any proposals, terms, or conditions additional to, or different from, those accompanying Seller's performance or acknowledgement of this Agreement.

General Conditions

1. Seller's Obligations

It is agreed that, to the extent of the work purchased by this Agreement, Seller shall assume toward Buyer all obligations which Buyer has assumed toward Owner under the Prime Contract. In case of conflict between the terms of this Agreement and the Prime Contract, this Agreement shall control.

2. Changes and Right to Terminate

Buyer may direct Seller to make changes to Seller's work after execution of this Agreement without invalidating this Agreement. Changes will be binding on Buyer only if in writing and signed by Buyer.

For its convenience, Buyer may by written change order make any change to the work of this Agreement, including without limitation adding or deducting quantities ordered, changing the specifications or drawings, changing the time for delivery, and suspending or terminating this Agreement. Seller accepts all requirements of an addition, deduction, change, suspension, or termination unless Seller timely notifies Buyer as required by this Section.

If the Owner or Owner's representative orders Buyer to add to, delete from, change, suspend, or terminate the work of this Agreement, Seller shall comply with Owner's order, and the price or time for performance shall be adjusted as allowed by Owner. To the extent disputes between Owner and Buyer involve disputes between Buyer and Seller, Seller agrees that disputes between Buyer and Seller shall be decided within the same dispute resolution proceeding as between Owner and Buyer. Seller shall not be entitled to lost profits or any consequential damages of any kind under the terms of this Agreement.

If Buyer orders Seller to add, delete, change, suspend, or terminate the work of the Agreement, Buyer shall make an equitable adjustment to the amount of this Agreement. If unit prices have been designated for materials supplied under this Agreement, such unit price shall control all price adjustments for quantity changes, unless the quantity ordered increases by more than 25%, in which case Buyer may adjust the unit price to reflect Seller's actual costs plus reasonable markup for overhead and profit. For all other changes in quantities, the unit price shall remain unchanged regardless of the extent of the change. Seller shall not recover lost profit or consequential damages of any kind in connection with any reduction in the quantity of materials ordered under this Agreement. If Seller disagrees with Buyer's equitable adjustment, Seller must notify buyer as required by this Section. In the event the parties cannot agree, the final determination shall be made in accordance with the dispute resolution provisions of this Agreement. No addition, deduction, change, suspension, or termination shall relieve Buyer or Seller of any of its obligations as to any material shipped prior to Seller's receipt of the addition, deduction, change, suspension, or termination.

If Seller disagrees with any addition, deduction, change, suspension, or termination, including any equitable adjustment, direction, instruction, interpretation, or determination by Buyer or Owner, Seller shall provide written notice to Buyer within ten (10) days, or within sufficient time to allow Buyer to give notice to Owner under the Prime Contract, whichever is sooner. **Failure to provide timely written notice as required under this Section constitutes Seller's waiver of any claim for adjustment to the price or time for performing the work of this Agreement.**

Should Seller fail to satisfy work deficiencies within three (3) working days from receipt of Buyer's written notice of the deficiency, Buyer may, in addition to all other rights and remedies, purchase substitute items or services elsewhere, take whatever additional steps Buyer deems necessary to correct deficiencies, and hold Seller liable for any and all excess costs incurred, including attorneys' fees and experts' and consultants' fees actually incurred. In the event of an emergency affecting the safety of persons or property, Buyer may proceed without notice, but shall give Seller notice promptly after the fact as a condition of recovering Buyer's costs. If Seller fails to commence and satisfactorily continue correction of a deficiency within three (3) working days after receipt of Buyer's written notice, Buyer may at its sole option terminate this Agreement, furnish the materials, equipment, or labor necessary to maintain timely progress of Seller's work, and deduct Buyer's costs from any payments due to Seller, or to become due to Seller, under this Agreement, including Buyer's reasonable overhead, profit, and attorney fees, expert and consultant fees, costs, and expenses. Seller shall be liable for payment of any amount by which such expenses may exceed the unpaid balance for work required to be performed under this Agreement. **Reasonable resolution mutually agreed and negotiated.**

3. Payment

Seller shall submit to Buyer applications for payment, in the form attached as **Exhibit B**, at such reasonable times as to enable Buyer to timely apply for and obtain payment from the Owner. Buyer shall withhold retainage from Seller in the same amount Owner retains from Buyer under the Prime Contract. Buyer's obligation to release retention to Seller shall be subject to proof that there are no unpaid third-party claims that arise out of or relate to Seller's work on the Project, as well as proof by Seller that it is entitled to final payment under the terms of this Agreement. Subject to the restrictions on Buyer's obligation to pay outlined in Section 4 below and subject to the other terms of this Agreement, and only if Seller has complied with all such terms, Seller shall be paid for work through the date of Buyer's last progress billing date in an amount approved by Buyer within ten (10) days after Buyer has received payment from Owner for Seller's work. Subject to the restrictions on Buyer's obligation to pay outlined in Section 4 and the other terms of this Agreement, and only if Seller has complied with all such terms, final payment for work under this Agreement shall be made within ten (10) days after Buyer has received payment from Owner for Seller's work.

