

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

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DISTRICT OF COLUMBIA,

*Plaintiff,*

v.

POWER DESIGN, INC., *et al.*

*Defendants.*

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Civil Action No.: 2022 CA 001977 B

**CONSENT ORDER**

This matter comes before the Court on the joint motion of Plaintiff District of Columbia (“District”) and Defendants Power Design, Inc. (“PDI”), John Moriarty & Associates of Virginia, LLC (“JMA”), K&K Electric & Construction, LLC (“K&K”), and JLH General Services, LLC (“JLH”) (collectively, the “Parties”) pursuant to SCR-Civil 68-I, for entry of this Consent Order (“Consent Order”). The Parties agree to the relief set forth in this Consent Order, and the Court further finds that the entry of the Consent Order is in the public interest. This Consent Order resolves the District’s claims (as defined below) in this action against all parties to this Consent Order.

**I. PARTIES**

1. Plaintiff District of Columbia, a municipal corporation that is authorized to sue and be sued, is the local government for the territory constituting the seat of the government for the United States of America. Pursuant to D.C. Code § 32-1306, the Attorney General for the District of Columbia is authorized to bring civil actions seeking back wages, liquidated damages, civil penalties, costs, and attorneys’ fees for violations of the District of Columbia Wage Payment and Collection Law (“WPCL”), D.C. Code § 32-1301, *et seq.*; Workplace Fraud Act (“WFA”), D.C.

Code § 32-1331.01, *et seq.*; Minimum Wage Revision Act (“MWRA”), D.C. Code § 32-1001, *et seq.*; and Sick and Safe Leave Act (“SSLA”), D.C. Code § 32-531.01, *et seq.*

2. Defendant PDI is a Florida corporation that provides multi-trade contracting services in multiple states and does business in the District.

3. Defendant JMA is a Delaware corporation that provides general contracting services in multiple states and does business in the District.

4. Defendant K&K is a Maryland corporation that provides labor services relating to electrical installation and does business in the District.

5. Defendant JLH is a Maryland corporation that provides labor services relating to electrical installation and does business in the District.

## II. RECITALS

6. On May 4, 2022, the District filed a Complaint against Defendants PDI, JMA, MBJ Electric, Inc (“MBJ”), K&K, JLH, LAF General Contractors, LLC (“LAF”), and BI&R Services, LLC (“BI&R”) (collectively, “Defendants”),<sup>1</sup> alleging that MBJ, K&K, JLH, LAF, and BI&R were liable as “employers” as defined in the WFA and MWRA for the following violations:

- a. Misclassifying workers as independent contractors when they should have been classified as employees in violation of the WFA, D.C. Code § 32-1331.01, *et seq.*; and
- b. Failing to pay overtime to workers in violation of the MWRA, D.C. Code § 32-1001, *et seq.*

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<sup>1</sup> BI&R, LAF, and MBJ are not parties to this Consent Order. To date, no counsel has entered an appearance on behalf of Defendant BI&R. The Court granted default judgment against BI&R on July 12, 2023. LAF is similarly unrepresented in Court by counsel despite the Court’s May 22, 2023 Order requiring LAF to obtain counsel by June 5, 2023. MBJ is similarly unrepresented in Court by counsel despite the Court’s May 3, 2024 Order requiring MBJ to obtain counsel by May 17, 2024.

7. In addition, the District alleged that PDI and JMA, as upstream contractors, were jointly and severally liable for violations of the WFA and MWRA committed by downstream labor subcontractors MBJ, K&K, JLH, LAF, and BI&R pursuant to D.C. Code § 32-1303(5).

8. PDI and JMA dispute and deny each and every claim asserted by the District, deny that they are liable to the District, deny that they have violated any of the aforementioned statutes, have actively defended the action, and contend that they are in compliance with District law. The Parties understand and acknowledge that nothing contained in this Consent Order, nor any actions taken in furtherance of this Consent Order, shall constitute or be deemed or construed as an admission of liability or wrongdoing.

9. During discovery, the District engaged in an extensive investigation into Defendants and other entities that potentially provided labor on PDI projects in the District of Columbia, including by serving over 20 third-party subpoenas to non-defendant subcontractors that had done work for PDI during the relevant period.

10. Following that investigation, the District determined that PDI's primary exposure originated from their joint-and-several liability with respect to misclassified workers employed by downstream contractors such as MBJ, K&K, JLH, LAF, BI&R, and others identified through discovery and responses to the District's third-party subpoenas. In addition, the District determined that certain subcontractors failed to provide paid sick leave benefits to their workers, as required by the SSLA, also subjecting JMA and PDI to potential exposure. As a result of its own investigation, and in conjunction with good-faith discussions with the District, PDI voluntarily resolved any known claims of unpaid wages, including minimum wage and overtime violations as they became aware of them. On September 14, 2023, and on motion of the Parties, the Court stayed this litigation to allow the Parties to explore a resolution of this case through private mediation.

11. The District and PDI then engaged in robust extensive good-faith negotiations including a virtual full-day mediation session on November 14, 2023 and an in-person full-day mediation session on February 13, 2024 with the Hon. Richard A. Levie (Ret.), as well as multiple written, telephonic, and videoconference conferrals.

