

MASTER SUBCONTRACT AGREEMENT



CONTRACTOR: Rapid Restoration and Construction Inc.

SUBCONTRACTOR: _____

RRC (Contractor) and Subcontractor hereby enter into this Master Subcontract Agreement effective _____, 2019. This agreement is entered into by the parties in Arvada, Colorado at Contractor’s place of business.

RECITALS

RRC may utilize the services of Subcontractor for various projects. To facilitate that business relationship, expedite contract execution and reduce paper consumption, the parties desire to enter into a Master Subcontract Agreement (“MSA”) that will be applicable to all future projects where RRC contracts with Subcontractor for services on projects and works of construction for which RRC has been retained to perform by a Client/Client.

Accordingly, RRC and Subcontractor agree that the terms and conditions of this MSA shall be applicable to and binding on the parties for all future construction projects for which the services of Subcontractor are retained by the RRC.

AGREEMENT

1. **Subcontracting of Projects:** By execution of this Agreement, RRC does not guaranty or represent that it will in fact subcontract with Subcontractor for any particular project or scope of work. RRC expressly reserves the right to competitively bid all subcontract projects and all scopes of work.
2. **Scope of Work:** The scope of work for future projects (the “Work”) will be specified and authorized pursuant to a separately executed Subcontract Purchase Order (“SPO”) which will specify the project name and address, name of client, name of bank (if applicable), Scope of Work, contract price and other information and terms applicable to the particular project.
3. **General Terms and Conditions:** The General Terms and Conditions applicable to this MSA and to each SPO are attached hereto as Exhibit “A” and incorporated herein.
4. **Subcontractor’s Insurance:** Prior to commencement of work under any SPO, for each project, RRC must have received and have in RRC’s possession a copy of Subcontractor’s Certificate of Insurance covering Subcontractor’s operation, including insurance coverage specified in this MSA and the SPO as well as Subcontractor’s automobile liability certificate for owned, non-owned and hired vehicles, and Worker’s Compensation certificates and

RRC’s Initials _____

Subcontractor’s Initials _____

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Waiver of Subrogation against Worker’s Compensation and General Liability policies. Subcontractor’s insurance shall apply first and a Certificate evidencing that RRC, Client and such other persons as may be identified in the SPO have been identified as additional insured on all Subcontractor’s insurance policies, with right of not less than thirty (30) days written notice of cancellation of any such policy must be provided to the RRC. Subcontractor is not to do any work pursuant to any SPO and no funds will be released until compliance with this section. Subcontractors insurance shall include:

Worker’s Compensation – Statutory Limits

General Liability - \$1,000,000.00 per occurrence/\$2,000,000.00 annual general aggregate.

Products – Completed Operations Aggregate - \$1,000,000.00

Personal Injury - \$1,000,000.00 per occurrence.

Fire Damage - \$100,000.00

Such other and further insurance as specified in the SPO.

Business Auto - \$1,000,000.00

- 5. Subcontractor may not retain the services of any third party (e.g. a sub-subcontractor or other independent contractor or person other than an employee of Subcontractor) to perform any portion of the SPO without RRC’s prior written consent, which shall not be unreasonably withheld but will be conditioned upon being provided with all information, proof of licensure, insurance and other obligations imposed upon Subcontractor under this MSA or the particular SPO.
- 6. Subcontractor certifies and agrees that Subcontractor is fully familiar with all terms, conditions and obligations of this MSA. Subcontractor represents that it will, prior to execution of any SPO, take all steps necessary so Subcontractor shall be fully familiar the location of the job site, and knowledgeable of the conditions under which the work identified in any SPO is to be performed. All work performed by Subcontractor under this MSA or any SPO will be performed and materials furnished shall be in strict conformity with plans and specifications for the same, which plans and specifications Subcontractor will have examined and thoroughly understand prior to execution of any SPO and prior commencement of any project.
- 7. This MSA and the SPO for each project shall constitute the entire understanding between the parties hereto and fully supersedes any and all other agreements, representations, and understandings, written or oral.

RRC’s Initials _____

Subcontractor’s Initials _____

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- 8. The general contract between the Client and RRC for each project that subject of any SPO is on file in the RRC’s office and available for review by the Subcontractor. This Agreement is to be performed in accordance with said general contract. The Subcontractor agrees that whenever the general contract between RRC and Client requires the performance of any act by RRC in connection with performance of any of the work required to be performed by the Subcontractor such obligation of RRC is hereby also assumed by the Subcontractor.

