

**STANDARD FORM OF SUBCONTRACT AGREEMENT  
WARD CONSTRUCTION COMPANY  
(STIPULATED SUM)  
AGREEMENT**

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between **WARD CONSTRUCTION CO.**, hereinafter referred to as Prime Contractor, and \_\_\_\_\_ hereinafter referred to as Subcontractor, whose address is \_\_\_\_\_. The contract constitutes the entire agreement between Prime Contractor and Subcontractor, and supersedes any separate quotes, terms or conditions. The Prime Contractor and Subcontractor agree as set forth in the following:

**Article 1. THE WORK.**

**1.1 The Subcontractor shall furnish** all management, materials, labor and proper supervision, in accordance with the plans and/or drawings, to complete all \_\_\_\_\_ as called for in specification section(s) \_\_\_\_\_ and the following contract documents prepared by \_\_\_\_\_ and whose address is \_\_\_\_\_ hereinafter referred to as the Architect, for the owner as identified by the contract documents, hereinafter referred to as the Owner.

**1.2 The contract** and contract documents as described in Article 1.2 constitute the entire agreement,

**1.3 The Subcontractor specifically includes (but is not limited to):**

- Jobsite safety is paramount. You must fully comply with our safety program. Specifically inform your employees that hard hats will be required to work on our jobsites.

- **PRIME CONTRACTOR RESERVES THE RIGHT TO CANCEL THIS CONTRACT IF IT IS NOT RETURNED BY \_\_\_\_\_ WITH NO COMPENSATION, REGARDLESS OF ANY WORK COMPLETED, AND THE SUBCONTRACTOR WILL NOT START WORK ON SITE UNTIL THE SUBCONTRACT AGREEMENT IS SIGNED AND AN INSURANCE CERTIFICATE IN CONFORMANCE WITH THIS SUBCONTRACT AGREEMENT IS RECEIVED.**

- **FORMS/DOCUMENTS REQUIRED:** The Subcontractor is required to return to the Prime Contractor the following forms or information:

- (a) List of all material suppliers and Sub-subcontractors supplying materials and/or services in excess of \$2,000 (on the Prime Contractor provided form).
- (b) Subcontractor Tax Identification Number Form.
- (c) Subcontractor Emergency Telephone Number Form.
- (d) Certificates of insurance required by Article 17.
- (e) Documents and schedules required by Article 9.11 (on the Prime Contractor provided Material Delivery Form).
- (f) HazCom and MSDS required by Article 9.17.

These items shall be executed and submitted to the Prime Contractor by \_\_\_\_\_. If the above information is not submitted to the Prime Contractor in a timely manner, then the Prime Contractor may find the Subcontractor to be in breach of the subcontract and may elect to terminate the entire subcontract in accordance with Article 21 or withhold any payments due.

Ward has the right at any time prior to execution by Ward of the subcontract agreement to cancel this agreement work without compensation to the Subcontractor.

**1.4 The Subcontractor specifically excludes:** (If an item is not specifically excluded, it will be deemed to be included as long as it relates to the scope of the Work set forth above.)

**1.5 This project is known as** \_\_\_\_\_ and is located at \_\_\_\_\_ and shall hereafter be referred to as the Project.

**Article 2. TIME OF COMMENCEMENT AND COMPLETION.** Subcontractor shall immediately commence the Work upon being notified to do so and shall proceed diligently and expeditiously toward completion of the Project. In any event, the Work, barring delays contemplated by Article 14 hereof and approved by the Prime Contractor, shall be completed in accordance with the Construction Schedule maintained by the Prime Contractor as the same shall be amended from time to time. The Subcontractor, without additional compensation, shall perform his Work at such times, in such order, and in such manner as the Prime Contractor may direct.

**Article 3. CONTRACT SUM.** The Prime Contractor shall pay the Subcontractor for the performance of the Work, subject to additions and deductions by change orders as provided herein, in current funds, the Contract Sum of \_\_\_\_\_ Dollars ( \_\_\_\_\_ ) including all applicable state and city sales and use taxes, licenses, permits and fees.

It is expressly understood by the Prime Contractor and Subcontractor that the contract price stated above is for Work to be performed based upon separate Specifications and Plans, if any, or otherwise upon the drawings and that any authorized change order shall be in addition to and/or deduction therefrom.