12. As a result of those negotiations, the PDI and the District have agreed that a resolution of the District's claims pertaining to worker misclassification under the WFA and paid sick leave violations under the SSLA is appropriate.<sup>2</sup> As detailed below, PDI agrees to make payments to workers employed by downstream labor subcontractors for misclassification and paid sick leave violations. Because PDI voluntarily resolved the alleged MWRA claims already, no payments will be made with respect to those claims, and the District agrees not to pursue them as part of this settlement.

13. PDI has further agreed to certain injunctive provisions aimed at improving compliance and preventing future violations within its contracting chains, including terms requiring enhanced oversight of downstream worker classification, payroll records retention, reporting requirements, and establishing a hotline for workers that wish to report potential violations. These terms, in part, will assist the District in its monitoring of prospective compliance by labor subcontractors. JMA has also agreed to separate injunctive provisions to bolster compliance by downstream contractors, and the Parties have negotiated injunctive terms for third-party labor subcontractors for future work on PDI projects in the District.

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<sup>2</sup> Although SSLA claims are not part of the operative Complaint in this matter, the District intended to file an amended complaint alleging these violations should litigation proceed. PDI is voluntarily agreeing to resolve these SSLA claims here.

14. Now, for the purpose of compromise and to eliminate the burden and expense of further litigation, the Parties wish to resolve and settle this litigation and have agreed to the terms in this Consent Order to resolve the District's claims in this action.

### **III. PAYMENT TERMS**

15. **Payment Terms.** PDI agrees to pay, in the manner set forth below, a total of Three Million Seven Hundred Fifty Thousand dollars (\$3,750,000) (the "Total Settlement Amount"). The Total Settlement Amount is the sum of (a) a "Worker Share" equaling One Million Seven Hundred Forty-Two Thousand dollars (\$1,742,000.00) to be paid to affected workers (hereinafter, "Claimants") (b) a "Penalty Share" equaling One Million One Hundred Twenty-Eight Thousand dollars (\$1,128,000.00) to be paid to the District, and (c) an "Attorneys' Fees Share" equaling Eight Hundred Eighty Thousand dollars (\$880,000.00) to be paid to Outten & Golden LLP. The Total Settlement Amount shall be paid out in the following manner:

- a. Upon the Court's approval of the Consent Order, PDI shall make payment to the District in the amount of One Million Five-Hundred Thousand dollars (\$1,500,000).
- b. Within ninety (90) days of the Court's approval of the Consent Order, PDI shall make its second payment to the District in the amount of Seven-Hundred Fifty Thousand dollars (\$750,000).
- c. Within one-hundred twenty (120) days of the Court's approval of the Consent Order, PDI shall make its third payment to the District in the amount of Seven-Hundred Fifty Thousand dollars (\$750,000).
- d. Within one-hundred eighty (180) days of the Court's approval of the Consent Order, PDI shall make its fourth and final payment to the District in the amount of Seven-Hundred Fifty Thousand dollars (\$750,000).
- e. PDI agrees it shall timely make payments as set forth in this Consent Order. Should PDI fail to make any payment within five (5) business days of the above deadlines, PDI shall pay the outstanding portion of the payment plus a penalty of eight percent (8%) interest per year beginning from the date of the violation. PDI and the District may agree to waive any penalties set forth in this section by written agreement.

- f. The Office of the Attorney General for the District of Columbia and PDI shall be jointly responsible for the distribution of the Worker Share portion of Total Settlement Amount to affected workers. Within thirty (30) days after entry of this Consent Order, PDI, with assistance of the District, will prepare a ledger (the “Claims Ledger”) in Excel spreadsheet format that identifies each Claimant’s (a) name; (b) last known contact information, including phone, email, and address; (c) the name(s) of the subcontractor(s) for whom the Claimant worked and (d) the amount of the payment. The Worker Share shall be paid out in pro rata amounts calculated by the District to each of the affected Workers identified by PDI or to PDI by the District, MBJ, K&K, JLH, LAF, BI&R, or self-identified. The District will retain a third-party settlement administrator to establish a qualified settlement fund (“QSF”) and help distribute payments to workers. The District will pay for the costs of the settlement administrator from the Penalty Share or any undistributed portion of the Worker Share, as described in paragraph 15(g), below. After distribution, PDI agrees to make good faith efforts to help notify workers for whom they have current contact information of the payments, making at least one attempt per quarter for one calendar year for any Claimant that does not cash their check within thirty (30) days of distribution. PDI will keep and maintain records of all outreach efforts to Claimants for at least one year after the entry of this Consent Order, and shall thereafter submit these records to the District.
  
- g. After three hundred sixty-five (365) days of entry of this Consent Order, or at an earlier date at the sole discretion of the Attorney General, any undistributed portion of the Worker Share shall be paid to the District. Any remaining funds reverting to the District may be used for any lawful purpose, including, but not limited to: Worker Share payments to newly identified Claimants, deposit to the District’s litigation support fund; deposit to OAG’s restitution fund defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. PDI hereby consents to any modification to the language of this paragraph, at the sole discretion of this Attorney General for the District of Columbia, that is needed to facilitate the reversion of any undistributed Worker Share funds under this paragraph

#### **IV. INJUNCTIVE TERMS**

- 16. **PDI.** PDI has agreed to separate injunctive terms, attached hereto as **Exhibit A.**
- 17. **JMA.** JMA has agreed to separate injunctive terms, attached hereto as **Exhibit B.**
- 18. **Labor Subcontractors.** The District and PDI have negotiated injunctive terms for labor subcontractors on PDI projects in the District, attached hereto as **Exhibit C.**
- 19. **Notice of Consent Order to PDI, JMA, K&K, and JLH Management.** PDI,

JMA, K&K, and JLH shall deliver a copy of this Consent Order to each of its current and future principals, officers, directors, and managers who have managerial authority with respect to the subject matter of this Consent Order for a period of one (1) year following entry of the Consent Order.

