



## MASTER SUBCONTRACT AGREEMENT

This Master Subcontract is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
by and between Park Range Construction Inc., hereinafter called the Contractor, and  
\_\_\_\_\_, hereinafter called the Subcontractor.

### DEFINITIONS OF SUBCONTRACT TERMS

- a) **PROJECT:**
- b) **OWNER:** To be determined in a Work Order.
- c) **GENERAL CONTRACT:** To be determined in a Work Order
- d) **SUBCONTRACT WORK:** To be determined in a Work Order
- e) **ARCHITECT:** To be determined in a Work Order
- f) **CONTRACTOR:** Park Range Construction Inc., 2755 South Raritan Street, Englewood, Colorado 80110, PH (303) 781 – 8936, Fax: (303) 781 8409
- g) **SUBCONTRACTOR:**

**WORK ORDER/PURCHASE ORDER:** A Work Order or purchase order may be completed and executed by Contractor and Subcontractor for each Project subject to this Subcontract. Contractor may require Subcontractor to proceed on a Project by issuing an oral direction to proceed.

**ARTICLE 1**  
**SCOPE OF SUBCONTRACT WORK**

The Contractor has retained the Subcontractor to provide the labor, materials; equipment and services referred to in one or more Work Orders, and to perform the Subcontract Work as an independent contractor. The Subcontractor shall perform such Work under the general direction of the Contractor and in accordance with this Subcontract. The scope of the Subcontract Work shall consist of all work necessary of incidental to complete the work for each Project in accordance with and reasonable inferable from the Subcontract Documents as being necessary to produce the intended results.

**ARTICLE 2**  
**SUBCONTRACT PRICE**

As full compensation for performance of the Subcontracted Work, the Contractor (Park Range Construction, Inc.) agrees to pay Subcontractor the agreed upon price for the satisfactory performance of the work, subject to all applicable provisions of the subcontract, as set for in a Work Order or Purchase Order.

**ARTICLE 3**  
**SUBCONTRACT DOCUMENTS**

The Subcontract Documents for a Project consist of this Subcontract and the documents, schedules and attachments (including without limitation the procedural and administrative provisions thereof) set forth in a Work Order, which are all incorporated by reference and made a part hereof. The Contractor shall make copies of the Subcontract Documents available to the Subcontractor, upon the Subcontractor's request, prior to the execution of any Work Order. With respect to any Project, Subcontractor shall assume toward Contractor all obligations and responsibilities, (including without limitation any provisions for alternative dispute resolution, and any other procedural and administrative obligations and responsibilities), which the Contractor, under the General Contract, assumes toward the Owner. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under the General Contract, has against the Contractor. The Subcontractor acknowledges that it has reviewed carefully the Subcontract Documents, and will call to the Contractor's attention any discrepancies, ambiguities, or omissions in the Subcontract Documents, insofar as applicable to the Subcontract Work.

**ARTICLE 4**  
**PAYMENT**

**4.1 PROGRESS PAYMENTS:** If the work occurs over a period of time, Park Range shall make progress payments of the Work performed within (10) days after Park Range is paid by the Owner in accordance with Prompt Payment Act. Monthly payments shall be based on total value of Work performed during the preceding month, with the amount of such payment established on the basis of invoices or monthly payment requests prepared by the Subcontractor and submitted to Park Range by the 15<sup>th</sup> day of the preceding month. Payment will be made to the subcontractor upon Park Range's receipt of payment from Owner by the 15<sup>th</sup> of the next month. If invoice is received after the 15<sup>th</sup>, subcontractor will be paid by the 30<sup>th</sup> of the following month.

