



STANDARD TERMS AND CONDITIONS OF SUBCONTRACT

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1. Payment of the Contract Price.

1.1. Payment of the Contract Price shall be made by Contractor to Subcontractor as follows:

- 1.1.1. **Approved Schedule of Values.** Before the first application for payment, Subcontractor shall submit to the Contractor, for approval by the Contractor, Owner, and Architect, a schedule of values allocating the Contract Price to the various portions of the Subcontractor's Work, such items being hereinafter referred to as the "**Line Items.**" Upon approval of the schedule of values (**Approved Schedule of Values**) by the Contractor, Owner, and Architect, the Approved Schedule of Values shall be used by Subcontractor for purposes of monthly application for payment.
- 1.1.2. **Application for Monthly Payment.** Each month following the commencement of work by the Subcontractor, the Subcontractor shall submit to the Contractor on Contractor's pay application form ONLY, at its office at 3755 West 69th Place, Westminster, Colorado, 80030, one application for payment no later than the 20th day of the month. Each application for payment shall set forth the original Contract Price, any adjustments to the Contract Price, approved changes, and the total value of the labor and materials incorporated into the Subcontractor's Work and materials delivered to the Project site suitably stored by Subcontractor to the date of such application for payment, supported by such data as the Contractor may require substantiating the Subcontractor's right to payment. On the last day of each payment period, the Contractor and Subcontractor shall mutually determine as of that date the percentage of completion of the Subcontractor's Work covered by each Line Item of the Approved Schedule of Values. Each monthly application for payment shall be based upon the percentage of completion of each such Line Item of the Subcontractor's Work. Providing Subcontractor has timely submitted an application for payment and the same is approved by Contractor, monthly progress payments will be made by the Contractor to the Subcontractor on or before the 20th day of the month following the month during which the labor and materials were provided as described in the application for payment or such amount of the application for payment which the Contractor approves, less the amount of the retainage, if any, as provided in this Subcontract Agreement. In the event there is a delay in payment due to the Owner's failure to timely pay Contractor, Contractor will pay Subcontractor as soon as practicable after the Owner's payment is received.
- 1.1.3. **Paid if Paid and Claims Against Owner.** Notwithstanding any other provision of this Subcontract, Subcontractor expressly acknowledges and agrees Contractor's receipt of payment from the Owner for amounts invoiced by and due to the Subcontractor is a condition precedent of an obligation of the Contractor to make any payments to Subcontractor, it being expressly agreed the risk of Owner's nonpayment is borne by the Subcontractor and not the Contractor and that the Contractor is relieved of any obligation to pay the Subcontractor if the Owner does not pay the Contractor. The provisions of this "**paid if paid**" clause is not intended to effect a waiver, abandonment, or diminution of the Contractor's and Subcontractor's respective rights under Colorado's mechanic lien statutes. Any payment advanced by the Contractor prior to receipt of payments from the Owner shall not be interpreted as a waiver or otherwise affect the Contractor's right to the enforcement of this "**paid if paid**" provision. In the event Contractor includes any amounts due to a Subcontractor or on a Subcontractor's lien in its demands, negotiations, or settlements of a combined lien claim against the Owner, Subcontractor agrees to share *pro rata* based on the percentage Subcontractor's lien bears to all of the Contractor's and other subcontractors' liens on which Contractor seeks relief in the attorneys' fees and costs incurred by the Contractor in the settlement of the litigation of the combined liens. This provision does not impose an obligation on the Contractor to pursue rights and lien rights against the Owner and does not restrict Subcontractor's rights to pursue its own claims and lien rights through its own counsel or otherwise.
- 1.1.4. **Retainage.** From the amount approved for payment by Contractor pursuant to Subparagraph 1.1.2, Contractor may, at Contractor's option, withhold ten percent (10%) of the amount approved for payment (**Retainage**) until the Subcontractor's Work required to be performed has been completed. All retainage amounts previously withheld shall be paid to Subcontractor at the time of final payment in accordance with Subparagraph 1.1.5, unless earlier paid to Subcontractor with the approval of the Owner, Architect, and Contractor.
- 1.1.5. **Final Payment.** Final payment of the full Contract Price as modified by approved Change Orders, if any, less the sum of progress payments previously made, shall be paid to the Subcontractor within sixty (60) calendar days after final acceptance of the Subcontractor's Work by the Contractor, Owner, and Architect, or upon final payment by the Owner to Contractor, whichever is later. All Subcontractor invoicing (including Change Orders) shall be considered complete and final sixty (60) calendar days after final inspection; no invoicing will be accepted after this time. It is the responsibility of the Subcontractor to get all the invoicing to Contractor within this time limit. If the Subcontractor has not been paid within forty-five (45) calendar days after submitting final invoices to Contractor, the Subcontractor shall contact Contractor to verify Contractor has received the final invoicing. Prior to final payment by the Contractor to the Subcontractor, the Subcontractor shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known debts connected with the Subcontractor's Work have been satisfied, which shall include, but not limited to, final lien waivers on the form provided by Contractor from Subcontractor and from all of Subcontractor's major subcontractors, materialmen, and suppliers, and others who may have a right to a lien against the Project as a result of performance of Subcontractor's Work, and Contractor has received Subcontractor's final application for payment and Subcontractor has executed and delivered to Contractor all required work guarantees.