## **V. RELEASE AND DISMISSALS**

20. **Release by the District as to PDI.** Upon entry of this Consent Order and PDI's payment of the Penalty Share, the District releases PDI with respect to claims that were brought in this action or that could be brought under the WFA, SSLA, and MWRA arising out of work performed by PDI or by any of PDI's subcontractors from May 4, 2019 to the date of the entry of this Consent Order. The foregoing release shall not affect the District's right to take an appropriate enforcement action against PDI with respect to the payment terms and injunctive terms set out in **Exhibit A** of this Consent Order, nor shall it, or anything in this agreement, affect the District's right to bring any enforcement action for conduct that is not specifically released or for any conduct that post-dates the date of the entry of the Consent Order.

21. **Release by the District as to JMA.** Upon entry of this Consent Order and PDI's payment of the Penalty Share, the District releases JMA with respect to claims that were brought in this action or that could be civilly brought under the WFA, SSLA, and MWRA arising out of work performed by JMA or by any of JMA's subcontractors from May 4, 2019 to the date of the entry of this Consent Order. Nothing in the foregoing release shall affect the District's right to take an appropriate enforcement action against JMA with respect to the injunctive terms set out in **Exhibit B** of this Consent Order, nor shall it, or anything in this agreement, affect the District's

right to bring any future action against JMA for conduct that is not specifically released or for any conduct that post-dates the date of the entry of the Consent Order.

22. **Release by the District as to K&K and JLH.** Upon entry of this Consent Order and PDI's payment of the Penalty Share, the District releases K&K and JLH with respect to claims that were brought in this action or that could be civilly brought under the WFA, SSLA, and MWRA arising out of work performed for PDI from May 4, 2019 to the date of the entry of this Consent Order. The foregoing release shall not affect the District's right to take an appropriate enforcement action against K&K and JLH with respect to the injunctive terms set out in **Exhibit C** of this Consent Order, nor shall it, or anything in this agreement, affect the District's right to bring any future action against K&K and JLH for conduct that is not specifically released or for any conduct that post-dates the date of the entry of the Consent Order.

23. **Dismissal of Claims Without Prejudice against MBJ, LAF, and BI&R.** Upon entry of this Consent Order, the District agrees to file within seven (7) days a notice of dismissal without prejudice against Defendants MBJ, LAF, and BI&R pursuant to SCR-Civil 41(a)(1)(A)(i).

## **VI. ADDITIONAL TERMS**

24. **No concession that claims were not well-founded.** The District's agreement to enter into this Consent Order does not constitute, and shall not be construed as, a concession that its claims were not well-founded or that any of defendants' defenses were valid.

25. **No admission of wrongdoing or liability.** PDI, JMA, K&K, and JLH's agreement to enter into this Consent Order does not constitute, and shall not be construed as, an admission of wrongdoing or liability.

26. **Full and complete terms.** This Consent Order represents the full and complete terms of the settlement entered by the Parties. In any action undertaken by the Parties, neither prior



versions of this Consent Order nor prior versions of any of its terms that were not entered by the Court in this Consent Order may be introduced for any purpose whatsoever.

27. This Court retains jurisdiction of this Consent Order and the Parties for the purpose of enforcing this Consent Order and for the purpose of granting such additional relief as may be necessary and appropriate. The Parties may agree in writing, through their counsel, to an extension of any time period in this Consent Order without need for a new court order.

28. The Parties may apply to the Court together to modify this Consent Order by agreement at any time. The laws of the District of Columbia shall govern this Consent Order. Any action brought pursuant to this Agreement shall be brought in the District of Columbia Superior Court, and the Parties consent to the jurisdiction of said court for all purposes.

29. This Consent Order may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

30. All notices sent pursuant to this Consent Order shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

James Graham Lake  
Assistant Attorney General  
Office of the Attorney General for the District of Columbia  
600 Sixth Street, 10th Floor  
Washington, D.C. 20001  
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Christopher M. McNerney  
Pooja Shethji  
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New York, NY 10017  
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*Counsel for Defendant John Moriarty & Associates of Virginia, LLC*

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*Counsel for Defendant K&K Electric & Construction, LLC*

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Fax: (301) 812-4238  
[dngottron@gmail.com](mailto:dngottron@gmail.com)

*Counsel for JLH General Services, LLC*

31. If any clause, provision, or section of this Consent Order shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Consent Order and this Consent Order shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

32. Nothing in this Consent Order shall be construed as relieving PDI, JMA, K&K, and JLH of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Consent Order be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