WHEREFORE, the parties hereto have read the foregoing and had the full opportunity to seek and obtain legal advice concerning the terms and provisions of this Master Subcontract Agreement, and therefore execute this agreement agreeing to all the terms and provisions hereof and all documents referred to and incorporated herein.

SUBCONTRACTOR: Rapid Restoration and Construction Inc

[Insert Name]

By: _____

By: _____

Print Name: _____

Print Name: Michael Turk

Print Title: _____

Title: Chief Operating Officer

Address: 6250 W. 55th Ave.
Arvada, Co. 80002

Address: _____

Phone No. 303-412-9999

Fax. No. 303-430-4450

Phone No. _____

Email: mike@rapiddenver.com

Fax. No. _____

Date Signed: _____

Email: _____

Date Signed: _____

RRC’s Initials _____

Subcontractor’s Initials _____

EXHIBIT "A"

GENERAL TERMS AND CONDITIONS OF SUBCONTRACT

THIS MASTER SUBCONTRACT AGREEMENT ("MSA"), is entered into by and between RRC, and Subcontractor, as of the date written in the MSA.

RECITALS

RRC will enter into a Construction Contract with a Client that will be identified in a Master Subcontract Purchase Order ("SPO") which will set forth and describe the work to be performed by Subcontractor (the "Project").

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1.

Terms of General Contract Incorporated

This Agreement is totally and completely controlling with respect to the relationship between RRC and Subcontractor, except that Subcontractor agrees to be bound to the RRC by the terms of the General Contract and to assume toward RRC all obligations and responsibilities that RRC assumes toward the Client and Architect under the General Contract with respect to the performance and completion of the Work, including all representations, definitions, conditions, requirements, indemnities, warranties, guarantees, and plans and specifications relating to the Work.

Section 1.2

Subcontractor agrees to perform all of the Work provided herein and as set forth in the SPO fully and completely in accordance with plans, specifications, laws, regulations, ordinances, building codes, and in a good, substantial and workmanlike manner.

Section 1.3

Whether or not shown by the plans or mentioned in the specifications, the Work includes the following: (A) Any item of labor, service and/or material reasonably inferred by the plans and/or specifications or customarily furnished by a Subcontractor performing such Work; (B) Any item of labor, service, or material required to make the Work comply with any ordinance or regulation; (C) All plans, drawings, permits and fees required by law, regulations, ordinances or building codes; (D) All scaffolding necessary or required for the performance of the Work; (E) All other items, materials, labor and service required to perform the Work and the SPO.

Section 1.4

Employment and labor by Subcontractor shall be effected under conditions which are satisfactory to RRC. Subcontractor shall keep a representative at the job site during all the time when Subcontractor’s work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the Work. Prior to commencement of the Work, Subcontractor shall notify RRC who the new representative is to be prior to such change becoming effective.

Section 2.

Compliance with Law; Fees and Taxes

Subcontractor shall give all notices and comply with all codes, laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work under this Subcontract. Subcontractor shall secure and pay for all permits, fees, and licenses necessary for the execution of the work, and shall pay all Federal, State, and local taxes in connection with the work, and agrees that all costs of such fees and taxes are included in the MSA and SPO Amount. When required by RRC, Subcontractor will furnish satisfactory evidence showing that all such payments have been made. Subcontractor shall promptly review all documents of this related to this MSA and any SPO and report in writing to RRC any variance with codes, laws, ordinances, rules, and regulations. Without having given such notice to RRC, Subcontractor shall assume full responsibility for that variance, and shall bear all costs and damages attributable to that variance.

Section 2.1

As a condition to receiving or requesting any payment on account of the contract price, Subcontractor agrees to furnish and deliver to RRC a duplicate copy of all plans, drawings, diagrams or applications, if any, required by any law, regulation or ordinance as a condition for obtaining a permit if part of Work.