**PRIME CONTRACTOR AND SUBCONTRACTOR ARE REQUIRED TO INITIAL HERE:**

Subcontractor Agreement (continued)

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**Article 4. PROGRESS PAYMENTS.** Based upon Applications for Payment submitted to the Prime Contractor (only on Prime Contractor provided form), subject to approval thereof by the Prime Contractor and by the Architect or any authorized representative designated by the Owner, the Prime Contractor shall make progress payments on account of the Contract Sum to the Subcontractor as follows:

Subcontractor shall submit monthly requests for payments based upon actual progress (projecting ahead on work completion is not allowed) to the Prime Contractor's office at **2750 S. Shoshone St., Suite 315, Englewood, CO 80110** not later than the **20th** day of the month for the period for which payment is being requested. If said day falls on a

Saturday, Sunday or holiday, the request must be submitted by the last weekday prior to the 20th. The Prime Contractor shall remit payments on all such requests within 30 days of receipt of said payment from the Owner. Retainage of 10% shall be withheld by the Prime Contractor until Work is completed with final payment payable in accordance with the terms of Article 5. The Prime Contractor is not obligated to make any payment to Subcontractor unless the Prime Contractor receives from the Owner the payment relating to the Subcontractor request for payment. Subcontractor agrees that the Prime Contractor shall be under no obligation to make any payment to the Subcontractor for any work on the project until the Prime Contractor has been paid therefore by the Owner, and Subcontractor agrees that payment by the Owner to the Contractor for work performed by the Subcontractor on this Project will be an express condition precedent to any payment obligation of the Contractor to the Subcontractor. Subcontractor understands that payments hereunder are expressly contingent upon the Contractor's receiving payment from the Owner, and Subcontractor expressly accepts the risk he will not be paid for work performed in the event the Contractor, for any reason is not paid by the Owner for such work. Subcontractor understands and agrees that the acceptance of a partial or final payment for Subcontractor's work by the Owner under the terms of the Contract Documents is an express condition precedent to partial or final payment by the Contractor to the Subcontractor. Only Change Orders generated and signed by the Prime Contractor may be included in the Subcontractor's Application. If there is a provision in the contract documents for a reduction in retention by the Owner, such reduction shall only be passed on to the Subcontractor when all the Subcontractor's punch list and closeout requirements (as required by the contract documents) have been completed to the satisfaction of the Owner, Architect and Prime Contractor. Billing for any unit price work, change orders, work the Subcontractor thinks is outside the contract, etc. must be in the Prime Contractor's office (priced per Articles 18 and 19 of this Subcontract Agreement) within 30 days of completion of the extra work, but no later than 30 days after substantial completion of the project as a whole (whichever is sooner), or the Subcontractor forfeits any right for payment on the work. If the contract documents allow for payment of materials stored offsite, the following criteria (of a form and quality acceptable to the Prime Contractor) must be met at the time of billing:

- 1) An insurance certificate must be provided showing the material is covered for damage or theft at the storage facility.
- 2) An invoice from the Subcontractor's supplier will be provided. The before retention bill amount shall not exceed the total of the supplier invoices.
- 3) A bond will be provided (at the Subcontractor's cost) guaranteeing delivery of the material to the jobsite.
- 4) Material will be set aside and marked as designated for the project.

**Article 5. FINAL PAYMENT.** The Prime Contractor shall make final payment within 30 days after receipt of final payment by the Prime Contractor from the Owner, provided the Subcontract be then fully performed subject to the provisions of Article 15 and Article 4 herein. The Prime Contractor is not obligated to make final payment to Subcontractor unless the Prime Contractor has received final payment from the Owner and then only under the terms of this Article. Subcontractor agrees that the Contractor shall be under no obligation to make any payment the Subcontractor for any work on the project until the Contractor has been paid therefore by the Owner, and Subcontractor agrees that payment by the Owner to the Contractor for work performed by the Subcontractor on this Project will be an express condition precedent to any payment obligation of the Contractor to the Subcontractor. Subcontractor understands that payments hereunder are expressly contingent upon the Contractor's receiving payment from the Owner, and Subcontractor expressly accepts the risk he will not be paid for work performed in the event the Prime Contractor, for any reason, is not paid by the Owner for such work. Subcontractor understands and agrees that the acceptance of a partial or final payment for Subcontractor's work by the Owner under the terms of the Contract Documents is an express condition precedent to partial or final payment by the Contractor to the Subcontractor. The Subcontractor must provide proof on the Prime Contractor's form of final payment to any sub-subcontractors or suppliers prior to release of final payment.

**Article 6. INTEREST.** Subcontractor will not be entitled to interest on any payment, either progress or final, regardless of whether payment is made by the Prime Contractor in a timely manner or not, unless the Prime Contractor is paid interest with respect to such payment by the Owner.

**Article 7. CONTRACT DOCUMENTS.**

7.1 The Contract Documents, with respect to which the Subcontractor agrees to be bound, consist of this Agreement, separate specifications and Plans, if any are existent, drawings and authorized change orders, and the terms, provisions and general conditions applicable to Subcontractors. These form the Contract and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, materials, equipment and other items as provided in Paragraph 9.2 necessary for the proper execution and completion of the Work and the terms and conditions of payment therefore, and also to include all Work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results. The Prime Contractor recognizes that authorized change orders are not included in the sum referred to in Article 3 hereof, but are subject to the other terms and conditions hereof.