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- 1.1.6. **Lien Waivers.** Each application for payment shall be accomplished by lien waivers on the form provided by Contractor as of the date of the last labor or materials covered by the application for payment from Subcontractor and from all of Subcontractor's major subcontractors, materialmen, suppliers, laborers, mechanics, truckers, and rental yards. Subcontractor's major subcontractors, materialmen, suppliers, laborers, mechanics, truckers, and rental yards shall mean any person or entity with which Subcontractor has a contract or from which Subcontractor purchases supplies or materials in an amount of One Thousand Dollars (U.S. \$1,000) or more (**Sub-subcontractors**); provided, however, Contractor may from time to time, in its discretion, require that Subcontractor provide a lien waiver from any person or entity who has furnished labor or materials regardless of amount. In the event Subcontractor or Sub-subcontractors use temporary or day labor or employees on the Project, Subcontractor shall provide Contractor with Project lien waivers signed by the temporary labor or employee agency for all such laborers and temporary employees. Lien waivers executed pursuant to this Paragraph 1.1.6 by the Subcontractor and the Sub-subcontractors shall include language stating, in substance, that, "**ALL DEBTS OWED TO THE LIEN WAIVING SUBCONTRACTOR OR SUB-SUBCONTRACTOR RELATING TO THE GOODS AND SERVICES COVERED BY THIS WAIVER OF LIEN RIGHTS HAVE BEEN OR WILL BE TIMELY PAID.**"
- 1.1.7. **Subcontractor's Major Subcontractors, Materialmen, and Suppliers.** In connection with the execution of the Subcontract Agreement and prior to commencing Subcontractor Work on the Project, Subcontractor shall list, on the form attached as Exhibit B of the Subcontract Agreement, all Sub-subcontractors that Subcontractor will utilize to provide materials, labor, supplies, and/or services on the Project (**Initial Listing**). Subcontractor shall supplement its listing of Sub-subcontractors in a timely manner in the event it utilizes additional Sub-subcontractors not initially listed on Exhibit B of the Subcontract Agreement (**Supplemental Listing**) and obtain Contractor's signature of approval on such Supplemental Listing. In connection with the execution of the Subcontract Agreement and prior to commencing Subcontractor Work on the Project, all Sub-subcontractors that Subcontractor will utilize to provide materials, labor, supplies, and/or services on the Project must be approved in writing by Contractor, at Contractor's sole discretion.
- 1.2. **Timely Submission of Proper Application.** It shall be the Subcontractor's sole responsibility to submit each application for payment under this Subcontract Agreement at the time and in the manner prescribed in this Subcontract Agreement and on the form provided or approved by Contractor for such purpose. Contractor shall not be liable to the Subcontractor for delay in payment when the application for payment is not submitted on time or does not comply with the provisions in this Subcontract Agreement. Subcontractor agrees applications for payment not complying with this Subcontract Agreement may, at the option of the Contractor, be held over for processing as if it had been submitted for processing as of the next succeeding application for payment.
- 1.3. **No Waiver.** No progress payment shall constitute a waiver by the Contractor of any right to require fulfillment of all of the terms and provisions of this Subcontract. Neither the final payment nor any progress payment, nor any certificate for either, shall constitute acceptance by the Contractor of defective work or improper materials or of any element of Subcontractor's performance determined to be at variance with the Subcontract Documents. Each progress payment and the final payment made under this Subcontract Agreement, and the total, will be subject to final audit and adjustment, and Subcontractor agrees to reimburse the Contractor in the event of overpayment, together with any costs and expenses, including reasonable attorneys' fees, incurred by Contractor in securing recovery.
- 1.4. **Joint Payment.** Subcontractor hereby authorizes Contractor to make any payment to Subcontractor due under this Subcontract Agreement by check made payable to the joint order of Subcontractor and such of Subcontractor's workmen, materialmen, suppliers or subcontractors or any of Subcontractor's creditors having a right to a lien against the Work for which Subcontractor has not furnished a current lien waiver on a form prescribed by Contractor or if Contractor, in its discretion, believes such creditor of the Subcontractor is in jeopardy of nonpayment.
- 1.5. **Conditions Giving Rise to Non-Payment.** Notwithstanding the terms or provisions of this Subcontract to the contrary, Contractor shall not be obligated to make payments to the Subcontractor: (a) when any such payment will leave a balance due Subcontractor which is less than the retained percentage of previous payments plus an amount adequate to satisfy all obligations of the Subcontractor for labor, materials, supplies, and equipment furnished or to be furnished by Subcontractor in order to complete Subcontractor's Work; (b) when Subcontractor is, or with reasonable probability may become, unable to comply with or complete performance of this Subcontract; (c) whenever the Contractor, in its discretion, determines the Subcontractor Work is being delayed or is in danger of being delayed by the work of Subcontractor or by any failure of the Subcontractor to effect timely compliance with any of the technical, administrative, or operational requirements of the Subcontract Documents; (d) pending satisfactory completion, repair, replacement, and/or restoration of faulty, deficient or defective work, materials, supplies, or equipment; (e) if any of Subcontractor's Work is rejected as not conforming with this Subcontract Agreement or the Subcontract Documents; (f) if there are Subcontractor obligations to Contractor as provided in Section 1.7 below; or (g) Owner's nonpayment to Contractor. Subcontractor expressly acknowledges and agrees Contractor's receipt of payment from the Owner for amounts invoiced by and due to the Subcontractor is a condition precedent of an obligation of the Contractor to make any payments to Subcontractor, it being expressly agreed that the risk of Owner's nonpayment is borne by the Subcontractor and not the Contractor and that the Contractor is relieved of any obligation to pay the Subcontractor if the Owner does not pay the Contractor.
- 1.6. **Payments to Third Parties.** The Subcontractor covenants and agrees all funds received for the performance of Subcontractor's Work pursuant to the Subcontract Agreement shall be used solely for the benefit of persons or firms supplying labor, materials, supplies, tools,

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machines, equipment or services exclusively for this Project and any funds paid to the Subcontractor pursuant to this Subcontract Agreement shall immediately become and constitute a trust fund for the benefit of such persons and firms, and shall not in any instance be diverted by Subcontractor to any other purpose until all obligations arising under this Subcontract Agreement to third persons have been fully discharged and all claims arising therefrom have been fully paid.

- 1.7. **Other Contracts.** If Contractor has other projects or contracts with Subcontractor not covered by this Subcontract Agreement under which Subcontractor has unsatisfied damages or monetary obligations to Contractor, final payment under Section 1.5 above may be delayed or withheld for set-off on written notice to Subcontractor.
- 1.8. **Reporting of Sales and Use Taxes.** The Subcontractor shall report the sales and use taxes paid or payable with respect to Subcontractor's Work on each application for payment.
- 1.9. **Payroll Records.** When required by the Contract with the Owner, the Subcontractor shall submit weekly certified payroll records to the Contractor in compliance with the Davis-Bacon and Related Acts.

2. **Time of Commencement and Completion.**

- 2.1. **Time of the Essence.** Time is of the essence in regard to performance by Subcontractor or Subcontractor's Work and obligations under these Subcontract Documents. No extension of time will be valid without the Contractor's written consent after claim made by Subcontractor in accordance with the Subcontract Documents. Subcontractor shall promptly begin Subcontractor's Work as soon as notified by Contractor and shall perform, forward, and complete said work in a proper, good, and workmanlike manner, with due diligence in accordance with the construction schedule as from time to time may be established by Contractor.
- 2.2. **Overtime.** Contractor shall have the right to order the Subcontractor to work its personnel and/or the personnel of Subcontractor's subcontractors overtime in the event the Contractor reasonably determines Subcontractor is not or will not be able to complete Subcontractor's Work in sufficient time so as not to delay the completion of the Work as required by the Contract with the Owner. Any and all additional costs involved due to the overtime work shall be responsibility of the Subcontractor and not that of the Contractor and/or the Owner, unless such overtime work is ordered by Contractor to accelerate the Subcontractor's Work solely for the convenience of the Owner or Contractor.
- 2.3. **Liability for Delays.** If Subcontractor shall fail to complete Subcontractor's Work on or before the time scheduled for such completion, Subcontractor shall be liable to Contractor for such damages for such delay as Contractor or Owner may incur.

