

## Sample Wage and Hour Flow-Down Provisions

- A. **General:** This Subcontract may be subject to various special wage and hour requirements with respect to prevailing wages, prevailing fringe benefits and overtime compensation required by the US. Government for its contracts. Accordingly, this Subcontract may be subject to a variety of wage and hour provisions, including but not limited to any combination of the following laws: the Davis-Bacon Act (“DBA”), the Copeland Anti-Kickback Act, the Service Contract Act (“SCA”), the Walsh-Healey Public Contracts Act (“WHPCA”), the Contract Work Hours and Safety Standards Act (“CWHSSA”), and the Fair Labor Standards Act (“FLSA”). **All such laws and their regulatory provisions, to the extent they apply to the Prime Contract, are incorporated herein by reference and are made applicable to this Subcontract.**
- B. **Wage Determinations:** Any wage determinations incorporated physically or by reference in the Prime Contract shall be applicable to this Subcontract and shall apply by operation of law to all activities of the Subcontractor. If no wage determination is physically attached to the Subcontract, Subcontractor agrees to inquire of and ask for such a determination prior to signing the Subcontract.
- C. **Flow-Down:** Subcontractor agrees to flow-down and incorporate any wage and hour requirements of its Subcontract, including this clause and any wage determinations, to all sub-subcontractors, and to supervise their compliance therewith.
- D. **Cooperation:** Subcontractor agrees to cooperate with the Prime Contractor in any investigation or inquiry with respect to compliance with the wage and hour laws. Prime contractor shall have the right to audit Subcontractor, demand written documentation and records, interview workers, and otherwise take any and all steps necessary to determine compliance. Contractor shall timely provide all information requested and shall take any corrective action required by either the Government or by the Prime Contractor.
- E. **State Laws:** Sometimes state and local wage and hour laws may require payments that are in excess of federal law, depending on the jurisdiction and the contract terms. Subcontractor agrees to perform its own independent investigation of state and local wage and hour laws and to adopt compensation policies which are in conformance therewith. Subcontractor further agrees to comply with all state wage and employments laws.
- F. **Labor Regulations and Executive Orders:** This Subcontract may also be governed by all kinds of labor and employment provisions and Executive Orders, including but not limited to specifying nondiscrimination, a nondisplacement or first right of refusal for work, contractor Executive Order minimum wages, posting of various notices at the work site, and state laws and regulations setting a minimum wage higher than that otherwise applicable to standard commercial businesses. Subcontractor expressly agrees to comply with all such Labor laws, regulations and Executive Orders.
- G. **Davis-Bacon Act and/or Service Contract Act Requirements:** To the extent that this Subcontract involves US Government service work performed by service employees, it is expressly subject to volume 29 of the Code of Federal Regulations (29 C.F.R), all pertinent portions of which are expressly incorporated herein. In interpreting any mandatory clauses that are incorporated into the Prime Contract and thus also apply hereto to this Subcontract, wherever, the terms “Government” or “Department of Labor” or “Agency” or “Contracting Officer” shall appear, substitute the term “Prime Contractor”. And whenever the term “contractor” shall appear, substitute the term “Subcontractor”.
- H. **Indemnification:** Subcontractor agrees to indemnify and hold Prime Contractor harmless from any costs, expenses, damages, penalties, fines, or other claims that Subcontractor owes its

employees back wages, fringe benefits, overtime pay, or any other wage and hour claim arising under or related to performance of this Subcontract. If Prime Contractor incurs any such cost, Subcontractor agrees that Prime Contractor may withhold such sums from any payment otherwise due Subcontractor, and Subcontractor expressly agrees to reimburse Prime contractor for said cost to the extent there is any deficiency in the funds to make payment.

- I. **Wage and Hour Disputes:** Subcontractor agrees to comply with all federal, state, and local wage and hour laws, regulations, orders, and requirements, and to do so at its own expense and cost. Subcontractor acknowledges this is its own exclusive responsibility, and Subcontractor understands that this is a condition precedent for the award of this Subcontract. Noncompliance with any of the requirements of wage and hour laws, regulations orders or procedures shall not be a basis for any Subcontractor claim for monies from due from the Prime Contractor. However, to the extent that Subcontractor wishes to pursue, at its sole own expense, any remedies or appeals offered by the US Department of Labor or otherwise, Prime Contractor may agree to sponsor and cooperate in the bringing of such *bona fide* appeal upon execution of appropriate indemnification provisions.
- J. **Breach of Subcontract:** Subcontractor agrees to comply with the requirements of any of these laws, to the extent applicable, and to pay the prevailing or minimum wages, fringe benefits, and any overtime or other compensation due its workers. Failure to comply with any material provision of this clause shall be a basis for withholding further payment to Subcontractor. Compliance is a condition precedent for payment of any of Subcontractor's invoices. Failure to comply is a breach of this Subcontract and shall subject Subcontractor to liability for any monetary deficiencies not withheld or offset.