33. Nothing in this Consent Order may be deemed as creating rights in individual or entity third parties.

**CONSENTED TO FOR PLAINTIFF DISTRICT OF COLUMBIA**

BRIAN L. SCHWALB  
Attorney General for the District of Columbia

JENNIFER C. JONES  
Deputy Attorney General for the District of Columbia  
Public Advocacy Division

/s/ James Graham Lake Date: July 22, 2024  
JAMES GRAHAM LAKE (D.C. Bar No. 1028853)  
Chief, Workers' Rights & Antifraud Section  
Office of the Attorney General for the District of Columbia  
600 6th Street NW, 10th Floor  
Washington, D.C. 20001  
Telephone: (202) 727-3400  
Email: [Graham.Lake@dc.gov](mailto:Graham.Lake@dc.gov)

**CONSENTED TO FOR DEFENDANTS**

/s/ Jessica L. Farmer Date: July 22, 2024  
Jessica L. Farmer (D.C. Bar No. 1023024)  
Paul J. Kiernan (D.C. Bar No. 385627)  
Benjamin Genn (D.C. Bar No. 1045761)  
**Holland & Knight LLP**  
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*Counsel for Defendant Power Design, Inc.*

/s/ Douglas W. Callabresi Date: July 22, 2024  
Douglas W. Callabresi (D.C. Bar No. 502431)  
Charles Asmar (D.C. Bar No. 434984)  
Laurence Schor (D.C. Bar No. 11494)  
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*Counsel for Defendant John Moriarty & Associates of Virginia, LLC*

/s/ Terry E. Morris

Date: July 22, 2024

Terry E. Morris (D.C. Bar No. 230283)

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751 Rockville Pike, Suite 2A

Rockville, MD 20852

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*Counsel for Defendant K&K Electric & Construction, LLC*

/s/ Douglas N. Gottron

Date: July 22, 2024

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Rockville, MD 20852

Tel.: (202) 924-2061

Fax: (301) 812-4238

dngottron@gmail.com

*Counsel for JLH General Services, LLC*

**IT IS SO ORDERED, ADJUDGED, AND DECREED.**

Date: \_\_\_\_\_

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JUDGE SHANA FROST MATINI  
Superior Court for the District of Columbia

Copies to counsel of record via Odyssey and via mail to:

BI&R Services, LLC  
c/o Raul Resendiz, Registered Agent  
7173 Mahogany Drive #5  
Hyattsville, MD 20785

LAF General Contractors, LLC  
85 Patuxent Mobile Estate  
Lothian, MD 20711

MBJ Electric, Inc.  
4024 Latham Drive  
Haymarket, VA 20169  
jmeija@mbjelectric.com  
cargueta@mbjelectric.com

MBJ Electric, Inc.  
c/o DC Registered Agent, Inc.  
2300 N Street NW, Suite 300-RLK  
Washington DC 20037

# Exhibit A

Non-monetary terms between Power Design, Inc. (“PDI”) and the Office of the Attorney General for the District of Columbia (the “District”):

**1. Responsible Subcontractor Policy:**

- 1.1. All Labor Subcontractors must agree to and follow PDI’s established Responsible Subcontractor Policy.
- 1.2. The current version of the Guidelines is attached as **Exhibit A-1**.
- 1.3. Violations of this policy may result in PDI terminating its subcontract with the Labor Subcontractor.

**2. Additional Subcontract Terms for New PDI Projects:**

- 2.1. Any new Labor Subcontracts that PDI enters into with a projected value of over \$50,000 for District of Columbia projects starting after the date of this settlement must include the following provisions:
  - 2.1.1. Submit to PDI a yearly certification attesting compliance with the SSLA along with payroll records showing that the Labor Subcontractors are accruing for sick leave;
  - 2.1.2. Submit to PDI a yearly certification that all workers used on PDI Projects were W2 employees, and will further certify that workers’ payment and benefits were delivered to the workers in compliance with District laws, including the WPCL, WFA, MWA, SSLA, and UCA, as appropriate. If any 1099 worker is used by a Labor Subcontractor, the Labor Subcontractor will identify the number of such workers and the locations at which such workers were employed during the preceding twelve-month period and provide a brief explanation for the basis of the classification.
  - 2.1.3. As noted above, for any new Labor Subcontracts with a projected contract value of over \$50,000 that PDI enters into for District of Columbia projects, provide to PDI on a biweekly basis certified payroll forms (unless using a third-party payroll company compliant with District law), which include workers’ classification status, an example of which is Department of Labor Form WH 347, which is available at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf>.
  - 2.1.4. Provide to PDI the name of the entity that prepared and issued any IRS Forms 1099 or W-2 issued to workers, annually.
  - 2.1.5. Prohibit Labor Subcontractors from utilizing lower tier subcontractors.
  - 2.1.6. Work only on a cost-plus or hourly fee basis as opposed to a lump sum basis.
- 2.2. The parties will negotiate an appropriate certification form that will be attached as an Exhibit to the settlement agreement.
- 2.3. This term shall not apply to projects begun prior to entry of the Consent Order.



**3. Enhanced Payroll Requirements For Labor Subcontractors:**

- 3.1. For one year from the date of the Consent Order, PDI shall engage a third-party to review for compliance the third-party payroll records required by Section 2.1.
- 3.2. This term shall not apply to projects begun prior to entry of the Consent Order.