3. **Insurance.**

- 3.1. **Liability Insurance.** Subcontractor shall carry and maintain at Subcontractor's expense, prior to Subcontractor commencing Subcontractor's Work, insurance with an insurance provider with a minimum rating by AM Best no lower than A minus (A-) with coverage as specified below. Subcontractor shall produce evidence of insurance through a minimum means of a Certificate of Liability Insurance and Subcontractor Insurance Compliance Statement as filled out by its insurance provider and submitted to the Contractor. These insurance requirements and the obligations of the indemnification agreement that is part of this Subcontract Agreement shall also apply to anyone hired by Subcontractor to work under this Subcontract Agreement.
- 3.2. **Worker's Compensation.** Subcontractor shall furnish Contractor with a certificate of Worker's Compensation insurance coverage, including employer's liability coverage, with a minimum of the Colorado statutory limits of One Hundred Thousand Dollars (U.S. \$100,000) for Employers' Liability for Each Accident, One Hundred Thousand Dollars (U.S. \$100,000) for Disease per Each Employee, and Five Hundred Thousand Dollars (U.S. \$500,000) for Disease per Policy Limit, unless Subcontractor is sole proprietor. If Subcontractor is a sole proprietor, a Declaration of Independent Contractor Status Form must be filled out, submitted to Contractor, and approved by insurance company enforcing the Colorado Workers' Compensation Act. The Workers Compensation and Employer's Liability policy shall provide a waiver of subrogation in favor of Contractor, Owner, and any other entity or individual required by the Contract.
- 3.3. **Commercial General Liability.** Subcontractor shall furnish Contractor with a certificate of insurance coverage through an insurance provider with a minimum rating by AM Best no lower than A minus (A-) for an occurrence-based Commercial General Liability policy (or occurrence-based Business Owners policy), including, without limitation, Operations, Premises, Products, Completed Operations, Contractor's Protective, Specific Contractual, Personal Injury, and Broad Form Property Damage. The minimum limits of insurance coverage under this Section 3.3 shall be Two Million Dollars (U.S. \$2,000,000) for General Aggregate and Products Completed Aggregate, One Million Dollars (U.S. \$1,000,000) for Each Occurrence and Personal and Advertising Injury, Fifty Thousand Dollars (U.S. \$50,000) for Damages to Rented Premises, and Five Thousand Dollars (U.S. \$5,000) for Medical Expenses for Any One Person. Subcontractors performing earth movement, grading or underground work, cannot have a subsidence exclusion on their policy. Subcontractor shall have its insurance provider state "No Subsidence Exclusion" under the description section of its certificate. Commercial General Liability insurance shall provide a waiver of subrogation in favor of the Contractor and shall be endorsed to include the Contractor as an additional insured for both ongoing operations and completed operations. Waiver of subrogation and additional insured endorsement shall be made evident within the Certificate of Insurance as provided to the Contractor by Subcontractor's insurance provider. Protection shall continue

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in full force and effect through the statute of repose in the state in which the work is performed and Subcontractor's full limits, not merely the limits shown above, shall be available to the Additional Insured.

- 3.4. **Automobile Liability.** Subcontractor shall furnish Contractor with a certificate of insurance coverage through an insurance provider with a minimum rating by AM Best no lower than A minus (A-) for Automobile Liability. The minimum limits of insurance coverage under this Section 3.4 shall be either One Million Dollars (U.S. \$1,000,000) for bodily injury per person and Five Hundred Thousand Dollars (U.S. \$500,000) for property damage, or One Million Dollars (U.S. \$1,000,000) Combined Single Limit. Acceptable types of Automobile Liability insurance shall include either "Any Auto" or a combination of "Hired Autos", "All Owner Auto", and "Non-Owned Autos."
- 3.5. **Commercial Excess Liability ("Umbrella").** Subcontract shall furnish Contractor with a certificate of Commercial Excess Liability ("Umbrella"). The minimum limits of insurance coverage under this Section 3.5 shall be One Million Dollars (U.S. \$1,000,000) for Products/Completed Operations Aggregate, One Million Dollars (U.S. \$1,000,000) for General Aggregate, One Millions Dollars (U.S. \$1,000,000) for Any One Occurrence (Coverage A), and One Million Dollars (U.S. \$1,000,000) for Any One Person or Organization (Coverage B).
- 3.6. **Deductible; Additional Insured.** No insurance required to be maintained by this Subcontract Agreement shall be subject to more than a One Thousand Dollar (U.S. \$1,000) deductible limit without Contractor's prior written consent. Each insurance policy shall specifically include, without limitation, provisions whereby: (i) Contractor and its permitted assignees shall be named as additional insureds; (ii) the policy may not be terminated or amended except after ten (10) calendar days' prior written notice to Contractor; and (iii) Contractor and any other additional insured, although named as an insured, shall nevertheless be entitled to recover under the policy for losses sustained by the additional insured as a result of the acts or omissions of Subcontractor.
- 3.7. **Equipment Insurance.** The Subcontractor will either (i) provide maintain fire, theft, and malicious damage insurance covering the Subcontractor's tools, construction equipment, and construction sheds and/or offices and, at the request of Contractor, will furnish Contractor with certificates of such insurance, or (ii) acknowledge to Contractor in writing that Subcontractor will self-insure such items, and assumes all risk of loss of such items, agreeing not to look to Contractor for any loss or damage to such items regardless of causation. Subcontractor shall have the sole responsibility for the proper storage and protection of materials stored at the Project site. Any loss resulting from damage, theft, or other casualty prior to the incorporation of such materials in the Work and acceptance by the Contractor shall be borne by the Subcontractor, except to the extent of insurance proceeds, if any.
- 3.8. **Authorized Insurance Companies.** All insurance shall be carried with insurance companies authorized to do business in the locality of the Project, with a minimum rating by AM Best no lower than A minus (A-) and reasonably satisfactory to Contractor. Subcontractor shall not, nor shall Subcontractor allow any of its Sub-subcontractors to, commence work until Subcontractor or such Sub-subcontractors have obtained all insurance required under this Subcontract Agreement and Contractor has approved such insurance.
- 3.9. **Commercial General Liability Limited Waiver.** The Contractor and Subcontractor waive all rights of action and subrogation against each other and against Owner and all other subcontractors and the officers, directors, managers, members, and employees of any of them to the extent of any insurance recoveries that may be obtained by the waiving party for loss or damages caused by any risk covered by insurance, except such rights as such party may have to proceeds of insurance held by any other person as trustee or otherwise on behalf of such party.
4. **Working Conditions.**
- 4.1. **Labor Unions.** The Subcontractor agrees to comply with all labor regulations promulgated by the labor union(s) having jurisdiction over the Subcontractor's Work or any portion of the Subcontractor's Work, or any other labor union with which Subcontractor has a contract, if any.
- 4.2. **Mutual Cooperation.** Subcontractor agrees to use every effort to promote mutual cooperation between Subcontractor's job superintendent and the Contractor, which mutual cooperation is essential to the proper performance by the Subcontractor under this Subcontract Agreement.
- 4.3. **Safety.** The Subcontractor, at its expense, shall conform to the basic safety policy of the Contractor and the Owner and comply with all specific safety requirements promulgated by any governmental authority, including, without limitation, the Construction Safety Act of 1969, as amended, or its successor; the Occupational Safety and Health Act of 1970 as amended; Colorado Department of Health and local regulations; and all standards and regulation which have been or shall be promulgated by the parties or agencies which administer such Acts. Subcontractor shall have and exercise full responsibility for compliance thereunder by Subcontractor and its agents, employees, materialmen and subcontractors generally and, in particular, with respect to Subcontractor and its agents, employees, materialmen and subcontractors generally and, in particular, with respect to Subcontractor's Work on this Project. Subcontractor shall receive, respond to, defend, and be responsible for all citations, assessments, fines or penalties which may arise in whole or in part, from the Subcontractor's or its agents', employees', materialmen's or subcontractors' failure or alleged failure to so comply and shall indemnify and hold Contractor harmless from any loss, damages, fines, costs, and expenses, including reasonable attorneys' fees, which Contractor may incur as a result of Subcontractor's failure or alleged failure to so comply. Subcontractor shall further comply with Contractor's safety requirements.

