



KCI Construction Company
10315 Lake Bluff Drive
St. Louis, MO 63123

SAMPLE PROJECT MATERIAL SUBCONTRACT

This MATERIAL SUBCONTRACT is made as of the ____ day of _____, 20__, by and between KCI CONSTRUCTION COMPANY ("KCI") and MATERIAL SUPPLIER ("Supplier"). Supplier agrees to furnish all labor, material, equipment, and services necessary to complete all: **SPECIFICATION SECTION 123456 CONSTRUCTION WORK; MATERIAL DELIVERY TO SITE; ETC.**, according to Contract Documents as listed below and interpreted by DESIGN FIRM for the construction of the SAMPLE PROJECT ("Project") for the Contract Sum of: **ONE-DOLLAR** (\$1.00), sales tax INCLUDED / EXEMPT, F.O.B. jobsite.

1. OBLIGATIONS: With respect to the labor, material, equipment and services necessary to produce the supplied materials (collectively, "Work") to be performed and furnished by Supplier, Supplier agrees to be bound to KCI by each and all of the terms and provisions of the Contract Documents (as defined below), and to assume toward KCI all of the duties, obligations, and responsibilities that KCI by the Contract Documents assumes toward the Owner. Supplier further agrees that KCI shall have the same rights and remedies as against Supplier as the Owner, under the terms and provisions of the Contract Documents, has against KCI with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Material Subcontract with respect to the Work to be performed and furnished by Supplier are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the Contract Documents.

For purposes hereof, the Contract Documents shall include the following, each of which is hereby incorporated in this Material Subcontract by this reference:

1. Drawings Volume(s) 1 THRU 45 dated 1/1/01
2. Specifications Volume(s) 1 THRU 45 dated 1/1/01
3. Addendum Number 1 THRU 45
4. General Conditions Section 123456
5. Special Conditions Section 456789
6. Supplemental Conditions Section 654321
7. Missouri Annual Prevailing Wage Order # 01
8. Division 1 - General Requirements

This Material Subcontract, all ancillary Material Subcontract documents, and the provisions of the Contract Documents, are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of this Material Subcontract or the ancillary Material Subcontract documents irreconcilably conflict with a provision of the Contract Documents, the provision(s) imposing the greater duty or obligation on Supplier shall govern.

2. DEFAULT: If Supplier defaults in the performance of its obligations hereunder or breaches any of the provisions of the Material Subcontract, KCI shall be entitled, in addition to all other rights and remedies, to recover from Supplier all costs and expenses (including without limitation, attorney's fees and court costs) incurred in enforcing the provisions of this Material Subcontract.

3. ARBITRATION: All claims or disputes between KCI and Supplier arising out of the Project or relating in any manner to the performance or breach of the Material Subcontract, shall be decided by arbitration which shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The arbitration shall take place in the locale where the Project is located or in St. Louis, Missouri as determined by KCI in its sole discretion. The award rendered by the arbitrator(s) shall be final and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

4. LIQUIDATED DAMAGES: If Owner assesses damages or penalizes KCI because of late completion, Supplier agrees to pay full amount of damages for all delays that are due to Supplier's late or nonperformance or pay its prorated share. (Prorated share equals Material Subcontract amount divided by total amount provided for in the contract ("Prime Contract") between Owner and KCI).