**4. PDI Records Retention Requirements:**

- 4.1. PDI shall request and retain the following documents for at least three (3) years and make them available to the District upon request:
  - 4.1.1. Copies of all Labor Subcontract Agreements;
  - 4.1.2. Signed Responsible Subcontractor Policies from all Labor Subcontractors as required by this Agreement;
  - 4.1.3. Documents specified in 2.1.1.
  - 4.1.4. Documents specified in 2.1.2
  - 4.1.5. Documents specified in 3.1.
- 4.2. Should a Labor Subcontractor fail to provide PDI with any documents as required by their Subcontract, PDI will provide the labor subcontractor with 15 days to comply or will initiate termination of their Subcontract. PDI shall not be held in violation of any reporting or record retention requirement due to a Labor Subcontractor's failure to provide PDI with the requisite documentation provided PDI terminates the Subcontract in accordance with this provision.
- 4.3. This term shall not apply to projects begun prior to entry of the Consent Order.

**5. PDI Reporting Requirement to the District:**

- 5.1. On an annual basis for the years 2024, 2025, and 2026, PDI will furnish to the District a certified report of documents retained per Section 4 of this Agreement for all applicable Labor Subcontractor agreements in force during the preceding calendar year.
- 5.2. On a biannual basis for the years 2024, 2025, and 2026, PDI will furnish to the District summaries of any wage and hour violation reports submitted through PDI's established worker hotline during the preceding two calendar quarters. Each incident on the report will include name of the worker, the worker's contact information, the worksite where the violation occurred, the labor subcontractor at issue, the alleged violation(s), the steps taken to resolve the issue, and the ultimate resolution.

**6. Notice by the District of Potential Violations:**

- 6.1. If the District has a good-faith belief that there has been a violation of the injunctive terms of this settlement, it shall notify PDI in writing within ten (10) business days and PDI shall have the right to dispute or remedy the alleged violation or misclassification within thirty (30) calendar days before the District may take any legal action to enforce the terms of this settlement. If PDI disputes the alleged violation or misclassification, the parties shall meet and confer in good faith prior to the District bringing an enforcement action. Nothing in this provision otherwise affects the District's enforcement authority outside of this settlement.

## 7. **Cure Provisions:**

- 7.1. The parties understand that there may be de minimis payroll errors in the normal course of business, e.g., missed hours, and that those are generally corrected by or before the next pay period for that particular worker. For purposes of this provision, such errors shall be referred to as “payroll errors.” Whereas a “violation” shall be defined as (i) the failure to pay overtime, minimum wage, and/or paid sick leave days identified by PDI and **not** remedied within thirty (30) calendars days; (ii) the failure to pay overtime, minimum wage, and/or paid sick leave days brought to PDI’s attention subcontractors, or affected workers and **not** remedied within thirty (30) calendars days; (iii) the failure to pay overtime, minimum wage, and/or paid sick leave days brought to PDI’s attention by the District and/or (iv) the misclassification of workers, or the failure to provide any sick leave, regardless of who raises the issue.
- 7.1.1. For such violations noticed to PDI, so long as PDI cures a violation within an additional 30 days, the District agrees not to seek additional damages or penalties for the violation. For minimum wage and overtime violations, curing is defined as paying the affected worker 150% of the owed wages.
- 7.1.2. For paid sick leave violations, curing is defined as paying the affected worker \$500 for each worker or \$500 for each paid sick leave day denied, whichever is higher. For misclassification violations, curing is defined as paying the affected worker \$500 and requiring the subcontractor to reclassify the worker as an employee.
- 7.1.3. For misclassification violations where the subcontractor refuses to reclassify the worker, PDI may still cure the violation by terminating the contractual relationship with the subcontractor within 60 days.
- 7.1.4. If a labor subcontractor accrues violations in excess of \$25,000 in a calendar year, PDI shall terminate the labor subcontract. PDI can take advantage of this safe harbor provision for violations in a calendar year up to \$50,000 in total across subcontractors. Should violations exceed \$50,000 per year, the parties agree to confer in good faith over whether to extend the safe harbor to additional violations.
- 7.2. PDI must maintain records of all violations for three (3) years, and inform the District of the violation and PDI’s response to the violation, within 30 days of notice of the violation.

## 8. **Hotline:**

- 8.1. PDI shall establish a hotline or outreach mechanism whereby workers for PDI or any labor subcontractor working on PDI jobsites can contact PDI to report actual or suspected violations of wage and hour laws, including the misclassification of employees as independent contractors, whether allegedly performed by PDI or any labor subcontractor on a PDI jobsite. In communicating the existence of the hotline or outreach mechanism at its worksites, PDI shall include language making clear that any alleged wage-and-hour violations may be reported to the hotline, expressly including worker misclassification.

## 9. **Discontinuance of Engagement of Certain Labor Subcontractors:**

- 9.1. Unless prevented from doing so by court order, PDI will discontinue its engagement of labor subcontractors who have classified electrical workers as independent contractors or failed to pay electrical workers sick leave under the SSLA and/or have violated PDI’s

responsible-subcontractor guidelines on PDI jobs. The restrictions will apply to any officers or owners of those labor subcontractors.

9.1.1. PDI will include language in its future contracts with labor subcontractors that they are strictly prohibited from using sub-subcontractors for labor and that such use is grounds for immediate termination.

