

**GENERAL CONDITIONS of the STANDARD FORM OF AGREEMENT BETWEEN  
CONTRACTOR AND SUBCONTRACTOR**

**Form SCG, Revised January 21, 2019**



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**This document is part of the Snyder Building Construction LLC Standard Form of Agreement Between Contractor and Subcontractor**

**ARTICLE 1: PAYMENT**

**1.1** At least ten (10) days before the first Application for Payment is submitted by Subcontractor, Subcontractor shall submit to Contractor a Schedule of Values allocated to various portions of the Work, prepared on a Snyder Building Construction form or an AIA G-703 Continuation Sheet form and supported by such data to substantiate its accuracy as Contractor may require. The Schedule of Values, unless objected by Contractor, shall be used as a basis for reviewing the Subcontractor's Application for Payment. Subcontractor shall properly adjust the items in the Schedule of Values for subsequent Change Orders, if applicable, and reissue the Schedule of Values if portions of the Schedule of Values are reallocated. Subcontractor's Application for Payment will not be processed and payments will not be made to Subcontractor if the Schedule of Values are not provided to Contractor as required.

**1.2** Contractor agrees to pay Subcontractor for performance of the Work the sum stipulated in "Contract Total" of the Subcontractor Agreement, Form SA, subject to additions and deductions for changes as may be agreed upon in writing, and to make monthly payments based upon the percentage of Work completed, in accordance with the schedule of values provided by Subcontractor, less ten percent (10%) retainage. All requests by Subcontractor for progress payments must be delivered to Contractor's principal office on or before the 25<sup>th</sup> day of the month.

**1.3** Subcontractor shall pay all costs and expenses incurred in the performance of this Subcontractor Agreement as they become due and furnish satisfactory evidence of same by lien waivers prior to receiving the next monthly payment. Prior to the first progress billing, Subcontractor shall submit to Contractor a list containing the following (including addresses and phone numbers): material suppliers, sub-subcontractors, sub-subcontractors' material suppliers and sub-subcontractors.

**1.4** Payment to Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

**1.5** Subcontractor shall not have satisfactorily completed the Work until Subcontractor has executed all Subcontract Documents including change orders, and if applicable the following Closeout functions and documents have been completed and submitted in accordance with the Contract Documents:

- Punch list relating to Subcontract Work.
- Closeout procedures and training of Owner Representatives.
- Warranties, manuals, and record documents.

**1.6** Final payment may be applied for when the Work described in the Subcontract Agreement is fully completed and performed in accordance with the Contract Documents, including the Closeout Documents satisfying the Contract requirements and as defined in Paragraph 1.3 above. Prior to final payment, Subcontractor shall submit to Contractor evidence in the form of lien waivers and affidavits of payment that all indebtedness connected with Subcontractor's Work has been satisfied. After Subcontractor has received final payment according to the procedure defined in this Article 1, Contractor will honor no further applications for payment from Subcontractor, unless additional Work was mutually agreed upon in writing between Contractor and Subcontractor subsequent to final closeout.

**1.7** Compensation payable to Subcontractor as herein provided includes all sales, use, franchise, excise, and other taxes and is not subject to any addition on account of taxes now or hereafter levied. Subcontractor is an independent contractor within the purview of the Internal Revenue Code, the Federal Social Security Act and any and all unemployment insurance laws, both State and Federal, and is solely responsible to the Federal and State Governments for all payroll taxes, deductions, withholdings and contributions under such laws.

**1.8** Contractor shall promptly advise Subcontractor, in the event of a dispute regarding verification of percentages of completion certified on his application for payment. Subcontractor shall furnish a schedule of values of Work portions with pay requests.



**1.9** Owner's payment to Contractor for the Work is a condition precedent to Contractor's obligation to pay Subcontractor. Contractor shall pay Subcontractor within three (3) working days following Contractor's receipt of payment from Owner. Contractor shall diligently pursue the timely payment from Owner and keep Subcontractor advised of his efforts in the event payment is not promptly received. Contractor may deduct from any amounts due or to become due to Subcontractor any sum owing Subcontractor to Contractor on account of the Project or any other project or matter. In the event of any breach by Subcontractor of any provision or obligation of this Subcontract, or in the event of the assertion by other parties of any claim or lien against Owner, Contractor, Contractor's Surety, or the premises upon which the Work was performed, which claim or lien arises out of Subcontractor's performance of this Subcontract, Contractor shall have the right but is not required to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage, or expense therefrom, including attorney fees, until the claim or lien has been resolved by Subcontractor to the satisfaction of Contractor. This paragraph shall be applicable even though Subcontractor has posted a labor and material payment bond and a performance bond.

## **ARTICLE 2: SURETY BONDING**

**2.1** If specifically requested by Contractor, Subcontractor shall forthwith furnish to Contractor a performance bond guaranteeing the full and faithful performance of all the provisions of this Subcontract and a payment bond guaranteeing the payment of all laborers, suppliers and subcontractors of Subcontractor, with a surety satisfactory to Contractor, in the full amount of this Subcontract including additive or deductive amounts which may occur during the time of performance. Contractor may withhold payments hereunder until such time as the bond is furnished and accepted. Subcontractor will be considered in default if any required bond is not furnished within ten (10) days after executing Subcontract.