In addition to any other restrictions on Buyer's obligation to release retention and/or make final payment, Buyer will have no obligation to release retainage or make final payment to Seller until Seller has: (1) signed, notarized, and returned to Buyer without modification the final waiver and release of claims in the form attached as **Exhibit C**; (2) completed and provided to Buyer all operation and maintenance manuals and met all other closeout requirements under the Contract Documents; (3) fully executed an unmodified final waiver in the form of **Exhibit C** from all lower-tiered subcontractors and suppliers; (4) fully completed all work required by this Agreement; and (5) received both Buyer's and Owner's final acceptance of the work.

Seller shall not assign the proceeds of this Agreement or any other rights or obligations under this Agreement without the prior written consent of Buyer and Owner. Seller acknowledges that all payments accepted by it or which are otherwise due under this Agreement shall constitute a trust fund in favor of laborers, material suppliers, equipment suppliers, governmental authorities, and all others who are legally entitled to claim a lien on the premises covered by this Agreement, or otherwise file a claim against any retained percentages or payment bond. Progress payments shall be deemed advances and are subject to adjustment at any time prior to final payment for errors, overpayment, or Buyer's good-faith determination that the remaining balance of payments may be insufficient to ensure completion of work covered by this Agreement in accordance with its terms or to pay lien, retention, or bond claims. If Buyer reasonably believes that Seller is obligated to Buyer or anyone else for labor, fringes, taxes, supplies, materials, equipment, or other proper charges against the work covered by this Agreement, the amount of such obligation may be deducted by Buyer from any payment or payments made under this provision. Buyer may from time to time require, and Seller shall provide, a statement in writing setting forth what amounts, if any, are due or payable by Seller to third parties for labor, fringes,

taxes, materials, equipment, or supplies in connection with or arising out of the performance of the Agreement, and Buyer may withhold from any partial or final payment otherwise due under this Agreement such sums as Buyer reasonably may determine are necessary to secure and protect Buyer or the Owner from claims or liens that may be asserted by said third parties.

Seller agrees that Buyer may, at its sole option and in its sole discretion, make any payments to Seller by issuance of joint checks. Seller also agrees to cause the release any lien, retention, or bond claim brought by Seller's lower-tiered subcontractors or suppliers (regardless of whether Seller is in direct privity of contract with the claimant or not). Seller agrees to cause the release of such claims within ten (10) calendar days of the date Seller became aware, or should have become aware, of the claim, or within the time required by the Prime Contract, whichever is sooner. Upon Buyer's request, and as a condition precedent to entitlement to any further interim or final payment under this Agreement, Seller will promptly furnish written evidence to the reasonable satisfaction of Buyer of Seller's financial ability to perform its obligations under this Agreement.

The billing period shall be the first through the last day of each month. In order to be considered for inclusion with Buyer's monthly billing to the Owner, each of Seller's monthly progress billings must (without limitation to other obligations referenced elsewhere in this Agreement): (1) be submitted at least three (3) days prior to the date required by the Contract Documents, but in no case later than one week prior to the end of the month; (2) be submitted along with a completed copy of Seller's payment request form; (3) include waivers and releases by Seller and Seller's lower-tiered subcontractors and suppliers in the form attached as **Exhibit D**; (4) not include changes that are not a part of a fully executed change order to this Agreement in Seller's progress billing; and (5) include waivers and releases by Seller and Seller's lower tiered subcontractors and suppliers of every tier in the form of Exhibit G covering all prior billing periods. Inclusion of change work not in an executed change order will delay processing of the billing.

Buyer's final payment to Seller shall constitute a waiver of all claims by Seller relating to the work of this Agreement, but shall in no way relieve Seller of liability for warranties, or for nonconforming or defective work discovered after final payment.

4. Payment to Seller Conditioned on Payment by Owner

It is agreed that as a condition precedent to any payment by Buyer to Seller, Buyer must first receive payment from Owner for the work Seller seeks payment for. Seller agrees that it is relying upon Owner's credit for payment (not Buyer's), and Seller accepts the risk of Owner's nonpayment. At the reasonable request of Seller, Buyer agrees to furnish such information as is reasonably available to Buyer from Owner regarding Owner's financial ability to pay for Project work. The parties agree Buyer does not warrant the accuracy or completeness of information provided by Owner.