Section 2.2

Subcontractor agrees to furnish 3 days in advance of any payment request, in form and text satisfactory to RRC, receipts and lien waivers (or conditional lien waivers conditioned only upon lien holder’s receipt of payment) showing that all labor and materials have been paid for in full. No payments shall be considered due until the foregoing has been complied with. In the event that conditional lien waivers are provided, RRC is authorized to issue payment jointly to the Subcontractor and the vendor or Subcontractor’s approved subcontractor.

Section 2.3

Subcontractor agrees not to make claim for any extras unless the extras have been approved by the RRC as reflected in a written change order signed by RRC. Any extras furnished by

Subcontractor except in accordance with the foregoing will be so done at Subcontractor's sole cost and expense. RRC shall be entitled to omit from the Work such portions of the Work as RRC may see fit. RRC shall be entitled to deduct from any subsequent payment due on account of the Contract Price an amount equal to the reasonable value of such Work omitted.

Section 2.4

In the event RRC elects to add to or deduct from the Work to be performed by Subcontractor, and unit prices are set forth on the face of this Agreement, then the addition or deduction to the Contract Price shall be based on the unit prices so set forth.

Section 2.5

Subcontractor agrees to commence the Work within 24 hours after notice by RRC to do so, to keep sufficient workmen, supplies of material, tools and equipment on the job, to prosecute the Work diligently to completion, and Subcontractor agrees not to hinder or delay the other trades in the performance of their work. RRC shall be the judge as to the sufficiency of the workmen, supplies of material, tools and equipment furnished by Subcontractor.

Section 2.6

If, in the judgment of RRC, the Work of Subcontractor is not proceeding in accordance with Article 2.3 hereof, or Subcontractor has breached any other provision of this Agreement, RRC may, after giving 24 hours notice to Subcontractor of his breach, proceed to have the Work done in the manner most expedient to RRC and charge the cost (including any incidental expenses) thereof to Subcontractor and RRC 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.

Section 2.7

Subcontractor waives any claim, demand or cause of action against RRC for the loss, use, misuse or conversion of tools, materials, equipment, plans, permits or diagrams taken or used by RRC in accordance with Article 2.4 hereof.

Section 2.8

In the event RRC is required to complete the Work of Subcontractor in accordance with the provisions in this Agreement, Subcontractor agrees to reimburse RRC for all his costs and expenses plus an additional twenty percent of his costs and expenses as overhead, in addition to the sum allowed elsewhere in this Agreement.

Section 2.9

It is understood and agreed that no payment on account to Subcontractor shall constitute an acceptance or approval of any labor or material theretofore performed or furnished by Subcontractor.

Section 2.10

RRC shall be entitled to withhold from Subcontractor any payments due or to become due for Work previously performed in addition to any other remedies RRC may have under the following conditions: (a) Subcontractor's failure to correct improper or defective Work; (b) Claims or liens filed or notice given to RRC of claims or liens to be filed against Subcontractor and/or the property on account of failure or Subcontractor to pay for labor and/or materials; (c) A reasonable doubt that Subcontractor can complete the Work for the balance then unpaid; (d) Damage to RRC and/or to another Subcontractor or his Work; (e) Failure of Subcontractor's Work to pass any official inspections; (f) Installation or attempted installation of an item different from that specified by the contract, unless ordered in writing by RRC; (g) Information or belief that material has been delivered direct to the jobsite or designated for the job by an independent supplier at the instance or request of Subcontractor.

Section 2.11

Upon request by RRC, Subcontractor agrees to furnish a bond with a bonding company suitable to RRC in an amount equal to contract price and in form and content satisfactory to RRC guaranteeing the faithful performance of this Agreement by Subcontractor. Said bond shall be paid for by RRC providing the cost thereof does not exceed 1.5% of the contract price. Subcontractor agrees to pay any costs of said bond in excess of the 1.5% mentioned herein. Subcontractor's failure to furnish or qualify for said bond shall give RRC the option of canceling this Agreement forthwith and RRC shall be relieved of any further obligation under this Agreement.

Section 2.12

Subcontractor's failure to promptly report in writing to the RRC any alleged defects in any Work of another person or persons on the Project or to which Subcontractor is to install his Work or to which the Work to be performed by Subcontractor will be attached will be deemed an acknowledgement 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 of Subcontractor to perform under this agreement or failure of Subcontractors installed systems to perform.