## **ARTICLE 3: SUBCONTRACT DOCUMENTS**

**3.1** The Subcontract Documents consist of the Subcontract Agreement, these General Conditions of the Subcontract Agreement, and the following listed documents, schedules and attachments (including without limitation the procedural and administrative provisions thereof) which are all incorporated by reference and made part hereof: The General Contract including all of its General and Special Conditions, Specifications, Drawings, Addenda, Schedules, Attachments, and documents or other information or requirements incorporated therein by reference or implication.

**3.2** To the extent provisions of the General Contract (including all provisions incorporated therein and including without limitation all procedural and administration provisions and those provisions relating to claim and dispute resolution) apply to the Work of Subcontractor, Contractor shall assume toward Subcontractor all obligations and responsibilities that the Owner, under the General Contract, assumes toward Contractor. Subcontractor shall assume toward Contractor all obligations and responsibilities which Contractor, under the General Contract, assumes toward the Owner. Contractor shall have the benefit of all rights, remedies and redress against Subcontractor which the Owner, under the General Contract, has against Contractor, and Subcontractor shall have the benefit of all rights, remedies and redress against Contractor which Contractor, under the General Contract, has against the Owner, insofar as applicable to this Subcontract.

## **ARTICLE 4: INDEMNITY, INSURANCE, AND WAIVER OF SUBROGATION**

### **4.1 INDEMNITY**

**4.1.1** To the fullest extent permitted by law, Subcontractor shall defend, indemnify, and hold harmless Owner, Architect and Contractor, and their agents and employees (indemnitees), from any and all liability, including contractual liability, costs, damages, attorneys' fees and expenses from any claim or cause of any nature arising from or related in any way to Subcontractor's performance of the Work (including the Work and including preparation or delivery of materials or equipment), including claims related to Subcontractor's sub-subcontractors, suppliers or employees, or arising from any claim or dispute of any person or entity for damages from any cause directly or indirectly related to any action or failure to act by Subcontractor, its representatives, employees, sub-subcontractors or suppliers, but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractors' sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Subcontractors' obligations to defend, indemnify, and hold harmless shall remain in force whether or not it is alleged that Contractor, Owner, or Architect in any way contributed to the alleged claim or dispute. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this paragraph.



Subcontractor's duty to defend any indemnitee shall be triggered at the time a claim, which, if proven true would require indemnification hereunder, is made. Proof or adjudication of negligence or fault on the part of the subcontractor or subcontractor's employees, personnel, agents, and permitted subcontractors shall not be a prerequisite to the duty to defend indemnitee.

**4.1.2** In any and all claims against the Indemnitees by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnifications 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 the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **4.2 INSURANCE**

**4.2.1** To the extent not otherwise provided in the Subcontract Documents, prior to start of the Subcontract Work, and as a condition of payment, the Subcontractor shall procure for the Subcontract Work and maintain in force Workers' Compensation Insurance, Employer's Liability Insurance, Commercial Automobile Liability Insurance (including coverage for owned automobiles and for non-owned and hired automobiles), Comprehensive or Commercial General Liability Insurance on an occurrence basis, and any other insurance required of Subcontractor under the Subcontract Documents. The Contractor and Owner shall be named as additional insureds on all operations, on-going and completed, on each of these policies, except for Workers' Compensation, and any such coverage shall be endorsed to the primary and non-contributory with any insurance maintained by Contractor or Owner. The Subcontractor's insurance shall include contractual liability insurance covering the Subcontractor's obligations under the Subcontract Documents. The additional insured endorsement must be a CG2010 (11/85) or its equivalent. Subcontractor shall provide the Contractor with a Certificate of Insurance and a copy of the Additional Insured Endorsement. Products and completed operations coverage, including broad form and property damage, shall be maintained for three (3) years after the earlier of the completion date or the final payment and shall include additional insured status as stated above. The certificate must also evidence that each policy provide a waiver of subrogation in favor of the Contractor. The Subcontractor shall furnish the Contractor evidence of products and completed operations coverage at the time of completion of the Subcontract Work.

**4.2.2** In the absence of specific additional instructions in the Subcontract Documents, the following minimum coverages shall apply. The Subcontractor's Workers' Compensation, Commercial General Liability Insurance and Commercial Automobile Liability Insurance, as required by Paragraph 4.2.1 shall be written with limits of liability not less than the following:

- A. Workers' Compensation
  - As Required By Law
  - Employers Liability \$1,000,000
  
- B. Commercial General Liability Insurance including completed operations.
  - Each Occurrence Limit \$1,000,000
  - General Aggregate Per Project \$2,000,000
  - Products/Completed Operations Aggregate \$2,000,000
  - Personal and Advertising Injury Limit \$1,000,000
  
- C. Commercial Automobile Insurance. Contractor and Owner shall be additional insureds.
  - Combined Single Limit Bodily Injury and Property Damage \$1,000,000
  
- D. Umbrella or Excess Coverage
  - Each Occurrence Limit \$1,000,000
  - General Aggregate \$1,000,000

**4.2.3** The Subcontractor shall maintain in effect all insurance coverage required under the Subcontract Documents at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. All insurance policies shall provide that the coverage afforded thereunder shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days prior written notice has been give to the Contractor unless otherwise specifically required in the Subcontract Documents. The Subcontractor shall file certificates of insurance, or certified copies of policies acceptable to the Contractor, with the Contractor prior to the commencement of the Subcontract Work.