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Subcontractor's foremen must attend all scheduled safety meetings and Subcontractor's personnel must wear hard hats and hard-soled shoes while on the Project. If Subcontractor or its personnel do not comply with all safety requirements applicable to the Project, Contractor may, but shall not be obligated to, give written notice of violation to Subcontractor. If Subcontractor has not caused its performance to come into compliance with such safety requirements within twenty-four (24) hours (or, in the event compliance cannot be completed within twenty-four (24) hours, the commencement of such action as may be necessary to obtain compliance) after notice has been presented to Subcontractor, without prejudice to any other remedy available to Contractor under this Subcontract Agreement, payment on this Subcontract will be withheld until such time as compliance has been obtained to the safety requirement(s) which was the subject of the notice of violation and satisfactory assurances reasonably acceptable to Contractor have been given by the Subcontractor to insure that the Subcontractor and its personnel engaged on the Project will comply with all safety requirements as stated herein.

- 4.4. **Temporary Facilities.** Unless otherwise provided in the description of the Subcontractor's Work, the Contractor will furnish temporary power, water, and temporary toilet facilities to Subcontractor and its personnel, at one location, at the job site, at no cost to the Subcontractor.
- 4.5. **Removal of Debris / Maintenance.** The Subcontractor shall remove all trash and debris connected with Subcontractor's Work from the job site daily and not allow such trash and debris to accumulate at the Project site. The Subcontractor agrees to properly protect the work of others from damage or soiling due to the performance of Subcontractor's Work, and Subcontractor shall, at its expense, promptly clean, restore, or replace any work damaged or soiled in the performance of such work. If Subcontractor refuses or fails to properly perform such cleaning, repair, or replacement, Contractor shall have the right to do so, and Subcontractor shall repay Contractor the actual costs of such work plus a reasonable amount to cover Contractor's overhead and profit and, at the option of Contractor, such charges may be deducted from sums otherwise due Subcontractor under this Subcontract Agreement.

5. **Subcontractor's Agreements.**

- 5.1. **Binding Agreements.** The Subcontractor shall be bound to the Contractor by the terms of this Subcontract Agreement and of the Contract Documents between the Owner and Contractor, and shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by those documents, assumes toward the Owner, and shall have the benefit of all rights, remedies, and redress against the Contractor which the Contractor, by those documents, has against the Owner, insofar as applicable to this Subcontract, provided where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Subcontract Agreement, the Subcontract Agreement shall govern. A copy of the Owner's Contract is available at Contractor's office for review.
- 5.2. **Prompt Claims.** The Subcontractor shall make all claims promptly to the Contractor for additional work, extensions of time, and damages for delay or otherwise in accordance with the Subcontract Documents.
- 5.3. **No Assignment Without Consent.** Without the prior written consent of the Contractor, the Subcontractor shall not: (a) assign this Subcontract or any amounts due or to become due under this Subcontract Agreement (including an assignment by operation of law or otherwise, incident to a merger, consolidation, reorganization or liquidation); (b) subcontract the whole or any part of this Subcontract; or (c) allow any of Subcontractor's Sub-subcontractors to further subcontract portions of this Subcontract Agreement. In the event of an assignment of any amount due or to become due under this Subcontract Agreement, with the prior consent of the Contractor, the Contractor shall not become obligated to any assignee of the Subcontractor on account of payments at any time made in good faith under any assignment and/or erroneously or inadvertently made to assignor, shall have no liability or obligation to any assignee of the Subcontractor for any amount in excess of the net sums owing Subcontractor under this Subcontract Agreement, and Subcontractor waives any claims against Contractor resulting from Contractor's continued payment to the assignee or former assignee, notwithstanding notification to Contractor of termination of any such assignment.
- 5.4. **Progress Reports.** The Subcontractor shall furnish to the Contractor periodic progress reports as required by Contractor, including information on the status of materials and equipment required under the Subcontract which may be in the course of preparation, manufacture, or delivery in a form designated by Contractor.
- 5.5. **Interference.** The Subcontractor shall cooperate with the Contractor and other subcontractors whose work might interfere with the Subcontractor's Work and shall participate in the preparation of coordinated drawings in areas of congestion as required by the Subcontract Documents, specifically noting and advising the Contractor of any such interference.
- 5.6. **Cooperation.** The Subcontractor shall cooperate with the Contractor in scheduling and performing Subcontractor's Work to avoid conflict or interference with the work of others.
- 5.7. **Prompt Submission of Drawings.** The Subcontractor agrees to promptly provide all required submittals, including, without limitation, all shop drawings, design and performance data, test results, samples, operating and/or maintenance manuals, together with any and all other data relating to the materials, methods, work practices, and equipment used or proposed for use in the performance of this Subcontract and as directed by Contractor, and in sufficient number to provide adequate information to all parties requiring the same. Approval of any of the foregoing by the Owner or the Architect shall under no circumstances alter the requirements for the Subcontract Documents for quality, quantity, finish, dimension, design, and configuration.