Section 2.13

Time is of the essence with regard to Subcontractor’s performance of its Work under this Agreement, and Subcontractor agrees to provide sufficient workers and materials to diligently and timely perform its Work in accordance with the schedule(s) and direction of RRC. However, in the event of delay to Subcontractor in performing the Work resulting from (i) the conduct or lack of conduct by RRC or any Project architect, engineer or consultant, or any of their officers, employees, agents or consultants, or (ii) delay or failure of RRC or Client in making the site available, or in furnishing any items required to be furnished to Subcontractor pursuant to this Agreement, or (iii) changes to the Project ordered by RRC, or (iv) extraordinary conditions of weather for the area and time of year, war or national conflicts or priorities arising therefrom, fires beyond the reasonable control of Subcontractor, strikes or other labor disruptions or any other cause beyond Subcontractor’s reasonable control (but not including delays caused by Subcontractor, subcontractors of any tier or suppliers); and for no other cause or causes, Subcontractor shall be entitled to an extension of time only with regard to the time for completion of the Work of this Agreement, and only by the amount of time Subcontractor is actually delayed thereby in the performance of this Agreement, provided written notice is given by Subcontractor within two (2) calendar days of the commencement of each such cause. Subcontractor shall not be entitled to recover from RRC or Client, and hereby waives any and all claims against RRC and Client for increased compensation or damages which Subcontractor may suffer from any of the above causes, or any other cause, and Subcontractor further waives any and all claims against RRC and Client for increased compensation or damages for any other disruption, interference or loss of efficiency or production caused by RRC or Client or the Project architect or engineers, or their officers, agents, employees or consultants, or by other subcontractors or contractors on the Project.

Section 3.

Changes To Work

RRC reserves the right to require changes in, deviation from, additions to, and omissions from the Work covered by this Subcontract, and the Subcontract price shall be adjusted accordingly. Before proceeding with any changes, deviations, additions, or omissions, Subcontractor will first obtain written authorization from RRC, which authorization will state any changes in the amount due Subcontractor or in the date for completion of Subcontractor's Work.

Section 4.

Notice of Proposed Changes

For changes in the Work that affect the SPO Amount or construction time, Subcontractor shall notify RRC of the scope of any change in cost or time within three days after receipt of the proposed change and shall submit the actual Change Order Request within five days after receipt of the proposed change.

Section 5.

Change Order Request

The Change Order Request shall consist of the detailed cost estimate outlining the changes in the Work and detailed documentation justifying proposed changes in time. The subcontractor shall use the RRC prescribed change order form or project specified. This estimate shall be computed in accordance with accepted estimating procedures and in accordance with the terms of this Subcontract, and the costs for labor and materials shall be at prevailing rates in the area or in accordance with appropriate provisions of this Subcontract. As far as practicable, unit prices and any other feasible formula for use in the determination of cost changes in the Work shall be used.

Section 5.1

In the event that Subcontractor makes any changes to any Work or materials encountered in the field at the site, Subcontractor shall certify and warrant that any such change shall be “equivalent to” the all specifications contained in the approved building and/or design plans for the project, and where necessary or in accordance with prudent construction practices shall obtain the approval of the Project’s designer’s or engineers prior to making any such change.

Section 5.2

All defects in material used or Work performed under this MSA or a related SPO, as designated by the Project Client or its representative, city or quasi-government or county inspectors or RRC upon inspection and brought to the attention of Subcontractor shall immediately be corrected by Subcontractor to the satisfaction of RRC and the designating person, without cost to RRC. The Subcontractor, at Subcontractor’s expense, shall pre-test and/or test and inspect the operations of all materials, components and systems during and after the installation of same. Subcontractor will confirm that components and systems to which Subcontractor will connect have been completed and perform in accordance with plans and specifications.

Section 5.3

Subcontractor agrees to protect his work, materials, tools and equipment against loss or damage by fire, theft, or accident and not to make any claim or demand upon RRC for any injury, loss or damage to Subcontractor, his agents or employees or work, materials, tools or equipment or on account of any act or omission of RRC or any third person or persons; but Subcontractor’s rights shall be limited, so far as RRC is concerned, solely and exclusively to receipt by conditions herein contained.

Section 5.4

Subcontractor agrees to keep the premises, inside and outside, free and clean at all times, including upon completion of the work, of all excess material, debris and equipment.