7.2 The Subcontract Agreement shall be signed in not less than duplicate by the Prime Contractor and the Subcontractor. By executing the Contract, the Subcontractor represents that he has visited the site and familiarized himself with the local conditions under which the Work is to be performed.

7.3 The term Work as used in the Contract Documents includes all labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in such construction.

**Article 8. PRIME CONTRACTOR.** The Prime Contractor may issue instructions to the Subcontractor through the project superintendent appointed by the Prime Contractor.

**Article 9. SUBCONTRACTOR.**

9.1 The Subcontractor shall supervise and direct the Work, using his best skill and attention. The Subcontractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

9.2 Unless otherwise specifically noted, the Subcontractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.

9.3 The Subcontractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Subcontractor will have a foreman on the project whenever he has work on going on the job. This foreman cannot be removed from the project for any reason without two weeks written notice to the Prime Contractor and without the Prime Contractor's written agreement.

9.4 The Subcontractor warrants to the Prime Contractor that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective.

9.5 The Subcontractor shall give all notices and comply with all laws, building codes, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. It is the sole responsibility of the Subcontractor to determine the requirements that must be met to enable the Subcontractor to be in compliance with all laws, ordinances, building codes, rules, regulations and orders of any public authorities.

9.6 The Subcontractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution and completion of the Work. It is the sole responsibility of the Subcontractor to determine what taxes and fees must be paid and what permits and licenses must be obtained. The Subcontractor shall keep complete and accurate records of the payment of all taxes and fees and shall permit the Prime Contractor to have access at all reasonable times to such records. For work in the City of Denver, the Subcontractor will obtain (and provide to the Prime Contractor) Use Tax and Occupational Privilege Tax Account Numbers within two weeks of receipt of the contract.

9.7 The Subcontractor shall be responsible for the acts and omissions of all his employees and all other persons performing any of the Work under a contract with the Subcontractor performing any of the Work under a contract with the Subcontractor or any of the Work for which the Subcontractor is responsible under the Contract Documents and changes to the Work authorized by the Contract Documents, including those not in privity of contract with Subcontractor.

On projects where the contract documents indicate the presence of hazardous materials such as asbestos, the Subcontractor shall comply with state and federal regulations concerning training for employees on a jobsite where hazardous materials are present.

If the Subcontractor is doing any excavation, he shall be responsible for calling for utility locates.

9.8 The Subcontractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations; and to this end, the Subcontractor shall periodically remove all accumulations of waste materials or rubbish. At the completion of the Work, he shall remove all his waste materials from and about the project as well as his tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and shall leave the Work "broom clean" or its equivalent, except as otherwise specified. In the event the Subcontractor shall fail to do so within a reasonable time, the Prime Contractor is authorized to employ someone to have the "clean-up" services performed and to withhold a sufficient amount from the payments to the Subcontractor to cover the cost of the "clean-up" services performed, the Prime Contractor shall charge the Subcontractor for the cost of such services and the Subcontractor agrees to pay the amount charged within 30 days of request.

9.9 The Subcontractor shall indemnify Prime Contractor, his agents and employees from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, to the extent arising out of or resulting from its obligations under this Subcontract, including, but not limited to, liability incurred by the Prime Contractor or those within the control of or under contract with the Prime Contractor pursuant to the Contract Documents but only to the extent allowed by Colorado law. The indemnification obligations under this subparagraph shall not be limited with respect to amount or type of damages, compensation, or benefits required to be paid by or for the Prime Contractor under worker's compensation acts, disability benefit acts, or other employee benefit acts regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described.

9.10 Subcontractor agrees to have a representative at each weekly Subcontractor's Meeting as requested by the Prime Contractor. This representative will be in a position to fully answer material delivery questions and add personnel as necessitated by the construction schedule.

**PRIME CONTRACTOR AND SUBCONTRACTOR ARE REQUIRED TO INITIAL HERE:**

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9.11 The Subcontractor is solely responsible for making field measurements and to making sure all of his materials are delivered within the construction schedule. The Subcontractor is solely responsible for finding out from the Prime Contractor when the Work and all his materials are needed.

The Subcontractor shall, when requested, within three workdays, submit to the Prime Contractor written evidence that specific material orders have been placed and/or shipped. All shop drawing/submittals shall be delivered to the Prime Contractor in accordance with the contract documents within two weeks of receipt of this proposed contract.

The Subcontractor must respond in writing within ten working days of receipt of this Agreement as to any material delivery problems. Subcontractor must submit to the Prime Contractor a schedule detailing when materials must be ordered to be delivered on time. If a specified material cannot be delivered on schedule, the Subcontractor is responsible for finding a product substitute acceptable to the Prime Contractor, Owner and Architect that does meet the schedule. No substitution of material from that which has been specified will be allowed without the approval of the Owner/Architect. Material delivery failures will not relieve the Subcontractor from responsibility for liquidated or other damages caused by the resultant failure of the Subcontractor to meet the schedule.