**4.2.4** In the event that Subcontractor fails to obtain or maintain any insurance coverage required under this Subcontract Agreement or fails to provide to Contractor adequate documentation of such insurance, Contractor shall be entitled, but shall not be obligated, to (a) terminate the Subcontract Agreement; or (b) withhold from amounts otherwise payable under this Subcontract Agreement an amount established by Contractor in its sole and absolute discretion to pay the cost of the insurance required by this Subcontract Agreement, and to pay Contractor an administrative fee for obtaining and maintaining such coverage, such withholding being expressly acknowledged and authorized by Subcontractor's execution of this Subcontract Agreement; or (c) accept from Subcontractor a waiver of insurance to the extent permitted and made in accordance with the requirements of any applicable statutes or regulations. It shall not be deemed or considered a waiver should Contractor permit Subcontractor to complete its work without Subcontractor having provided conforming insurance coverage and documentation of such coverage. To the contrary, Contractor specifically retains all rights and remedies available under Colorado law for Subcontractor's failure to provide conforming insurance despite the fact that Contractor may have permitted Subcontractor to complete its work without having complied with the terms of this Article 5.

**4.2.5** The Owner or Contractor will obtain and maintain property insurance upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall include as named insureds the Subcontractor and its subcontractors, and shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, at least theft, vandalism, malicious, mischief, transit, collapse, falsework, temporary buildings and debris removal, flood, earthquake, testing and damage resulting from defective design, workmanship or material. The limits or coverage shall be increased, if necessary, to reflect estimate replacement cost. The Owner or Contractor will be responsible for any co-insurance penalties and/or deductions.

**4.2.6** If not covered under the builder's risk policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for portions of the Subcontract Work stored off the site or in transit, when such portions of the Subcontract Work are to be included in an application for payment under Article 4.

**4.2.7** Subcontractor shall procure and maintain, at the Subcontractor's own expense, insurance for Subcontractor's own property and equipment, which are not a part of the Work.

**4.2.8** If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

#### **4.3 WAIVER OF SUBROGATION**

**4.3.1** Contractor and Subcontractor waive all rights against each other, the Owner, and all of their respective consultants, subcontractors, and sub-subcontractors, agents and employees, for loss or damage to the extent covered by builder's risk or any other property or equipment insurance provided under this Article 4, except such rights as they may have to the proceeds of such insurance. The Subcontractor shall require similar waivers from its sub-subcontractors.

#### **ARTICLE 5: MODIFICATIONS**

**5.1** Subcontractor shall make any and all changes or deviations from the original plans and specifications without nullifying the original Subcontract Agreement when specifically ordered to do so in writing by Contractor. Contractor, without the consent of Subcontractor, shall have the right from time to time to add to or delete portions of the Work under this Subcontract. No change, however, shall be made in the Work except upon written order of Contractor, signed by contractor's authorized representative, with the amount added or deducted by Contractor by virtue of any such change agreed to by the parties and stated in such order, and with any revision in the time allotted under this subcontract for performance of the Work resulting from any such change agreed to and stated in such order. If however, Contractor and Subcontractor are unable to agree as to the amount, either of money or time, to be added or deducted for any change with respect to the Work, Subcontractor, nevertheless, shall, upon written notice from Contractor, proceed within twenty-four (24) hours with the change, and the determination of any disputed amount of money or time, if not sooner agreed to by Contractor and Subcontractor, shall be determined upon final completion of the Work and before the final settlement under this subcontract. Within five (5) working days of final completion of the work, Subcontractor shall submit to the Contractor's office, a Subcontractor Change Order Request Summary with a detailed breakdown of all costs of the change, copies of time cards, material tickets and other reasonable back up as requested by Contractor, supporting the change. If in the reasonable judgment of Contractor the above mentioned changes will have no material effect on the time required for performance of the Work, the time otherwise applicable for completion of the Work shall not be adjusted. In the event any change in the Work



involves unit pricing already agreed to and in effect under this subcontract, such unit pricing shall be recognized and followed in the agreement of the parties concerning the amount to be allowed for the change. Subcontractor's overhead and profit percentages or margins for changes in the Work shall be subject to limitations (if any) set forth in the Contract Documents. Subcontractor shall have no dealings with Owner or his authorized representatives in regard to the Work or to changes, actions or omissions in connection with the Work, but shall deal only with Contractor.

