



SUBCONTRACT AGREEMENT

Date of Draft: July 21, 2023

GENERAL TERMS AND CONDITIONS OF SUBCONTRACT AGREEMENT

1. **Multiple Projects.** The Subcontractor identified at the end of this Agreement (hereinafter "Subcontractor") hereby acknowledges that Subcontractor may be retained by Grass Creek Construction, Inc. (hereinafter "Contractor") to perform services on many projects. These General Terms and Conditions shall apply to all projects for which Subcontractor is hired, unless and until it is superseded by another master subcontractor agreement. The parties hereby acknowledge and agree that each project is separate and distinct from the other projects and that each project is a separate contract even though the following General Terms and Conditions apply to each separate contract. Each project shall be evidenced by a Project Worksheet, which shall incorporate these General Terms and Conditions. Each reference herein to "project" shall apply to each project separately. Each project shall have its own certain contract sum for the work to be performed by Subcontractor (the "Contract Sum"). In consideration of, and for the full and faithful performance of the work and the other obligations of the Subcontractor hereunder, Contractor agrees to pay Subcontractor that certain contract sum for the particular project to which it pertains and as set forth in the separate Project Worksheet for each project, which will be paid in accordance with the terms set forth below. Payment of the Contract Sum is subject to additions and deductions for approved Changes in the Work (as defined below) approved in writing by the parties and subject to the other additions, deductions and Back charges permitted and described elsewhere in this Agreement. Subcontractor agrees that all material costs, labor costs, taxes, permits, and fees have been provided for in the Contract Sum and that he will pay such when they become due.
2. **Subcontract Documents.** Subcontractor and Contractor hereby agree that for each project for which Subcontractor is hired, the parties shall be bound by the terms of the contract documents which shall include, for each project, (i) the Project Worksheet for the project (ii) these General Terms and Conditions; (iii) the Prime Contract for the project, consisting of the Agreement between the owner, architect, design-builder, (or other party with whom Contractor has contracted for the project) (hereinafter referred to as "Owner") and Contractor on the project and the other contract documents enumerated therein and/or incorporated therein; (iv) all plans, drawings, models, reports (including but not limited to soils reports), specifications, measurements, and exhibits and/or addenda thereto, relevant to the performance of the work, and all addenda, amendments and changes thereto, whether or not stipulated in the contract documents; (v) the Project Schedule for the project, as amended from time to time by Contractor; (vi) and all written change orders for the project ("the Contract Documents"). For each project, the foregoing documents form the subcontract agreement between Contractor and Subcontractor for each project and are as fully a part of the subcontract as if attached to the Project Worksheet (hereinafter collectively referred to as the "Agreement"). These General Terms and Conditions may be amended or modified only by written modification. Anything required by a portion of the Contract Documents shall be performed as if it were displayed in all portions of the Contract Documents. The Contract Documents will be construed together so as to give effect to every part, but in case of conflict or ambiguity, Subcontractor will bring the conflict or ambiguity to the attention of Contractor as soon as it is discovered, and the decision of Contractor as to the interpretation of the Contract Documents shall be final. Subcontractor and his subcontractors will be and are bound by any and all parts of said Contract Documents, plans and specifications, insofar as they relate in any part or in any way, directly to work herein undertaken. The subcontractor agrees to assume full responsibility for the accuracy of all lines, levels, and measurements. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of such conditions shall rest with Subcontractor. Subcontractor will perform for Contractor all of the obligations that Contractor is required to perform for the Owner, to the extent that such obligations relate to Subcontractor's work or are customarily performed by Subcontractor's trade or are reasonably inferred from the plans and specifications. The work required to be performed by Subcontractor is not confined to any particular portion of the drawings or section of the specifications but may be scattered throughout the Contract Documents. In the event of disagreement between Subcontractor and Contractor or any other Subcontractor as to the portions of the work performed by the Subcontractor, the Contractor will give due consideration to the contentions of all Subcontractors, and the orders of Contractor shall be followed, and the decision of Contractor shall be final.
3. **Scope of Work and Commencement of Work.** The work to be performed includes the work set forth in the Project Worksheet, the Contract Documents, and all exhibits and addenda attached thereto or referenced therein or herein and reasonably inferable therefrom. The Contractor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment and services necessary or incidental to complete the work described in the Agreement, and more particularly in the Project Worksheet, in accordance with, and reasonably inferable from, that which is indicated in the Contract Documents, and consistent with the Project Schedule, as amended from time to time by Contractor. The work to be performed for each project (a) shall include, and Subcontractor shall perform and provide, all duties and services necessary or inherent to the trade classification referred to in the Project Worksheet, and the scope of work which is more fully defined and described in the Contract Documents, including, but not limited to, providing all labor, materials, equipment and services necessary or incidental to complete the work described in the Agreement, and more particularly in the Project Worksheet, in accordance with, and reasonably inferable from, that which is indicated in the Contract Documents, and consistent with the Project Schedule; and (b) shall include all work of such type and trade classification for the project which is the subject of the Agreement, and said Contract Documents as defined above, and shall include all work ordinarily and usually performed, and the supply of all facilities (including all utilities, power, water, etc.)

ordinarily and usually provided, as a part of the work covered by this Agreement or ordinarily and usually performed by a subcontractor doing work of such trade classification, and all addenda, amendments and changes thereto, whether or not stipulated in the Contract Documents, (the “**Work**”). Subcontractor shall complete all work necessary to resolve related issues and tie into the work of adjoining trades. Anything which is not shown in the Contract Documents, but which is implied and required to carry out the scope of Subcontractor’s Work or intended by the Contract Documents, shall be the responsibility of the Subcontractor as though it were specifically detailed. This defined term and all other defined terms contained in this document shall be construed herein to apply to each project separately. Accordingly, any reference herein to a defined term shall be read as though the defined terms apply to each particular project independent of the other projects. Subcontractor, to the entire satisfaction and approval of Contractor (or its authorized representatives and/or assigns) and all governing agencies, agrees to furnish all labor, materials, supplies, machinery, temporary services, including but limited to water and power, ladders, scaffolding, tools, equipment, and services as necessary to perform the Work and to properly perform the Work in a sound, workmanlike and substantial manner. Subcontractor’s commencement of the Work constitutes its acceptance of the Agreement and all of its terms and conditions. The parties hereby acknowledge that with respect to the projects for which Subcontractor is hired, Subcontractor may submit a bid, proposal, estimate or other similar type of document outlining Subcontractor’s pricing and scope of work (hereinafter referred to as the “Subcontractor’s Estimate”). The parties hereby agree that only that language contained in the Subcontractor’s Estimate concerning the scope of the Work may be, at the sole discretion of Contractor, incorporated herein; all other terms and conditions set forth in Subcontractor’s Estimate is excluded, shall not be a part of the agreement between the parties, and Contractor shall not be bound thereby. Further, if the scope of Work set forth in Subcontractor’s Estimate is contrary to the terms of this Agreement, the terms of this Agreement shall control. The scope of the Work shall be as broad as the combined language of the Subcontractor’s Estimate and this Agreement. In the event of any disagreement between Contractor and Subcontractor as to the scope of the work, scheduling, equipment, materials, or any other disagreement, Subcontractor will not stop work or reduce progress, but will continue with the prompt and diligent prosecution of the work. Subcontractor will not interrupt or delay its work because of any dispute with Contractor but will continue to perform its Subcontract work diligently to completion and will later negotiate in good faith for settlement of the dispute.

4. **Examination of Contract Documents and Subcontractor’s Own Investigation.** Subcontractor represents and agrees that, prior to its execution of the Agreement, and more specifically the Project Worksheet, it has reviewed and examined and understood all of the Contract Documents for the project. Subcontractor further represents and agrees that it has (i) reviewed and examined all of the construction plans, drawings, models, specifications, measurements, time of completion and addenda relevant to the performance of the Work; (ii) examined, inspected and investigated the location and condition of the site on which the Work is to be performed (hereinafter referred to as the “Project Site”), including power, water and other necessary facilities, and also including the subsurface conditions; (iii) knows and understands the conditions under which the Work is to be performed; (iii) determined that the Contract Documents are sufficient to enable Subcontractor to determine the Contract Sum for completion of its Work; (iv) examined and approved all lines, grade, elevations; and (v) determined that the Subcontractor’s price reflects all work necessary and incidental to provide a complete project. Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Contract Documents and information furnished by the Owner and Contractor relative to the Work for the purpose of facilitating the Work and for the discovery of errors, inconsistencies or omissions in the Contract Documents and for ascertaining if the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Contract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within two (2) days after discovery. Subcontractor shall comply with the Contractor’s instructions as to the measures to be taken. If the Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules, regulations, covenants, conditions or restrictions without notice to the Contractor and advance approval by appropriate authorities, including the Contractor, the Subcontractor shall assume appropriate responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Subcontractor agrees that in relation to its examination, inspection and investigation of the Project Site, Subcontractor will correlate the site observations with the Contract Documents and report any discrepancies between its site observations and the Contract Documents. Subcontractor will promptly submit shop drawings, samples, templates, and material lists, and will take any action needed to provide for anchorage, embedded items, long lead-time orders, and the like. Subcontractor will check the drawings and advise Contractor in writing if any item to be furnished by Subcontractor will not fit the space provided, or if any special sequence of construction is necessary. Subcontractor will maintain as-built drawings up to date at all times. By submitting any process or item of equipment or material as an “equal,” Subcontractor guarantees to Contractor and Owner that the item can be installed without hindrance to other trades and will perform in a satisfactory manner as to capacity, serviceability, ease of maintenance and repair, function, and aesthetics. Subcontractor shall be responsible to install any manufactured items in accordance with the manufacturer’s recommendations and notify superintendent of irregularities in prefabricated components which are unacceptable to building tolerances. Subcontractor is entering into this Subcontract on the basis of Subcontractor’s own examination, inspection, review and investigation of the Contract Documents and the Project Site and is not relying on the opinion or representation of Contractor except that which have been expressly provided to Subcontractor in writing. Accordingly, no allowance in the form of any additional compensation including, without limitation, any adjustment to the Contract Sum, is to

be made by reason of any error on the part of Subcontractor with respect to the Contract Documents or the Project Site, including, without limitation, the discovery of any facts or circumstances either relating to the Contract Documents or the Project Site which are at variance from that which Subcontractor believed to be in existence at the time of Subcontractor's execution of this Subcontract. Information provided by the Contractor regarding the Project Site or Contract Documents is believed by Contractor to be reasonably correct. However, Contractor does not warrant either the completeness or the accuracy of such information, and Subcontractor understands and agrees that it is Subcontractor's sole responsibility to verify all such information independently, and to make such examination of the Contract Documents and of the Project Site as shall be necessary for Subcontractor to satisfy itself with respect to the conditions to be encountered during the performance of the Work. Subcontractor shall check the correctness of all contiguous work.