In the event Owner does not make payment to Buyer for Seller's work, Seller waives and releases any rights Seller may have under RCW 39.08 et seq., RCW 18.27 et seq., RCW 60.28 et seq., and 40 U.S.C. § 3131 et seq. (the federal Miller Act), and any payment bond posted by Buyer on this Project. Seller agrees its sole remedy shall be against Owner. To the extent a court or arbitrator finds this waiver and release ineffective or unenforceable, Seller agrees that its rights to payment against Buyer, any of Buyer's payment or performance bonds, Buyer's sureties, and Buyer's retained funds is expressly conditioned on Buyer's receipt of full payment from the Owner. Seller further agrees that any recovery by Seller against any of the above entities or funds is expressly limited and solely payable from funds actually received by Buyer from Owner for Seller's work.

5. Delivery

Time is of the essence in this Agreement. If no delivery date is specified as part of this Agreement, all deliveries of materials shall conform to the date or dates specified in writing by Buyer's representative. Seller is solely responsible for timely obtaining any approvals required by the Contract Documents for Seller's work. Should delivery for any reason fail to be timely, Seller shall be liable for all damages

suffered by Buyer as a result of such failure, including without limitation direct, incidental, and consequential damages, and any liquidated damages assessed against Buyer. If materials have to be expedited due to Seller error, Seller is responsible for additional delivery costs. In no event shall Seller be entitled to an extension of time beyond that allowed to Buyer under the terms of the Prime Contract.

6. Defaults

If Seller's performance fails in any respect to conform to the requirements of this Agreement, Buyer may reject the whole, accept the whole, or accept any commercial unit or units and reject the rest. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or files or becomes subject to receivership or reorganization or bankruptcy proceedings, or becomes involved in labor difficulties which in Buyer's opinion threaten Seller's ability to perform in a timely manner, Buyer may, in addition to any other rights or remedies it may have under this Agreement or at law, terminate this Agreement upon written notice to Seller providing three (3) days notice and opportunity to cure the default and avoid termination. Seller's failure to cure the default within this time period shall constitute Seller's default and entitle Buyer to terminate this Agreement and seek damages as provided in this Agreement. Buyer's failure to notify Seller of a rejection of nonconforming materials or to specify with particularity any defect in nonconforming materials after rejection or acceptance thereof will not bar Buyer from pursuing any remedies for breach which it may otherwise have.

7. Inspection

Buyer shall have the right to inspect and test the materials at Seller's plant anytime prior to shipment and to conduct additional inspections at any time after arrival at the job site. The making or failure to make any inspection of, or payment for or acceptance of, the materials shall not impair Buyer's right to later reject nonconforming materials, or to avail itself of any other remedy to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, the magnitude or extent of the nonconformity, or the ease of its discovery. Seller shall be liable for all inspection, reshipment and return costs on nonconforming materials. Seller shall not replace returned materials unless so directed by Buyer in writing.

8. Risk of Loss

Notwithstanding the terms of shipment, the risk of loss shall pass to Buyer only after both the delivery of the materials to the job site or other place designated in writing by Buyer and the acceptance of the materials by the Buyer.

9. Warranties

Seller warrants to Buyer that it has fully and carefully reviewed the provisions, specifications, drawings, samples, or other descriptions contained in this Agreement and in the Contract Documents.

Seller warrants to Buyer of the materials that the same shall be free from all defects, materials shall be merchantable, shall be of the quality specified, shall be new (unless otherwise mutually agreed), shall be fit and appropriate for the purpose intended, and shall conform to the provisions, specifications, performance standards, drawings, samples or other descriptions contained herein or in the Prime Contract.

Seller further warrants that the materials will be complete in all respects necessary to make materials fully functional if installed in accordance with the contract documents. All warranties implied by law or usage of trade are incorporated into this Agreement and shall apply to services and materials ordered.

Seller's warranty shall in all respects meet the terms of the warranty requirements in the Contract Documents for the materials and services ordered. The materials are ordered by Buyer in reliance on each and all of the warranties and guarantees specified in this Agreement. Buyer's remedies pursuant

to this paragraph are in addition to, and not a limitation on, all other remedies allowed by law. **Manufacturers standard warranty shall pass from seller to buyer.**

11. Insurance

See **Exhibit E** to this Agreement.

12. Indemnity

See **Exhibit F** to this Agreement.

