Ethan Construction, L

SUBCONTRACT AGREEMENT

JOB # 041107

THIS SUBCONTRACT AGREEMENT (THE "SUBCONTRACT") is made **February 15, 2007** by and between Ethan Construction., a Washington corporation, 3100 Airport Way S, Seattle, Washington 98134, (the "Contractor")

And the Subcontractor **J.B. Asphalt Paving**
22228 95th Pl. W.

Edmonds, WA 98020
(425) 774-6537

The Contractor has made a Contract for construction (the "General Contract") dated **November 7, 2004** with

The Owner **Rainier Commons**
3100 Airport Way S
Seattle, WA 98134

For the following Project: **Rainier Commons**
3100 Airport Way S
Seattle

The Architect for the Project is: **LDG Architects**
1319 Dexter Ave. N
Seattle, WA 98109

The Contractor and the Subcontractor, for the consideration herinafter named, agree as follows:

SECTION 1. THE WORK OF THIS SUBCONTRACT

The Subcontractor and the Contractor agree that the Subcontractor is to perform the following, which shall be defined as the "Work". The Subcontractor acknowledges 1) receipt of all plans and specifications applicable to the Work, 2) that the Subcontractor has been provided with access to all plans and specifications for the project, and 3) that the Subcontractor relied upon such plans and specifications as the Subcontractor deemed necessary when submitting the bid and entering into this Subcontract. The Work is described as follows:

2150 Site Paving

All labor, materials, and equipment necessary to accomplish the work set out in the contract documents for this section of work, and without limiting the generality of the foregoing, inclusive of all the terms attached to this contract.

SECTION 2. PAYMENTS

The Contractor agrees to pay the Subcontractor for the performance of the work, the sum of : **$42,780.00**
Forty Two Thousand Seven Hundred Eighty Dollars And No Cents (the "Subcontract Sum")
subject to the provisions set forth below. All local state and federal taxes, including without limitation sales and use taxes, incurred as a result of the Work shall be paid by the Subcontractor and are deemed included in the Subcontract Sum.

DEFINITION

3.10 Subcontract Documents. The Subcontract Do. .nts consist of this Subcontract; the General Contract, consisting of the Agreement between the Owner and the Contractor and any other documents enumerated therein, including conditions of the contract, drawings, specifications, addenda and modifications, whether issued before or after the execution of this Subcontract; the Job Progress Schedule, including modifications thereof; General Rules and Procedures and modifications thereof; and Addenda, modifications, or attachments to this Subcontract.

3.20 Conflict between Documents. In the event of a conflict between this Subcontract and the General Contract between and Contractor and Owner, the latter shall control if more stringent than the Subcontract.

3.30 Definition of Subcontractor. The term Subcontractor as used herein includes the Subcontractor, other subcontractors employed by the Subcontractor, their employees, agents, and representatives. The Subcontractor understands that references are occasionally made in specification books, drawings or other documents which refer to the Subcontractor as a contractor. The use of any such terms are to be interpreted so as to include the Subcontractor.

SUBCONTRACTORS OBLIGATIONS

4.10 Execution and Progress of the Work.

4.11 The Subcontractor agrees to perform the Work in complete accordance with the Subcontract Documents and to furnish and pay for all things necessary for its performance of the Work, including without limitation materials, labor, supervision, tools, equipment, supplies, freight and transportation, storage, offices, communications, taxes, fees, permits and licenses attributable to the Work, all of which are included in the Subcontract Sum.

4.12 Diligent Prosecution of Work. The Subcontractor agrees to commence the Work when directed by the Contractor and to diligently and continuously prosecute and complete the Work within the time specified in the Subcontract Documents so that the Contractor shall not be delayed by any act or omission of the Subcontractor in completion of the General Contract. The Subcontractor shall cooperate with the Contractor in scheduling and performing the Subcontractor's work to avoid conflict, delay in, or interference with the work of the Contractor, other subcontractors or the Owner's own forces. The Subcontractor shall furnish to the Contractor periodic progress reports on the Work.