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- 5.8. **Permits and Licenses.** The Subcontractor shall obtain and pay for all permits, licenses, and official inspections made necessary by Subcontractor's Work and shall comply with all laws, ordinances, and regulations relating to Subcontractor's Work required under this Subcontract Agreement and the conduct of the Subcontractor. Further, the Subcontractor shall comply with and pay any and all contributions, taxes, or insurance of any description whatsoever imposed by any authority or union which are measured by the wages, salaries, or other remuneration paid to persons employed by Subcontractor or Subcontractor's Work performed pursuant to the terms of this Subcontract. Subcontractor further agrees to pay any and all personal property taxes, inventory taxes, sales or use taxes, exercise taxes, and/or assessments in any manner relating to the materials, supplies, tools, machinery, and equipment which may be purchased, acquired, rented, or used by Subcontractor relating to the Subcontractor's Work performed under this Subcontract. If sales or use tax is paid by Contractor when building permit is acquired, Subcontractor shall credit the Contractor for the amount of sales or use tax applicable to Subcontract.
- 5.9. **Subcontractor's Facilities.** The Subcontractor shall provide, at its own expense, whatever tools, machines, equipment, plant, services, storage sheds, workshops, offices, or other temporary structures, and all other facilities it may deem necessary for the complete performance of Subcontractor's Work, and shall remove and dispose of any such installations and thoroughly clean and restore the site and premises at the completion of Subcontractor's Work. If the Subcontractor has occasion to utilize any of the facilities of the Contractor, when and if available, other than those to be provided by the Contractor pursuant to Paragraph 4.4, Subcontractor shall pay an equitable portion of the cost to utilize any of the facilities of the Contractor; provided, however, Contractor shall bear no responsibility for any loss or damage from any cause whatsoever arising from Subcontractor's use of such facilities.
- 5.10. **Feasibility.** Subcontractor acknowledges it has, prior to entering into this Subcontract, investigated and familiarized itself with: (a) all laws, ordinances and regulations applicable to Subcontractor's Work; (b) the character and content of purchase orders and arrangements for supplies and materials to be furnished by the Contractor for the use of Subcontractor; (c) all options, site consideration and restrictions, underground conditions, prevailing weather, and climatological conditions and history of the Project site; and (d) any other factors which may affect Subcontractor's Work under this Subcontract.
- 5.11. **Records.** Subcontractor agrees that Contractor, its agents, or representatives of any union with which Subcontractor has a collective bargaining agreement shall have the right at any reasonable hour to inspect, copy, or audit the books and records of Subcontractor as they may pertain to the Subcontractor's payment of all required benefits to such unions or union trusts pertaining to Subcontractor's Work on the Project.
- 5.12. **Contractor Withdrawal or Removal.** Subcontractor agrees, in the event Contractor voluntarily withdraws from the Project or is terminated by the Owner, or if in default is removed from the Project by the Owner, such withdrawal, termination, or default shall not serve to terminate the Subcontract and the Subcontractor will honor this Subcontract with the Owner if requested to do so in the place and stead of the Contractor as if this Subcontract has been originally negotiated with the Owner, provided Owner agrees to honor and discharge the obligations of the Contractor under the Subcontract Agreement.
- 5.13. **Indemnification Against Liens.** Subcontractor shall at all times indemnify and hold Contractor and Owner harmless against any liability for claims and liens for labor performed or materials used or furnished in the performance of Subcontractor's Work, including any costs and expenses incurred in the defense of such claims and liens, reasonable attorneys' fees, and any damages to Contractor or Owner resulting from such claims or liens. Subcontractor agrees, after demand to immediately cause the effect of any suit or lien to be removed from the Project and the real property upon which it is located, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the costs, together with reasonable attorneys' fees, shall be immediately due and payable by Subcontractor. In the event a suit on such claim or lien is brought, Subcontractor shall, at the option of the Contractor and/or Owner, defend said suit at its own cost and expense, and will pay and satisfy any such claim, lien, or judgment as may be established by the decision of the court in such suit. Subcontractor may litigate any such lien or suit provided Subcontractor causes the effect of any such lien or suit to be removed promptly in advance from the Project and the property upon which the Project is located. In the event Contractor receives notice or information the Subcontractor's Sub-subcontractors, subcontractors, or materialmen have not been paid as provided under this Subcontract Agreement and a lien has been threatened, noticed, or filed, upon the request made within the sole discretion of the Contractor, Subcontractor's owner(s) or principal shareholder or interest owner(s) will personally guarantee, in writing, the prompt, full, and complete performance of all obligations and indebtedness that may arise by or through actions of Subcontractor, including, without limitation, all monies owed to Subcontractor's subcontractors, materialmen, laborers, and suppliers. Failure to provide such guarantee under the foregoing circumstances shall be a breach of the Subcontract Agreement.
- 5.14. **Good Faith.** Subcontractor warrants to Contractor and Owner that all bid prices, costs, data, and proposals submitted to Contractor and Owner were arrived at by good faith bargaining, pricing, and negotiation and that such bid price or proposal was not arrived at and is in no way the product of a concerted or joint effort with other persons or entities who may also be submitting prices or proposals to Contractor on the Project or any part of the Project, and such bid prices and proposals were not discussed in any manner with such other persons or entities.