9.12 Upon request by Prime Contractor, Subcontractor shall promptly increase its workforce, accelerate its performance, work overtime, and work Saturdays, Sundays, and holidays, all without compensation from Prime Contractor, if as reasonably determined in good faith by Prime Contractor, such work is necessary as a result of Subcontractor being behind the current project schedule due to Subcontractor's own defective or deficient work, or non-performance.

The lack of available, qualified manpower is not an acceptable excuse for the Subcontractor's failure to stay on the Prime Contractor's construction schedule or to comply with the contract's quality requirements. The Subcontractor is responsible at its cost for whatever means are necessary to stay on schedule, including but not limited to, working overtime, or paying higher wages to attract qualified workers, etc.

If in the Prime Contractor's judgment the Subcontractor is not maintaining the schedule, the Prime Contractor may hire supplemental personnel to be used at the direction of the Subcontractor, or by the Prime Contractor if the Subcontractor does not direct the supplemental personnel. The cost for the additional personnel will be deducted from the Subcontractor's contract. The Subcontractor agrees that the warranty on the project will be unaffected by this action.

If the Subcontractor loses a day of work due to weather or holidays, Subcontractor agrees to work longer days and/or Saturday to complete a 40-hour workweek.

9.13 The Subcontractor shall provide detailed updated schedules showing no fewer than 20 tasks with start and completion dates for their work once per week if required by the Prime Contractor. The schedule will include equipment setting, hook-up and operational dates.

9.14 The Subcontractor(s) performing the work in Divisions 02-000, 15-000, 16-000 and/or 17-000 are responsible for maintaining existing utilities at all times to the site(s) and structure(s) or providing temporary service acceptable to the Prime Contractor. The types of utilities include, but are not limited to: water, sewer, storm, gas, electrical power, telephone, cable, intercom, security system, fire alarm, and/or any other work found in the above referenced specifications.

9.15 The Subcontractor will complete (and will notify the Prime Contractor in writing) all their punch list items within seven calendar days of receipt of the list and shall turn in all closeout items within seven calendar days of the date of substantial completion of the project as a whole. If the punch list is not completed within the specified time, the Prime Contractor may do the required work and backcharge the Subcontractor.

9.16 The Subcontractor is responsible for reviewing all contract documents for conflicts that affect their work and for giving adequate written notice to the Prime Contractor of said conflict. If the work the Subcontractor needs to coordinate with is constructed in accordance with any of the options shown in the construction documents, the Subcontractor is responsible for all costs associated with completing their work per the alternate design.

9.17 The Subcontractor shall provide for itself and all Subsubcontractors MSDS and a HazCom program as required by OSHA prior to working on the project. Payment to the Subcontractor will be contingent upon delivery of this material to the Prime Contractor.

9.18 There shall be no charge from the subcontractor for determining whether work is warranty work or not. Subcontractor shall respond to investigate the problem within 72 hours (or sooner if the situation dictates) of the notification by the Prime Contractor.

9.19 The Subcontractor shall immediately report if they see or suspect mold growth on the project to the Prime Contractor's Project Manager.

9.20 By the subcontractor proceeding with their work they have accepted the substrate/underlying condition (or existing conditions) as being acceptable for their work and being in compliance with the contract documents. Subcontractor will check elevations/grades before commencing work and advise Prime in writing of any discrepancies.

If repairs are needed to the substrate after the subcontractors work is completed then the subcontractor is responsible for substrate repairs and the repairs to their own work required by the substrate repair.

#### **Article 10. SUBCONTRACTS.**

10.1 A Sub-subcontractor is a person who has a direct contract with the Subcontractor to perform any of the work at the site.

10.2 Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Subcontractor, within five calendar days after the award of the Contract, shall furnish to the Prime Contractor in writing a list of the names of Sub-subcontractors proposed for the principal portions of the Work. The Subcontractor shall not employ any Sub-subcontractor to whom the Prime Contractor may have an objection. The Subcontractor shall not be required to employ any Sub-subcontractor to whom he has a reasonable objection. Contracts between the Subcontractor and the Sub-subcontractors shall be in accordance with the terms of this Agreement and shall include the terms and conditions of this Agreement insofar as applicable.

#### **Article 11. SEPARATE CONTRACTS.**

11.1 Subcontractor shall take necessary precautions to protect properly the Work of other subcontractors from damage caused by operations under this Subcontract. The Prime Contractor has the right to let other contracts in connection with the work.

11.2 Subcontractor shall cooperate with Prime Contractor, other subcontractors and the Owner's own forces whose Work might interfere with the Subcontractor's Work. Subcontractor shall prepare coordination drawings in areas of congestion, if requested by Prime Contractor or required by the Prime Contract, specifically noting and advising the Prime Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, of the Owner's own forces.