Subcontractor’s failure to do so shall give RRC the option of removing said items at Subcontractor’s own risk and expense.

Section 5.5

Subcontractor agrees at his own cost and expense to do all digging, backfilling, cutting, patching and fitting of every kind required to properly install his work and to do this in a proper and timely manner. Any expenses incurred by RRC due to failure of Subcontractor to install his work at the proper time will be paid for by Subcontractor.

Section 5.6

By the signing of this Agreement, Subcontractor acknowledges that he has read and understands this Agreement, has fully inspected the site where the Work is to be performed, has fully inspected all existing conditions at the job site concerning the Work to be performed, including but not limited to work or conditions previously performed by others and/or prior work to which Subcontractor is to complete and/or correct, has examined and understands the plans and specifications, is familiar with all the laws, regulations, codes, ordinances and rules pertinent to his work and agrees to install Work in the manner required by public or private authority, or public utility having jurisdiction thereof and in the location and manner required by public or private authority and the public utility for connection of service to his work, without any additional cost to RRC.

Section 6.

Site Conditions Inspected

Subcontractor hereby represents and acknowledges that prior to execution of any SPO, it will have reviewed and inspected all the documents related to the SPO and will have investigated and satisfied itself as to the conditions affecting the Work, including, but not restricted to, those bearing on transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, and uncertainties of weather, physical conditions of the site and the type of equipment and facilities needed preliminary to and during the performance of the Work. Subcontractor has satisfied itself as to the surface and subsurface conditions of the site from an inspection, including all exploratory work done by Client or RRC, as well as from information presented by the plans, drawings, and specifications made a part of and SPO. Any failure by Subcontractor to acquaint itself with the available information will not relieve it from responsibility for any conclusions or interpretations made by Subcontractor on the basis of any information made available by Client or Contractor.

Section 6.1

Subcontractor hereby acknowledges that it has carefully reviewed and examined this MSA, with all of its Subcontract documents, and all other documents directly or indirectly relating to this MSA, and that any and all prior ambiguities and discrepancies have previously been clarified

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and/or corrected. Subcontractor agrees that it will not make any claim or demand on RRC based on, or arising out of, any misunderstanding or misconception on its part of the provisions and requirements of the General Contract, this MSA or any SPO. Any information given or statements made to Subcontractor by RRC or others as to the nature or characteristics of the Work included SPO, or as to the particular details relating to Subcontractor's Work, shall not reduce the work to be performed by Subcontractor. Subcontractor acknowledges that it has fully examined and analyzed all conditions that could affect its performance and that no conditions exist that would affect the progress, performance, or price of the SPO. Subcontractor will perform and furnish any and all work, labor, services, and/or materials mentioned, shown, depicted, or required in any MSA or SPO document. In case of any ambiguity or discrepancy in this MSA or any SPO, Subcontractor shall promptly submit the matter to RRC in writing, otherwise Subcontractor will be held solely liable to make any change necessary to correct same. Any decision or adjustment by Subcontractor without a written determination by RRC shall be at Subcontractor's sole risk and expense. Any and all decisions by Client or Architect/Engineer, relative to any ambiguity or discrepancy, shall be binding on Subcontractor when furnished to Subcontractor by RRC. Subcontractor shall be required to do all things and be bound by all rulings of Client or Architect/Engineer to the same extent and degree as RRC is bound thereto.

Section 6.2

Subcontractor warrants that prior to execution of any SPO, it will satisfy itself by its own independent investigation and research regarding all conditions affecting the Work, materials to be furnished, and other matters related to and all conditions existing at the Project that is the subject of the SPO. Subcontractor represents and warrants that it will enter into each SPO on the basis of such investigation and independent of any information or estimates prepared or furnished by RRC. Information respecting the Project as contained in the MSA, SPO, drawings, specifications, or the work of others is not warranted to be complete or accurate. No conversation or verbal agreements with any representative of RRC or any other person or information furnished thereby, either before or after the execution of this MSA or any SPO, shall affect or modify any of the terms or obligations contained therein. This MSA and the applicable SPO shall control any conflict that may arise between this Subcontract and any other contract documents. The Work shall be completed to the Satisfaction of RRC, Client, and applicable governmental agencies. If the contract documents provide for performance contrary to any governmental laws and regulations, Subcontractor shall be required to notify RRC, in writing, prior to commencement of the Work.