9.1.2. Notwithstanding the foregoing provisions, a labor subcontractor may be permitted to continue working on Power Design projects where the labor subcontractor has independently reached an agreement with the Office of the Attorney General for the District of Columbia and provides a copy of that agreement to PDI within thirty (30) days of entry of the Consent Order.

**10. Sunset:**

10.1. Unless otherwise provided in a specific term, the provisions in this agreement shall sunset in three years.

# Exhibit A-1

# EXHIBIT DC-1

## DC EMPLOYMENT LAW REQUIREMENTS FOR SUBCONTRACTORS

The purpose of this DC Subcontract Rider is to set forth additional obligations, responsibilities, terms and conditions applicable to Subcontractor in the event Subcontractor performs any Work for Contractor within the District of Columbia. This obligations in this Rider shall be in addition to and not in lieu of any other obligations set forth in the Contract Documents. This Rider shall be considered a part of any and all Subcontract Purchase Orders that may be issued hereafter to Subcontractor, unless otherwise expressly noted in the subject Subcontract Purchase Order.

1. Subcontractor shall at all times perform the work in accordance with all applicable, federal, state, and local laws, and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family Medical Leave Act, and record-keeping requirements. In addition, Subcontractor shall strictly adhere to all laws specific to the District of Columbia, by adhering to the following terms:
  - 1.1. Classify tradespersons as employees as required by law.
  - 1.2. Secure from tradespersons all employment documents including Forms W-4 and I-9, and issue D.C. Wage Theft Protection Act notices to each new employee (and any existing employee who was not provided with notices in the past), containing all information required by the law, in English, Spanish, and any other applicable languages, and retain such notices in accordance with law.
  - 1.3. Pay minimum wage for all hours actually worked and overtime for all hours actually worked over 40 in a workweek for all tradespersons, and issue itemized statements (payroll stubs) with all information required by the D.C. Wage Payment and Wage Collection Law.
  - 1.4. Keep all payroll and employment-related records required by law with respect to all tradespersons.
  - 1.5. Provide statutory benefits to all tradespersons under applicable laws including D.C. Sick and Safe Leave Act, D.C. Family and Medical Leave Act, D.C. Pregnancy and Childbirth Leave, D.C. Parental Leave Act, and the upcoming D.C. Universal Paid Leave Act.
  - 1.6. Cover tradespersons with Workers' Compensation insurance coverage and provide employees with Worker's Compensation forms after reporting that they have suffered a workplace injury or illness.
  - 1.7. To the extent applicable, Subcontractor shall post all statutory notices (in English, Spanish, and any other applicable languages for tradespersons in conspicuous places with respect to tradespersons, including notices under the D.C. Sick and Safe Leave Act, D.C. Family and Medical Leave Act, D.C. Protecting Pregnant Workers Fairness Act, D.C. Parental Leave Act, D.C. Workers' Compensation Act, D.C. Minimum Wage Act, and all applicable federal laws.
  - 1.8. Pay Unemployment Insurance taxes (SUTA and FUTA) with respect to tradespersons as required by law.
  - 1.9. Withhold payroll taxes and deduct FICA taxes and any local taxes/deductions, file any and all statutory filings including IRS Forms 940 and 941 and applicable local /state forms, and remit withholdings and payroll taxes to applicable government tax/revenue agencies, with respect to tradespersons, as per legal requirements.
  - 1.10. Provide tradespersons with all tax forms including W-2 Forms as required by law.

- 1.11. Develop and issue to all tradespersons an employee handbook setting forth all employment policies of the company required by law, including any and all required policies (such as a Family and Medical Leave Act policy and a D.C. Family and Medical Leave Policy,
  - 1.12. Provide a qualified contact for tradespersons to inquire or register complaints with respect to any labor and employment questions, policies, laws, and disputes in order to carry out the Subcontractor's legal obligations.
  - 1.13. Comply in all other respects with all labor and employment laws.
2. Ensuring Compliance by Labor Subcontractors - Verification and Due Diligence
    - 2.1. Contractor shall have the right to verify compliance with each of the basic responsible Subcontractor requirements, and to facilitate its verification of compliance verification, Contractor shall have the right to require the Subcontractor to provide to Contractor information and documents confirming compliance with each such basic responsible Subcontractor principles and to produce all books, records, and information requested by Contractor to verify such compliance.
    - 2.2. Contractor shall have the right to engage in due diligence in order to verify and confirm the Subcontractor's compliance with each of the basic responsible Subcontractor requirements.
    - 2.3. Contractor shall have the right to make random checks of each labor contractor in the field to visually observe compliance with the basic responsible Subcontractor requirements.
    - 2.4. Contractor shall have the right to make inquiries of tradespersons on a random and/or reasonable suspicion basis to verify that the Subcontractor is fulfilling its legal and contractual obligations to the tradespersons, and the Subcontractor agrees to make tradespersons available to Contractor to verify compliance.
    - 2.5. In the event Contractor determines that a Subcontractor is not complying with any provision of the requirements for responsible Subcontractors, Contractor shall take action permitted under the contract to ensure that each such requirement is fulfilled, deducting from the amounts otherwise due to the Subcontractor any and all monies expended by Contractor to ensure compliance and deducting a reasonable administrative fee related to the cost of verifying non-compliance, plus any legal fees Contractor may have incurred in connection with such determination.
    - 2.6. Contractor will afford the Subcontractor a period of time not to exceed 10 business days to cure any breach of the basic requirements for responsible Subcontractors and, failing cure, shall have the right to terminate the parties' contract, deducting any amounts incurred to replace the Subcontractor from amounts otherwise payable to the Subcontractor.
3. ADDITIONAL REQUIREMENTS FOR SUBCONTRACTORS
    - 3.1. Compliance Requirements: Each Subcontractor shall:
      - 3.1.1. Annual SSLA Certification: Submit to PDI, no later than January 31st of each calendar year, a signed certification attesting to compliance with the Sick and Safe Leave Act (SSLA), accompanied by detailed payroll records demonstrating proper accrual of sick leave for all employees.
    - 3.2. Annual Worker Classification Certification: Provide PDI, no later than January 31st of each calendar year, a signed certification confirming that all workers engaged on PDI Projects were classified as W2 employees. This certification shall include an attestation that all workers' compensation and benefits are in full compliance with applicable District laws, including but not limited to WPCL, WFA, MWA, SSLA, and UCA.