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6. **Changes in Subcontractor's Work.** Contractor, without invalidating this Subcontract, shall have the right from time to time to order additions, deletions, revisions or any other changes (**Change Orders**) in extent, timing, and character of the Subcontractor's Work. Any additional costs or time required to do the work required by the Change Orders shall be agreed upon in writing before such work commences in accordance with the terms of the Contract Documents, except as otherwise provided in this Subcontract. The Subcontractor shall make no changes in the Work except upon written order of the Contractor and these written orders shall be valid only when signed by an official of Contractor authorized to sign such Change Orders. Should the Subcontractor disagree as to the amount to be paid, Subcontractor must nevertheless expeditiously proceed with such work, and the amount to be paid as a result of such Change Order shall be determined in accordance with the Contract Documents. A Change Order request must be submitted to Contractor within two (2) weeks after request for pricing, or within thirty (30) calendar days of completion of a field authorized change, and must include a complete cost breakdown showing quantities, labor, material, sub-subcontracts, joint services, overhead and fee. Change Order requests for field authorized changes not received by Contractor within the time stated may not be considered, at Contractor's sole option.
7. **Remedies on Default of Subcontractor.**
- 7.1. If at any time during the course of the performance of the Subcontractor's Work, Contractor, in good faith, determines Subcontractor is: (a) failing or refusing to proceed with or to properly perform the Subcontractor's Work as directed by Contractor; (b) delaying the Work or otherwise failing or refusing to perform or comply with any terms, covenants, conditions, or provisions of this Subcontract; (c) refusing or failing to supply enough skilled workmen or proper materials; (d) failing to correct or re-do any completed work or work in progress that is inadequate, defective, or faulty in any material respect as determined by the Contractor; or (e) failing to comply with or disregarding laws, ordinances, rules, regulations, orders, or other codes of conduct (any such neglect, delay or failure being deemed to constitute a "default"), Contractor may notify Subcontractor who shall do whatever Contractor designates as necessary to cure such default within two (2) calendar days after such notification. If the Contractor determines Subcontractor has not remedied and cured the default or defaults within the two (2) calendar days; or if Subcontractor shall institute any voluntary or involuntary proceedings under the Bankruptcy Act or any successor act, including a proceeding for arrangement or reorganization, or commits any act of bankruptcy; then Contractor may, at its option, without releasing or waiving its rights and remedies against Subcontractor or the Subcontractor's sureties and without prejudice to any right it may be entitled to in the Subcontract Agreement or by law, and after giving the Subcontractor two (2) calendar days additional notice: (a) terminate this Subcontract and take possession of the Subcontractor's Work and all materials, tools, equipment and appliances of the Subcontractor and finish the Subcontractor's Work by whatever means, method, or agency which the Contractor may, in its sole discretion, choose; or (b) without terminating this Subcontract, the Contractor may, at its option, without releasing or waiving its right and remedies against the Subcontractor or the Subcontractor's sureties and without prejudice to any other right the Contractor may be entitled to under this Subcontract Agreement or by law, take any steps the Contractor deems advisable to secure any labor, materials, equipment, and services to complete Subcontractor's Work, and shall have a lien upon and may take over all of Subcontractor's equipment, tools, appliances, and materials and may prosecute the Subcontractor's Work or any part of the Subcontractor's Work to completion. In the event Subcontractor elects to terminate this Subcontract in accordance with the foregoing provisions, Subcontractor shall, at the option and request of Contractor, execute and deliver to Contractor all documents, instruments, and assignments that may be necessary for Contractor to be fully vested with the rights and benefits of Subcontractor's agreements with its subcontractors. In the event Contractor deems any of the foregoing remedies necessary, Subcontractor agrees it shall not be entitled to receive any further payment until after the Work shall have been completed. Moreover, all monies expended and all of the costs, losses, damages, and extra expenses, including all management, administrative, and other overhead and other direct and indirect expenses, including attorneys' fees, incurred by the Contractor incident to such completion, shall be deducted from the Contract Price stated and, if such expenditures, together with such costs, losses, damages, and extra expenses exceed the unpaid balance of the Contract Price, Subcontractor agrees to pay promptly to the Contractor, on demand, the full amount of such excess, including costs of collection, attorneys' fees, and interest thereon at the rate of eighteen percent (18%) per annum until paid.
- 7.2. Whether or not a termination is declared as provided in Paragraph 7.1, the costs and expenses incurred by Contractor and any damages incurred by Contractor or Owner by reason of Subcontractor's default, or such termination, as the case may be, shall be chargeable to and be paid by Subcontractor, and Contractor shall have a lien upon all materials, tools, and appliances taken possession of as provided in this Subcontract Agreement to secure the payment of Subcontractor's default. No right or remedy of Contractor under this Subcontract shall be to the exclusion of any other right or remedy under this Subcontract Agreement or remedy provided by law or by statutory provision, all such rights and remedies being cumulative.
- 7.3. The Contractor's determination of Subcontractor's default or defaults and the Contractor's decision as to the Subcontractor's failure to remedy and cure such default or defaults upon notification of their existence, made by the Contractor in good faith under the belief that the default or defaults existed under the term of the Subcontract Agreement and that the Subcontractor failed to remedy and cure such default or defaults, shall be conclusive as to the Contractor's right to proceed as provided in this Subcontract Agreement.
8. **Performance and Payment Bond.**
- 8.1. If requested by the Contractor in connection with the Contract Documents, Subcontractor shall, within ten (10) calendar days from the date of the Subcontract Agreement, provide a performance bond a payment bond, each in the amount of the Contract Price. The Contractor (and such other persons as Contractor may designate) shall be the named obligee of the payment and performance bonds and such bonds shall be executed by a surety company acceptable to the Contractor or approved by the Contractor. The premium for any such payment

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and performance bond shall not be included in the Contract Price and Contractor shall issue a Change Order to the Subcontractor increasing the Contract Price by the amount of such premium.

- 8.2. No charge, alteration, or modification in the terms and conditions of this Subcontract, or in the terms or manner of payment, or the exercise by Contractor of the rights and remedies in this Subcontract Agreement or by law granted Contractor shall in any way release or discharge, in whole or in part, any surety on any bond furnished by or on behalf of the Subcontractor.

9. **Indemnification.**

- 9.1. The Subcontractor shall indemnify and hold harmless the Contractor and Owner, their officers, employees, members, managers, and directors (collectively, **Indemnitees**) from and against all liabilities, claims, damages, losses, causes of action, judgment, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from the failure of Subcontractor's Work or the performance of the Subcontractor's Work, provided any such liability, claim, damage, loss, cause of action, judgment, or expense is attributable to bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and is caused in whole or in part by any negligent act or omission of Subcontractor, any of its Sub-subcontractors, subcontractors, materialmen, or suppliers or any for whose acts any of them may be liable. In any and all claims against any of the Indemnitees by any employee of Subcontractor, any of Subcontractor's subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workmen's compensation action, disability benefits acts or other employee benefit acts. The obligations of Subcontractor under this Paragraph 9.1 shall not extend to the liability of the Architect, its agents or employees arising out of their preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications or the giving of, or the failure to give, directions or instructions by the Architect, providing such giving or failure to give directions or instructions is the cause of the injury or damage.