Section 6.3

In the event that Subcontractor's Work includes completion of work performed by another Subcontractor, or Subcontractor's Work is applicable to any designs or specifications reflected in an "as built" plan, and Subcontractor believes that any existing work is not in compliance with such plans, Subcontractor shall notify RRC in writing of any such discrepancy. In addition,

Subcontractor certifies that any changes or work performed by Subcontractor which deviate from any “as built” plans are “equivalent to” all original plans and specifications.

Section 6.4

Client, Client’s architect, and Client’s engineer shall establish, when applicable, principal axis lines and levels whereupon Subcontractor shall lay out and be strictly responsible for the accuracy of its work and for any loss or damage to other contractors engaged in work on the Project by reason of failure of Subcontractor to set out or perform its work correctly, or advise RRC, in writing, of any variations between the SPO, the plans, drawings, specifications or any other documents related to the MSA and SPO for the project, and that Subcontractor will be responsible to RRC for any damage, inconvenience, or increase of cost arising directly or indirectly from failure on its part to observe same.

Section 6.5

Subcontractor shall promptly review all documents related to any SPO and report in writing to RRC any variance or non-compliance with codes, laws, ordinances, rules, and regulations related to the Subcontractors scope.

Section 6.6

Subcontractor shall be fully responsible for all the protection and performance of all materials and equipment delivered to the Project until such time as the Subcontractor’s work has been fully accepted by RRC at the end of the Project.

Section 6.7

The final payment hereunder shall not be due until Subcontractor has delivered to RRC a complete release of all liens in form and text satisfactory to RRC and has otherwise satisfactorily complied with all its other obligations under this MSA, the applicable SPO and the Project plans and specifications. Additionally, the final payment is contingent on all O&M’s, warranties and punch list completion.

Section 6.8

Any tests or uncovering of the Work ordered or required by any competent public authority or necessary or convenient in connection with the entire construction shall be performed and repaired at the expense of Subcontractor.

Section 6.9

Subcontractor shall pay for any damage to another’s work.

Section 6.10

Subcontractor agrees not to assign any monies due or to become due Subcontractor hereunder. Any such assignment shall be void.

Section 6.11

Whenever any monies are expended or costs or expenses are incurred by RRC on behalf of or on account of Subcontractor which Subcontractor should have paid for which Subcontractor is required to reimburse RRC or if RRC continues or completes the work after default by Subcontractor, Subcontractor shall pay to RRC interest at the rate of 10% per annum from the time said monies are expended or said costs or expenses are incurred until the same are paid to RRC. Nothing herein contained shall be construed as requiring RRC to make any such expenditures, advance any such monies, or incur any such expenses.

Section 6.12

Any notice which RRC desires to, or is required to give to Subcontractor may be delivered to Subcontractor personally or may be mailed to Subcontractor at the address set forth below Subcontractor's signature on the face hereof, or at such other address as may be designated in writing by Subcontractor to RRC, and such notice shall be deemed served upon being deposited in the United States mail so addressed, and postage thereon paid, but the time for performance by Subcontractor of any act based on such notice or the time for the exercise by RRC of any right based on such notice shall be extended for twelve hours in the event such notice is served by mail.

Section 6.13

In the event Subcontractor makes an assignment for the benefit of creditors, files a petition in bankruptcy, has a petition in bankruptcy filed against him, suffers or permits an attachment, levy or execution to remain against any materials or monies due the Subcontractor, RRC shall be entitled to cancel this Agreement forthwith in addition to any other remedies RRC may have by this Agreement or by law provided.

Section 6.14

All clauses of this Agreement shall apply to any changes or extras in like manner and to the same extent as though said changes or extras were incorporated herein. Waiver of any breach, alleged breach, clause, covenant or condition of this contract by RRC shall not be construed as a waiver of any other clause of this Agreement nor shall such waiver serve as an estoppel of any other right RRC may have hereunder.

Section 6.15

Subcontractor agrees at no additional cost to RRC to make any changes or modifications ordered by RRC which do not involve extra cost to Subcontractor.