- 3.3. Biweekly Payroll Reporting: Submit to PDI certified payroll forms on a biweekly basis, detailing worker classification status. This requirement may be waived if Subcontractor utilizes a third-party payroll company that is compliant with District law and approved by PDI. PDI shall have access to all third-party payroll reports and data.
- 3.4. Annual Tax Form Disclosure: Disclose to PDI, no later than February 28th of each calendar year, the name and contact information of the entity responsible for preparing and issuing IRS Forms 1099 or W-2 to workers.
- 3.5. Compensation Structure: Operate exclusively on a cost-plus or hourly fee basis. Lump sum payment structures are expressly prohibited.
- 3.6. Prohibition on Sub-subcontracting Subcontractor is strictly prohibited from engaging sub-subcontractors for labor on any PDI project. Any violation of this clause shall be grounds for immediate contract termination.
- 3.7. Payroll and Worker Classification
  - 3.7.1. Third-Party Payroll Requirement: Subcontractor shall utilize a third-party payroll company that is fully compliant with District law. If not using PDI's designated provider, Subcontractor must furnish written evidence of compliance for PDI's approval.
- 3.8. Document Retention and Production
  - 3.8.1. Retention Period: Subcontractor shall maintain all documents required under this agreement for a minimum of three (3) years from the date of creation.
  - 3.8.2. Document Production: Upon PDI's request, Subcontractor shall produce all required documents within 15 calendar days. Failure to comply may result in immediate contract termination.
- 3.9. Worker Hotline Compliance
  - 3.9.1. Investigation Cooperation: Subcontractor agrees to fully cooperate with any investigations arising from reports to PDI's worker hotline, including but not limited to providing access to relevant documents and personnel.
  - 3.9.2. Non-Retaliation: Subcontractor shall not retaliate against any worker for reporting suspected violations through PDI's hotline or any other reporting mechanism. Any proven retaliation shall be grounds for immediate contract termination.
4. Penalties for Non-Compliance:
  - 4.1. Contract Termination: PDI reserves the right to terminate this contract for any uncured breaches within the specified cure periods.
  - 4.2. Administrative Fees: Subcontractor shall pay an administrative fee of not less than \$5,000 for each instance of non-compliance that requires PDI's intervention to rectify.
  - 4.3. Legal Costs: Subcontractor shall bear all legal costs incurred by PDI in addressing non-compliance, including but not limited to attorney fees, court costs, and settlement amounts.
  - 4.4. Payment Withholding: PDI may withhold any pending payments until Subcontractor achieves and PDI verifies full compliance.
  - 4.5. Regulatory Fines: Subcontractor shall be liable for any fines or penalties imposed on PDI by regulatory authorities due to Subcontractor's non-compliance.
  - 4.6. Escalated Termination: PDI may immediately terminate this contract and Subcontractor shall pay a minimum \$10,000 administrative fee if violations exceed \$25,000 in a calendar year.
  - 4.7. Future Contract Ban: Subcontractor agrees to a three-year ban from future PDI projects in the District of Columbia for repeated or egregious violations.

- 4.8. Replacement Costs: Subcontractor shall reimburse PDI for any costs associated with engaging replacement subcontractors due to Subcontractor's contract termination.
  - 4.9. Indemnification: Subcontractor shall indemnify PDI against any third-party claims arising from Subcontractor's non-compliance with labor laws.
  - 4.10. Payment Withholding for Anticipated Costs: Subcontractor consents to PDI's right to withhold payments to cover any anticipated costs related to resolving Subcontractor's non-compliance issues.
  - 4.11. Reporting of Non-Compliance: Subcontractor acknowledges that repeated non-compliance may result in being reported to relevant regulatory authorities and industry associations.
5. Upon request, Subcontractor shall provide a signed certification by subcontractor attesting to compliance with the WPCL, WFA, MWA, SSLA, and UCA.