- 9.2. If, in the execution or performance of this Subcontract, Subcontractor shall have failed to perform Subcontractor's Work in accordance with the terms, conditions, provisions, or covenants of this Subcontract or shall have violated any laws, rules, orders, regulations, or ordinances applicable to Subcontractor's Work under this Subcontract Agreement, then Subcontractor shall indemnify and hold Contractor harmless from all damages, liabilities, claims, and expenses, including reasonable attorneys' and professional fees paid by Contractor or imposed upon or incurred by Contractor as a result of any such failures or violations committed by Subcontractor in the execution of performance of Subcontractor's Work.

10. **Express Warranty and Guaranty.**

- 10.1. Subcontractor warrants and represents to Contractor and Owner that all materials and equipment furnished under this Subcontract shall be new unless otherwise specified, and all of Subcontractor's Work shall be of good quality, free from faults and defects, in conformance with the Subcontract Agreement, and shall be free and clear of all liens, claims, surety interests, or encumbrances. All Subcontractor Work not conforming to these standards may be considered defective. This warranty is not limited by the provisions of Paragraph 10.2.
- 10.2. Without Subcontractor's express or implied warranties and obligations otherwise imposed under this Subcontract or by law, if, within one (1) year after the date of substantial completion of the Work or designated portion of the Work, or within one (1) year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the Subcontractor's Work is found to be defective or not in accordance with the Subcontract Documents, Subcontractor shall correct it promptly after receipt of notice from the Contractor to do so unless the Contractor has previously given the Subcontractor a written acceptance of such condition. This obligation shall survive termination of this Subcontract. Contractor shall give such notice within a reasonable time after discovery of the condition. Final payment to Subcontractor shall be conditioned upon the execution and delivery of any applicable warranty required under this Paragraph 10.2.
- 10.3. As to all manufactured equipment furnished by Subcontractor, Subcontractor agrees to install the same in good and workmanlike manner and to obtain and deliver to the Contractor and Owner such manufacturer's warranties as such equipment manufacturer may furnish with such manufactured equipment and as may be required by the Contract Documents, and to cooperate with Contractor and Owner in enforcing such equipment warranties. Subcontractor has not warranted and guaranteed the design or the sufficiency of such manufactured equipment nor that the manufactured equipment furnished, assuming that it is the manufactured equipment specified in the Contract Documents, will accomplish the purpose intended, have any particular propensities or characteristics, or be free from any inherent defects or defects which are not apparent upon ordinary examination of such manufactured equipment. Final payment to Subcontractor shall be conditioned upon the execution and delivery of any applicable warranty required under this Paragraph 10.3.
- 10.4. If any portion of Subcontractor's Work is to be performed by subcontractors of Subcontractor, Subcontractor shall obtain from such subcontractor its written express warranty and guaranty to Contractor and Owner covering the respective portions of the Subcontractor's Work in the same form and on the same terms as Subcontractor's express warranty and guaranty described in Paragraphs 10.1, 10.2 and 10.3, provided, however, the express warranty and guaranty of such subcontractor shall not limit, reduce, or modify the obligation of Subcontractor on its express warranty and guaranty.

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- 11.1. The Subcontractor, for itself and its successors and assigns, agrees that, during the performance of Subcontractor's Work required by the Contract Documents, Subcontractor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, or national origin. Subcontractor will take affirmative action to ensure applicants are employed, and employees are treated without regard to their race, religion, sex, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subcontractor further agrees it will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, or national origin.
- 11.2. Subcontractor, by signing this Subcontract Agreement, certifies it shall not knowingly employ or contract with an illegal alien to perform work under this Subcontract Agreement and Subcontractor shall not enter into a contract with a subcontractor that fails to certify to the Subcontractor and Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Subcontract Agreement. In addition to any other remedy provided for under this Subcontract Agreement, Contractor shall have the right to terminate this Subcontract Agreement if Subcontractor or its subcontractors violate this Paragraph 11.2 and Subcontractor shall indemnify and hold harmless from any damages, penalties or losses sustained as a result of Subcontractor or Subcontractor's subcontractor's breach of this Paragraph 11.2.

12. Disputes.

- 12.1. In case of any claims, disputes or other matters in question between the Subcontractor and Contractor, Subcontractor agrees to be bound to the Owner by the terms of the Contract between Owner and Contractor and by any and all decisions or determinations made thereunder by the party or board so authorized in such Contract. The Subcontractor also agrees to be bound to Contractor to the same extent Contractor is bound to Owner by the final decision of a court of competent jurisdiction, whether or not Subcontractor is a party to such proceedings. If such dispute is prosecuted or defended by Contractor against Owner under the terms of the Contract or in a court action, Subcontractor agrees to furnish all documents, statements, witnesses and other information required by the Contractor for such purposes and to pay or reimburse Contractor for all expenses and costs, if any, incurred in connection therewith. It is expressly understood that, as to any and all work agreed to be done by Subcontractor, as to any and all materials, equipment or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor in connection with this Project, Contractor shall never be liable to Subcontractor to any greater extent than the Owner is liable to Contractor. No dispute shall interfere with the progress of construction and the Subcontractor agrees to proceed with Subcontractor's Work as directed despite disputes it may have against Contractor, Owner, or other parties. Subcontractor expressly acknowledges and agrees Contractor's receipt of payment from Owner for amounts invoiced by and due to Subcontractor is a condition precedent of an obligation of Contractor to make any payments to Subcontractor, it being expressly agreed the risk of Owner's nonpayment is borne by Subcontractor and not Contractor and Contractor is relieved of any obligation to pay Subcontractor if Owner does not pay Contractor.
- 12.2. If, at any time, any controversy should arise between Contractor and Subcontractor with respect to any matter or thing involved in this Subcontract Agreement or construction of the Project, which controversy is not controlled or determined by Paragraph 12.1 or other provisions of this Subcontract Agreement, then said controversy shall be decided as follows:
- 12.2.1. Subcontractor shall conclusively be bound by and abide by Contractor's written decision respecting such controversy unless Subcontractor shall commence arbitration proceedings or other remedies under this Paragraph 12.2 within thirty (30) calendar days following receipt of such written decision from Contractor.
- 12.2.2. If a dispute arises between the parties involving an obligation or claim, the aggrieved party(ies) shall give written notice to the other party(ies) and the parties shall agree to negotiate in good faith to resolve their disputes (**Dispute Notice**). If the parties agree, an independent third-party mediator may be retained to assist in the resolution of the dispute, each party to pay its pro rata share of the cost of the mediator and its own attorneys' fees and other costs, if any. In the event the parties are unable to resolve their controversy within sixty (60) calendar days of the Dispute Notice, then the controversy, upon an agreement of the parties, may be decided by arbitration before an agreed-upon arbiter with the Judicial Arbitrator Group, Denver, Colorado (**JAG**). If the parties cannot agree to an arbiter, then the managing member of JAG shall select the JAG arbiter, which selection shall be final, non-appealable, and binding on both parties. Notice of demand for arbitration shall be filed in writing with JAG within ninety (90) calendar days of the Dispute Notice. If the parties agree to arbitration, the contract to arbitrate shall be specifically enforceable under the prevailing Colorado arbitration law. Notwithstanding any contrary JAG rule, discovery as provided in the Colorado Rules of Civil Procedure (**C.R.C.P.**), but excluding C.R.C.P. 16.1, shall be permitted in any arbitration initiated under this Paragraph 12. Judgment may be entered upon the arbitration award in accordance with applicable law in any court having jurisdiction and shall be final and binding on party. The prevailing party in any arbitration under this Agreement shall be entitled to an award of its reasonable attorneys' fees and costs of arbitration. In absence of agreement to arbitrate, the party(ies) may initiate litigation, which shall take place in the City and County of Denver, State of Colorado.
- 12.2.3. In the event of any court or arbitration proceeding between the parties concerning the subject matter of this Subcontract Agreement, the prevailing party in the court or arbitration proceeding shall be entitled to receive from the defaulting party, in