Section 6.16

Subcontractor shall indemnify, defend and hold RRC and the Project Client, and their directors, officers, agents and employees (collectively “Indemnities”) harmless from all losses, claims, liabilities, injuries, costs and expenses that Indemnities may incur by reason of any claim of injury or damage or loss claimed to have been sustained to any person or property or entity, with respect to all work which is covered by or incidental to this Agreement. Subcontractor’s duty to defend and indemnify Indemnities shall exist even if the alleged injuries or damages or losses sustained by the claimant are the result in part of Indemnities’ active or passive negligence, but the duty to defend and indemnify Indemnities shall not extend to injuries or damages or losses that are determined by final judgment in a lawsuit to which Subcontractor and the Indemnities are parties, to be the result of Indemnities’ sole negligence or willful misconduct. Subcontractor’s duty to defend is separate and distinct from the duty to indemnify and shall immediately arise when a claim is asserted against Indemnities in connection with the performance of Subcontractor, or performance by others for whom Subcontractor is liable, in connection with this Agreement, and regardless of whether others may owe Indemnities or Subcontractor a duty of defense and/or indemnity. The indemnity rights and obligations identified in this Agreement shall be, and are, the only indemnity rights and obligations between the parties, in law or equity, arising out of or related to this Agreement and the Project or any claims asserted in relation thereto. Nothing in this Agreement shall be deemed to abridge the rights of Contractor to seek contribution when appropriate.

Section 6.17

This MSA and any SPO shall be subject to the terms of the Prime Agreement between the Client and RRC. A redacted copy of said Agreement is available for review at office of the RRC and may be reviewed by Subcontractor at the offices of RRC upon written request.

Section 6.18

Subcontractor warrants to Client and RRC that the materials and equipment furnished under this MSA and an SPO and Subcontractor’s work shall be of good quality and new and shall be free from defect or failure for a period of one (1) year after completion of the Project. The Project shall be deemed complete on the later of the filing of a Notice of Completion, the issuance of a certificate of occupancy, or completion of all work called to be performed under the General Contract. However, this one year warranty period does not, and shall not, establish a period of limitations with respect to RRC’s right to seek remedies against Subcontractor or right to demand indemnification as permitted in this Agreement. Instead, this Section relates only to the specific obligation of Subcontractor to correct or replace defective work or materials and equipment within the one year period at Subcontractor’s sole cost and expense. In

addition, standard manufacturers’ warranties, if any, for materials or equipment supplied in connection with Subcontractor’s Work shall be assigned to Client or RRC, as the case may be, on Subcontractor’s receipt of payment in full for all materials, supplies, and labor. All work not conforming to these standards shall be considered defective. This warranty shall be in addition to, and not a limitation of, any other warranty or remedy provided by law or by this MSA or any applicable SPO. Subcontractor hereby agrees to provide all warranties and guarantees to Client for its Work required by the General Contract.

Section 6.19

Subcontractor shall not, without prior written consent of RRC which shall be entirely at RRC’s sole discretion, assign, transfer, nor subcontract any portion of the work required by this Agreement, nor assign any payments hereunder to others. RRC may assign or transfer the whole or part of this Agreement, and its rights hereunder, to any individual or business entity.

Section 6.20

In the event Subcontractor shall fail to perform or furnish any of the Work or materials required under any MSOP, or in the event RRC shall have to pay any project obligations of Subcontractor, or in the event RRC suffers any damage whatsoever, or is caused any inappropriate expense, loss of liability by Subcontractor, all such payments made and all related costs incurred by RRC shall be expenses of the Subcontractor and may be deducted by RRC from the retention of other amounts otherwise due hereunder to Subcontractor. In addition, RRC may withhold payment of any amount due to or claimed by Subcontractor at any time Subcontractor shall be in default or potential default under this Agreement or fail to satisfy that no lien or claim exists, or can rise against RRC, the Client, the Project or RRC’s surety with respect to anything done by, for, or under Subcontractor in the performance of this Agreement. If Subcontractor is indebted to RRC on any other job or for any other reason, RRC may offset such indebtedness against any payment earned under this Agreement. RRC may invoice Subcontractor of any such amounts due to RRC, which invoice shall be immediately due and payable upon its receipt by Subcontractor.

Section 6.21

Subcontractor will not permit employees or representatives of the Subcontractor to bring radios to the project, other than those specifically used for two-way and telephone communications on the project.

