



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

SAMPLE PROJECT SUBCONTRACT

This SUBCONTRACT is made as of the _____ day of _____, 201_, by and between KCI CONSTRUCTION COMPANY ("KCI") and SUBCONTRACTOR ("Subcontractor"). Subcontractor agrees to furnish all labor, material, equipment, and services necessary to complete all: **SPECIFICATION SECTION 123456 CONSTRUCTION WORK; HOISTING FOR SUBCONTRACTOR WORK; 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.

1. OBLIGATIONS: With respect to the labor, material, equipment and services (collectively, "Work") to be performed and furnished by Subcontractor, Subcontractor 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. Subcontractor further agrees that KCI shall have the same rights and remedies as against Subcontractor 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 Subcontract with respect to the Work to be performed and furnished by Subcontractor 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 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 Subcontract, all ancillary 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 Subcontract or the ancillary Subcontract documents irreconcilably conflict with a provision of the Contract Documents, the provision(s) imposing the greater duty or obligation on Subcontractor shall govern.

2. ACCELERATION: If, in the opinion of KCI, Subcontractor does not employ sufficient manpower and equipment to keep pace with the job progress, as determined by KCI in its sole discretion, then KCI is authorized by Subcontractor to perform the work and charge Subcontractor.

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

4. ARBITRATION: All claims or disputes between KCI and Subcontractor arising out of the Project or relating in any manner to the performance or breach of the 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.

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

6. INDEMNITY: To the fullest extent permitted by law, Subcontractor 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 Subcontractor's performance, or lack of performance, with respect to the Work under this 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 Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor 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. Subcontractor acknowledges that the terms and conditions in this paragraph constitute a promise by Subcontractor 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. Subcontractor

agrees to undertake this obligation regardless of whether the injured party asserting a Loss is an employee of Subcontractor, and Subcontractor's obligation shall not be limited by the operation of any workers' compensation act, disability act or other employee benefit act. Subcontractor acknowledges that the terms and conditions of this paragraph constitute a promise by Subcontractor to provide specific limits of insurance that afford contractual liability insurance for this indemnity obligation and Subcontractor further acknowledges that Subcontractor has had the opportunity to recover the costs of Subcontractor's liability insurance coverages required by this Subcontract in the Contract Sum. The parties acknowledge that the indemnification provided by Subcontractor is limited to the amount of General Liability insurance coverage required by "Exhibit A – Insurance Requirements" of this 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 Subcontract to meet the requirements of Section 434.1002(8) RSMo.

7. REGULATIONS: Subcontractor 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 Subcontract. Subcontractor agrees to indemnify and hold harmless KCI from all penalties and damages resulting from failure of Subcontractor to comply with these regulations.

8. SAFETY: Subcontractor agrees to comply with KCI and Owner project safety plan and adhere to and enforce all safety policies established for this project. Subcontractor is responsible for verification of satisfactory completion of 10-Hour OSHA Training for all workers employed by subcontractor on the Project.

9. LABOR RELATIONS: Subcontractor agrees that it will comply and be bound by all obligations and conditions which KCI, as an "Employer Party", is required to impose upon its subcontractors pursuant to the current collective bargaining agreements between the Associated General Contractors of St. Louis and: Operating Engineers Union Local 513; Carpenters District Council of St. Louis; Cement Masons Union Local No. 527; International Association of Iron Workers Local 396; and Eastern Missouri Laborers District Council; including, but not limited to, KCI's right to terminate this Subcontract, and to remove Subcontractor from the job site, in the event Subcontractor fails to pay wages and fringe benefits in the aggregate as provided in the above referenced collective bargaining agreements.

10. IMMIGRATION: Subcontractor represents and warrants that it is, and will remain, in compliance with (i) any and all applicable immigration laws, rules and regulations ("Immigration Laws"), including all form I-9 verification, E-verify, and record keeping requirements; and (ii) any and all OSHA requirements, including all construction safety and training program requirements ("OSHA requirements"). Subcontractor is responsible for verification of U.S. citizenship of lawful status of all workers employed by Subcontractor on the Project. Subcontractor shall indemnify and hold KCI harmless from and against any and all claims, costs, expenses (including legal fees and expenses), damages and liabilities occasioned by or arising from Subcontractor's noncompliance with applicable Immigration Laws requirements. By execution of this Subcontract, Subcontractor affirmatively states that it is not knowingly in violation of Section 285.530.1 RSMo (prohibiting "knowing" employment of "unauthorized aliens"), and further, that it shall furnish KCI with a sworn affidavit, in form acceptable to KCI, attesting to the fact the Subcontractor's employees are lawfully present in the United States, and will not violate said Section in the future. Subcontractor also agrees to insert the substance of this clause, including this paragraph, in all subcontracts or purchase orders applicable to this project.

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

12. 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 Subcontractor waive claims against each other for consequential damages arising out of, or related to this 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.

Exclusions: NONE

Unit Prices: NONE

Clean Up: BY SUBCONTRACTOR TO KCI DUMPSTER

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

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

KCI Construction Company

SUBCONTRACTOR

By: _____

By: _____

Officer's Title: _____

Officer/Owner's Title: _____

Date: _____

Date: _____