5. **Subcontractor and Prime Contract.** Subcontractor assumes toward Contractor all obligations and responsibilities, including warranties, which Contractor assumes toward the Owner, Architect, and others named in the Contract Documents. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor, which the Owner, under the Contract Documents, has against the Contractor. Subcontractor accepts mutual responsibility, along with Contractor and all other Subcontractors on the project, for the prompt, efficient, and coordinated progress of the work.
6. **Workmanship.** Subcontractor represents and warrants that it possesses all of the expertise, knowledge and skill necessary to perform all of the Work in a careful and workmanlike manner. The Subcontractor agrees to furnish its best skill and judgment in the performance of the Work and to cooperate with the Contractor so that the Contractor may fulfill its obligations to the Owner. All materials used in the Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work and shall be new and of the most suitable grade of their respective kinds for that purpose. Subcontractor represents, warrants and guarantees to Contractor that the workmanship of the Work, all materials and equipment furnished for the Work, and all other aspects regarding the Work shall be in strict conformance with the Contract Documents, the federal, state and local codes, ordinances and regulations, be of the finest quality, and be free from faults and defects of design, material and workmanship for the period called for in the other Contract Documents, or if no warranty is called for in the other Contract Documents, then for a period of six (6) years from the date of either substantial completion or the initial occupancy or use of the particular structure or improvement upon which Subcontractor's Work was performed, whichever is later, unless a longer period is required by common law, any state or federal statutory warranties or by governmental or other agencies, or as per industry standard, in which case, the period of warranty shall be for such longer period, provided however, that the period of time shall not be less than the time for which Contractor is responsible to Owner, architect, or any other person or party in relation to the project of which Subcontractor's Work is a part. Subcontractor's responsibility for latent defects shall not be less than the foregoing period and shall extend beyond the warranty/guarantee period to the maximum extent as the applicable statute of limitations and repose permit. These warranties and guarantees shall be in addition to and not in limitation of any other warranty or remedy required by the Contract Documents or allowed by law. If Subcontractor's breach of this provision or any provision of this Agreement results in damage or injury to property or person or results in damage or destruction of completed or partially completed work of the Owner, the Contractor or any separate contractors or subcontractors, the Subcontractor shall be responsible for all damages arising out of or relating in any way to the damage or injury to person or property and, if applicable, the cost of correcting such destroyed or damaged property. If Subcontractor's correction or removal of Work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors or subcontractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged construction. Notification of the need for warranty work shall be either written or verbal from Contractor (at the sole discretion of Contractor's designated representative) or the general contractor or owner of any part of the Project. Except as hereinafter provided, all non-emergency warranty work shall be responded to within three (3) business days of notification and shall be completed within three (3) business days after commencement of the warranty work. If such work is not responded to within three (3) business days of notification and if such work is not completed within three (3) business days of commencement and/or finish such work, or alternatively to commence and finish such warranty work itself, Contractor shall have the right, but not the obligation, to take the necessary steps to complete said warranty work and Back charge Subcontractor for all amounts expended by Contractor in completing such warranty service. In the event that inadequate sums remain in the Contract Sum for any subcontract, Subcontractor shall repay Contractor from its own funds forthwith upon demand. Emergency service requests are to be handled immediately. Response time for emergency items shall not exceed five (5) hours. An "emergency" is defined as an event or situation that creates imminent threat of damage to person or property or any part of the project, or results in an unsafe condition due to a defect. Contractor's designated representative shall have the final decision on classification of emergencies. In addition, all subcontractors for electrical or plumbing work shall be required to be reachable by an emergency telephone number on a 24-hour per day, 365-day per year basis. If any complaint is not satisfactorily serviced and completed within the times specified above, Contractor shall have the right, but not the obligation, to take the necessary steps to complete said warranty work and Back charge Subcontractor for all amounts expended by Contractor in completing such warranty service. In the event that inadequate sums remain in the Contract Sum for any subcontract, Subcontractor shall repay Contractor from its own funds forthwith upon demand. The remedies provided in this Paragraph shall not be restrictive but shall be cumulative and in addition to all other remedies of Contractor hereunder and under Utah law, including all laws related to latent defects or fraud. If Contractor deems it more expedient to correct any of the Work covered by this warranty itself, a Back charge may be made

pursuant to the Paragraph on Back charges herein. This provision shall be binding upon the successors and assigns of Subcontractor and shall benefit the successors and assigns of the Contractor and shall survive termination of this Subcontract.

7. **Warranty, Customer Service.** Within ten (10) days after execution of this Subcontract, Subcontractor shall provide to Contractor a copy of any warranties covering a "consumer product" to be installed by Subcontractor, as that term is used in the Magnuson-moss Warranty Federal Trade Commission Improvement Act, 15 U S C Section 2301, et seq., and the regulations promulgated thereunder. Subcontractor acknowledges and agrees that Contractor shall have the right to assign such consumer product warranties to the owner or the buyer of any part of the Project. Subcontractor agrees to satisfy its warranty obligations upon receipt of written notice from Contractor or such buyers requiring same without cost to Contractor.
8. **Additional Responsibilities of Subcontractor.** Subcontractor, in addition to the other items specified in the Contract Documents, shall, at its own cost and expense, do the following:
 - a. Subcontractor's Responsibility for Actions of Its Subcontractor and Others. Subcontractor shall be fully responsible to Contractor and Owner for all acts and omissions of Subcontractor's subcontractors and suppliers, including the employees and agents of each of them. Subcontractor shall at all times enforce strict discipline and good order among its employees and the employees of any subcontractor of any tier.
 - b. Duty to Keep Premises Clean. Subcontractor shall at all times keep the inside and outside of the premises clean and free from the accumulation of excess material, waste materials, unsafe materials, or rubbish arising out of the Work, and further agrees to do daily cleanup of all waste and trash generated by Subcontractor during the course of performing the Work. Upon completion of any unit of Work, and upon final completion of the Work, Subcontractor shall remove all of its plans, tools, materials and other articles from the premises and shall remove from the premises all hazardous materials, temporary structures, and waste incident to Subcontractor's operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of the Work. If Subcontractor is not performing its duties under this subparagraph to the satisfaction of Contractor, Contractor may, after giving Subcontractor twelve (12) hours' notice, perform Subcontractor's duties imposed by this subparagraph and Subcontractor hereby authorizes Contractor to back charge Subcontractor for the expense thereof, plus reasonable overhead. If sufficient money is not left owing Subcontractor under this Agreement to completely compensate Contractor for performing Subcontractor's clean-up duties, Subcontractor hereby further agrees to pay the amount left owing to Contractor forthwith.
 - c. Permits, licenses, fees, taxes and other expenses. Subcontractor shall secure, pay for and show proof of all permits, fees, licenses, inspections, etc. necessary for the execution and completion of its Work hereunder. Subcontractor agrees that all sales taxes, federal taxes, or any and all other taxes affecting the Work (including federal and state social security taxes and income taxes withheld from wages), and any or all sums paid, or to be paid, to union trust funds and cooperative committees have been included in the Contract Sum and will be paid by the Subcontractor. Further, as part of the Work and the Contract Sum, Subcontractor shall, among other things, (a) pay all transportation, storage and freight costs of labor, materials and equipment and (b) cause all temporary structures, scaffolds, lights, utilities, hoists, fuel, expendable supplies and other facilities (including all utilities, power, water, etc.) of every type and description, required for the execution of the Work to be provided without additional charge to Contractor unless otherwise agreed to in writing by Contractor. Subcontractor shall bear all expenses associated with tests, inspections and approvals necessary for the execution and completion of its Work hereunder or required of the Subcontractor by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor and Owner. Required certificates of testing, approval or inspection shall be secured by the Subcontractor and promptly delivered to the Contractor. Subcontractor shall give all notices and comply with all federal, state and local laws ordinances, rules, regulations, standards and orders (collectively, "Laws") bearing on the performance of the work, including but not limited to, compliance with Employee Retirement Income Security Act of 1977 ("ERISA"), (including not incurring any material accumulated funding deficiency within the meaning of ERISA or incurring any material liability to the Pension Benefit Guaranty Corporation established pursuant to ERISA) or otherwise, and shall maintain suitable forms, books, and records. Subcontractor shall, at its own expense, promptly furnish evidence, including certified copies of payrolls, of compliance with any of the foregoing as Contractor may require. Subcontractor shall comply with the immigration Control and Legalization Amendments Act of 1986. Subcontractor warrants that all labor done and any and all materials furnished by Subcontractor will meet or exceed FHA minimum standard, VA requirements if applicable and ADA requirements. Subcontractor shall secure and pay for all permits and governmental fees, taxes, licenses and inspections necessary for the proper execution and completion of the Work. Subcontractor shall have full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance, old age retirement benefits, life pensions, annuities, subsistence, health and welfare, vacation, holidays, apprenticeship, or other fringe benefits or other payments to employee funds which are now or may hereafter be imposed or required by the United States or any state or labor agreement, whether measured by the wages, salaries, or remuneration paid to, or number of hours worked by persons employed by Subcontractor or otherwise, for the Work to be performed hereunder. Subcontractor's price will not be augmented by any sums related to the foregoing. Subcontractor hereby represents and warrants that he presently holds a valid State Contractor's licenses and certificates necessary to perform this Contract, and that he will continue to hold such throughout the performance of the Contract. Subcontractor further represents and warrants that his contractor's license limit is equal to or greater than the Contract Sum and that he will maintain said limit throughout performance of the Contract.