4.13 Job Progress Schedule. The Subcontractor agrees to comply with the Job Progress Schedule provided by the Contractor, which shall set forth the schedule for completion of the Work and portions thereof, including all deadlines. The Job Progress Schedule may be modified from time to time by the Contractor. If the Subcontractor at any time anticipates it will be unable to comply with the Job Progress Schedule, the Subcontractor shall immediately notify the Contractor in writing of the nature of the problem and the expected delays.

4.14 General Rules and Procedures. The Contractor in its discretion may establish General Rules and Procedures for the Subcontractor which apply to performance of the Work. The Subcontractor agrees to comply with all such General Rules and Procedures.

4.20 Laws, Permits, Fees and Notices.

4.21 Compliance and Licenses. The Subcontractor shall be responsible for ascertaining all governmental laws and regulations pertaining to its performance of the Work. The Subcontractor shall give all notices required and otherwise comply with all laws, ordinances, rules, regulations and orders of any authority bearing upon performance of the Work. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

4.22 Taxes and Worker's Compensation. Without limitation, the Subcontractor shall comply with all federal, state and local tax laws, social security acts, unemployment compensation acts, and worker's compensation acts applicable to the performance of this Subcontract.

4.30 Safety Precautions, Meetings, and Procedures.

4.31 Safety and Injuries. The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, including compliance with all governmental and other safety standards and any safety measures established by the Contractor, including without limitation those in the "Contractor Safety Manual." The Subcontractor shall adequately inform its subcontractors, employees, visitors and suppliers of all safety hazards and procedures, and shall provide all safety equipment required for the Work. The Contractor may, at the Subcontractor's expense, correct or remove any unsafe condition not corrected or removed by the Subcontractor after notice, and may require the Subcontractor to remove any employee from the Project who willfully creates an unsafe condition or commits an unsafe act. The Subcontractor shall report to the Contractor within 24 hours any injury to an employee or agent of the Subcontractor which occurred as a result of the Work.

4.32 Meetings. Prior to s...ng the Work, the Subcontractor shall submit a written safety program wit ...ils as to the performance of the Work. The Subcontractor shall have a supervisior or other appropriate respresentative attend all pre-mobilization and weekly safety and project meetings scheduled by the Contractor.

4.33 Hazardous Materials. The Subcontractor shall be required to notify the Contractor in writing of any hazardous materials it plans to utilize with respect to the Work or which it encounters on the Project.

4.40 Material Safety Data Sheets. The Subcontractor must provide to the Project Superintendent, all relevant Material Safety Data Sheets (MSDS) prior to any such materials being brought onto the Project site.

4.50 Cleaning Up.

4.51 Clean Site. The Subcontractor understands that a clean site is important for safety purposes. The Subcontractor is required daily to keep the Project site clean and remove the Subcontractor's debris on a daily basis.

4.52 Failure to Keep Clean. If the Subcontractor fails to keep the site clean, the Contractor is authorized to employ, and the Subcontractor agrees to pay, cleanup workers at the rate of $50.00 per hour.

4.60 Protection and Condition of Work.

4.61 Protection of Subcontractor's Work. The Subcontractor shall effectively secure and protect its materials and work at its sole expense.

4.62 Protection of Other's Work. The Subcontractor shall take necessary steps in carrying out its Work to protect the work, materials, tools, equipment and supplies of others, including the Owner, from damage caused by the Subcontractor's operations.

4.63 Condition of Other's Work. If the Subcontractor deems that work to which its work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to the Contractor before proceeding or taking remedial action, otherwise the Subcontractor shall be fully and soley responsible and liable for any and all expense, loss, or damages resulting from said condition and the Contracor shall be relieved of all liability in connection therewith.

4.70 Warranties.

4.71 Warranty. The Subcontractor warrants to the Owner, Architect and Contractor that the Work, including materials and equipment furnished under this Subcontract, will comply with the requirements of the Subcontract Documents. The Subcontractor warrants that the Work shall be free of defects in materials and workmanship for a period of one (1) year from the date of substantial completion of the Project, unless a longer period is stated in the General Contract, in which case the Subcontractor shall warrant the work for the longer period of time.

4.72 Other Warranties. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract.

4.73 OSHA. The Subcontractor further warrants that the Subcontractor will comply with all OSHA rules and regulations in addition to all of the Contractor's safety manual guidelines, and the Owner's safety requirements.