**Article 12. ROYALTIES AND PATENTS.** The Subcontractor shall pay all royalties and license fees, if any. The Subcontractor shall defend all suits or claims for infringement of any patent rights by the Subcontractor and shall save the Prime Contractor harmless from loss on account thereof.

**Article 13. LEGAL PROCEEDINGS AND/OR ARBITRATION.** This Subcontract Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The Subcontractor shall not institute any action, in any way relating to this Subcontract Agreement, against the Prime Contractor except in a court of competent jurisdiction in the City and County of Denver, State of Colorado. Notwithstanding the foregoing, the Prime Contractor, at its discretion, shall have the right and the choice to have any controversy arising out of this Subcontract Agreement mediated and/or arbitrated and shall have the right to compel mediation and/or arbitration of any controversy arising under this Subcontract before the JAMS (Judicial and Mediation Services) in accordance with its rules then in effect. The foregoing sentence is not intended to limit the Prime Contractor's right to resort to courts of competent jurisdiction to resolve any controversy arising under the Subcontract Agreement, but is intended to provide the Prime Contractor with the choice of forums and methods of resolving any dispute.

#### **Article 14. TIME.**

14.1 All time limits stated in the Contract Documents are of the essence of the Contract.

14.2 Subcontractor agrees to submit all requests for extension of time for the performance and/or for the completion of the Work or any part thereof in writing to the Prime Contractor allowing the Prime Contractor sufficient time to present such claims to the Owner if such presentment is necessary, and in no event shall Subcontractor give the Prime Contractor notice of the request for the extension later than three (3) days after the occurrence of the event that caused the request for extension. The Subcontractor's request shall state the estimated amount of time that the Work will be delayed, and the reasons that require the Subcontractor to request an extension of time.

14.3 If the Subcontractor is delayed at any time in the progress of the Work by changes ordered in the Work, by acts of God, or by any cause which the Prime Contractor may determine justifies the delay, then the Contract Time shall be extended by change order signed by Prime Contractor for such reasonable time as the Prime Contractor may determine.

14.4 Except as provided herein, an extension of time shall be Subcontractor's sole and exclusive remedy for any delay, disruption or interference, and Subcontractor shall not be entitled to an equitable adjustment to the Contract Sum as a consequence of any delay, disruption or interference except to the extent that the Contract Documents or any applicable law entitles Contractor to recover for such delay, disruption or interference, and then recovery shall be limited to the extent of any proportional amount that Contractor may, on behalf of Subcontractor, actually receive from owner or other Customer for such delay, disruption or interference, and the liability of Contractor's surety, if any, shall be coextensive. The decision on whether or not to pursue recovery of time or monetary compensation from the Owner shall be at the sole unbridled discretion of the Prime Contractor.

#### **Article 15. PAYMENTS.**

15.1 Payments shall be made as provided in Article 4 of this Agreement.

15.2 Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed, (3) failure of the Subcontractor to make payments properly to Sub-subcontractors or for labor, materials, or equipment, (4) damage to another contractor, (5) unsatisfactory prosecution of the work by the Subcontractor, and (6) lack of any condition precedent to payment described in Article 4 or 5, including but not limited to payment received by Prime Contractor from Owner, and for any other reason specifically set forth in the Agreement.

15.3 Final payment shall not be due under this Contract until the Subcontractor has delivered to the Prime Contractor a complete release of all liens arising out of work performed pursuant to the Contract or receipts in full concerning all labor, materials and equipment for which a lien for work performed could be filed or a bond satisfactory to the Prime Contractor indemnifying him and the Owner against any lien.

15.4 The making of final payment shall constitute a waiver of all claims by the Prime Contractor except those arising from (1) unsettled liens, (2) faulty or defective Work appearing after completion thereof, (3) failure of the Work to comply with the requirements of the Contract Documents, or (4) violation of the terms of any special guarantees required by the Contract Documents. The acceptance of final payment shall constitute a waiver of all claims by the subcontractor as to work performed.

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Subcontract Agreement (continued)

**Article 16. PROTECTION OF PERSONS AND PROPERTY.** The Subcontractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work, including delivery to the Prime Contractor's main office at least two weeks prior to the Subcontractor doing any work on the project site of complete and correct Material Safety Data Sheets and their Hazardous Communication Program. Failure to provide these documents will be cause for withheld payment to the Subcontractor. He shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. He shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable shall be remedied by the Subcontractor, except damage or loss attributable to the acts or omissions of the Prime Contractor or anyone employed by him or for whose acts he may be liable but which are not attributable to the fault in whole or in part of negligence of the Subcontractor.

#### **Article 17. SUBCONTRACTOR'S INSURANCE REQUIREMENTS.**

17.1 All tiers of subcontractors shall purchase and maintain the following insurance coverage from companies acceptable to the contractor for the duration of the work and the applicable warranty period. **The following coverages shall be evident on the certificate of insurance.** Coverages shall be maintained without interruption from date of commencement of the Subcontractor's work until the date of warranty completion or a later date that is dictated by the contract documents.