- d. Subcontractor's license; Compliance with Laws. Subcontractor shall possess and show proof of a current Contractor's license for the state in which the work of improvement is located and comply with all applicable federal, state and local laws and regulations including, but not limited to all applicable federal, state and local taxes/duties, social security, environmental laws, employment laws, health laws, unemployment compensation acts and Workers' Compensation laws. Subcontractor will comply with all applicable Contract Document requirements, statutes, laws and regulations regarding equal employment opportunity, affirmative action, minority employment, employment of women, minority contracting, and the like. During the performance of this Subcontract, Subcontractor agrees to not discriminate against any employee because of race, color, religion, sex or national origin as outlined in Employment Discrimination Statutes; Equal Pay Act of 1963, 29 USC Sec. 206(d); Title 7 of the Civil Rights Act of 1964, 42 USC Sec 2000e; Age Discrimination in Employment Act of 1967, 29 USC Sec. 623; rehabilitation Act of 1973, 29 USC Sec. 793 and 794; or any successor statutes or laws.
- e. Subcontractor's Submittals. Subcontractor shall promptly submit for approval to the Contractor all shop drawings, installation instructions, data, samples and similar submittals required to perform Subcontractor's Work or required by the Contract Documents, in order to perform Subcontractor's Work efficiently, expeditiously and with reasonable promptness and in such sequence so as to cause no delay in its Work or in the work of others. Contractor reserves the right to withhold payment to Subcontractor until all shop drawings, data, samples and similar submittals are received. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Contract Documents unless express written approval is obtained from the Contractor and Owner. If the Contract Documents do not contain submittal requirements pertaining to the Work, the Subcontractor agrees upon request to submit in a timely fashion to the Contractor for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, Owner or Architect.
- f. Downstream Compliance. Subcontractor shall ensure that all agreements it enters into for performance of its Work hereunder do obligate its subcontractors and suppliers to comply with all terms of the Contract Documents, including warranties and scheduling/time of performance, and Subcontractor shall ensure that its material suppliers and subcontractors adhere to all terms of all Contract Documents and that they order and provide materials on time so as to enable timely performance of all Subcontractor's Work hereunder.
- g. Coordination of Scheduling. Subcontractor shall cooperate and coordinate scheduling with Owner's and Contractor's forces and other subcontractors whose work might impact Subcontractor's Work. The Subcontractor shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work and any and all testing, approvals and inspections to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors or Owner's own forces. Subcontractor shall not claim or be entitled to receive any compensation or damages because of failure of Owner, Architect, or Contractor or other Subcontractors, to have related portions of the work completed in time for the Work of this Subcontractor to proceed.
- h. Conflicts. Subcontractor shall advise Contractor of potential future or actual conflicts between the Subcontractor's work and that of the Contractor, other subcontractors or the Owner's forces as soon as they become apparent and in any event before such conflicts result in any delay in the completion of the Project. Subcontractor shall notify Contractor, in writing, of any materials or systems shown in the Contract Documents which Subcontractor believes are incorrect, inconsistent or inappropriate for the intended purposes or which would cause Subcontractor to object to furnish any warranty required by the Contract Documents. Upon notification of Contractor, Subcontractor shall not proceed with any work or order any materials impacted by such belief prior to receiving from Contractor a written Change Order or other directive. Subcontractor agrees that it shall be responsible for any and all additional costs resulting from its failure to notify Contractor in accordance herewith.
- i. Safety Precautions. Subcontractor shall take all appropriate safety precautions with respect to the performance of this Subcontract and to protect employees and other persons, materials and equipment and all property and structures at the Project Site and adjacent areas; comply with all applicable health and safety policies initiated by Contractor; comply with all applicable laws, ordinances, rules, regulations and orders of any governing public authority for the safety of persons and property, including the Occupational Safety and Health Act. Subcontractor shall be responsible to immediately report to Contractor, in writing, and immediately remedy any safety hazards on the Project Site and to immediately take all necessary precautions to protect any person on the Project Site. Subcontractor's Project Site Superintendent shall attend all safety meetings. Contractor may require Subcontractor to submit a safety program and an appropriate Haz-Mat manual prior to entry onto the Project Site. Damage or loss that may arise from the performance of the Work shall be promptly remedied by the Subcontractor.
- j. Injury Prevention; Indemnification. Subcontractor shall be diligent in ensuring that all of its subcontractors and suppliers use reasonable precaution to prevent injury to person and damage to any property, real or personal, located on or near the Project Site. To the fullest extent permitted by law, Subcontractor also shall, and regardless of whether any claimant for injury or property damage is employed at the Project Site, defend and indemnify Contractor, the Architect, other consultants and the Owner and their agents and employees from any and all claims, damages, losses, suits, judgments, fines, assessments and expenses, including reasonable legal fees and costs, arising out of or, in any way, relating to the acts or omissions of Subcontractor or any of its employees, agents, suppliers or subcontractors. Such indemnification shall include but not be limited to damages for the failure to comply with OSHA or other health and safety regulations by Subcontractor or any of Subcontractor's employees, agents, suppliers or subcontractors.

- k. Hazardous Substances. Subcontractor shall notify Contractor, in writing, and in advance, of the use of any hazardous substance by the Subcontractor on the Project Site, of a type of which an employer is required by law to notify its employees are being used on the site, by providing Contractor a list of such substances and pertinent material safety data sheets. Subcontractor shall comply with all applicable federal, state or local statutes, regulations, ordinances, and judicial or governmental orders pertaining to the use of hazardous substances at the Project Site. Upon completion or termination of the Work, Subcontractor shall be responsible for removing all hazardous substances from the Project Site that result from Subcontractor's activities. "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste and material as defined by any applicable law or order.
- l. Compliance with Laws. Subcontractor shall not perform work that is contrary to applicable laws, codes, ordinances, rules or regulations. Subcontractor shall be deemed to know all applicable laws, codes, ordinances, rules, regulations, and specifications mandated by any governmental authority. If Subcontractor performs any work that is contrary to any applicable laws, codes, ordinances, rules or regulations, it shall assume the full responsibility for such, including but not limited to all costs of correction. All Work shall meet with the approval and pass inspection of the city, county, state, and federal agency where the Work is to be performed, or materials are to be furnished. In addition, if the project is a project within a national park, a government project, or a project which is subject to government oversight and required to meet certain specifications mandated by a governmental or quasi-governmental agency, Subcontractor shall perform the Work consistent with and in strict compliance with such federal specifications, laws, codes, ordinances, rules and regulations.
- m. Proper and Complete Installation of Work; Protection of Work of Others. Subcontractor shall perform, at its sole cost and expense, all digging, compacted backfilling, cutting, fitting and patching of every kind necessary to complete its Work and cause all parts to fit together properly. Subcontractor also shall perform, at its sole cost and expense, any necessary restoration work required to repair the work of another damaged by Subcontractor's Work. Subcontractor, however, shall not cut, fit, patch or otherwise alter or damage the work of any other contractor without the prior written consent of Contractor. In carrying out the Work, Subcontractor shall take all necessary precautions to protect the Work and the work of other trades from damage caused by Subcontractor's operations. In the event that Subcontractor causes damage to any Project or to the property of Contractor or others, Subcontractor shall promptly remedy such damage to the satisfaction of Contractor and any other applicable party. In the event Subcontractor fails to remedy such damage to Contractor's reasonable satisfaction within 24 hours of notice thereof from Contractor, Contractor may so remedy the damage itself and Subcontractor shall be responsible to reimburse Contractor, which may deduct the cost thereof from the Contract Sum. The Subcontractor shall be responsible for taking field dimensions, providing tests, obtaining required permits related to the Work, ordering of materials and all other actions as required to meet the Project Schedule, as may be amended from time to time by Contractor. Subcontractor shall verify field dimensions and shall check all drawings, specifications, shop drawings, and other items to ensure that they are dimensionally proper. If there are discrepancies, Subcontractor shall promptly report them to Contractor in writing. Subcontractor acknowledges that Contractor is not responsible for verifying the adequacy of the shop drawings, installation instructions or samples. Subcontractor shall be solely responsible for any additional costs that arise due to Subcontractor's failure to adequately and promptly check shop drawings and field dimensions. Where Project drawings and/or specifications are not clear or more than one detail or specification is provided for the same item or assembly, Subcontractor hereby confirms that it has included in its price, the more expensive item or assembly or the higher quantity item or assembly. Should any work be required which is not specified in the Agreement, but which is nevertheless reasonably necessary for the completion of Subcontractor's Work, such work shall be performed as fully as if it were actually described and delineated herein, at no additional cost to Contractor. Subcontractor shall be responsible for receiving, off-loading, placing and storing all its own materials and equipment required for the Project in addition to any materials supplied by Contractor for use in Subcontractor's Work. Contractor shall have no obligation to ensure or protect Subcontractor's materials or tools from theft or vandalism. Subcontractor shall assume all responsibility for insuring and/or securing and protecting its materials and tools from theft or vandalism until final acceptance by Contractor. In the event that any Subcontractor's tools or materials are lost, stolen or vandalized at any time or in the event that Subcontractor's materials are lost, stolen or vandalized at any time prior to those materials becoming a fixed part of any part of the project, Contractor shall have no responsibility for such loss, theft or vandalism and any damages caused to Subcontractor therefore shall be the sole responsibility of Subcontractor.
- n. Shoddy Work of Subcontractor or Others. Subcontractor shall not cover over, hide, or fail to report any shoddy, incomplete, inadequate, nonconforming, or otherwise inferior work, whether performed by Subcontractor or any other subcontractor or supplier, and shall immediately report such discovery, in writing, to Contractor. Subcontractor's failure to promptly report to Contractor any alleged defects in any work on or in which Subcontractor is to install its Work will be deemed an acknowledgment by Subcontractor that such other work is fit and proper for the reception, attachment, or covering by Subcontractor, and no claimed justification for alleged defects caused by any work so covered or attached will be recognized as valid or may be asserted by Subcontractor to justify any failure to perform on its part. If Subcontractor covers over, hides or fails to report any shoddy, incomplete, inadequate, nonconforming or otherwise inferior work, Subcontractor shall be responsible for any and all damages, costs, expenses, warranty work, consequential damages, or other liability arising directly or indirectly from the shoddy, incomplete, inadequate, nonconforming or otherwise inferior work and from Subcontractor's

action of covering over, hiding, or failing to report. The Subcontractor shall not proceed to install non-conforming materials and equipment without advance written approval from the Contractor.

- o. Superintendent On Site. Subcontractor shall have a Superintendent on Site at all times when the Work is being performed, who is a responsible and competent person with authority to represent the Subcontractor. Subcontractor agrees to provide full time, competent supervision of all Work performed at the project and shall inform Contractor of that person's identity. Contractor shall have the right to require Subcontractor to appoint a new supervisor if Contractor, in its sole discretion, finds the existing Subcontractor's supervisor to be unacceptable for any reason. Subcontractor acknowledges and warrants that it is not relying on any supervision by Contractor of Subcontractor's employees or Work.
- p. As Built Plans. Subcontractor agrees to furnish and deliver to Contractor a duplicate of all plans, drawings, diagrams, or applications, if any, required by any law, regulation, or ordinance as a condition for obtaining a permit. Record drawings shall be maintained on the job site and shall be marked by Subcontractor to indicate any deviations from the bid set. If Subcontractor makes any deviation from and/or changes to the plans, which requires advance written approval from the Contractor, Subcontractor agrees, as a condition precedent to payment from Contractor, to provide Contractor with a set of as-built plans showing any and all changes and/or deviations from the plans made by Subcontractor or at Subcontractor's request or direction. The record drawings shall be delivered to the Contractor at job completion. **FAILURE TO DO SO WILL DELAY**

FINAL PAYMENT.