5. INDEMNITY: To the fullest extent permitted by law, Supplier shall defend, indemnify and hold harmless KCI, Owner, their respective officers, employees, agents, representatives, successors and assigns, KCI's bonding company (if any), and any and all others whom KCI and/or Owner are legally obligated to defend and indemnify by the Contract Documents, (collectively, "the Indemnified Parties") from and against any and all suits, claims, demands, actions or causes of action, and any and all liabilities, costs and expenses, including but not limited to attorneys' fees and expenses (collectively, "Losses"), arising out of, or in any manner incidental to or in connection with Supplier's performance, or lack of performance, with respect to the Work under this Material Subcontract or any change order, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and caused by the acts or omissions of Supplier, anyone directly or indirectly employed by Supplier or anyone for whose acts Supplier may be liable, regardless of whether such suits, claims, demands, actions, causes of action or liability are or alleged to have been caused or contributed to by the negligence, fault or strict liability of any Indemnified Party. Supplier acknowledges that the terms and conditions in this paragraph constitute a promise by Supplier to defend and hold the Indemnified Parties harmless from all Losses that may allege negligence or other wrongful conduct on the part of the Indemnified Parties, but exclude those Losses caused by the sole fault of KCI or Owner. Supplier agrees to undertake this obligation regardless of whether the injured party asserting a Loss is an employee of Supplier, and Supplier's obligation shall not be limited by the operation of any workers' compensation act, disability act or other employee benefit act. Supplier acknowledges that the terms and conditions of this paragraph constitute a promise by Supplier to provide specific limits of insurance that afford contractual liability insurance for this indemnity obligation and Supplier further acknowledges that Supplier has had the opportunity to recover the costs of Supplier's liability insurance coverages required by this Material Subcontract in the Contract Sum. The parties acknowledge that the indemnification provided by Supplier is limited to the amount of General Liability insurance coverage required by "Exhibit A – Insurance Requirements" of this Material Subcontract and that the General Liability coverage and the policy limits are specifically required and obtained to insure the indemnity obligations set forth in this Material Subcontract to meet the requirements of Section 434.1002(8) RSMo.

6. REGULATIONS: Supplier agrees to observe and comply with all provisions and requirements of the Occupational Safety and Health Act of 1970 ("OSHA"), Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Rehabilitation Act of 1973 concerning qualified handicapped individuals, in performance of the Work under this Material Subcontract. Supplier agrees to indemnify and hold harmless KCI from all penalties and damages resulting from failure of Supplier to comply with these regulations.

7. LIEN WAIVERS: As a prerequisite for payments, Supplier shall provide, in form satisfactory to KCI, lien waivers in the amount of the payment and affidavits covering its subcontractors and suppliers for completed Material Subcontract Work.

8. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES: To the extent the Prime Contract between Owner and KCI provides for a mutual waiver of consequential damages by such parties, KCI and Supplier waive claims against each other for consequential damages arising out of, or related to this Material Subcontract, including but not limited to, losses of revenue, business, reputation, profit. damages for which KCI is liable to the Owner are not consequential damages for the purpose of this waiver. To the extent the Prime Contract does not preclude the award of liquidated damages, nothing contained in this paragraph shall be construed to preclude the imposition of such liquidated damages.

9. ACCEPTANCE OF AGREEMENT: Although Supplier may utilize its own form of sale invoice or other form acknowledging acceptance of the Work, said invoice or other form shall not apply to the Work provided hereunder and all terms and conditions in such invoice or other form shall be null, void and of no effect. Acceptance of this Material Subcontract shall be limited to the terms and conditions stated herein, and any additional or different terms, conditions or instructions proposed by Supplier are rejected by KCI unless expressly assented to in writing by KCI. Supplier shall be bound by this Material Subcontract when it executes and delivers a copy or when it delivers or performs any of the Work hereunder.

10. TITLE, RISK OF LOSS: Title shall pass through KCI to owner upon KCI's receipt of materials at the project site, subject to KCI's right to inspect and inventory materials. Risk of loss of all materials shall remain on the Supplier until receipt and acceptance by KCI at the project site.

11. SCHEDULE: All materials must be delivered per the requirements of the approved project schedule.

12. SUBMITTALS: All materials on this project require submittals per the terms of the project specifications. This agreement is based upon materials that meet the requirements and products specified per the terms of the project specifications. No substitutions are allowed without prior written approval and this agreement is contingent upon written approval of the submittals by the owner or their design consultant. Failure by the supplier to deliver submittals is a timely and complete submission or failure to obtain written approval of the submittals are grounds for KCI to cancel and terminate the agreement without payment of any kind to the supplier.

13. OPERATION & MAINTENANCE INSTRUCTIONS AND WARRANTY: Supplier shall delivery prior to final payment all Operation & Maintenance Instructions, as well as, a written warranty to replace materials within one year of the substantial completion date, or a longer duration as may be specified within the project specifications.

14. PAYMENT TERMS: The payment terms are defined in the attached project information sheet, identified as Exhibit B.

Exclusions: NONE

Unit Prices: NONE

Supplier acknowledges that this Material Subcontract is not subject to the terms and conditions of any other proposal.

THIS MATERIAL SUBCONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

KCI Construction Company

MATERIAL SUPPLIER

By: _____

By: _____

Officer's Title: _____

Officer/Owner's Title: _____

Date: _____

Date: _____