13. Bond

If requested in writing by Contractor or if required by the Prime Contract, Seller shall, at Seller's own expense, furnish Contractor with performance and payment surety bonds acceptable to Contractor in an amount equal to the Supply Agreement price. The bonds shall be conditioned upon the full and faithful performance of all terms, provisions and conditions of this Agreement and upon payment by Seller of any and all of its obligations related in any way to this Agreement. The cost of a bond shall only be reimbursed to Seller for a bond that was both not required prior to the execution of this Agreement and not required by the Prime Contract. Failure of Seller to provide such bonds on demand at any stage of the Project shall be a material breach by Seller of this Agreement.

14. Miscellaneous

This Agreement shall be considered to have been made in and shall be interpreted under the laws of the State of Washington. The site of any arbitration or venue of any lawsuit arising out of this Agreement shall be King County, Washington.

Any written notice required to be given to a party shall be hand-delivered or delivered to the address of that party indicated above.

Seller shall comply with all federal, state, and local laws, regulations, and orders prohibiting discrimination on the basis of race, religion, sex or national origin.

This Agreement represents the final understanding of the parties and Buyer assumes no responsibility for any different understanding or any representations made by any of its officers, agents, or others unless expressly stated in writing and incorporated by reference into this Agreement. No oral agreement or conversation with any officer, agent, or employee of Buyer, either before or after execution of this Agreement, shall affect or modify any of the terms or obligations contained in the Agreement. Such oral agreement or conversation shall be non-binding upon Buyer unless subsequently reduced to writing and made a written a change to this Agreement.

Whenever Buyer is not the ultimate consumer of the materials, all rights, benefits, and remedies conferred upon Buyer shall accrue and be available to and are for the express benefit of any successors in interest to the materials, including the ultimate consumer of the materials. The term "materials" as used in this Section means the supplies, drawings, data, and other intellectual or personal property, and all services, including design, delivery, installation, inspection, and testing specified or required as part of the work required by this Agreement.

15. Disputes

In the event of any dispute or claim between Buyer and Owner which directly or indirectly involves the work performed or to be performed by Seller, or in the event of any dispute or claim between Buyer and Seller caused by or arising out of conduct for which Owner may be responsible, as determined by Buyer, Seller agrees to be bound to Buyer to the same extent that Buyer is bound to Owner by the terms of the Prime Contract and by any and all procedures and resulting decisions, findings,

determinations, or awards made by the person so authorized in the Prime Contract, or by an administrative agency, board, court of competent jurisdiction or arbitrator(s).

If any dispute or claim of Seller is prosecuted or defended by Buyer together with disputes or claims of Buyer's own, and Seller is not directly a party, Seller agrees to cooperate fully with Buyer and to furnish all documents, statements, witnesses, and other information required by Buyer. Further, Seller shall pay or reimburse Buyer for all expenses and costs, including reasonable attorneys' fees and expert fees incurred in connection therewith, to the extent of Seller's interest in such claim or dispute.

Seller agrees to be bound by the procedure and final determinations as specified in the Prime Contract and agrees that it will not take, or will suspend, any other action or actions with respect to any such claims and will pursue no independent litigation with respect thereto (including but not limited to any arbitration, or action commenced with respect to the federal Miller Act, state lien statutes, or bond or retainage) pending final determination of any dispute resolution procedure between Owner and Buyer. It is expressly understood and agreed that as to any and all claims asserted by Seller in connection with this Project arising from the actions or fault of Owner, as determined by Buyer, Buyer shall not be liable to Seller for any greater amount than Owner is liable to Buyer, less any markups or costs incurred by Buyer. As to any claims asserted by Seller for or on account of acts or omissions of Owner or its agents or design professionals, at the sole option of Buyer, Seller agrees to prosecute such claims in Buyer's name. For any amount recovered or collected (whether through proceedings or settlement) by Seller, Buyer shall be entitled to ten percent (10%) of such amount received or collected as its markup for such claims. Seller shall have full responsibility for preparation and presentation of such claims and shall bear the expenses thereof, including attorneys' fees and expert fees.

All other claims, disputes, and other matters in question between Buyer and Seller arising out of or relating to this Agreement, the breach thereof, or work thereunder (for which a dispute resolution procedure is not otherwise provided in the Prime Contract), if determined by Buyer not to be an Owner pass-through claim, shall be decided exclusively in the Superior Court of King County, Washington, unless Buyer determines at its sole option that such claims should be arbitrated. If Buyer exercises its option to arbitrate a claim, then Seller agrees it is bound to arbitrate such claim before a single neutral and impartial arbitrator. Unless the parties mutually agree otherwise, any arbitration shall be administered in accordance with the American Arbitration Association Construction Industry Arbitration Rules in effect on the date of the Agreement. All claims and causes of action brought in any arbitration proceeding arising out of this Agreement shall be subject to and governed by Washington statutes of limitation and repose. In any dispute between Buyer and Seller, the prevailing party shall be awarded its reasonable attorneys' fees and costs and all other costs of litigation or arbitration, including but not limited to expert witness fees.