- q. Royalties, Patents and Copyrights. The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Subcontractor and incorporated in the Work.
- r. Materials and Workmanship: Inspection and Testing. All materials used in the Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work and shall be new and of the most suitable grade of their respective kinds for the purpose. At the request of Contractor, Subcontractor shall furnish to Contractor for approval, full information, reports and/or samples concerning the materials or articles which subcontractor intends to incorporate in the Work. The materials actually used in the Work shall conform to the information or samples approved by Contractor. Should Subcontractor perform or cause to be performed any inspections or tests, said results which pertain to the Work shall be given to Contractor immediately. Except as otherwise provided herein, all material and workmanship, if not otherwise designated by the Contract Documents, shall be subject to inspection, examination and testing by Contractor at any and all times during manufacture and/or construction and at any and all places when such manufacturing and/or construction are carried on. Contractor shall have the right to reject improper or defective material or workmanship or require correction without charge to Contractor. Subcontractor shall promptly segregate and remove rejected material from the project site. Nothing contained in this Paragraph shall in any way restrict the rights of Contractor under any warranty by Subcontractor of material or workmanship.

- 9. **Changes to the Contract.** Contractor shall have the right, from time to time and without invalidating this Agreement to order changes to, additions to or deletions from the Work, the Contract Sum or the Completion Date, or any other changes in the extent and character thereof, which Contractor deems necessary for the completion of the Work (collectively referred to as "Changes in the Work" or "Additional Work") and Subcontractor hereby agrees to promptly make any and all changes in the Work as directed by Contractor. Prior to the commencement of any Changes in the Work, Subcontractor must first submit a written claim for any required adjustment to the Contract Sum, which claim for adjustment must be reasonable and equitable. Subcontractor specifically agrees that Contractor shall have no obligation to pay Subcontractor for any Changes in the Work, including any charges incurred by Subcontractor for any labor, materials, equipment or services used in connection therewith, unless such Changes in the Work are expressly covered by a written Change Order, Purchase Order or Field Order in a form issued by Contractor (collectively, an "Order" or "Change Order") signed by an authorized representative of Contractor, which executed Order was obtained by Subcontractor prior to its commencement of such Change in the Work. If Subcontractor makes any Changes in the Work without first obtaining a written Order from Contractor, such change constitutes an agreement by Subcontractor that it will not seek payment and will not be paid for that changed work even if Subcontractor claims to have received verbal direction from Contractor or any form of direction, written or otherwise, from the Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change made without written direction from Contractor. If a dispute arises between Contractor and Subcontractor about whether particular Work constitutes a Change in the Work, Subcontractor shall timely perform the disputed Work and will give written notice or claim for additional compensation within seven (7) days after such Work is commenced. Subcontractor's failure to give written notice within **seven (7) days** after commencing the disputed Work or commencing any Work which Subcontractor believes constitutes a Change in the Work, constitutes an agreement by Subcontractor that it **will not seek payment and will not be paid** for the disputed Work or Changes in the Work. If the Contractor and Subcontractor cannot agree on the terms of a Change Order, a Field Order will be issued and will be replaced by a Change Order after the price and time impacts have been agreed to. If mutual agreement is not possible, then the price and time impact shall be determined as provided in this Paragraph or in the dispute resolution paragraph of this Agreement, as determined by Contractor. In any event, Subcontractor agrees to proceed with the Work as changed when Contractor so orders in writing so as not to delay the progress of the Work. Subcontractor shall provide to the Contractor unit prices for all aspects of the Work. In addition, the Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following

items attributable to the Work and any Changes in the Work: i.) labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance; ii.) costs of materials, supplies and equipment, whether incorporated in the Work or consumed, including transportation costs; iii.) costs of renting machinery and equipment other than hand tools; iv.) costs of bond and insurance premiums, permit fees and taxes attributable to Work and changes in the Work; v.) costs of additional supervision and field office personnel services necessitated by the change. Adjustments in the Contract Sum may be determined by unit prices and the foregoing information, or by the terms of the dispute resolution paragraph, as determined by Contractor. Payment of the Contract Sum is subject to additions and deductions for approved Changes in the Work (as defined above) and subject to the other additions, if any, and deductions and back charges permitted and described elsewhere in this Agreement. Except for Changes in the Work requested by Contractor, as expressly described above, the Contract Sum shall not, under any circumstances, be increased for any reason, including but not limited to any increases in labor rates, transportation charges, costs of materials or any other change in pricing or availability of labor or materials or other similar changes, and Subcontractor agrees that, as a material part of the consideration for this Agreement and as a material inducement for Contractor's execution hereof, the Contract Sum shall not be increased through the duration of the Work, other than as provided herein.

10. **Time is of Essence; Scheduling of Work; Delays.** Time is of the essence with respect to the performance of Subcontractor's duties under this Agreement because Subcontractor's failure to commence and complete Work as and when required by Contractor may cause grave injury and damage to Contractor by virtue of increased costs for construction financing, loss of interest on invested funds, loss of sales and goodwill, extension of overhead costs, damages imposed by Owner or others, and otherwise.
- a. Notice to Proceed. Subcontractor shall be given a "Notice to Proceed" for the commencement of the Work and Subcontractor shall be prepared to commence the Work within twenty-four (24) hours of Contractor's delivery of said notice. Such notice shall be given as Contractor determines that a Project has reached the stage of construction, in accordance with the Contract Documents, where the Subcontractor's services are to be used. Subcontractor shall commence work under the Agreement for each particular project by reporting to the jobsite with sufficient workmen, supervision, equipment, tools and materials to properly and expeditiously begin the Work.
 - b. Project Schedule and Order of Performing Work. Subcontractor agrees to comply with and adhere to the Project Schedule issued, from time to time, by Contractor without delaying or hindering Contractor's work or the work of other contractors or subcontractors. This schedule shall be deemed acceptable unless Contractor is notified by Subcontractor in writing within forty-eight (48) hours of the issuance of the schedule or amended schedule. Contractor shall have complete control of the Project Site on which the Work is to be performed and shall have the right to decide the time and order in which various portions of the Work shall be installed and the relative priority of the Work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the Work of Subcontractor on the Project Site. Subcontractor acknowledges that it may have to do its Work out of sequence, or out of its desired order, to keep the Project moving as directed by Contractor.
 - c. Overtime. Contractor, if it deems necessary, may direct Subcontractor to work overtime, and if so directed Subcontractor shall work said overtime at the Subcontractor's own cost and expense. Contractor shall be the sole and absolute judge as to the sufficiency of the workmen, supplies of material, tools, and equipment furnished by Subcontractor.
 - d. Subcontractor's Liability for Not Timely Performing. Contractor and Subcontractor each recognize that in the event Subcontractor fails to timely perform the Work hereunder, Contractor will suffer substantial damages, including increased interest and carrying charges, charges from Owner, general contractor or others, administrative costs, loss of goodwill and damages to business reputation. If Subcontractor should default in performance of the Work or should otherwise commit any act which causes delay, Subcontractor shall be liable for all losses, costs, expenses, claims, causes of action, demands, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to any party because of Subcontractor's default. Subcontractor agrees that the computation of said damages is difficult to ascertain and because of this Subcontractor agrees to pay Contractor the sum of one thousand dollars (\$1,000) each (or as otherwise set forth in the Project Worksheet), per day for each day Subcontractor is in default of this provision. In addition, for each day after the date scheduled as the completion date for Subcontractor's Work, as determined by Contractor, Subcontractor agrees to pay a delay payment in an amount equal to the greater of i.) the amount set forth on the Project Worksheet for that particular project, and ii.) the amount for which Contractor may be liable to any party because of the delay. Contractor shall be entitled to offset the amount due to Subcontractor under this Agreement. If owner should assess damages for delay or liquidated damages against Contractor, Contractor will determine the proportion of fault for the delay among Contractor, Subcontractor, and all other subcontractors, and said damages will be distributed between Contractor, Subcontractor, and other subcontractors accordingly. Contractor's allocation shall be final and binding as long as it is made in good faith. In addition to distributing the damages for delay and liquidated damages that may be assessed by Owner, the Contractor will also assess the damages and expenses directly suffered by Contractor, and such damages shall be distributed among Contractor, Subcontractor, and other subcontractors according to the same principle.
 - e. Coordination of Work. Contractor and Subcontractor agree that the timely performance of the Work is essential to the coordination of the completion of the construction project. Subcontractor shall correctly measure and properly fit the Work and shall cooperate with Contractor in scheduling and performing the Work so as to avoid conflict or interference with the work of others on the Project Site. Subcontractor also agrees to prosecute the Work, and the several parts thereof at such times and in

such order as Contractor considers necessary to avoid any delay in the completion of the construction of the Project. If Subcontractor detects any design deficiency, any error in measurements or any inconsistencies or errors in the Contract Documents or the work of others on the Project, or in the sequencing of trades being utilized on the Project, or any condition which Subcontractor believes or which a reasonable person would believe to be at variance with approved plans, FHA standards, ADA standards, VA standards, or any other governmental requirements or the applicable building code, such inconsistencies or errors shall be immediately reported, in writing, to Contractor by Subcontractor. To the extent Subcontractor's Work shall be affected by the work of other trades or the Work shall affect other trades, Subcontractor agrees to cooperate fully with other tradesmen as may be necessary to ensure the complete coordination of the Project in its entirety as contemplated by the Contract Documents. Subcontractor shall coordinate the Work covered by this Agreement with that of all other contractors, subcontractors, and that of the Contractor, in a manner that will facilitate the efficient completion of the entire Work. In the event Subcontractor fails to maintain its part of the Project Schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct until the Work is restored to being in accordance with such schedule. Contractor shall have the right to decide the time and order in which various portions of the Work shall be installed and the relative priority of the Work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the Work of Subcontractor on the Project Site.

f. Extension of Time is Subcontractor's Sole Remedy for Delay. Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect, or default of Contractor or Owner, or should Subcontractor be delayed waiting for materials required by this Agreement to be furnished by Contractor, or by acts of God, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the Work shall be extended by the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim for an extension is presented in writing to Contractor within forty-eight (48) hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed for completion. To the extent permitted by law, no claims for additional compensation or damage for delays, whether caused in whole or in part by any conduct on the part of Contractor or Owner, including, but not limited to, conduct amounting to a breach of this Agreement or delays by other subcontractors, shall be asserted against nor recoverable from Contractor, and the above-mentioned **extension of time for completion shall be the sole remedy of Subcontractor.**

g. Contractor's Right to Complete. If Subcontractor should default in performance of the Work or should otherwise commit any act which causes delay to the Contractor's completion of the Project, Contractor may, after giving 24 hours written notice to Subcontractor of such breach, proceed to have the Work done in a manner expedient to Contractor and charge the cost (including any incidental expenses) thereof to Subcontractor, and Contractor shall be entitled to take possession of and use any materials, tools, equipment, plans, permits, and diagrams on the job site or intended for the Work and use the same for the performance of the Work. Subcontractor waives any claim, demand, or cause of action, against Contractor for the loss, use, misuse, abuse, or conversion of the tools, materials, equipment, plans, permits, or diagrams, taken or used by Contractor in accordance with this Paragraph. Subcontractor shall be liable for all losses, costs, expenses, liabilities, and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to any other party because of Subcontractor's default.