# Exhibit B

Non-monetary terms between John Moriarty & Associates of Virginia, LLC (“JMA”) and the Office of the Attorney General for the District of Columbia (the “District”):

1. **Subcontractor Compliance with District Laws.** As part of all its future subcontracts for District projects, JMA shall include additional language requiring the subcontractor to strictly adhere with District wage and hour laws, including the WPCL, WFA, MWA, SSLA, and UCA. JMA shall further include new language explicitly prohibiting retaliation against workers who report potential violations.
2. **Subcontractor Termination for Cause.** As part of all its future subcontracts for District projects, JMA shall include language permitting JMA to terminate for cause any subcontractor that violates District wage and hour laws, including the WPCL, WFA, MWA, SSLA, and UCA, or fails to timely resolve any verified wage and hour violations.
3. **Worksite Notices.** In connection with its future District projects, JMA shall require subcontractors with semi-permanent locations on jobsites to post notices prominently in English and Spanish at all District jobsites: (a) informing workers of their rights under District law, including the WPCL, WFA, MWA, SSLA, and UCA, and (b) stating “If you think you may be misclassified as a 1099 worker, or if you are not receiving paid sick leave, please contact workers@dc.gov,” or some alternate formulation as to which JMA and the District later agree. In addition, JMA shall post the same or similar notices at prominent jobsite locations, including without limitation, jobsite entrances and exits.
4. **Payroll Reporting.** As part of all its future subcontracts for District projects, JMA shall include additional language requiring first-tier subcontractors to notify JMA of the software or company they use to do their payroll. The contract language shall specify that this requirement will flow all the way down the contracting chain, i.e., that the first-tier subcontractor will require any of its subcontractors (or further subcontractors, etc.) to notify it of the software or company they use to do their payroll, and that the first-tier subcontractor will then pass along that information to JMA. JMA will retain information received pursuant to these contractual provisions for three (3) years after receipt.
5. **Worker Names.** As part of all its future subcontracts for District projects, JMA shall include additional language that the first-tier subcontractor will collect a list of all people who did work on the JMA project whether through the first-tier subcontractor or any subcontractor (or further subcontractor, etc.), and that the first-tier subcontractor will be contractually obligated to provide the complete list at the completion of work under the subcontract with JMA. JMA will retain information received pursuant to these contractual provisions for three (3) years after receipt.
6. **Proof of Workers’ Insurance.** As part of all its future subcontracts for District projects, JMA shall include additional language requiring first-tier subcontractors to provide proof of workers’ compensation and related insurance coverage and encourage second tier subcontractors to review for the same.

7. **Supervisory Training.** JMA commits to reviewing and updating its project start-up checklist and project introductory onboarding materials to ensure it includes employee training for identifying probable wage and hour and classification violations.

# Exhibit C

## The District's Form Injunctive Terms for Power Design, Inc. Labor Subcontractors

[Insert subcontractor name] and [Insert relevant principals] (together, "Subcontractor") hereby agree as follows:

1. Subcontractor certifies that for any work in the District of Columbia (the "District"), it shall comply with all of the District's wage-and-hour laws, including the Wage Payment and Collection Law ("WPCL"), D.C. Code § 32-1301, Workplace Fraud Act ("WFA"), D.C. Code § 32-1331.01, *et seq.*, Minimum Wage Revision Act ("MWRA"), D.C. Code § 32-1001, *et seq.*, Sick and Safe Leave Act ("SSLA"), D.C. Code § 32-531.01, *et seq.*, and Unemployment Compensation Act ("UCA"), D.C. Code § 51-101, *et seq.*
2. For all new projects with PDI in the District, Subcontractor agrees to work on a cost-plus, certified payroll basis. Subcontractors shall use a certified payroll form that requires the Subcontractor to certify (a) identifying information pertaining to the subcontractor and project, (b) the names of their workers, (c) their classification as employees or independent contractors, (d) their hours worked each day, (e) their rate of pay, (f) paid sick leave accrued, (g) their gross earnings, (h) tax deductions, (i) net earnings, and (j) a sworn certification that the subcontractor is in compliance with the District's wage-and-hour laws. Certified payroll records may be modeled on U.S. Department of Labor Form WH-347.<sup>1</sup> Subcontractor agrees to identify how it tracks payroll and notify PDI of any third-party payroll company used by the subcontractor.
3. By no later than April 1 of the following year, for 2024, 2025, and 2026, Subcontractor agrees to provide the Office of the Attorney General for the District of Columbia ("D.C. OAG") with (i) all IRS Forms 1099 or W-2 issued to workers for work performed in the District of Columbia in the prior calendar year, and (ii) a complete list of workers who worked on each PDI jobsite in the District of Columbia at any point that year (including the jobsite name and address where they worked), and a certification that it has complied with the laws listed in Paragraph 1. Subcontractor may provide this information to D.C. OAG by mailing the documents to [address] or emailing legible pdf copies to [email].
4. [Insert relevant principals] specifically agree that these Form Injunctive Terms, and the obligations listed herein, shall all apply to any and all other companies as to which they are either an owner, officer, or principal.
5. Subcontractor agrees to cooperate with any settlement claims administration process in *District of Columbia v. Power Design, Inc. et al.*, Case No. 2022-CA-001977-B, including by providing timely notice to all its affected workers and providing a list to the parties with best known contact information for these workers.

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<sup>1</sup> See <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification>.

Subcontractor Name: \_\_\_\_\_

Principal Name(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Subcontractor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Principal Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Principal Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Principal Signature: \_\_\_\_\_

Date: \_\_\_\_\_