4.80 General Indemnification. The Subcontractor shall, to the fullest extent permitted by law with respect to its obligation under the Contract Documents, Indemnitfy, defend, protect and hold harmless Owner, Architect, Architect's consultants and their constituents partners, employees, agents, representatives, stockholders, officers and directors (collectively, the "Indemnified Paryties") from and against each and all of the following.
1) Any claims, liabilities, loss, damage, cost, expense, including attorneys' fees, awards, fine or judgment, resulting from arising out of (i) the performance of the Work, or (ii)breach of the obligations of Subcontractors, or (iii) any other act or omission with respect to the Work by the Subcontractors, anyone directly or indirectly employed by it or anyone for those acts it may be liable, attributable to death, bodily injury, sickness, disease or unjury to or destruction of tangible property (except for the Work), or loss of use thereof; provided, however, Subcontractor shall not be obligated to indemnify the Indemnified Parties to the extent such damages are the result of the negligance or willful misconduct of the Indemnified Parties. Such obligation shall not be construed as to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party disceibe in the paragraph. Subcontractor's obligation to defend the Indemnified Parties shall not extend to any action, proceeding or arbitration which asserts or alleges only that the injury to the claimant resulted solely from the

4.81 To the fullest extent permitted by applica-ble la[illegible]he Subcontractor expressly agrees to defend (at Subcontractor's expense [illegible]ith counsel acceptable to Contractor), indemnify, and save and hold harmless the Contractor, the Owner, the Architect/Engineer and all of their officers, directors, shareholders, employees, agents, insurors, successors, and assigns, from and against any and all claims, suits, losses, causes of action, damages, liabilities, and expenses of any kind whatsoever, including without limitation, all expenses of litigation and arbitration, court costs, and attorney's fees, arising on account of or in connection with injuries to or the death of any person whomsoever, or any and all damages to property (including the loss of use thereof), regardless of possession or ownership, or damages of any other kind, which injuries, death or damages arise from, or are in any manner connected with, the work performed by or for the Subcontractor under this Subcontract, or are caused in whole or part by reason of the acts or omissions or presence of the person or property of the Subcontractor or any of its employees, agents, representatives, subcontractors, or suppliers, INCLUDING WITHOUT LIMITATION INJURIES, DEATH, OR DAMAGES WHICH ARISE FROM OR IN CONNECTION WITH, OR ARE CAUSED BY ANY ACT, ERROR, OMISSION, OR NEGLIGENCE OF THE CONTRACTOR, THE OWNER, THE ARCHITECT/ENGINEER and all of their OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, OR SUPPLIERS; BUT EXCLUDING INJURIES, DEATH, OR DAMAGES CAUSED BY THE SOLE NEGLIGENCE OR WANTON AND WILLFUL MISCONDUCT OF THE CONTRACTOR. The indemnification obligations under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Subcontractor or of any third party to whom Subcontractor may sublet a part of the Work.

4.82 OSHA Violations. To the fullest extent permitted by law, the Subcontractor shall further indem-nify and hold harmless the Owner, Contractor, Architect, and all of their officers, directors, shareholders, employees, agents, subcontractors, and suppliers from and against all OSHA claims, damages, losses, and expenses, including without limitation, fees or fines and attorneys' fees arising out of or resulting from, the performance, under this Subcontract, of the Subcontractor, the Subcontractor's subcontractors, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. The Contractor assumes no liability for any of the claims, damages, losses, or expenses as set forth herein.

4.90 Insurance and Bonds.

4.91 Insurance. Prior to starting the Work, the Subcontractor shall procure and maintain in force statutory Worker's Compensation Insurance for all of the Subcontractor's employees at the project site, Employer's Liability Insurance with $500,000 coverage (each section), Commercial General Liability Insurance (including XCU coverage by subcontractors involved in utility work, excavation, mechanical, electrical and/or plumbing work) and Automobile Liability Insurance and such other insurance, to the extent required by the Contract Documents for the Work. Unless otherwise provided in this Agreement by Exhibit, the Subcontractor's Commercial General and Automobile Liability Insurance, as required by this provision shall be written for not less than the limits of liability per the Owner's requirements as listed in the Specifications Manual. The Commercial General Liability Policy shall contain broad form contractual liability coverage and endorsement listing the Owner and Contractor as additio-nal insureds with coverage on a primary basis for the additional insureds (not contributory), and products/completed operations coverage, on Form CG2010 or an equivalent form acceptable to the Contractor. Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella policy. All policies providing coverage for the Work shall contain a waiver of subrogation endorsement in favor of the Owner, Contractor and their employees. Upon request from the Contractor, the Subcontractor shall deliver a copy of all policies of insurance required herein.