##### **A) Commercial General Liability:**

- 1) General Liability must be "Occurrence" based and not "Claims Made".

- 2) General Liability Policy will be endorsed to **provide Additional Insured** status to the Prime Contractor and Owner. The Additional Insured language must say **“The Additional Insured language is included in the General Liability policy and it covers Ward Construction Co. and the Owner (must state the Owner’s legal name as provided by Ward Construction) for ongoing and completed operations. Coverage also applies on a primary and non-contributory basis.”**
- 3) Policy will evidence a per project aggregate by means of a CG 2503 ISO endorsement.
- 4) Subcontractor's policy will evidence \$100,000 project pollution coverage protecting the Prime Contractor and the Owner from Bodily Injury, Property Damage and clean-up expenses at the job site.
- 5) General Aggregate limits applies per “Project” and not per “Policy” or “Loc(ation)”
- 6) Limits of General Liability:

The following limits of liability are minimum, and are not in anyway a relief of the obligation of indemnity so set forth in this contract beyond these minimums. These limits are for Bodily Injury and Property Damage to third parties:

Each Occurrence	\$1,000,000
Damage to Rented Premises (Ea. Occurrence)	\$100,000
Medical Expenses (Any one Person)	\$5,000
Personal and Adv. (Advertising) Injury	\$1,000,000
General Aggregate	\$2,000,000
Products-Completed Operations Agg.	\$2,000,000

**B) Automobile Liability:**

- 1) Combined single limit for Bodily Injury and Property Damage per accident is \$1,000,000
- 2) Coverage must extend to “Any Auto”, “Hired Automobiles” and “Non-Owned Autos”.
- 3) The Automobile Liability policy will be endorsed to provide additional insured status to the contractor and the owner, including completed operations.

**C) Workers Compensation – State of Colorado**

- 1) Employer’s Liability Limit:

By Each Accident	\$500,000
By Disease Each Employee	\$500,000
By Disease Policy Limit	\$500,000

- 2) Workman’s Compensation Statutory Limits box must be checked.

**D) Waiver of Subrogation**

- 1) Waiver of Subrogation must be included in the Workers Compensation, General Liability and Automobile Liability policies and be in favor of the named Additional Insureds.

**E) Cancellation Notice**

- 1) The certificate of insurance cancellation clause shall only be written as follows: **"Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days written notice to the certificate holder named to the left"**. No additional language is acceptable.

**F) Professional Liability Coverage for Architect's and Engineer's design work (errors and omissions coverage).**

Coverage is \$1,000,000 and is required from all subcontractors and suppliers that provide engineering, calculations and/or design work (usually, but not always, identified by an engineer's stamp) for the project. If the Subcontractor sub-subcontracts the design work, then the coverage needs to be provided by the Sub-Subcontractor.

17.2 Any Subcontractor doing design work (sometimes identified by an engineer's stamp) needs to provide evidence of \$1,000,000 of Architect's and Engineer's Professional Liability (errors and omissions). If the Subcontractor sub-subcontracts the design work, then the evidence needs to be provided for the Sub-Subcontractor.

17.3 Coverages on an occurrence basis shall be maintained without interruption from date of commencement of the Subcontractor's work until date of final payment or date coverage is required to be maintained after final payment to the Subcontractor, whichever is later.

**Article 18. CHANGES IN THE WORK.**

18.1 The Prime Contractor may order changes in the Work consisting of additions, deletions or modifications, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized in writing signed by the Prime Contractor and presented to the Subcontractor.

18.2 When change order pricing requests are made of the Subcontractor, the Subcontractor has, at most, seven calendar days (or three days less than the time period required by the contract documents, whichever is less) from the time of receipt of the pricing request to deliver a written response to the Prime Contractor. Response shall be a written quote on the form provided by the Prime Contractor, including a complete breakdown of labor (number of hours, rate, etc.), material (list and price, and supplier quote sheets, if required), and mark-up. Failure to respond with a detailed breakdown within the time limits set forth above will be interpreted as a no cost change quote. If directed to proceed by the Prime Contractor, the change order work will be done by the subcontractor with no additional compensation.

On credit change order pricing, if the Subcontractor fails to respond within the required time, the Prime Contractor will negotiate pricing with the owner/architect, and the amount will be deducted from the Subcontractor's contract.

If the Subcontractor does any work he believes is outside of the subcontract agreement scope, he must receive written direction from the Prime Contractor before proceeding, or he gives up any claim to additional compensation or time extensions.

18.3 The Contract Sum and the Contract Time may be changed only by written change order from the Prime Contractor, if the Subcontractor proceeds with work outside the scope of the Work described in this Subcontract Agreement without a written change order from the Prime Contractor, Subcontractor does so at its sole and exclusive risk and expense.

18.4 In emergency situations, the project superintendent appointed by the Prime Contractor may authorize changes in the Work by written change orders not signed by the Prime Contractor.