11. Subcontract Amount. See the project worksheet for the particular project.

12. Payment to Subcontractor. Provided Subcontractor is not in breach of this Agreement, and except as otherwise set forth in this Agreement, Contractor agrees to pay Subcontractor for the Work in the amount set forth in the project worksheet. Unless other arrangements are made, Subcontractor shall be paid as follows: Subcontractor shall submit a schedule of values covering its entire scope of Work and consistent with the Contract Sum in the Project Worksheet before submitting its first application for payment. Applications for payment must be submitted on the 1st of each month. Each application for payment must be received by the 1st of the month, shall cover only the work completed prior to the submission of the application and since the last application, shall be consistent with the Subcontractor's schedule of values. Subcontractor shall be paid by the 1st day of the month following the month for which the submittal of the application for payment is made, if same is timely and properly submitted. If an application for payment is submitted after the required deadline, it will be included by Contractor in Subcontractor's next application for payment. Contractor, however, reserves the right to increase the frequency of payments.

a. Payment Application. All applications for payment must be properly prepared and authorized pursuant to Contractor's policies and procedures. In order for an application for payment for Work to be "**properly prepared,**" all of the following must be true with respect to each application: (i) The portion of the Work thereby billed is satisfactorily complete and in conformity with the Contract Documents in the opinion of Contractor at the time of receipt of the application; (ii) Subcontractor's insurance policies, workers compensation, and bond and surety policies are in full force and effect; (iii) Neither tax, freight nor other similar charges shall be added to the invoice because the parties recognize that the Contract Sum includes all such costs; (iv) The invoice shall be accompanied by an affidavit in which Subcontractor acknowledges (a) that it has received full payment to date and (b) that all payroll costs, union benefits if applicable, material costs, equipment costs, fixture costs and indebtedness connected therewith, or incurred in the construction of the Work invoiced by Subcontractor then to date have been paid for in full. The invoice shall further be accompanied by appropriate conditional lien and labor releases from all

persons or entities who might claim, or who are entitled under the Mechanic's Lien laws to claim, liens arising out of Subcontractor's performance of the Work to date. Subcontractor understands and agrees that Subcontractor shall not be paid for Changes in the Work or Additional Work unless there is strict compliance with provisions contained in the Paragraph on Changes in the Work herein. Unless otherwise agreed in writing, payment for materials and equipment shall not be made by Contractor until such are incorporated into the Work. Within ten days after executing the project worksheet, or before commencing work on the project, whichever first occurs, Subcontractor shall deliver to Contractor the name and contact information of each of its proposed suppliers and subcontractors with whom Subcontractor may contract in relation to the Project. The Subcontractor shall notify the Contractor in writing immediately if it intends to change any subcontractor or supplier. Subcontractor shall immediately supplement said information when necessary to ensure that the information is continually accurate. Payment may be withheld by Contractor if the contact information for all subcontractors and suppliers is not current and accurate. All invoices for payment must be submitted to Contractor under this Paragraph no later than thirty (30) days after a Certificate of Occupancy, or final inspection (if no Certificate of Occupancy is provided for that type of project), has been issued or completed by the applicable municipality for the project in which the applicable portion of the Work was performed. If Work has not been invoiced prior to this date, Subcontractor hereby waives all rights to compensation for the Work performed.

- b. Payment of Retained Percentage. Contractor may withhold up to five percent (5%) of the total Contract Sum, in Contractor's sole discretion, from payments to Subcontractor as retention ("**Retained Percentage**"). Final payment and payment of the Retained Percentage will not be due until Subcontractor complies with all terms of the Contract Documents including warranties and punch-list corrections and Contractor receives all submittals, including all as-built drawings required by the Contract Documents. No progress payment made pursuant to this Paragraph prior to final completion and acceptance of the Work shall be construed as evidence of final acceptance by Contractor or of waiver or release of any claims, demands, or causes of action of or for any known or unknown, latent or patent defect or unsatisfactory workmanship and/or materials. Subcontractor's acceptance of final payment shall constitute a waiver of any and all claims it has or may have against Contractor, Owner and the Architect.
- c. Maximum Payments. Notwithstanding anything to the contrary contained herein, Contractor shall not be obligated to pay any amount to Subcontractor if such payment would render the balance in the Contract Sum then due to Subcontractor to be less than the sum of (i) the Retained Percentage plus (ii) the amount necessary for Subcontractor to complete or correct all of its then-remaining obligations for the Work. Contractor shall have no obligation to pay Subcontractor for labor, materials, equipment or services or for any Additional Work unless such Additional Work is expressly covered by a Change Order in a form issued by Contractor (collectively, an "**Order**") signed by an authorized representative of Contractor, which executed Order was obtained by Subcontractor prior to its commencement of such Additional Work.
- d. Payment to Contractor. To the extent allowed by law in the jurisdiction where the Project Site is located, payment by the Owner, the general contractor, or the party responsible, to Contractor for the Work performed by Subcontractor is an express condition precedent to payment by the Contractor to the Subcontractor. Subcontractor understands and agrees that it will be paid only after Contractor is paid for that portion of the Work for which Subcontractor is seeking payment. Subcontractor fully understands that it bears the risk of nonpayment to Contractor by the party responsible for payment. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, or the party responsible for payment, not the Contractor, for payment of Subcontractor's work. The making and acceptance of final payment to Subcontractor constitutes a waiver of any claims by Subcontractor against Contractor for compensation for extra work or for compensation or damages of any kind claimed by Subcontractor because of the activities of Contractor in connection with the project.
- e. Payment Use. Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Work through the most current period of payment before it is used for any other purpose. Upon payment by the Contractor, Subcontractor shall promptly pay its subcontractors, sub-subcontractors and suppliers the amounts to which they are entitled. Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Work.
- f. Lien Releases. Subcontractor agrees, as a condition precedent to receiving any progress payments or the Retained Percentage, that it will submit to Contractor, on forms prepared by Contractor, original releases, waiver of liens, affidavits, and such further evidence as may be required by Contractor (from Subcontractor, its subcontractors, material men, laborers, and/or suppliers as applicable) to prove that all labor, materials, equipment and services used in connection with or incorporated in the Work or any Additional Work have been paid for in full. Such waivers and releases may be made conditional upon payment as appropriate. Contractor shall have the right, but not the obligation, at all times to contact directly Subcontractor's employees, subcontractors and suppliers to ensure that such parties are being paid in a timely and complete manner by Subcontractor for labor or materials furnished for use in performing the Work. Upon retrieving payment, Subcontractor shall execute an unconditional lien release on the forms prepared by Contractor for the work performed to date. When the funds paid to Subcontractor have cleared the bank upon which the check is issued, Subcontractor shall immediately submit to Contractor an original unconditional lien release on the forms prepared by Contractor for each subcontractor and supplier contributing to the performance of the work to date. In the event Subcontractor fails to pay and discharge when due any bills for

labor, materials, equipment, services or other obligations incurred by Subcontractor in the fulfillment of this Agreement, or if at any time during the term of this Agreement, Contractor shall have evidence of any lien or any claim against the Project or Contractor as a result of Subcontractor's operations, Contractor shall, in addition to all other legal and equitable remedies, (a) be 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 cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor and/or (b) have the right to deduct, retain, and back charge Subcontractor, retain out of any payment, advance or guaranty of funds due or to become due to Subcontractor an amount sufficient to satisfy any unpaid bills and to protect and indemnify Contractor from and against any and all liability, loss, cost, damage and/or expense, (including, without limitation, attorneys' fees and expenses) arising out of or relating to any such lien or claim, until the lien or claim has been satisfied in full by Subcontractor. If Contractor makes a payment under this provision, Contractor shall have the right to charge, and Subcontractor agrees to pay, a reasonable administrative charge of 5% of the amount paid. In the event that inadequate sums remain in the Contract Sum, after any payments and/or appropriate deductions therefrom, to reimburse Contractor for any payments made, Subcontractor shall repay Contractor from its own funds forthwith upon demand. Subcontractor shall at all times defend, indemnify and save Contractor harmless against all liability for claims and liens for labor performed or materials used or furnished to be used in connection with the Work, including any costs and expenses including attorneys' fees and all incidental or consequential damages resulting to Contractor from such claims or liens.