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addition to the amount of any judgment or other award entered, all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the court or arbitration proceeding. In Minimal Claim litigation involving a claim for damages of less than Fifty Thousand Dollars (U.S. \$50,000), exclusive of attorneys' fees, interest, and costs, this prevailing party provision shall not apply and neither party shall be entitled to attorneys' fees, interest, and costs.

- 12.2.4. Notwithstanding any other provision of this Subcontract Agreement, all arbitration and court proceedings for claims asserted by Subcontractor arising from or related to this Subcontract Agreement, Subcontractor's Work, or Project shall be commenced the earlier of one (1) year from the date of material substantial completion of Subcontractor's work or abandonment by the Subcontractor or, in all events, one (1) year from the substantial completion of the Project.

13. **Subcontract Documents.**

- 13.1. The term "**Contract**" as used in this Subcontract Agreement refers to the Contract between Owner and Contractor for construction of the Project.
- 13.2. The term "**Contract Documents**" as used in this Subcontract Agreement refers to the Contract between Owner and Contractor, together with all Drawings, Specification, General Conditions, Supplemental General Conditions, Special Conditions, Addenda, amendments and all other instruments issued by or on behalf of the Owner, together with all other documents or instruments referred to in the Contract and Contract Documents.
- 13.3. The term "**Subcontract**" as used in this Subcontract Agreement refer to the Subcontract Agreement between Contractor and Subcontractor together with any exhibits, attachments, or addenda incorporated, and referred to, in the Subcontract Agreement.
- 13.4. The term "**Subcontract Documents**" as used in the Subcontract Agreement refers to the Contract, Contract Documents, and Subcontract Agreement.
- 13.5. In the events of a conflict between any of the Subcontract Documents, the documents shall take precedence in the following order and the one taking precedence controls over the one(s) following: (a) the Contract, together with all Change Orders, modifications and exhibits; (b) the Contract Documents in the order listed in the Contract; (c) the Subcontract, together with all Change Orders and exhibits; provided, however, the Subcontract shall control when the provisions of the Subcontract require stricter performance by the Subcontractor or expressly provides that it takes precedence notwithstanding any other provisions of the Contract Documents.

14. **Miscellaneous Provisions.**

- 14.1. All previous oral or written promises and agreements relating to the Subcontract are hereby superseded to the extent they may be inconsistent herewith, it being expressly agreed the terms and provisions of the Subcontract, into which the Subcontract Documents have been incorporated, shall constitute the full and complete agreement between Contractor and Subcontractor.
- 14.2. All covenants, agreements, indemnities, guarantees and warranties made by the Subcontractor shall survive completion of the Work and the Subcontract, and any payment of the Contract Price, in full or in part.
- 14.3. The Subcontractor shall not unreasonably encumber any part of the Project with Subcontractor's materials. The Subcontractor shall not load or permit any part of the structure or appurtenances to be loaded with a weight that will endanger its safety.
- 14.4. Any and all notices or demands or other documents or instruments provided for in this Subcontract Agreement shall be in writing and shall be deemed effectively given or made on the date served upon the party to be notified personally; three (3) business days after being deposited in the United States mail registered or certified mail, return receipt requested, postage prepaid; or one (1) business day after deposit or delivery to a reputable overnight courier, prepaid, receipt acknowledged, to the address of such party as set forth in this Subcontract Agreement or to such other address as such party may last have designated by notice in the Subcontract Agreement. Rejection or refusal to accept delivery or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice as of the date such notice was deposited in the mail or delivered to the overnight courier.
- 14.5. Whenever the singular number is used in this Subcontract and when required by the content, the same shall include the plural and vice versa, and the neuter genders shall include the feminine and the masculine and vice versa.
- 14.6. Subcontractor acknowledges it has been advised by Contractor that no assurances have been given that parking space will be available at the Project site for Subcontractor's vehicles or those of its employees and subcontractors.
- 14.7. The persons executing this Subcontract on behalf of the Contractor and Subcontractor represent they have been authorized to do so by their Board of Directors, officers, directors, members, managers, partners, or other governing body, as the case may be.



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- 14.8. Section and paragraph headings in the Subcontract are inserted only for convenience or reference, and shall in no way define, limit, or prescribe the scope or extent of any provisions of this Subcontract.
- 14.9. Contractor and Subcontractor each bind itself, its successors, assigns, and legal representatives to the other party, and to the successors, assigns, and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Subcontract; however, the provisions of this Paragraph 14.9 shall not constitute a waiver of Subcontractor's compliance with Paragraph 5.3 of the Subcontract concerning assignment.
- 14.10. Contractor shall have the right to assign the Subcontract without the consent of Subcontractor. Upon such assignment, the term "Contractor" as used in the Subcontract Agreement shall refer to the assignee and the liability of Contractor to Subcontractor under the Subcontract Agreement shall be that which it would have had if the assignee had been the original contracting party to the Subcontract Agreement.
- 14.11. If any term or provision of this Subcontract shall be held to any extent to be invalid or unenforceable, the remaining terms and provisions of this Subcontract shall be valid and shall be enforceable to the fullest extent permitted by law.
- 14.12. The Subcontract shall be construed and governed under the laws and statutes of the State of Colorado.
- 14.13. As used in this Subcontract Agreement, the term "**business days**" shall mean any day other than a Saturday, Sunday, or legal holiday on which United States' mail service is not furnished. The term "**calendar days**" shall mean consecutive days including all holidays, Saturdays, and Sundays.