Within ninety (90) days of the filing of any lawsuit or demand for arbitration, the parties to this Agreement shall submit any and all disputes between them to non-binding mediation with the assistance of an experienced mediator. The parties shall each designate a representative with full settlement authority who will participate in person for at least eight (8) hours in the mediation. The parties shall bear equally all expenses, exclusive of attorneys' fees, associated with the mediation.

16. Conflict

To the extent that this Agreement conflicts with any terms or conditions of **Exhibit A** or the Contract Documents, the terms and conditions of this Agreement shall govern and control. In the event **Exhibit A** contains a clause that would require the terms of **Exhibit A** to control in the event of conflict with this Agreement, this Agreement shall govern and control. This Agreement shall govern and control in any "battle of the forms" situation.

17. Miscellaneous

Should any portion of this Agreement be declared void or unenforceable, the remaining portions of this Agreement shall continue in full force and effect.

The headings provided herein are solely for the convenience of the parties and are not to be used in interpreting this Agreement.

We acknowledge receipt of, and accept MidMountain Contractor's order:

Seller: _____
By _____ Print Name: _____
Title _____ Date: _____
Address _____

Phone Number _____ Contractors' License No. _____
Washington State Labor & Industries No. _____
UBI Number _____

This order is hereby approved by Buyer:

MidMountain Contractors, Inc.
P.O. Box 2909
Kirkland, WA 98083-2909
(425) 202-3600
MIDMOCI720B

By _____ Print Name: Judd Anderson
Title Vice President Date: _____

By _____ Print Name: Greg Lovinger
Title President Date: _____

Exhibit B

APPLICATION FOR PAYMENT

TO: MidMountain Contractors, Inc.
P.O. Box 2909
Kirkland, WA 98083
(425) 202-3600

FROM:
PHONE:

PROJECT NAME:
JOB NO:

NVOICE DATE:
INVOICE NO:

The following invoice covers work completed THROUGH CALENDAR MONTH ENDED (date):

ORIGINAL CONTRACT AMOUNT: \$
APPROVED CHANGE ORDERS:

CO#: \$
CO#: \$
CO#: \$
CO#: \$
CO#: \$
CO#: \$
CO#: \$

TOTAL APPROVED CHANGE ORDERS: \$
ADJUSTED SUBCONTRACT AMOUNT: \$
PERCENTAGE COMPLETED: %
TOTAL BILLING TO DATE: \$
LESS: PREVIOUSLY APPROVED PAYMENT REQUESTS: (Gross Amt) \$
AMOUNT OF THE BILLING: \$
LESS: RETENTION @ 0.00% \$
NET DUE THIS BILLING: \$

Conditional Waiver and Release form must be completed.

You must submit a Conditional Waiver and Release form for all lower-tiered subcontractors and suppliers along with your billing in a form acceptable to MidMountain Contractors, Inc.

MidMountain Contractors Inc.'s Use Only:

SC#: VENDOR #: CURRENT CONTRACT:
INVOICE#: % COMPLETE:
GROSS: \$ DATE: DEDUCT PREVIOUSLY BILLED:
JOB NO.: TASK CODE: COST CODE: THIS ESTIMATE:
MSA XXXXX-XXX LESS 10.00% RETAINED:
EXT: BALANCE DUE:
POSTED:
BY: AUTHORIZED BY:

EXHIBIT C
Final Waiver and Release of All Claims

TO WHOM IT MAY CONCERN:

_____ (the "Releasing Party") has performed work or supplied materials or equipment for construction on the _____ Project (the "Project") located at _____ (the "Property").

In exchange for final payment in the amount of \$_____, the Releasing Party hereby waives and releases any and all claims, liens, claims of lien, rights to lien, bond claims, Miller Act claims, claims pursuant to RCW 39.08 et seq. and RCW 60.28 et seq., stop notices and rights to submit stop notices (whether under statute, in equity or otherwise, and whether received through assignment or otherwise), either arising against the owner(s) of the Property (the "Owner"), the Property, Contractor or any higher-tier contractors or subcontractors, or arising in connection with the Project or the Property (hereinafter collectively "Claims").