18.5 On any "Time and Material" work authorized in writing by the Prime Contractor, all potential changes must be presented to and signed off by the Prime Contractor's jobsite superintendent on a daily basis. A copy of the signed document must be given to the superintendent at the time of signing. Failure to strictly follow this procedure will forfeit any payment to the Subcontractor.

18.6 Signature by the Prime Contractor's superintendent or other representative on a Subcontractor's ticket or similar work order is not an acknowledgment or agreement that the work is considered an extra or change order to the contract. The signature only generally verifies that the work was done.

18.7 Unless otherwise specified, the overhead and profit mark-up on any extra work will be no more than 10%. Any office costs and/or project management time is included in the mark-up. When the mark-up on changes is a percentage to be shared between the Prime and the Subcontractor, the Prime's portion shall be 2/3 and the Subcontractor's shall be 1/3 of the total percentage mark-up.

**PRIME CONTRACTOR AND SUBCONTRACTOR ARE REQUIRED TO INITIAL HERE:**

\_\_\_\_\_  
SUB PRIME  
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**Subcontract Agreement (continued)**

**Article 19. TIME AND MATERIAL WORK.**

19.1 Materials. The Subcontractor (for the material they are required to provide) is responsible for providing the lowest cost material that meets the specifications and is available within the required scheduled time. Subcontractor is responsible for providing actual paid invoices to be reimbursed and all material on the invoices shall be exclusively for the project being billed for. All material billed shall be as actually used and incorporated into the project, and shall be signed off on a daily basis by Prime Contractor's superintendent. The cost billed to Prime Contractor shall be the actual net cost to the Subcontractor, including any discounts, rebates, etc. Actual cashed checks on payment for materials by the Subcontractor shall be presented if requested by Prime Contractor. Sales tax shall only be paid as actually due (i.e., when there is a sales tax exemption, tax shall not be paid). Any unused material shall be credited in full to the Prime Contractor. Restocking fees will not be compensated. Subcontractor shall document location and use of all material when requested by Prime Contractor. If the mark-up on materials provided by the Subcontractor is not specified, it will be 10% of the actual cost.

19.2 Equipment. Unless otherwise specifically stated and agreed in advance, items other than materials and labor will be considered part of the hourly labor price. If equipment reimbursement is agreed in advance, the rate shall be at the lowest rate locally available and shall be at the lowest rate for the applicable term – monthly, etc.

19.3 Vehicle Use. No reimbursement. Trucks and transportation to, from and at the jobsite are included in the hourly labor price.

19.4 Small Tools. Part of hourly labor price.

19.5 Administrative and Supervisory Costs. The hourly labor charge is intended to cover all administrative and supervisory (office and field) costs. Examples of administrative costs are submittals, pay applications, payroll, meetings, paperwork required by the project specifications. Supervision is required for attendance at project meetings, quality control and general onsite supervision.

19.6 Labor. All labor hours that are going to be charged need to be signed off on a daily basis by the Prime Contractor's onsite supervisor. The signed ticket needs to include a detailed description of what was done by each worker. The Prime Contractor's supervisor's signature does not change conditions of the contract as to what are acceptable charges. Subcontractor shall only be reimbursed for using the most cost effective means to get the work done, such as using a laborer to dig a ditch instead of having an electrician do it. No hours that will be at an overtime rate will be expended without prior written consent from the Prime Contractor. The Subcontractor shall make no changes in personnel (including the number of workers) without the Prime Contractor's project manager's written consent. Time for workers begins when workers arrive at

their own worksite and the day ends with a few minutes to pick-up tools. Labor rate shall be as noted in paragraph 1.2. If a labor rate is not specified, it shall be 50% on top of the actual gross take home pay made to the Subcontractor's employees. Copies of employee's cashed checks shall be provided if requested by the Prime Contractor.

19.7 Office Materials/Secretarial. No reimbursement.

19.8 Warranty. The cost to redo defective or warranty type work shall be borne by the Subcontractor. Work completed is subject to standard project warranties.

**Article 20. CORRECTION OF WORK.** The Subcontractor shall promptly correct any Work that: fails any tests that are performed by the Prime Contractor and/or Owner's selected testing agency, fails the inspections by the Owner or Prime Contractor's project representatives, fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the Work. The subcontractor shall promptly remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the date of completion of the Contract, as defined in the contract documents, or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty or guarantee required by the Contract Documents. Corrections shall include all necessary labor and materials to repair all adjacent work, that is or is not included in this contract, that is consequently damaged by the originally installed unsuitable material and consequential damage due to the removal and replacement of the Subcontractor's unsuitable work. All corrections will be performed at no cost to the Prime Contractor. The provisions of this Article 20 apply to Work done by Sub-subcontractors as well as to Work done by direct employees of the Subcontractor. All of the terms of this article apply even if the work is done on a time and material basis.