#### **ARTICLE 6: SAFETY**

**6.1** Subcontractor shall at its own expense take all necessary safety precautions with respect to his Work, shall comply with all safety measures initiated by Contractor and with all applicable laws, ordinances, rules, regulations, acts and orders of all public authorities for the safety of persons or property. This provision shall include without limitation the specific requirements of OSHA regarding Hazard Communication Standards, Trenching and Excavation Standards, Fall Protection and all other requirements pertaining to Subcontractor's Work.

**6.2** Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work shall be submitted to Contractor by Subcontractor. MSD sheets obtained by Contractor from other subcontractors or sources shall be made available to Subcontractor by Contractor.

**6.3** A copy of the Snyder Building Construction Safety Policy and the Snyder Building Construction Safety Manual are available at the site. Subcontractor's site personnel shall read this policy, comply with all of its provisions and understand its enforcement procedures.

**6.4** A hazard analysis, and if necessary, a written safety program for the Work, may be required from Subcontractor prior to start up of the Work.

**6.5** Subcontractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, permitted subcontractors or suppliers at the job site. Subcontractor shall prohibit and prevent any employee of Subcontractor, Subcontractor's subcontractors or Subcontractor's suppliers from performing any job function at the Work site if such person is under the influence of alcohol or drugs.

**6.6** Subcontractor shall give prompt written notice within 24-hours to Contractor of any accident involving bodily injury requiring a physician's care, any property damage exceeding five hundred dollars (\$500) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

**6.7** Subcontractor shall immediately notify Contractor's construction supervisors of any unsafe condition or practice observed on the Work site.

**6.8** Each party shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements.

**6.9** Hard hats must be worn by all personnel at all times. Subcontractor employees who show up to the job without a hard hat will be provided one by Contractor, and Subcontractor will be charged \$20 per hard hat, regardless of condition of hard hat provided or whether or not it is returned to Contractor.

**6.10** Subcontractor is required to designate an individual at the site in the employ of Subcontractor who shall act as Subcontractor's designated safety representative with a duty to prevent accidents or violations of applicable safety laws, regulations or standards. Unless otherwise identified by Subcontractor in writing to Contractor, the designated safety representative shall be Subcontractor's project superintendent or foreman.

**6.11** The site safety program may require Subcontractor's attendance at mandatory periodic safety meetings as defined in Contractor's Safety Manual and any Special Conditions hereto.

**6.12** At all times when Subcontractor has one or more craft labor on site, the Subcontractor's lead employee must be fully fluent in the English language.

#### **ARTICLE 7: SUBMITTALS**



**7.1** Subcontractor shall, in accordance with the Contract Documents and project schedule, submit to Contractor all required submittal information, shop drawings, drawings and samples for approval in quantities requested by Contractor.

**7.2** Subcontractor shall be responsible to Contractor for the accuracy and conformity of its submittals to the Contract Documents.

**7.3** Subcontractor's submittals shall be marked in the following manner: As Specified, Equal, or Substitution.

#### **ARTICLE 8: SCHEDULE OF WORK**

**8.1** Time is of the essence. Subcontractor agrees that any labor, materials, services and tools to be furnished or used by Subcontractor hereunder shall be furnished in sufficient time to enable Subcontractor and/or any other party requiring same to perform or complete Work within the time established as herein provided. Upon Contractor's request, Subcontractor shall furnish such evidence as Contractor may require relating to Subcontractor's ability to fully perform this Subcontract in the manner and within the time established as herein provided.

**8.2** In a timely fashion, Subcontractor shall provide Contractor with any scheduling information proposed by Subcontractor for the Subcontract Work. Contractor shall prepare the schedule for performance of the General Contract (hereinafter called the "Schedule of Work") and shall revise and update such schedule, as necessary, as the work progresses. Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the Subcontract Work shall be performed and all other matters relevant to the timely and orderly conduct of the Subcontract Work. Subcontractor shall be bound by the Schedule of Work as revised and updated from time to time by Contractor.

#### **ARTICLE 9: CLEANUP**

**9.1** Subcontractor shall at all times keep the building and premises free from accumulation of debris resulting from the Subcontract Work; and shall follow Contractor's cleanup directions.

**9.2** Subcontractor shall broom clean each work area prior to discontinuing work in each area. If Subcontractor fails to immediately commence compliance with cleanup duties within twenty-four (24) hours after written direction from Contractor to Subcontractor foreman on site of noncompliance, Contractor may implement appropriate cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due Subcontractor under this Subcontract.

#### **ARTICLE 10: WORK OF OTHERS**

**10.1** Subcontractor shall cooperate with Contractor and other Subcontractors whose work might interfere with Subcontractor's Work and to participate in the preparation of coordinated drawings in areas of congestion as required by the Contract Documents, specifically noting and advising Contractor of any such interference.

**10.2** Subcontractor shall cooperate with Contractor in scheduling the Work so as not to conflict or interfere with the work of others.

**10.3** In carrying out this Work, Subcontractor shall take necessary precautions to protect the Work of other trades from damage caused by Subcontractor's operations, and shall be responsible for repair of such damage.