Section 6.22

Tennis shoes, running or athletic shoes are not permitted to be worn by tradesmen working at the site. Safe wearing apparel and shoes are mandatory. All Subcontractors are required to adhere to the RRC Project Safety Plan and develop their own plan, to compliment RRC’s Plan, for review and approval by RRC.

Section 6.23

Subcontractor must be licensed at all times when performing work on the Project. Failure to be licensed shall be grounds for immediate termination for cause and RRC shall have no obligation to pay Subcontractor for any work performed it at any time during the work Subcontractor is unlicensed. Subcontractor shall, with twenty-four (24) hours of suspension or license revocation, notify RRC in writing of the suspension or revocation and the reasons therefore.

Section 6.24

Prior to final payment under the terms of this Agreement, Subcontractor shall provide to RRC and to Client’s representative, architect, engineer and/or designer, a detailed set of “AS-BUILT” plans marked to show the Work as actually performed and completed by Subcontractor including the details of all modifications, deviation or changes from the Plans and Specifications provided by Contractor to Subcontract.

Section 6.25

In the event the General Contract is terminated prior to its completion, or in the event RRC elects to terminate this Agreement without cause (which it is permitted to do upon three days notice to Subcontractor), Subcontractor immediately shall terminate performance of its work and make every reasonable effort to mitigate RRC’s losses as a result of such termination; provided, however, in connection with such termination, Subcontractor shall perform such acts as may be necessary to preserve and protect that part of its work then under construction. Upon such termination, Subcontractor shall be entitled to (i) payment of a pro rata portion of the Agreement price for the work performed through termination, or (ii) recovery of all labor, materials and equipment provided to the Project through termination plus a markup of 15% for overhead and profit, whichever is less, and Subcontractor shall have no further responsibilities under this Agreement other than with respect to matters which occurred and work which was performed prior to such effective date.

Section 6.26

In the event this Agreement is terminated “for cause”, Subcontractor shall not be entitled to receive any further payment until the work undertaken by RRC in its General Contract is completely finished and accepted by Client. At that time, if the amounts earned but not paid Subcontractor before said termination exceeds the expenses incurred by RRC in finishing or correcting Subcontractor’s work, any excess shall be paid by RRC to Subcontractor, but if such expense shall exceed the said amount earned and unpaid, Subcontractor shall promptly pay the RRC the amount by which the expense incurred by RRC by means of Subcontractor’s default exceeds said sum.

Section 7.

Dispute Resolution

All claims or disputes between RRC and Subcontractor, arising out of or relating to this MSA or any SPO, or the breach thereof, shall be decided by legal action to be filed in the Superior Court of the County, State of Colorado, where the Project is located. All parties to this agreement expressly waive the right to jury trial in any such proceeding and the matter, action and claim shall be tried by a judge sitting without jury. The prevailing party in any such action shall be entitled to recover all attorneys fees, expert witness fees and all other costs incurred in connection with the prosecution of such legal proceeding. In the event that RRC is required to arbitrate claims or disputes between RRC and the Property Client or any other third party, and that dispute should involve, in any manner, the Subcontractor, its work or materials provided, Subcontractor hereby agrees to submit all such disputes and claims involving the Subcontractor to arbitration under the provisions of and as provided for the in the General Contract.

Section 8

Entirety of Agreement

This MSA and the applicable SPO constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all prior negotiations, understandings, and agreements of any nature with respect to the subject matter hereof. No amendment, waiver, or discharge of any provision of this MSA or SPO shall be effective against any party unless that party shall have consented thereto in writing.

Section 9

Choice of Law

This Subcontract shall be construed, interpreted, and enforced in accordance with the laws of Colorado.

Section 10

Invalidity of Provisions

Invalidation or a holding of unenforceability of any provision of this Subcontract shall not affect any other provisions hereof, and such provisions shall remain in full force and effect.

Section 11

No Other Contractual Relationship Created

This Subcontract does not create, nor does any course of conduct between Contractor and Subcontractor pursuant to this Subcontract create, any contractual relationship between any parties other than Contractor and Subcontractor.

Section 12

Headings

The captions, titles, and Section headings used in this Subcontract are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Subcontract or any Section, article, or provision in it.