**Article 21. TERMINATION BY THE PRIME CONTRACTOR.** If the Subcontractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provisions of the Contract, the Prime Contractor may, after three (3) days written notice to the Subcontractor and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Subcontractor or, at this option, may terminate the contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Subcontractor and may finish the Work by whatever method he may deem expedient. If such expense exceeds such unpaid balance, the Subcontractor shall pay the difference to the Prime Contractor within 30 days of request.

If the Subcontractor refuses to pay the excess expense above mentioned or any part thereof, Subcontractor agrees to pay all the Prime Contractor's expense, including attorney's fees incurred in collecting the said excess expense. The Prime Contractor may offset against expenses incurred in finishing or correcting Subcontractor's Work any monies that are due and owing to the Subcontractor.

The Subcontractor shall have the right to correct any such default or violation of the Contract Documents during this three-day period and if Subcontractor does make such correction, all of these rights under this Contract shall be reinstated. The Prime Contractor may recover any actual damages or loss, including loss of profits, suffered by the Prime Contractor due to the delay in performance by the Subcontractor.

The Prime Contractor may order the Subcontractor in writing to terminate all or any part of the Subcontractor's work or suspend, delay or interrupt such Work for such period of time as may be determined to be appropriate for the convenience of the Prime Contractor. Neither the contract price nor the contract time shall be adjusted under this article for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed or interrupted by the fault or negligence of the Subcontractor. In the event of termination as provided herein, Prime Contractor shall be free of liability to the Subcontractor, except to pay the portion of the subcontract price corresponding to the percentage of completion of subcontract work and material furnished on the date of termination. Subcontractor will be entitled to payment for all work satisfactorily completed, plus a reasonable overhead and profit for that Work. Subcontractor shall receive no anticipated profit for unperformed work or unabsorbed overhead, and in no event shall the total sum paid the Subcontractor exceed the Subcontract price.

Any termination of this Contract due to Owner's termination of Prime Contractor shall be deemed a termination for convenience, regardless of the reasons underlying Owner's termination. Any wrongful termination of this Contract by Prime Contractor for cause shall be deemed a termination for convenience.

**Article 22. WAIVER.** Any waiver by either of the parties of any breach of any one or more of the terms and conditions of this Agreement shall not be a waiver of any subsequent or other breach to the same of any other term or condition to this Agreement, nor shall the failure of either party to require complete compliance with any of the terms or conditions of this Agreement be construed as changing the terms hereof or stop either party from enforcing the full provisions hereof.

**Article 23. SEVERABILITY.** If any provision of this Agreement or any other instrument constituting a Contract Document or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained, nor the application of the provision to other persons, entities or circumstances, nor any other instrument referred to hereinabove shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

**Article 24. LIEN WAIVER PROCESSING.** The Subcontractor is required to deliver to the Prime Contractor, Prime Contractor furnished lien waivers for the Subcontractor and all his material suppliers and Sub-subcontractors for amounts in excess of \$2,000. This is required for each progress payment and final payment.

**Article 25. CLAIMS.** If the Subcontractor believes that they are entitled to monetary claims above and beyond their contractual amount set forth herein as the same is modified by written change orders, then these claims must be submitted in writing to the Prime Contractor within 14 calendar days of the event causing the claim (or sooner if required by the contract documents).

**Article 26. DELAY DAMAGE TO PRIME CONTRACTOR.** If the Subcontractor's lack of performance to meet the construction schedule causes the Prime Contractor to suffer damages, liquidated or otherwise, the Subcontractor is responsible to the Prime Contractor for those damages (the amount of which is determined by the Prime Contractor) and may be deducted from any amount owing to the Subcontractor.

**Article 27. JOINT CHECK PAYMENT.** With respect to any supplier which will supply material to the Subcontractor in the amount of \$10,000 or more or any Subcontractor with a Sub-subcontract of \$10,000 or more, payment to Subcontractor will be in the form of a joint check with Subcontractor and/or supplier/Sub-subcontractor being the Joint payee. This procedure will be followed in all instances unless specifically waived by the Prime Contractor. Further, if the Prime Contractor receives notice of a claim of non-timely payment by Subcontractor to any supplier or Sub-subcontractor, the Prime Contractor is authorized to make all further payments to Subcontractor in the form of joint checks. This Article is intended solely for the protection of the Prime Contractor and no one else, and Prime Contractor has no obligation or duty to protect suppliers or Sub-Subcontractors by enforcing this Article.

This instrument has been executed in counterpart, and any executed copy thereof shall have the force and effect at law of an original and shall be governed by the laws of the State of Colorado.

WARD CONSTRUCTION COMPANY  
Prime Contractor

Stan Ward, President  
Print Name/Title of Corporate Officer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Execution Date

\_\_\_\_\_  
Subcontractor

\_\_\_\_\_  
Print Name/Title of Corporate Officer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Execution Date