- g. **Joint Checks.** Contractor may, in its sole and absolute discretion, issue checks jointly payable to Subcontractor and its subcontractors and/or suppliers. Subcontractor shall not negotiate said joint checks without first obtaining the endorsements of all payees and lien releases.
 - h. **Contractor's Right to Withhold Payment.** Contractor shall be entitled to withhold from Subcontractor as a back charge or otherwise, so long as permitted by the law of the jurisdiction where the Project is located, any payments due or to become due for Work previously performed, in addition to any other remedies Contractor may have, for one or more of the following reasons: (i) Subcontractor's failure to correct non-conforming or defective work; (ii) claims or liens filed against the Contractor or the Project or upon receipt of reasonable evidence that said claims or liens might be filed; (iii) A reasonable doubt exists about whether Subcontractor can complete the Work for the balance then unpaid, or about whether the Work will be completed within the time required for Subcontractor to complete the Work; (iv) Damage to Contractor and/or another subcontractor or his work; (v) Failure of Subcontractor's work to pass any official inspection or inspections; (vi) Installation or attempted installation of an item different from that specified by this Agreement, unless otherwise authorized, in writing, by Contractor; (vii) A breach by Subcontractor of its obligations under the Contract Documents; or (viii) any other ground for withholding payment allowed by law or as otherwise provided in the Contract Documents.
 - i. **Financial Ability.** In addition to the foregoing, Subcontractor agrees as a condition precedent to Contractor's obligation to make payment under this Contract to provide Contractor upon demand a sworn statement in a form satisfactory to Contractor detailing such facts as deemed necessary to Contractor to determine Subcontractor's financial condition. In the event Subcontractor fails to do so or, from the information provided Contractor determines that Subcontractor's financial condition is not adequate to assure orderly completion of the contract, Subcontractor shall provide Contractor with security of a nature and amount satisfactory to Contractor within three days of demand, therefore. Said security shall be of a nature and amount as to assure that all labor and materials necessary to perform the Contract are available throughout the course of construction.
13. **Performance and Payment Bond.** If requested by Owner or Contractor, Subcontractor shall obtain and require each of its subcontractors to obtain and furnish a performance bond and labor and material payment bond in the amount of 100% of the Contract Sum. Subcontractor's subcontractors shall furnish to Contractor their bonds no later than the day prior to execution of their subcontract with Subcontractor but in no case later than the day prior to their first entry onto the Project Site. The bonds shall conform to all laws and regulations of the jurisdiction where the Project is located and shall (i) name as obliges the Contractor, the Owner, Owner's partners and affiliates, any lenders of Owner secured by any lien or mortgage on the Project and any title insurance companies which have issued title policies to Owner or its lenders, and any other party required by Contractor; (ii) be issued by a licensed surety and in a form satisfactory to Owner; and (iii) be automatically increased, upon 30 days, to the extent the Contract Sum has been increased as provided for herein. The premium for such bond(s) shall be paid by Subcontractor. Subcontractor shall promptly furnish a copy of such bond(s) to Contractor and to any other person/entity appearing to be a potential beneficiary of such bond(s) within five days after executing this Agreement.
14. **Uncovering Work.** The Contractor may direct the Subcontractor to uncover portions of the subcontract work for inspection at any time for any reason. The Subcontractor is required to uncover such work, at Subcontractor's own expense, whether or not the work had been inspected prior to it being covered and shall do so as directed and within the time prescribed by Contractor. Subcontractor shall restore the uncovered work to its original condition or restore the uncovered work so as to make it conform to the Contract Documents, at the Subcontractor's own expense and shall do so as directed and within the time prescribed by Contractor.
15. **Indemnification.** With the exception that this Paragraph shall in no event be construed to require indemnification by Subcontractor to an extent prohibited by the laws of the state where the Project is located, and without in any manner limiting Contractor's rights and remedies in the event of a breach of this Agreement, Subcontractor agrees to indemnify, defend (with legal counsel approved by Contractor) protect and hold harmless Contractor and Contractor's officers, partners, designees, directors,

shareholders, consultants, predecessors, successors, assigns, agents, representatives, employees, attorneys, divisions, affiliates, parent and subsidiary companies, and each of them (individually, "Indemnified Party" and collectively, "Indemnities" or "Indemnified Parties") for, from and against any and all claims (including, without limitation, claims for bodily injury, death, damage to property and/or patent infringement), demands, obligations, suits, losses, fines, penalties, causes of action, liabilities, judgments, settlements, losses, costs, inspections, re-inspections, damages and/or expenses in law or equity, contract or tort, (including, without limitation, attorneys' fees, in-house legal fees, professional, expert and consultant fees, Contractor's general and administrative expenses, investigative costs, disbursements and court costs, postage costs, document copying costs, telecopy costs and any and all other costs and expenses) (collectively, "Defense Expenses") of every kind and nature whatsoever (individually, a "Claim", collectively, "Claims") that in any way may arise out of or in any manner relate (directly or indirectly) to this Agreement or any Work performed or services provided under this Agreement (including, without limitation, defects in workmanship or materials and/or design defects (if the design originated with Subcontractor) or Subcontractor's presence or activities conducted on the Project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Subcontractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them), or to Subcontractor's breach of this Agreement, the Subcontractor's safety violations, the Subcontractor's failure to perform the reviews, comparisons and disclosures required in this Agreement, the Subcontractor's installation of non-conforming items, the Work hereunder or any other work performed or materials supplied by or on behalf of Subcontractor at or on the Project Site, or any negligent act or omission of the Subcontractor or anyone directly employed by him or anyone performing services related to the Work, or anyone for whose acts Subcontractor may be liable, regardless of whether the injury or damage is caused in whole or in part by any act or omission to act (including liability imposed without fault or on the basis of strict liability), active or passive negligence, or willful misconduct by Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, regardless of the fault or negligence by Subcontractor or those for whom Subcontractor is liable. THIS INDEMNIFICATION OBLIGATION COVERS, WITHOUT LIMITATION, ALL CLAIMS that in any way arise out of or relate to: (A) personal injury, bodily injury or death (including, without limitation, emotional injury, physical injury, sickness, disease or death to any person, including but not limited to, employees of Subcontractor); and (B) defects in or damage to property of any kind whatsoever, including, without limitation, loss of use, enjoyment or occupancy thereof, or violation of building codes and/or laws. The indemnification, defense and hold harmless obligations of Subcontractor under this Paragraph, and elsewhere in this Agreement or the Exhibits hereto (sometimes collectively, the "Indemnification Obligations") shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which Subcontractor is required to carry under this Agreement. The Indemnification Obligations shall survive the expiration or earlier termination of this Agreement, and shall continue until the last to occur of: (i) the last day permitted by law for the filing of any Claims as to which the Indemnification Obligations may apply; or (ii) the date on which all Claims to which the Indemnification Obligations may apply are fully and finally resolved either by way of settlement or judgment and regardless of whether they are paid or remain unpaid by Subcontractor. Notwithstanding the foregoing, this Paragraph shall in no event be construed to limit Indemnities' rights and remedies in the event of a breach of this Agreement. Further, Indemnities' right to seek equitable indemnity or contribution from Subcontractor in no way shall be diminished or precluded by anything in this Agreement. Moreover, should Contractor be forced to institute a proceeding to establish said duty to indemnify, Contractor shall also be entitled to recover its actual attorneys' fees and costs incurred in establishing said duty.

16. **Duty to Defend.** The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Subcontractor. Such defense obligation shall arise immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Subcontractor. Payment by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified party's rights to indemnification hereunder. Subcontractor's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations and/or repose, or until any pending case is concluded, including appeals, whichever is later. Subcontractor's liability for indemnification hereunder is in addition to any liability Subcontractor may have to Contractor for a breach by Subcontractor of any of the provisions of the Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Subcontract be construed to limit Subcontractor's indemnification obligation or their liability hereunder. Moreover, should Contractor be forced to institute a proceeding to establish said duty to defend, Contractor shall also be entitled to recover its actual attorneys' fees and costs incurred in establishing said duty.
17. **Insurance.**
 - a. **General.** Prior to commencing the Work, and as a condition precedent to Contractor's obligations under this Agreement, Subcontractor must furnish and thereafter maintain insurance as set forth herein and furnish certificates satisfactory to Contractor evidencing compliance with the terms of this Agreement. Generally, the insurance requirements for each Project will be set forth in the Contract Documents for the specific Project. Subcontractor agrees to comply with the insurance requirements in the Contract Documents, as long as the insurance requirements in the Contract Documents are greater than the insurance coverage set forth in this Agreement. If the insurance requirements in this Agreement are greater than the insurance

coverage requirements in the Contract Documents, then Subcontractor shall obtain at least the insurance coverages set forth below. Subcontractor understands that the responsibility and assumption of liability may be beyond the scope of the limits and coverage of Subcontractor's insurance and Subcontractor assumes the risk thereof. Upon request by Contractor, Subcontractor shall produce the entirety of said insurance policies. No acceptance of insurance certificates by Contractor shall in any way limit or relieve Subcontractor of its duties and responsibilities under this Agreement. All policies shall include endorsements providing thirty (30) days written notice to Contractor in the event of cancellation.

b. Insurance Required. Subcontractor shall maintain at its sole cost and expense and with insurers rated at least A- by AM Best, during the entire term of this Agreement and for so long as required in the Contract Documents insurance that will protect it, and the additional insured required herein, from the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants, suppliers, subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including, but not limited to, the following insurance. In the event the Contract Documents require higher or additional coverages than stated herein, then Subcontractor agrees to provide such higher and additional coverages as are required in the Contract Documents.

i. *Worker's Compensation Insurance.* Subcontractor agrees to provide statutory Worker's Compensation Insurance and employers liability with limits of \$500,000 for Bodily Injury by Accident/Each Accident, \$500,000 Bodily Injury by Disease/Policy Limit, and \$500,000 Bodily Injury by Disease/Each Employee. The policy shall contain an endorsement providing a waiver of subrogation in favor of Contractor. If required, any premiums charged to Contractor will be deducted from the Contract Sum, including a reasonable administration fee.

ii. *General Liability Insurance.* Subcontractor agrees to provide General Liability Insurance, with limits of at least \$1,000,000 per occurrence and an aggregate limit of at least \$2,000,000, consisting of property damage coverage, products liability coverage and contractual liability expressly covering, without limitation, all of Subcontractor's obligations, including, but not limited to, the following: premises/operations, products/completed operations, work done by subcontractors, blanket contractual liability, personal injury, mobile equipment liability. General Liability coverage shall be written on an occurrence basis rather than on a claims-made basis. The following coverages shall be included:

- Subcontractors policy shall be primary and non-contributory to any insurance of the Contractor or any other additional insured.
- A waiver of subrogation in favor of Contractor shall be included.
- Subcontractor agrees to provide General Liability of \$1,000,000 each occurrence, \$2,000,000 Products/Completed Operations Aggregate, \$2,000,000 General Aggregate, and \$1,000,000 Personal and Advertising Injury Limit for the full term of the statute of repose and or limitation.
- This policy shall also be endorsed to include the per project aggregate limit.
- General Liability Insurance shall be at least as broad as ISO "Occurrence" Form CG 0001
- Subcontractor will provide an endorsement and certificate of insurance identifying Contractor and Owner as an additional insured. The additional insured form must be as broad in scope of coverage as the ISO CG20 10 1001 and CG2037 1001 or its equivalent.

iii. *Automobile Liability Insurance.* Subcontractor agrees to provide Automobile Liability coverage for all owned motor vehicles including non-owned, hired or borrowed automobiles in the amount of \$2,000,000 minimum limits per occurrence. Subcontractor shall provide an endorsement naming Contractor, and Owner as additional insureds.

iv. *Professional Errors and Omissions.* At Contractor's option, Subcontractor agrees to provide Professional Errors and Omissions in the amount of \$1,000,000 per occurrence and aggregate.

v. *Excess Liability Umbrella Coverage.* At Contractor's option, Subcontractor agrees to provide Excess Liability Umbrella coverage in the amount of \$2,000,000.