4.92 Certificates and Notice of Cancellation. Prior to starting the Work, the Subcontractor shall deliver to Contractor original Accord Certificates of Insurance acceptable to Contractor which evidence the coverages and endorsements required herein and which contain a provision that coverages under the applicable insurance policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Contractor. Any failure of the Contractor to demand or complain of any deficiencies in coverages required herein shall not in any manner waive or excuse the performance required of the Subcontractor or reduce its liability. If the Subcontractor subcontracts any portion of the Work, the Contractor may further require that Subcontractor deliver to Contractor original Accord Certificates of Insurance acceptable to Contractor with the same coverages and provi-sions as required of the Subcontractor.

4.93 Bonds. The Subcon[illegible]tor also agrees to provide such performance bonds and payment bonc [illegible]ay be required by the Contractor.

PAYMENT TERMS

5.10 Invoices. The Subcontractor shall forward all invoices to Ethan Construction, to the address listed on the Payment Package attached to this subcontract.

5.11 Lien Waivers and Releases. No payments to the Subcontractor will be processed unless the Subcontrac-tor and any of its applicable subcontractors have executed a lien waiver, and as to any Subcontractor who has previously filed a lien, a lien release, in a form acceptable to the Contrac-tor with respect to each invoice submitted to the Contractor.

5.12 Change Orders. Invoices for change orders must be billed separately, attached to a copy of the additional Work Authorization Form, as defined herein.

5.20 Documents Required. No payments to the Subcontractor will be processed unless the Contractor has received executed copies of this Subcontract, current certificates of insurance as required by Section 4.9., and current copies of required licenses from the Subcontractor.

5.30 Information Required. No payments to the Subcontractor will be processed until the Subcontractor supplies information to the Contractor as to the source of materials and labor being provided for the Work and verification of payment for such materials and labor. All such information must be supplied within twenty (20) days of the commencement of the Work or the supplying of the materials and labor. The Contractor may obtain or verify the information required by direct contact with the suppliers of materials and labor.

5.40 Use Tax Deductions. The Subcontract Sum is subject to a deduction for Use Tax paid by the Contractor.

5.50 Progress Payments. The Subcontractor shall submit progress payment requests to the Contractor stating the amount of work completed. Payment shall be made to the Subcontractor only after receipt by the Contractor of applicable progress payments from the Owner.

5.51 Final Payment. Final payment shall not be due to the Subcontractor until final payment has been received by the Contractor from the Owner. Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment and all known indebtedness connected with the Work have been paid or extinguished. Further, before making final payment to the Subcontractor, the Subcontractor shall execute and submit to the Contractor in a form acceptable to the Contractor a lien waiver, or if applicable a lien release, conditional upon final payment to the Subcontractor, and submit unconditional lien waivers or releases to the Contractor for all suppliers of materials and labor provided by the Subcontractor in forms acceptable to the Contractor.

5.52 Retainage. Ten percent (10%) of the Subcontract Sum may be retained by the Contractor until all of the Work has been satisfactorily completed and all required documentation has been received by the Contractor, or as specifically stated in "Additional Provisions"

5.53 Payment Not Approval. No payment to the Subcontractor shall operate as an approval of the Work, or any portion thereof.

5.60 Lack of Lien Waivers or Releases. If the Subcontractor fails to provide the lien waivers or releases required by this Subcontract, the Contractor, in its sole and absolute discretion, may either (1) withhold payment or (2) issue checks jointly payable to the Subcontractor and the supplier(s) of labor and materials.

5.70 Payment by Owner. Notwithstanding any other provision in this Subcontract, the Subcontractor represents that it relies primarily on the Owner's credit and ability to pay, and not that of the Contractor, for payment of the work performed. The Subcontractor agrees that payment by the Owner to the Contractor for work performed by the Subcontractor shall be an express condition precedent to any obligation of the Contractor to pay the Subcontractor.