#### **ARTICLE 11: LABOR RELATIONS**

**11.1** Subcontractor shall have exclusive control and responsibility for its own labor relations, but shall give Contractor notice and full information regarding any existing or impending labor dispute affecting the Work on the Project. If Subcontractor has any collective bargaining agreements, Subcontractor represents that these agreements contain or have been modified to contain provisions prohibiting any strikes or picketing, secondary boycotts, or work stoppages of any kind during the performance of the Work covered by this Subcontract. Subcontractor represents that its agreement to perform the Work does not violate any collective bargaining agreement to which Subcontractor is a party. Subcontractor shall be responsible for costs to Contractor resulting from Subcontractor labor relations problems. In the event of a labor dispute that interferes with the progress of Work, Contractor, at its option, shall have the right to terminate this Subcontract on three (3) days written notice. Subcontractor shall be paid in accordance with the termination clause in this agreement.

#### **ARTICLE 12: FINAL ACCEPTANCE**

**12.1** Subcontractor agrees that all Work will be done subject to the final approval of Architect, Owner's authorized agent, and Contractor.





**12.2** If Architect or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed. Subcontractor shall be responsible for the costs of correction such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of Architect and Contractor made necessary by the defective Subcontract Work.

### **ARTICLE 13: GOVERNMENTAL REQUIREMENTS**

**13.1** Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations, acts, and orders of all public authorities bearing on the performance of the Work under this Subcontract Agreement. Subcontractor shall secure and pay for all permits, taxes and governmental fees, licenses and inspections necessary for the proper execution and completion of Subcontractor's Work, the furnishing of which is required of Contractor by the Contract Documents.

**13.2** Snyder Building Construction LLC. is an Affirmative Action/Equal Opportunity Employer.

### **ARTICLE 14: CLAIMS**

**14.1** Subcontractor shall make all claims promptly to Contractor for additional cost, and extensions of time in accordance with the Contract Documents. Notification shall be forwarded by Subcontractor and received by Contractor not more than five (5) working days following the events giving rise to any claim.

**14.2** Subcontractor claims for out-of-scope work, when directed by the Superintendent or his/her authorized representative, will be documented on Contractor's Field Work Order (FWO), and executed by the authorized representatives of Subcontractor and Contractor, prior to commencement of the work. Within **five (5) working days** of completion of out-of-scope work, Subcontractor shall submit to the Contractor's office, a Subcontractor Change Order Request Summary with a detailed breakdown of all costs of the out-of-scope work, a copy of the FWO, copies of time cards, material tickets and other reasonable back up as requested by Contractor, supporting the Field Work Order. Work performed without obtaining Contractor's executed FWO will be considered unauthorized, and will not be paid.

**14.3** Should Subcontractor be delayed or interfered in the commencement, prosecution or completion of the Work by the act, omission, neglect or default of Contractor or of anyone employed by Contractor, or of any other contractor or subcontractor on the Project, or by Owner, or by any damage caused by fire or other casualty or by the combined action of workmen in no way chargeable to Subcontractor, or by any extraordinary conditions arising out of war, government regulations or by any fault, neglect, act or omission on Subcontractor's part, Subcontractor shall be entitled to an equitable adjustment in cost and an extension of time, such extension to be for a period equivalent to the time lost by reason of any and all the aforesaid causes, and as determined by Contractor. Subcontractor shall not be entitled to any such cost adjustment or extension of time, however, unless a claim therefore is presented in writing to Contractor in accordance with this claims article.

### **ARTICLE 15: NOTIFICATION AND AUTHORIZED REPRESENTATIVES**

**15.1** Contractor and Subcontractor shall each designate the individual who shall be its authorized representative prior to the commencement of the Work. Contractor and Subcontractor shall give instructions or orders, regarding the Work, only to persons designated as authorized representatives and to the address herein specified. Contractor and Subcontractor shall notify each other in writing within ten (10) days of any change in authorized representative or change in address.

**15.2** Any notice required by this Subcontract shall be a sufficient notice for all purposes as to its contents if given in writing, delivered to the party to whom such notice is intended to be given, or to its representative authorized in writing and at the address set forth.

**15.3** This Subcontractor shall have a representative, that is authorized to make scheduling and man power commitments on behalf of this Subcontractor, in attendance at weekly on-site scheduling meeting when this Subcontractor is scheduled to perform work as indicated on the ongoing Schedule of Work as defined in Article 8. If the authorized representative is not present at the weekly Subcontractor meeting(s), a penalty of \$150, per meeting not present, will be assessed to this Subcontractor

### **ARTICLE 16: ASSIGNMENT OF SUBCONTRACT**



**16.1** Neither Contractor nor Subcontractor shall assign this Work without the written consent of the other party. Subcontractor shall give written notification to Contractor of any portions of the Work further subcontracted. Contractor and Subcontractor shall not assign any amount due, or to become due, under this Subcontract Agreement without written consent of the other party.