vi. *Builder's Risk Insurance.* Subcontractor agrees to provide Builder's Risk Insurance. All Work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to a Project shall be at risk of Subcontractor exclusively until the completed Work is accepted by Contractor. Contractor shall have no obligation to insure or protect Subcontractor's materials or tools from theft or vandalism. Subcontractor shall assume all responsibility for insuring and/or securing and protecting its materials and tools from theft or vandalism until final acceptance by Contractor. In the event any of Subcontractor's materials or tools are lost, stolen or vandalized at any time prior to those materials becoming a fixed part of the Project and final acceptance by Contractor, Contractor shall have no responsibility for such loss, theft or vandalism and any damages caused to Subcontractor therefore shall be the sole responsibility of Subcontractor. Subcontractor is responsible for any damage due to transport of material to and from the Project Site, and any associated damages (i.e., should equipment fail or damage building or material in any way, etc.). Subcontractor is liable for all cost of repair and/or replacement or any damage to walls, structure or materials due to wind, rain, snow or acts of vandalism. Any tools utilized in the construction project shall be solely the responsibility of the Subcontractor using such.

c. Subcontractor's Failure to Provide Insurance. A certificate and endorsement in a form acceptable to Contractor demonstrating compliance with the above insurance requirements (or, at Contractor's request, certified copies of

Subcontractor's actual policies) shall be delivered to Contractor before Subcontractor performs any work at or prepares or delivers material to the Project. Subcontractor shall maintain all of the above insurance coverage in force until the project's completion. Subcontractor shall maintain the Products and Completed Operations Liability Coverage, including the required endorsements, in force until expiration of the last applicable statute of limitation and/or repose relating to construction defects pursuant to Utah Law or the applicable law to the causes of action and claims, or such longer period as the Contract Documents may require. If Subcontractor fails to purchase or maintain the insurance specified in this Paragraph, Contractor shall have the right, but not the obligation, to purchase such insurance on Subcontractor's behalf and at Subcontractor's cost. If Contractor makes a payment under this provision, Contractor has the right to deduct and retain out of any payment, advance or guaranty of funds due or to become due to Subcontractor, the amount of the payment plus a reasonable administrative charge of 5% of the amount paid. Subcontractor agrees that in the event it does not continually provide the insurance required under this Agreement, it will reimburse Contractor, Owner and Architect and their insurers for any and all costs of furnishing such insurance and further reimburse Contractor, Owner and Architect for all judgments, settlements, costs, attorneys' fees, payments or expenses which would have been covered by said insurance had the terms of this Agreement been performed. Subcontractor shall require that each of its subcontractors, suppliers and/or materialmen also separately maintain all insurance coverages the Subcontractor is required to maintain in this Agreement.

d. **Insufficient Insurance.** Damage or loss not insured under property insurance which may arise from the performance of the Work to the extent of the negligence attributed to such acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor.

e. **Notice to Contractor.** The policies required herein shall contain a provision that coverage will not be cancelled or not renewed until written notice has been given to Contractor at least thirty (30) days prior to cancellation or nonrenewal.

18. **Default.** If Subcontractor, at any time, (i) fails to supply supervision, properly skilled workers and proper materials, or fails to properly and diligently prosecute the Work in a timely manner, fails to promptly correct all work performed under this Agreement which proves to be defective in workmanship or materials at any time after commencement of the work and within a period of six years from the date of Subcontractor's completion of the Work or for a longer period of time as may be required in the Contract Documents for the Project or applicable to Contractor, or fails to make prompt payment to its workers, subcontractors, materialmen, laborers, or suppliers, or fails to perform or provide adequate quantities of labor or material to meet schedules or otherwise to perform any term, covenant, or condition contained in the Contract Documents, including but not limited to clean-up, and (ii) fails, within 24 hours after notification from Contractor to commence and continue satisfactory correction of such default with diligence and promptness, the Contractor, in addition to and without any prejudice to any other rights or remedies it may have at law, in equity or under the Contract Documents, and without terminating this Agreement shall have the right to any or all of the following remedies: (a) Supply such workers and quantity of materials, equipment, and other facilities (including all utilities, power, water, etc.) as Contractor deems necessary for the orderly progress of or completion of the Work or any part thereof which Subcontractor has failed to complete or perform, and charge the costs to Subcontractor, including Contractor's overhead at fifteen percent (15%), profit, and actual attorneys' fees and costs incurred as a result of Subcontractor's failure of performance; (b) contract with other subcontractors to perform such part of the Work as Contractor shall determine will provide the most expeditious completion of the Work and charge the cost to Subcontractor, including costs which exceed the unpaid Contract Sum; (c) withhold payment of any monies due, or to become due, to Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor; (d) use any of the materials, implements, equipment, appliances, or tools furnished by or belonging to Subcontractor to complete the Work without any compensation being owed to Subcontractor for such use; and/or (e) perform the obligations imposed upon Subcontractor by this Agreement. In the event of an emergency affecting the safety of persons or property, Contractor may commence the correction of the default, without first giving notice.

19. **Correction.** Subcontractor shall promptly correct all work performed under this Agreement which proves to be defective in workmanship or materials at any time after commencement of the work and within a period of six years from the date of Subcontractor's completion of the subcontract work, or for a longer period of time as may be required in the Contract Documents for the Project or imposed upon Contractor, or as may be provided in an applicable statute of limitations, whichever is longer. If the Subcontractor's correction or removal of subcontract work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors or subcontractors, Subcontractor shall be responsible for the cost of correcting such destroyed or damaged construction. In addition to the foregoing, if the Owner or Contractor rejects the Work or the Work is not in conformance with the Contract Documents, the Subcontractor shall promptly correct the Work whether it had been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Work, any additional testing, inspections, and compensation for services and expenses of the Owner and Contractor, or any other party made necessary by the defective Work. If the Subcontractor fails to correct defective or nonconforming Work within a reasonable time after receipt of notice from the Contractor, the Contractor may correct such Work.

20. **Punch List.** Throughout the course of construction, Contractor may from time to time provide Subcontractor with a punch list of areas Contractor believes are not suitable. Subcontractor shall perform all punch list work as directed by Contractor, such lists are guidelines only, and are not conclusive regarding the non-existence of other work required to be performed. Subcontractor acknowledges that the failure of Contractor to list a particular item on a punch list shall not be construed as an admission that said

item was completed in a workmanlike manner. In the event that Subcontractor fails to repair or complete any item on any punch list to the satisfaction of Contractor, Contractor shall be empowered to employ such other company or person as it deems appropriate to complete or repair the item at Subcontractor's expense. Prior to doing so, Contractor shall first give Subcontractor the opportunity to do so within one (1) day from the date of issuance unless it appears that the repair pertains to work outside the scope of the subcontractor's license or that the delay which would be incurred in allowing Subcontractor to complete or repair the item could cause additional harm.

21. **Back charge.** Contractor shall have the right to charge back to Subcontractor all sums paid by Contractor on behalf of Subcontractor and as set forth in this Agreement (a "Back charge"). Subcontractor acknowledges that Contractor may, at its sole discretion, add to any Back charges assessed under the terms of the Agreement an administrative charge in an amount equal to fifteen percent (15%) of each such Back charge and Subcontractor agrees to pay such administrative charge to Contractor concurrently with the payment of such Back charge. If Back charges are identified by Contractor after Contractor has paid the Retained Percentage, Contractor shall have the right to apply such Back charges to amounts owed to Subcontractor under other subcontracts with Contractor for any other work on the Project or any other projects of Contractor.
22. **Breach of One Contract is Breach of All.** Subcontractor and Contractor acknowledge that during its performance of the Work hereunder, Subcontractor may also be under contract with Contractor for work at Contractor's other projects pursuant to a separate project worksheet or separate agreement. Should one or more contracts now or hereafter exist between the parties hereto or with any affiliated corporation or company of Contractor, concerning any project that is the subject of an agreement, then a breach by the Subcontractor of any contract may, at the sole option of the Contractor, be considered a breach of any or all contracts. In such event, Contractor may terminate any or all of the contracts as breached, it may withhold monies due or to become due on any such contracts and apply the same toward payment of any damages suffered on that or any other contract.
23. **Suspension and Termination.**
 - a. **Suspension.** Contractor may, for its convenience or by direction, suspend all or part of the Work. Upon service of written notice to Subcontractor, Subcontractor shall suspend its Work to the extent specified and shall place no further orders and perform no other work except as permitted by Contractor's notice of suspension. During the period of suspension, Subcontractor agrees to care for all Work, materials and equipment at the Project Site or at storage areas under its responsibility. All changes to the Contract Sum, if any, and changes to the time for performance, if any, that is requested by the Subcontractor due to the suspension shall be addressed as provided for in the Paragraph on Changes to the Contract herein.
 - b. **Termination for Convenience.** Contractor may, at any time and for any reason, or no reason, terminate or modify Subcontractor's services and the Work, and the timing of the Work, at Contractor's sole convenience. Cancellation or modification shall be by service of written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work. Subcontractor shall thereafter do only such Work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the Project Site or in transit thereto. Subcontractor shall make every reasonable effort to discontinue its Work and to procure cancellation or modification of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. If this Agreement is terminated for convenience, Subcontractor shall be entitled only to payment for the Work performed to date and completed in conformity with the Contract Documents minus any payments made to Subcontractor prior to the date of the termination and all applicable Back charges. In the event no agreement can be reached concerning the terms of the Subcontractor's compensation, the matter will be resolved in accordance with the provisions of the Paragraph on Dispute Resolution of this Agreement.
 - c. **Termination for Cause.** If Subcontractor fails to perform any term, covenant or condition contained in this Agreement, or fails to commence and satisfactorily continue correction of a default within 24 hours after notification is provided by Contractor, if it is the kind of default that can be cured, Contractor may issue a written notice of termination and terminate all or part of this Agreement immediately. If the default is of the type that cannot be cured by Subcontractor, this Agreement may be terminated immediately upon notice to the Subcontractor. Upon termination for cause, Contractor may take possession of all Subcontractor's materials, equipment, implements, appliances or tools furnished by or belonging to Subcontractor to complete the Work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor reasonably deems necessary to maintain the orderly progress of the Work. In such case, Subcontractor shall be entitled to no further payment until the balance of the Work has been completed. At such time, in addition to all other legal and equitable remedies available to Contractor, all such costs incurred by Contractor in performing the Work, including a markup of fifteen (15%) percent for overhead and profit on such expenses, plus actual attorneys' fees, shall be deducted from any monies due or to become due Subcontractor and Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Contract Sum. If Contractor's termination for cause is later determined to have been improper, the termination automatically shall be converted to a termination for convenience and Subcontractor shall be limited in its recovery to the compensation provided for in the Termination for Convenience clause.