CHANGES IN THE WORK

6.10 Authorization. The Subcontractor shall not inc[illegible]rate any extra labor or materials into the Work and the Project withou[illegible]eceiving approval from the Project Manager in the form of an additional Work Authorization Form. The Subcontractor acknowledges receipt of the Work Authorization Form from the Contractor. The Subcontractor must provide documentation acceptable to the Contractor to substantiate any requests by the Subcontractor for extra labor or materials. In the exceptional case in which extra labor or materials must be provided by the Subcontractor prior to submitting the Work Authorization Form to the Contractor, the Subcontractor agrees to submit the Work Authorization Form to the Contractor and to obtain written authorization, within 2 working days of such additional labor or materials being provided. Materials and labor provided without a properly submitted, executed and approved Work Authorization Form will not be reimbursable to the Subcontractor.

6.20 Changes in Work. The Subcontractor may be ordered by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of the Subcontract Documents, consisting of additions, deletions or other revisions. Materials and labor which are provided after such additions, deletions or revisions but are not in conformity therewith shall not be reimbursable to the Subcontractor. The Subcontractor is limited to a maximum of no more than _15__% of the cost of any such additions, deletions or other revisions requested by the Contractor in accor-dance with this Section 6.2, as compensation for providing such additions, deletions or other revisions, or, in the event that a specific percentage has not been set forth above, the maximum amount of such additional compensation shall be limited to the amount specified in the General Contract.

6.30 Denial of Changes. Notwithstanding any other provision in this Subcontract, if the additional work which has been authorized in accordance with this Section 6 is later determined by the Owner or Architect not to entitle the Contractor to extra compensation for the additional work, or the Owner otherwise fails to pay the Contractor for such additional work, then the Contractor shall not be liable to the Subcontractor for any extra compensation for the additional work.

TERMINATION, REMEDIES, BREACH OF CONTRACT

7.00 TERMINATION AND REMEDIES FOR BREACH OF THE SUBCONTRACT.

7.10 Breach by Subcontractor. The Subcontractor shall be in default of this Subcontract, which shall also be considered a breach, if the Subcontractor is adjudged a bankrupt, or makes a general assignment for the benefit of Subcontractor's creditors, or if a receiver is appointed on account of the Subcontractor's insolvency, or if the Subcontractor refuses or fails to supply enough properly skilled workmen or proper materials, or if the Subcontractor fails to make prompt payment to its subcontractors, or for materials or labor, or the Subcontractor fails to comply with the terms of the Subcontract Documents. In the event of a breach of this Subcontract by the Subcontractor, the Subcontractor agrees to pay any damages, and indemnify and hold harmless the Con-tractor for any and all losses, expenses, and liabilities incurred by the Contractor, including the Contractor's reasonable attorneys' fees.

7.20 Remedies of Contractor. If the Subcontractor has breached the Subcontract, or neglects to carry out the Work and fails within three (3) working days after receipt of written notice of default from the Contractor to commence and continue correction of such default, the Contractor may, without prejudice to any right or remedy of the Contractor, terminate this Subcontract and take possession of the Project site and all materials, equipment, tools, construction equipment and machinery thereon owned by the Subcontractor, and may finish the Work by whatever method the Contractor deems expedient, or without terminating this Subcontract it may correct the default and charge the Subcontractor for the cost of such correction and deduct same from the Subcontract Sum. If the Contractor must finish the Work, the Subcontractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Subcontract Sum exceeds the cost of finishing the Work and any other amounts subject to offset or withholding under the Subcontract, such excess shall be paid to the Subcontractor. If the cost of finishing the Work exceeds the unpaid balance of the Subcontract Sum, the Subcontractor shall pay the balance to the Contractor.

7.30 Liquidated Damages. In addition to all other remedies which may be available to the Contractor, the Subcontractor agrees to pay any damages, including liquidated damages, losses, and expenses, including without limitation attorneys' fees, which may be assessed against the Contractor as a result of the General Contract, arising out of or resulting from the performance under this Subcontract of the Subcontractor, the Subcontractor's subcontractors or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, including, without limitation, damages for delays or other problems associated with the Work.