The Releasing Party expressly acknowledges that it has been paid all amounts due and owing to it for work, material or equipment in connection with the Project and the Property, including retention, and hereby releases and waives any and all of its claims.

In the event any Claim is made or filed by the Releasing Party or any subcontractor or supplier at any tier below the Releasing Party, the Releasing Party (1) shall immediately release and discharge, or secure the release or discharge of, such Claim and (2) shall indemnify, defend (with an attorney approved by Contractor) and hold harmless the Owner, Contractor, any contractors or subcontractors of a higher tier, and their respective subsidiaries, affiliates, partners, successors and assigns from and against any and all costs, damages, expenses, court costs and attorneys' fees arising from any such claim or litigation.

DATED this ____ of _____, 20__.

(Signature)

(Print Name of Releasing Party)

By:_____
(Print Name)

Its:_____
(Print Title)

STATE OF)
) ss
COUNTY OF)

I, _____, being sworn, say: I am the _____ of _____ (company) and am authorized to act on behalf of the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing, read and know the contents thereof, and believe the same to be true and correct under penalty of perjury.

By _____
Its _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__.

[PRINTED NAME] _____
NOTARY PUBLIC in and for the state of _____,
residing at _____
My commission expires: _____

STATE OF)
) ss
COUNTY OF)

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____(company), the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned; and on oath stated that _____ was authorized to execute the said instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

[PRINTED NAME] _____
NOTARY PUBLIC in and for the state of _____,
residing at _____
My commission expires: _____

EXHIBIT D
Conditional Waiver and Release

TO WHOM IT MAY CONCERN:

_____ (the "Releasing Party") has performed work or supplied materials or equipment for construction on the _____ Project (the "Project") located at _____ (the "Property").

In exchange for a progress payment in the amount of \$_____, the Releasing Party hereby waives and releases any and all claims, liens, claims of lien, rights to lien, bond claims, Miller Act claims, claims pursuant to RCW 39.08 et seq. and RCW 60.28 et seq., stop notices and rights to submit stop notices (whether under statute, in equity or otherwise, and whether received through assignment or otherwise), either arising against the owner(s) of the Property (the "Owner"), Contractor, Contractor's bond or bonding company or any higher-tier contractors or subcontractors, or arising in connection with the Project or the Property (hereinafter collectively "Claim"), through the date of _____, except its claim for retention described below.

The Releasing Party expressly acknowledges that it has been paid all amounts due and owing to it for work, material or equipment in connection with the Project through the above date, except retention in the amount of \$_____.

In the event any Claim is made or filed by the Releasing Party or any subcontractor or supplier at any tier below the Releasing Party, the Releasing Party (1) shall immediately release and discharge, or secure the release or discharge of, such Claim and (2) shall indemnify, defend (with an attorney approved by Contractor) and hold harmless the Owner, Contractor, any contractors or subcontractors of a higher tier, and their respective subsidiaries, affiliates, partners, successors and assigns from and against any and all costs, damages, expenses, court costs and attorney fees arising from any such claim or litigation.

DATED this ____ of _____, 20__.

(Signature)

(Print Name of Releasing Party)

By: _____
(Print Name)

Its: _____
(Print Title)

STATE OF)
) ss
COUNTY OF)

I, _____, being sworn, say: I am the _____ of _____ (company) and am authorized to act on behalf of the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing, read and know the contents thereof, and believe the same to be true and correct under penalty of perjury.

By _____
Its _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

[PRINTED NAME] _____
NOTARY PUBLIC in and for the state of _____,
residing at _____
My commission expires: _____

STATE OF)
) ss
COUNTY OF)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____ (company), the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned; and on oath stated that _____ was authorized to execute the said instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

[PRINTED NAME] _____
NOTARY PUBLIC in and for the state of _____,
residing at _____
My commission expires: _____

EXHIBIT E
Insurance Addendum

Seller's Liability Insurance

- Seller shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Seller's operations under this Agreement, whether such operations be by itself or by any sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
 - Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed.
 - Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees under any applicable employer's liability law.
 - Claims for damages because of bodily injury or death of any person other than its employees.
 - Claims for damages insured by usual personal injury liability coverage.
 - Claims for damages because of injury to or destruction of tangible property, including loss of use.
 - Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
 - Any other type of claims for which Seller may be responsible under this Agreement.

- Coverage Forms

- Seller's General Liability insurance shall be written on an industry standard Commercial General Liability Occurrence form and shall include the following coverage extensions: Stop Gap Liability, Per Project Aggregate (CG 25 03) and Contractual Liability (including that assumed specifically under this contract).