- d. Damages. Subcontractor shall not be entitled to damages or compensation for suspension or termination as provided herein.
24. Dispute Resolution.
- a. Disputes Between Contractor and Owner /Architect Involving Subcontractor's Work. In the case of disputes between the Contractor and any other party which arise from or relate to the Subcontractor's Work, Subcontractor agrees to settle such dispute in the manner determined by Contractor, including in the manner provided by the Contract Documents between Contractor and Owner. Subcontractor consents to be joined, at Contractor's option, in any arbitration, mediation or other dispute resolution proceeding that involves its Work. Subcontractor agrees to pay a proportionate share of the fees and costs incurred by Contractor in any dispute resolution proceeding involving the performance or non-performance of Subcontractor's Work. These fees shall include, but not be limited to, those incurred in connection with the retention of experts, consultants and attorneys.
- b. All other Claims and Disputes Involving Contractor and Subcontractor. If the Subcontractor believes that it has a claim against or dispute with the Contractor, Owner and/or Architect arising out of or relating to this Agreement, Subcontractor hereby agrees to provide written notice of that claim or dispute to Contractor within ten (10) days after Subcontractor first learns of, or reasonably should have learned of, the event or events giving rise to the claim or dispute. Failure by the Subcontractor to give this written notice to Contractor within these ten (10) daytimes period will result in a waiver and complete discharge of that claim or dispute by the Subcontractor. Subcontractor understands that if the required notice is not timely provided to Contractor, Subcontractor shall not be entitled to assert any demand or claim for damages, or otherwise, because of its failure to provide the required notice to Contractor. Within ten (10) days after Subcontractor provides timely written notification of its alleged claim or dispute, the representatives of the Contractor and Subcontractor shall meet and attempt, in good faith, to reach a negotiated resolution. Representatives of both parties who participate in this meeting must have full authority to settle the dispute. If the dispute is not resolved at this meeting, Contractor and Subcontractor mutually agree to submit the matter to mediation, with a mediator mutually acceptable to both parties. The costs of the mediation are to be shared equally by Contractor and Subcontractor. Representatives of both parties who participate in the mediation must have full authority to settle the dispute. If the claim or dispute is not resolved by negotiation or mediation, Contractor and Subcontractor agree that Contractor, at its sole option, may elect, within thirty (30) days after conclusion of the mediation, to submit the claim or dispute to arbitration, with an arbitrator mutually agreed upon by the parties. Notwithstanding the foregoing, Contractor may elect to forego mediation and arbitration and may proceed directly to initiate legal proceedings. Contractor and Subcontractor further agree that the award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The Contractor may join or consolidate the arbitration with the Owner, Architect or any other party having an interest in the claim or dispute. Subcontractor agrees to carry on the Work and maintain the schedule of the Work pending the outcome of the arbitration.
25. Proprietary Nature of Plans. The Contractor's architectural, structural, civil, landscape drawings, architectural plans, and specifications, and all other design materials with respect to all Projects (the "**Design Documents**") are and shall remain the property of the Contractor whether or not a Project is built. The Subcontractor acknowledges and agrees that the Design Documents are privileged and proprietary in nature and that Contractor has and maintains copyrights to the Design Documents under state and federal law. Subcontractor shall return all Design Documents and all copies thereof to the Contractor at the request of the Contractor at the completion of this Agreement. Except as necessary to complete a Project, the Subcontractor shall not copy or otherwise reproduce the Design Documents in any way without the express written permission of Contractor. Further, submission or distribution to meet official regulatory requirements or for all other governmental approval purposes in connection with a Project shall not be construed as a publication that undermines or otherwise derogates the Contractor's ownership rights.
26. Independent Contractor. Contractor and Subcontractor are independent contractors and all persons employed by Subcontractor in the performance of the work shall be under the sole and exclusive direction and control of the Subcontractor and for no purpose shall they be considered the employees of Contractor. Subcontractor shall be separately and exclusively responsible for the acts or omissions of its employees and shall be separately responsible for the withholding of payment of all personal income taxes, social security, unemployment and sickness disability insurance and other payroll taxes, including contributions when and as required by law. Furthermore, Subcontractor acknowledges that this Agreement is non-exclusive, and that Contractor is free to contract with any other person or entity for the performance of work that is the same or similar to that performed by Subcontractor or described herein.
27. Use of Contractor's Equipment. The use of any of Contractor's equipment, rigging, blocking, hoist, or scaffolding by Subcontractor, given, loaned or rented to Subcontractor by Contractor, shall be upon the distinct understanding that Subcontractor uses said equipment, rigging, blocking, hoist or scaffolding at its own risk, and takes the same "AS IS" and after Subcontractor has satisfied himself by examination as to the condition thereof, and Subcontractor does hereby assume all responsibility for and holds Contractor harmless from any and all claims or damages whatsoever resulting from the use of same, whether such damages result to its own employees or property or to the employees or properties of others.
28. Use of Alternate or Substitute Product. If Subcontractor desires to use an alternate product or method from that specified in the Contract Document, it may, prior to shop drawing submittal, propose to Contractor the use of an alternate product or method on a

form supplied by Contractor. In its request, Subcontractor must provide the following: (i) a full explanation of the proposed alternate with all supporting data, technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, etc. to enable a complete evaluation of the proposal; (ii) the reasons the alternate is advantageous or necessary; and (iii) any requested adjustment to the Contract Sum and/or the scheduling/completion date which would be necessitated by the use of the alternate product or method. No proposed alternates will be deemed accepted unless a written Change Order is first executed by Contractor. Subcontractor hereby agrees to pay Contractor a reasonable fee for review of an alternate proposal regardless of whether such proposal is accepted by Contractor.

29. **Design Delegation.** If the Contract Documents (1) specifically require the Subcontractor to provide design services and (2) specify all design and performance criteria, the Subcontractor shall provide those design services necessary to satisfactorily complete the Work. Design services provided by the Subcontractor shall be procured from licensed design professionals retained by the Subcontractor as permitted by the law of the place where the Project is located (the Designer). The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by the Designer. Shop drawings and other submittals related to the Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer. If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor- Designer agreement shall not provide for any limitation of liability. The Designer shall be identified by the Subcontractor on the project worksheet. The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents.
30. **Work for Others.** Until final completion of the Work, the Subcontractor agrees not to perform any work directly for the Owner, other contractor or any other party, or representative therefor, in connection with the Work, unless otherwise approved in writing by the Contractor. In addition, Subcontractor agrees not to perform any work or correct work that is not part of the scope of the Work, unless otherwise approved in writing by the Contractor.
31. **Contract Interpretation.**
- a. **Partial Invalidity.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any of the other provisions. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement or to exercise any right herein, shall not be construed as waiver or relinquishment of such term, covenant, condition or right as respects further performance.
 - b. **Attorneys' Fees.** Should either party employ an attorney to institute suit, demand arbitration or institute any other procedure for the resolution of a dispute in order to enforce any of the provisions hereof, to protect its interest in any matter arising under this Agreement, or to collect damages for the breach of this Agreement or to recover on a surety bond given by a party under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, consultants and experts fees, costs, charges, and expenses expended or incurred therein.
 - c. **Headings.** The headings given to the paragraphs of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.
 - d. **Entire Agreement.** This Agreement and the Exhibits attached hereto are solely for the benefit of the parties hereto and represent the entire and integrated agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. If a bid, estimate, proposal or similar document furnished by Subcontractor is incorporated herein as an exhibit or otherwise, or if one is signed by the parties, and an inconsistency exists between the terms of the Subcontractor's document and the terms of this Agreement, the terms of this Agreement shall control and shall supersede and replace any such document and the terms of such document.
 - e. **Authorization.** The signature of any person on behalf of a party to this Agreement shall be deemed a personal warranty by that person that such person has the power and authority to bind any corporation, partnership or any other business entity for which that person purports to act.
 - f. **Amendments.** No oral statement of any person shall in any manner or degree modify or otherwise affect the terms of this Agreement. It is agreed that nothing done by Contractor in the performance of its obligations hereunder or in directing performance by Subcontractor shall be construed in any manner or to any extent whatsoever as a waiver by Contractor of any default in or a failure of performance of the terms and conditions of this Agreement or any Work Agreement by Subcontractor. It is agreed that no person has or shall hereinafter have any power or authority to waive, modify, alter or rescind any provision of this Agreement on behalf of Contractor except the person or persons whose names are affixed to this Agreement as representatives of Contractor and except further, such persons who are authorized by the President or Secretary of Contractor, in writing, to agree to such a waiver, modification, alterations or rescission and in the case of these latter persons, their authority shall be strictly limited to the terms of the writing granting them such authority.

- g. No Presumption or Construction Against Drafter. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Agreement.
- h. Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah, without regard to principles of conflicts of laws, and the parties hereby agree to submit to personal jurisdiction in Washington County, Utah in any action or proceeding arising out of this Agreement. The exclusive venue for any dispute arising hereunder shall be in a court of competent jurisdiction in Washington County, Utah, and the parties hereby irrevocably waive any objection to such venue. Notwithstanding the preceding, Contractor is free to elect to file an action in another jurisdiction and venue including where the Subcontractor does business or where the Work was to be performed.
- i. No Waiver. Neither the final payment nor any provision in any document shall relieve the Subcontractor of responsibility for faulty materials or workmanship and the Subcontractor shall, when notified of any such defects, promptly remedy the same and pay for any damage to any Project and/or other Work resulting therefrom.
- j. Assignment or Subletting. This Subcontract is freely assignable by Contractor to the Owner and its agents and/or assigns. Subcontractor acknowledges that Contractor is relying upon the experience, expertise and ability of the present owners, officers, stockholders and/or partners of Subcontractor to cause all of the terms and provisions of this Subcontract to be fulfilled. Subcontractor shall not, without prior written consent of Contractor, (a) assign or subcontract, in whole or in part, the performance of any of its obligations hereunder; (b) sublet or otherwise transfer the performance of said obligations; or (c) assign any monies due or to become due to it hereunder. All contracts between Subcontractor and any other person or entity concerning or relating to the performance of any part of this Agreement shall be submitted to Contractor for its written approval. If Contractor consents to an assignment or subcontracting, such consent does not relieve or release Subcontractor of its duties and liabilities to Contractor, the Owner or Architect.
- k. Notices. For all notices required hereunder to be made in writing, the parties may provide such notice by an electronic transmission such as by email.
- l. Effective Date. This document shall apply to all projects for which a Project Worksheet is executed by the parties on or after March 20, 2018. The parties anticipate that this document shall be updated and revised from time to time by Contractor. Upon the revision and execution of an updated version of this document, the updated version of this document shall apply to all projects for which a Project Worksheet is executed before or after the effective date of the updated version.

The parties hereby agree to the terms and conditions set forth herein. This Agreement is entered into on this ____ day of _____, 20____.

Grass Creek Construction, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Subcontractor:

Signature: _____

Printed Name: _____

Title: _____

Date: _____