#### **ARTICLE 17: DEFAULT**

**17.1** Subcontractor agrees to prosecute the Work at such times and in such order as Contractor considers necessary to keep the same sufficiently in advance of the other parts of the project and to avoid any delay in the completion of the construction as a whole. Subcontractor shall reimburse Contractor for any loss or damage, including but not limited to any liquidated damages, if any, that may be assessed against Contractor by Owner, which are directly or indirectly attributable to or caused by Subcontractor's failure to comply fully with the foregoing provisions; and further, whether or not liquidated damages are so assessed, Subcontractor further agrees to pay to Contractor such other additional damages as Contractor may sustain by reason of any such delay directly or indirectly attributable to or caused by Subcontractor and any additional expenses, damages, paid or incurred by Contractor which are due to (a) Subcontractor's failure to deliver any and all materials and/or supply labor, furnish equipment or services as required herein; and/or (b) Subcontractor's failure to properly perform any and all work in keeping with the progress of the general construction work; and/or (c) to properly perform any term, covenant or condition contained in this Subcontract. If Subcontractor fails or refuses to proceed with the Work as directed by Contractor or fails to perform said Work in accordance herewith, in whole or in part, or fails to perform any term, covenant or condition contained in this Subcontract, Contractor may, at Contractor's option, upon three (3) days written notification to Subcontractor, take any steps Contractor deems advisable to secure any labor and/or materials and prosecute the Work to completion. In case Contractor deems the foregone procedure necessary, all costs, including but not limited to reasonable attorney fees, all losses, damages and extra expenses shall be deducted from Subcontract sum herein stated, and if such expenditures, together with said losses, damages and extra expenses exceed the amount otherwise due Subcontractor hereunder, Subcontractor agrees to pay to Contractor on demand the full amount of such excess together with carrying costs until paid.

#### **ARTICLE 18: DISPUTES**

**18.1** In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves the Work required to be performed by Subcontractor under this Subcontract or in the event of any dispute or claim between Contractor and Subcontractor which directly or indirectly involves a claim against Owner for either additional compensation or extension of time, or both, under the General Contract, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor to the same extent that Contractor is bound to Owner by the terms of the General Contract, and by any and all decisions, findings and determinations made thereunder by the person so authorized in the Contract Documents, or by an administrative agency, arbitration panel, or court of competent jurisdiction, whether or not Subcontractor is a party to the proceedings before said person, agency, panel or court.

**18.2** If any dispute or claim is prosecuted or defended by Contractor, and Subcontractor is not directly a party or litigant, Subcontractor agrees to cooperate fully with Contractor and furnish all documents, statements, witnesses and other information required by Contractor for such purposes and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorney's fees, incurred in connection therewith to the extent of Subcontractor's interest in such claim or dispute.

**18.3** It is expressly understood and agreed in connection with the determination of such claims or disputes, that as to any and all work done or agreed to be done by Subcontractor, and as to any and all materials furnished or agreed to be furnished by Subcontractor, and as to any and all damage, if any, incurred by Subcontractor in connection with this project, Contractor shall never be liable to Subcontractor to any greater extent than Owner is to Contractor.

**18.4** The following provisions of this Article 18 regarding mediation and arbitration shall be effective only upon Contractor's election, which election shall be exercised in Contractor's sole discretion.

#### **18.5 MEDIATION OF DISPUTES**

**18.5.1** Any claim arising out of or related to this Subcontract, if Contractor in its sole discretion so elects, shall be subject to mediation prior to arbitration or the institution of legal or equitable proceedings.

**18.5.2** Should Contractor in its sole discretion so elect, the parties shall endeavor to resolve their claims by mediation, which shall be conducted using an individual, or a mediation service provider agreed to by the parties at the time. If the parties are unable to agree on an individual or a mediation service provider, the mediation shall be in accordance with the Construction Industry Mediation





Rules of the American Arbitration Association then in effect. The request for mediation shall be filed in writing with the other party to the Subcontract and with the individual mediator, the mediation service provider, or the American Arbitration Association. The request for mediation may be made concurrently with the filing of a Demand for Arbitration or the institution of legal or equitable proceedings but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or order of the court.

**18.5.3** The parties shall share the mediator's and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is agreed upon at the time. Any agreement to resolve the disputes reached in mediation shall be enforceable as settlement agreement in any court having jurisdiction thereof.

## **18.6 ARBITRATION OF DISPUTES**

**18.6.1** Any claim arising out of or relating to this Subcontract, subject to the election of Contractor in its sole discretion, shall be subject to binding arbitration.

**18.6.2** The arbitration shall be administered and conducted by an individual arbitrator or panel of arbitrators or provider of arbitration services upon which the parties agree. If the parties cannot so agree, the arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The demand for arbitration shall be filed in writing with the other party to this Subcontract and with individual arbitrator, panel of arbitrators, provider of arbitration services, or the American Arbitration Association, as the case may be.

**18.6.3** The demand for arbitration, if any, shall be made within the time limit specified in the General Contract as applicable, and in other cases within a reasonable time after the claim arises. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

**18.6.4** Notwithstanding any other provision in this Subcontract or choice of law provisions to the contrary, this agreement to arbitrate shall be governed by the Colorado Uniform Arbitration Act, § 13-22-201 et seq., C.R.S., which shall not be superseded or supplemented by any other arbitration act, statute, or regulation. Contractor shall have the option, at its sole discretion, to allow or require some limited discovery procedures in connection with any arbitration proceeding. These discovery procedures shall not include more than three (3) fact depositions, plus the deposition of any expert designated by the other party; twenty-five (25) written interrogatories (including subparts); twenty-five (25) requests for production of documents (including subparts); and ten (10) requests for admissions (including subparts).