In addition, Buyer and all Owners shall be named as primary additional insureds (form CG 20 10 11/85 or equivalent, which must cover completed operations) with respect to work performed by or for Seller on behalf of Buyer. This endorsement shall be primary to any other insurance carried by either Buyer or an Owner, and any other insurance carried by either Buyer or an Owner shall be excess and non-contributory until such time as the limits of the additional insurance are exhausted. The above requirements shall expressly be stated on the endorsement or shall be included automatically in the endorsement based upon the parties' mutual intent as expressed herein.

Seller's general liability insurance shall be primary as respects Buyer and any Owner, and any other insurance maintained by Buyer or any Owner shall be excess and not contributing insurance with Seller's insurance until such time as all limits available under Seller's insurance policies have been exhausted.

Seller and sub-subcontractors of all tiers shall maintain products and completed operations liability insurance for not less than six (6) years following Buyer's final acceptance of Seller's work under this Agreement.

- Seller's Auto Liability insurance shall be written on an industry standard Business Auto Liability policy form covering "any" automobile, whether owned, hired, rented, borrowed or otherwise.
- Seller's Workers' Compensation insurance shall be written on an industry standard Workers' Compensation and Employer's Liability policy form (WC 00 00 00), where applicable.

In the State of Washington, Seller shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Any employer qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington shall so certify by a letter signed by a corporate officer setting forth the limits of any policy of excess insurance covering its employees. Seller shall be responsible for confirming compliance of all sub-subcontractors with this provision.

- Seller's Liability insurance shall be written for not less than the following limits of liability. Required limits of liability may be satisfied by a combination of primary liability and umbrella/excess liability policies. Umbrella/excess liability policies shall at least conform to the primary policies.
 - Workers' Compensation
 - Statutory Bodily Injury by Accident or Disease
 - Employer's Liability
 - \$2,000,000 Bodily Injury by Accident - Each Accident
 - \$2,000,000 Bodily Injury by Disease - Policy Limit
 - \$2,000,000 Bodily Injury by Disease - Each Employee
 - General Liability - Bodily Injury, Personal Injury, and Property Damage
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products and Completed Operations Aggregate
 - \$2,000,000 Personal Injury
 - \$2,000,000 Each Occurrence
 - Stop Gap Liability
 - \$2,000,000 Each Accident
 - \$2,000,000 Disease - Policy Limit
 - \$2,000,000 Disease - Each Employee
 - Automobile Liability
 - \$2,000,000 Bodily Injury and Property Damage - Per Accident
 - Electronic Data Liability Insurance. Seller shall maintain electronic data liability insurance covering liability arising out of damage to, loss of, loss of use of, or corruption of, inability to access, or inability to properly manipulate electronic data, with a limit of \$2,000,000 on CG 04 37 12/04 or equivalent form.
- Certificates of Insurance evidencing the above coverages shall be filed with Buyer within five (5) working days of execution of this Agreement and prior to commencement of the work and shall be on the appropriate form and shall read as follows:

"It is hereby understood and agreed that MidMountain Contractors, Inc. and Owner have been added as primary additional insureds."

Seller's insurance is primary and any other insurance maintained by an Owner or Contractor shall be secondary and not responsible for any defense or indemnity until the primary additional insurance is exhausted; notwithstanding any "other insurance" clauses to the contrary.

- All certificates of insurance shall include a provision that the coverage will not be canceled, terminated or otherwise modified without at least 45 days' prior written notice being given to Buyer.

Such certificates shall contain a waiver of subrogation in favor of Buyer and Owner.

- Property Insurance
- Seller shall provide insurance against any and all losses that may occur to its tools, equipment,

facilities, and stored materials. Certificates of Insurance evidencing the above coverage shall be filed with Buyer within five (5) working days of award of this Agreement and prior to commencement of the work. Such certificates shall indicate that a waiver of subrogation provision in favor of Buyer and Owner is included in Seller's equipment insurance policy.

- **NO EXCLUSIONS FOR UNKNOWN PROGRESSIVE INJURY OR PROPERTY DAMAGE OCCURRING DURING AN ANNUAL POLICY PERIOD.** The liability insurance required under this Agreement must not contain any exclusion for unknown progressive damage that occurs or continues to occur within a policy period, and shall not contain any exclusion or limitation preventing the application of annual limits under each policy in which unknown progressive damage occurs.