7.40 Breach by Contract[illegible] The Contractor shall be in default of this Subcontract, which shall also be[illegible]dered a breach, if the Contractor fails to make the payments due hereunder within sixty (60) days of the due date of such payment, which shall be determined by the date the Owner pays the Contractor for the work performed by the Subcontractor. In the event of such breach by the Contractor, the Subcontractor shall be entitled to cease its performance of the Work until such payment has been made by the Contractor as provided in Section 5.

7.41 Damages for Delay. The Contractor shall not be liable to the Subcontractor for any damages or additional compensation due to delays caused by any third party unless the Contractor has recovered same on behalf of the Subcontractor, and in the absence thereof the Subcontractor's sole and exclusive remedy for delay shall be extension of the time for performance and completion of the Work.

SUBCONTRACTOR STATUS

8.10 Independent Contractor. The Contractor reserves no control over the Subcontractor as to how the services involved in this Subcontract should be performed, except as otherwise stated herein. The Subcontractor's obligation is to accomplish the results contemplated by the Subcontract Documents. The Subcontractor acknowledges that it is a business customarily engaged in an independent trade, occupation, profession, or business related to the services contemplated by this Subcontract. It is the intention of the parties to this Subcontract that the Subcontractor shall be an independent contractor and this Subcontract shall be construed in light of this intention. The Subcontractor shall execute and deliver to the Contractor any document requested by the Contractor to confirm such status.

8.20 Nonentitlement. The Subcontractor is not entitled to worker's compensation or unemployment compensation or other benefits from the Contractor. Further, the Subcontractor shall be obligated to pay all federal and state income taxes and withholdings, and worker's compensation and unemployment compensation insurance for itself and its employees.

8.30 Disputes with Owner. The Subcontractor irrevocably designates the Contractor as the Subcontractor's sole and exclusive agent with respect to any and all claims which the Subcontractor may have against the Owner as a result of the Project. In conjunction therewith, the Contractor may retain legal counsel, compromise claims, pursue litigation or arbitration, release claims or take any other action which the Contractor deems advisable in its sole discretion without liability to the Subcontractor. If there are multiple claimants with claims against the Owner, the Contractor shall allocate, upon a pro-rata basis, the respective interests of all the claimants including the Subcontractor, and the Subcontractor agrees to be bound by any such allocation. If the Contractor receives any payment as a result of such claims, the Subcontractor shall receive its pro-rata share of the payment received after deduction for the Subcontractor's pro-rata share of legal expenses, costs and other expenses incurred by the Contractor in pursuit of the claim. Notwithstanding the foregoing, the Subcontractor shall be liable for its pro-rata share of such expenses as incurred by the Contractor and shall reimburse the Contractor therefor upon request by the Contractor. The Subcontractor agrees to cooperate diligently in the prosecution of any such claims. Further, the Subcontractor agrees not to seek recovery from the Contractor for the Subcontractor's claims except to the extent that such claims are recovered from the Owner, and to fully release the Contractor for any actions taken by the Contractor and its agents in pursuit of the Subcontractor's claims. If the Subcontractor fails to comply with the terms of this Section 8.3, the Subcontractor waives any right to payment of its claims and the Contractor may retain any amounts otherwise payable to the Subcontractor. Notwithstanding the foregoing, the Contractor is under no obligation to pursue any such claims and the Contractor may, in its sole discretion, waive its rights under this Section 8.3. In such case the Subcontractor shall be free to pursue directly any claims it may have against the Owner.

MISCELLANEOUS PROVISIONS

9.01 Assignment Prohibited. The Subcontractor shall not let, assign, or transfer the Subcontract or any part thereof, or any interest therein.

9.02 Inurement. The terms of this Subcontract shall be binding upon and inure to the benefit of, and shall be enforceable by, all parties hereto, their personal and legal representatives, guardians, successors and assigns to the extent, but only to the extent that assignment is provided for in accordance with, and permitted by, the provisions of this Subcontract.