**18.7** The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with the Colorado Uniform Arbitration Act in any court having jurisdiction. The prevailing party in any arbitration, litigation or other dispute resolution proceeding shall be entitled to an award of its costs and reasonable attorney fees incurred in connection therewith.

**18.8** Contractor shall have the right, in its sole and absolute discretion, to join in any negotiation, mediation, or arbitration with Subcontractor any person or entity that is or may be liable to Contractor for all or part of Contractor's claim against Subcontractor.

**18.9** Subcontractor shall carry on the Subcontract Work and maintain the Schedule of Work pending final resolution of any claim including arbitration, unless the Subcontract has been terminated or the Subcontract Work suspended as provided for in the Subcontract, or the parties otherwise agree in writing to a partial or total suspension of the Subcontract Work. If Subcontractor continues to perform in accordance with the Subcontract, Contractor shall continue to make payments as required by the Subcontract.

## **ARTICLE 19: SUSPENSION OR TERMINATION**

**19.1** Should the Owner order Contractor in writing to suspend, delay or terminate the performance of the Contract or any part which affects the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Owner, and not due to any act or omission of Contractor, or any other person or entity for whose acts or omissions Contractor may be liable, then Contractor shall so notify Subcontractor in writing and, upon written notification, Subcontractor shall immediately suspend, delay, interrupt, or terminate this Subcontract or that portion of the Subcontract Work as ordered by Contractor.



**19.2** In the event of an Owner suspension, delay or termination for convenience as described in Subparagraph 19.1, Contractor's liability to Subcontractor for any damages caused to Subcontractor by said order, including any claims for adjustments in the Subcontract Price and/or Subcontract Time, shall be extinguished by Contractor pursuing said damages and claims against the Owner, on Subcontractor's behalf and at Subcontractor's expense, and by awarding and paying over to Subcontractor any additional time and/or money obtained from the Owner on Subcontractor's behalf. At Subcontractor's option, Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of said damages and claims against the Owner through mediation, arbitration and/or litigation, and to permit Subcontractor to prosecute said damages and claims, in the name of the Contractor and for the use and benefit of Subcontractor. Contractor's liability to Subcontractor for any damages and claims caused by the Owner's suspension, delay or termination for convenience shall be fully extinguished by Contractor awarding and paying over to Subcontractor any additional time and/or money obtained from the Owner on Subcontractor's behalf through the conclusion of the mediation, arbitration and/or litigation process.

**19.3** If the Work is stopped for a period of thirty (30) days through no fault of Subcontractor or because Contractor has not made payments thereon as provided in this Subcontract Agreement, then Subcontractor may without prejudice to any other remedy it may have, upon seven (7) additional days written notice to Contractor, terminate this Subcontract Agreement and recover from Contractor payment for all Work executed and for any proven loss resulting from the stoppage of the Work except as provided in Article 17 herein, including reasonable overhead and profit related to Work actually performed by Subcontractor.

**19.4** If Subcontractor fails or neglects to carry out the Work in accordance with the Contract Documents or otherwise fails to perform in accordance with this Subcontract within three (3) days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, Contractor may, in lieu of or in addition to any other remedy Contractor may have, including without limitation Contractor's remedies under Paragraph 18.1 hereof, terminate the Subcontract and finish the Work by whatever method he may deem expedient. If unpaid balance of the Subcontract price exceeds the expense of finishing the Work, such excess shall be paid to Subcontractor, but as such expenses exceed such unpaid balance, Subcontractor shall pay the difference to Contractor.

#### **ARTICLE 20: WARRANTY**

**20.1** Without limiting any other applicable guarantees and warranties to which Contractor may be entitled, Subcontractor warrants and guarantees that materials and equipment furnished under this subcontract will be of good quality and new unless otherwise required under the Contract Documents, that the Work will conform with the requirements of the Subcontract Documents, and that the Work of this Subcontract will be free from defects in materials and workmanship for a period of twelve (12) months from the date of Substantial Completion of the Project and acceptance of the completed Work by Contractor and Owner or as required by the Contract Documents. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents. Subcontractor shall, at its cost, correct and make good any defects in the Work, which may appear within such warranty period. If Subcontractor refuses or neglects to correct and make good such defects promptly after receiving notice to do so, then Contractor shall have the right and power to correct and make good such defective Work, at the expense of Subcontractor and may withhold the cost of the same from any sums due Subcontractor hereunder. Otherwise, Subcontractor shall pay Contractor for such costs.

#### **ARTICLE 21: USE OF EQUIPMENT**

**21.1** It is mutually agreed that, where necessary and beneficial, Contractor and Subcontractor each can use the equipment of the other party on the job site, subject to written or oral agreement between Contractor's and Subcontractor's authorized site representative. It is agreed that the using party shall indemnify and hold harmless and be liable to the supplying party for any loss or damage, which may arise from such use.