Exhibit F
Indemnification Addendum

In consideration for entering into the Agreement with Buyer, and as part of this Agreement, and to the fullest extent allowed, Seller agrees to defend, indemnify, and hold Buyer and Owner and their respective employees and agents (collectively, "Indemnitees") harmless from any and all claims, demands, losses, and liabilities, including but not limited to breach of contract, arising from work performed or to be performed under this Agreement by Seller or Seller's agents, employees, or lower-tier subcontractors or suppliers, regardless of whether such claims may prove to be false, groundless, or fraudulent, subject to the limitations provided below.

Seller's duty to indemnify Indemnitees shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Indemnitees or Indemnitees' agents or employees.

Seller's duty to indemnify Indemnitees for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) Indemnitees or Indemnitees' agents or employees and (b) Seller or Seller's agents, employees, or lower-tier subcontractors or suppliers shall apply only to the extent of negligence of Seller or Seller's agents, employees, or lower-tier subcontractors or suppliers.

Seller agrees that its indemnity obligations under this addendum survive any limitation imposed by any statute of repose or limitation including but not limited to RCW 4.16.310 and 4.16.326, and Seller hereby waives any and all defenses under any statute of repose or limitations, including those provided under RCW 4.16.310 or 4.16.326.

Seller agrees that it shall be obligated to accept any tender of defense by Indemnitees pursuant to this Addendum and provide a full defense to Indemnitees so long as any potential exists for Seller to have an obligation to indemnify Indemnitees for any part of any potential judgment against Indemnitees.

FOR PURPOSES OF THE FOREGOING INDEMNIFICATION PROVISION ONLY, AND ONLY TO THE EXTENT OF CLAIMS AGAINST SELLER BY INDEMNITEES UNDER SUCH INDEMNIFICATION PROVISION, SELLER SPECIFICALLY WAIVES ANY IMMUNITY IT MAY BE GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW. THE INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

Seller's duty to defend, indemnify, and hold Indemnitees harmless shall include, as to all claims, demands, losses, and liability to which it applies, Indemnitees and Indemnitees' personnel-related costs, reasonable attorney and expert fees, court costs, and all other claim-related expenses.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS ADDENDUM WAS MUTUALLY NEGOTIATED AND AGREED TO AS PART OF THIS AGREEMENT.

MidMountain Contractors, Inc.

By: _____

Name: Judd Anderson – Vice President

Date: _____

By: _____

Name: _____

Date: _____

By: _____

Name: Greg Lovinger - President

Date: _____

EXHIBIT G
Unconditional Waiver and Release

TO WHOM IT MAY CONCERN:

_____ (the "Releasing Party") has performed work or supplied materials or equipment for construction on the _____ project (the "Project") located at _____ (the "Property").

For valuable consideration, the receipt of which is hereby acknowledged, the Releasing Party hereby unconditionally waives and releases any and all claims, liens, claims of lien, rights to lien, bond claims, Miller Act claims, claims pursuant to RCW 39.08 et seq. and RCW 60.28 et seq., stop notices and rights to submit stop notices (whether under statute, in equity or otherwise, and whether received through assignment or otherwise), either arising against the owner(s) of the Property (the "Owner"), Contractor, Contractor's bond or bonding company or any higher-tier contractors or subcontractors, or arising in connection with the Project or the Property (hereinafter collectively "Claim"), through the date of _____, except its claim for retention described below.

The Releasing Party expressly acknowledges that it has been paid all amounts due and owing to it for work, material or equipment in connection with the Project through the above date, except retention in the amount of \$_____.

In the event any Claim is made or filed by the Releasing Party or any subcontractor or supplier at any tier below the Releasing Party, the Releasing Party (1) shall immediately release and discharge, or secure the release or discharge of, such Claim and (2) shall indemnify, defend (with an attorney approved by Contractor) and hold harmless the Owner, Contractor, any contractors or subcontractors of a higher tier, and their respective subsidiaries, affiliates, partners, successors and assigns from and against any and all costs, damages, expenses, court costs and attorney fees arising from any such claim or litigation.

DATED this ____ of _____, 20____.

(Signature)

(Print Name of Releasing Party)

By: _____
(Print Name)

Its: _____
(Print Title)

STATE OF)
) ss
COUNTY OF)

I, _____, being sworn, say: I am the _____ of _____ (company) and am authorized to act on behalf of the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing, read and know the contents thereof, and believe the same to be true and correct under penalty of perjury.

By _____
Its _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

[PRINTED NAME] _____
NOTARY PUBLIC in and for the state of _____,
residing at _____
My commission expires: _____

STATE OF)
) ss
COUNTY OF)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____ (company), the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned; and on oath stated that _____ was authorized to execute the said instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

[PRINTED NAME] _____
NOTARY PUBLIC in and for the state of _____,
residing at _____
My commission expires: _____