9.03 Governing Law and Jurisdiction. This Subcontract shall be governed by and construed and enforced in accordance with the laws of the State of Washington, United States of America, irrespective of the fact that any one of the parties now is, or may become a resident of a different state or country. Exclusive jurisdiction for purposes of this Subcontract shall be in the District Court for the State of Washington, City Seattle and County of King .

9.04 Waiver of Jury Trial. The Subcontractor hereb vocably waives and relinquishes any right to have a dispute betwe parties submitted to jury trial.

9.05 Severability. Any provision of this Subcontract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of this Subcontract. The Rule of Construction which provides that ambiguities in a contract shall be construed against the drafter shall not apply to this Subcontract and Subcontractor waives any such defense to the terms of this Subcontract.

9.06 Time. Time is of the essence under this Subcontract.

9.07 Nonwaiver. The failure of any party or all parties to insist, in any one or more instances, upon performance of any of the terms or conditions of this Subcontract shall not be construed as a waiver or a relinquishment of any right granted hereunder of the future performance of any such term, covenant or condition, but the obligations of all parties with respect thereto shall continue in full force and effect.

9.08 Further Assurances. The parties hereto agree that they and each of them will take whatever action or actions as are deemed by counsel to the Contractor to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Subcontract, and to that end, the parties agree that they will execute, acknowledge, seal, and deliver any further instruments or documents which may be necessary to give force and effect to this Subcontract, or any of the provisions hereof, or to carry out the intent of this Subcontract.

9.09 Counterparts. This Subcontract may be executed in several counterparts, each of which may be deemed an original, but all of which together shall be deemed one instrument.

9.10 Facsimile Signatures. Facsimile signatures shall be deemed to be the same as original signatures.

9.11 Warranty of Authority. The signator of this Subcontract warrants that he or she has full authority to execute the Subcontract on behalf of and to bind the Subcontractor, and the Subcontractor warrants that it has full authority to enter into this Subcontract.

Additional Provisions

General

- Project Schedule - Attached
  Subcontract Registration Package - Attached
  Subcontract Payment Package - Attached
  Maintain project schedule as directed by the project superintendent.
  No extra work without prior authorization from the project manager.

Charge Out Rates		
Inclusive of all markups, surcharges, and burdens	Supervisor	50.00
	Tradeperson	45.00
	Laborer/Apprentice	40.00
	OT Premium	20.00
	Material Markup %:	15%
	List Attached	☐

- 95% of approved invoices paid not later than 15 days after receipt of monies from the Owner.
  Contract balance paid no later than 30 days after release of retained monies by owner and payment of all labor, materials and taxes by subcontractor.
- -Comply with the requirements of any regulatory agency having jurisdiction. Provide written notice to the General Contractor if contract documents do not meet these requirements. Obtain or coordinate inspections and provide inspection documentation.
  -Instruct workers in regard to the safe completion of site activities. Provide evidence of training upon request.
  Provide Material Data Safety Sheets for Section products upon request.
  -Examine preceding work, commencement of work is acceptance of conditions. Protect surrounding areas to preclude damage. Use qualified and experienced workers to complete work. Ensure that environmental conditions are met before proceeding.
  -Remove debris on a constant basis to eliminate hazards. Complete thorough site cleanup, including removing debris from site and reorganizing materials, weekly, or as directed by Superintendent. Leave work area "broom clean" at conclusion of work.
  -Deliver products in original packaging. Deliver as required for installation, do not encumber site. Employ good trade practice in storing and protecting products until installation. Replace at own cost any material failing to meet specifications.

Inclusions

- Price is based on $2.30sf. Cost could increase or decrease after final completion of scope of work.
- Removal and disposal of all required material generated for scope of work.
- Supply and Install
  Fine grading of subgrade
  Soil sterilization
  2" crushed rock
  Class B Asphalt to thickness shown on drawings
- This section includes all labor, materials, and equipment required to complete asphalt paving as per plans, specification
- Provide barricades, flagging, and traffic control to maintain public egress and protection.
- Provide three copies of signed original Warranty (s) stated:
  -One year warranty on materials and installation

Exclusions

- Washington State Sales Tax

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and acknowledged this Subcontract as of the date first written above.

SIGNATURES

Ethan Construction, LLC.

By _____

By _____ Project Manager

J.B. Asphalt Paving

By _____

Owner

Title