#### **ARTICLE 22: SUBCONTRACTOR RESPONSIBILITIES**

**22.1** Subcontractor is responsible to examine all substrates, areas and conditions that affect the installation of their work as outlined by the Contract Documents. It shall be the Subcontractor's responsibility to give the Contractor written notice of any objections to conditions that exist that may affect the installation of products per the Contract Documents or per manufacturer's recommendations. The Contractor shall respond to the Subcontractor within 48 hours after receipt of notice outlining the corrective action that Contractor intends to take and the time frame to make the corrections. If Contractor does not receive written objections as outlined above, the Subcontractor is assumed to have accepted the existing conditions and shall be responsible for all obligations as outlined in the Subcontract Documents.



#### **ARTICLE 23: DESIGN DELEGATION**

**23.1** If the Subcontract Documents (1) specifically require Subcontractor to provide design services, and (2) specify all design and performance criteria, Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. Design services provided by Subcontractor shall be procured from licensed design professionals retained by Subcontractor. Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by Designer. Shop Drawings and other submittals related to the Subcontract Work designed or certified by Designer, if prepared by others, shall bear Subcontractor's and Designer's written approvals when submitted to Contractor. Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by Designer.

#### **ARTICLE 24: CLOSEOUT**

**24.1** Contractor and Subcontractor agree that timely closeout of the Work to achieve Substantial Completion in accordance with the provisions of the General Contract is a critical part of the performance of the Work. Subcontractor agrees to cooperate with Contractor and meet all closeout requirements for the Project set forth in the Contract Documents. If Subcontractor fails to meet the timing agreed to in the closeout schedule, Contractor may declare Subcontractor in Default as provided in Article 17 of this Subcontract.

#### **ARTICLE 25: QUALITY ASSURANCE AND CONTROL PROGRAM**

**25.1** In performance of the Work, Subcontractor agrees to fully comply with Contractor's Quality Assurance and Quality Control Program (QAQCP) for the Project. It is understood and agreed by Subcontractor that the requirements of Contractor's QAQCP are separate and in addition to any inspections, reviews and punch lists required by other provisions of this Subcontract, the General Contract or other sections of the Contract Documents.

#### **ARTICLE 26: LABOR BROKERS/TEMPORARY HELP AGENCIES**

**26.1** Subcontractor and labor brokers or temporary help agencies used by Subcontractor shall comply with the provision of the Immigration Reform and Control Act of 1986. Subcontractor and labor brokers or temporary help agencies used for the Work shall comply with all applicable State, Federal and Local laws requiring Worker's Compensation Insurance coverage, the payment of wages, including overtime and minimum wages, as well as income tax withholding and Social Security and Medicare withholding and payment requirements. The practice of assigning Independent Contractor status to employees by Subcontractor or labor brokers used by Subcontractor to avoid Worker's Compensation Insurance premiums is not permitted.

#### **ARTICLE 27: CLAIMS FOR CONSEQUENTIAL DAMAGES**

**27.1** Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract. This mutual waiver includes:

- Damages incurred by Contractor for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons.
- Damages incurred by Subcontractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Termination provisions herein. Nothing contained in this Article shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **ARTICLE 28: STORMWATER INDEMNIFICATION**

**28.1** Each party shall indemnify the other party from and against fines or penalties imposed as a result of stormwater violations, but only to the extent that such fines are caused by its failure to comply with applicable Government stormwater requirements.

#### **ARTICLE 29: GOVERNING LAW, VENUE, CONFLICTING PROVISIONS, DEFINITIONS, SUCCESSORS AND ASSIGNS**

**29.1** This Subcontract Agreement, and all matters relating to it, shall be governed by the laws, rules and regulations of the State of Colorado ("Colorado Laws"), as are now in effect or as may be later amended or modified, without reference to the choice of law rules of any state. In the event that any provision of this Subcontract conflicts with, or is inconsistent with the Colorado Laws, then the provisions of the Colorado Laws shall govern. In the event of any litigation arising out of this Subcontract, and all matters relating to it, all parties hereto submit to the exclusive jurisdiction and venue in the District Court for the State of Colorado in the



County where the Project is located, or in the United States Court for the District of Colorado, regardless of where this Subcontract may be executed or performed.

**29.2** If any term or provision of this Subcontract Agreement is determined to be invalid, then it shall not affect the validity and enforceability of the remaining terms and provisions of this Subcontract.

**29.3** In the event there is an inconsistency or conflict in the provision set forth in this Subcontract Agreement and the provisions of the General Contract between Owner and Contractor, then the language in the General Contract shall control.

**29.4** This Subcontract Agreement shall be binding upon and shall inure to the benefit to the parties' respective successors, assigns and heirs, if any.

**29.5** The Subcontract Agreement is solely for the benefit of the parties, it represents the entire and integrated agreement between the parties, and it supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral.

**29.6** Unless otherwise specifically set forth herein, the term "day" shall mean calendar day.