**4.2 COMPLETION AND PAYMENT:** The Work shall be completed upon the completion date set forth in the Work Order. Upon completion of the Work pursuant to the terms and conditions hereof, Subcontractor shall so advise Contractor, who shall promptly, inspect such Work and approve same, if acceptable. Approval of defective workmanship and/or materials due to concealment, oversight or otherwise shall not in any way relieve the Subcontractor from the responsibility of correcting such defective workmanship and/or materials. Thereafter, Subcontractor shall submit an invoice for payment. Subcontractor shall submit a list of all of its suppliers and subcontractors that are providing materials and labor on the Work to the Contractor. Furthermore, Subcontractor shall provide to Contractor a fully notarized mechanic's lien release from each and every supplier and subcontractor utilized by the Subcontractor prior to Contractor issuing payment. Should contractor reasonably believe that Subcontractor is behind or slow in the payment of any of its labor, subcontractors and/or materialmen, Contractor may issue its checks jointly payable to the Subcontractor and its labor, subcontractors, vendors and/or materialmen.

**4.3 WITHHOLDING PAYMENT:** Contractor may withhold payment, in whole or in part, upon notice to Subcontractor of defective work or failure to perform the Subcontract Work as required by the Subcontract, third party claims filed or reasonable evidence indicating probable filing of such claims, or failure of Subcontractor to make payments properly to subcontractor for labor, materials, or equipment, or damage to another subcontractor, or damage to Contractor as per indemnification.

**4.4 ADDITIONAL WORK:** In the event Subcontractor is required to perform services or furnish material in addition to that called for in the Work described on page one of this Subcontract, Subcontractor must first obtain written approval from the Contractor, which such written approval must specify the exact nature of the additional work and the dollar amount to be paid for such additional work. Any additional work performed or material supplied without express written approval of the Contractor shall be deemed to be done pursuant to the Contract Price specified in page one of this Subcontract.

**ARTICLE 5  
PERFORMANCE OF WORK**

**5. DATE OF COMMENCEMENT:** The Date of Commencement is the date established in a Work Order for each Project. The Contractor shall prepare a schedule for performance of the Subcontract Work (hereinafter called the "Schedule of Work"). The Schedule of Work shall be attached to each Work Order. The Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the Subcontract Work shall be performed and all other matter relative to the timely and orderly conduct of the Subcontract Work. The Subcontractor shall be bound by the Schedule of Work as revised and updated from time to time by the Contractor.

**5.1 SUBCONTRACT PERFORMANCE:** The Subcontractor shall use the utmost care, skill and diligence in supervising and directing the Subcontract Work. The Subcontractor shall have responsibility and control over the performance of the Subcontract Work, including the construction methods, techniques, means and sequences for coordinating and completing the various portions of the Subcontract Work.

**5.2 TIME IS OF THE ESSENCE:** Time is of the essence hereof. Subcontractor agrees to complete the Work described in page one of the Subcontract on or before the completion date set forth in page one of this Subcontract. Subcontractor agrees to adhere strictly to the exact time schedule of the Contractor, and if, in the sole opinion of the Contractor, the Subcontractor does not maintain such schedule adherence, and within 24 hours after notification of such failure by the Contractor, Subcontractor has not taken actions necessary to promptly achieve and maintain such schedule, the Contractor may declare a forfeiture, complete the Work, and deduct the cost of the same from any funds due the Subcontractor. Any delays caused by Subcontractor which result in additional expenses to Contractor shall be charged to Subcontractor and may be deducted from funds due Subcontractor.

**ARTICLE 6  
SUBCONTRACTOR'S OBLIGATIONS**

**6.1 RESPONSIBILITIES:** Subcontractor hereby agrees to furnish Contractor all labor and/or specifications ("The Work"), at the price or prices which are specified in the Work Order.

**6.2 WORKMANSHIP:** Every part of the Subcontract Work shall be executed in accordance with the Subcontract Documents using the utmost skill, workmanship and materials. All materials used in the Subcontract Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Subcontract documents to be otherwise.

**6.3 WARRANTY:** Subcontractor shall guarantee and specifically warrant the nature and quality of all of its workmanship, materials and equipment furnished and utilized hereunder for a period of one year from the date of final acceptance of same by Contractor and if applicable, by any governmental agency. Said warranty shall be against any and all defects in materials and/or equipment, defective workmanship and/or failure to follow the requirements and provisions set forth in the plans and specifications, as well as instructions received from Contractor. In the event of any such defective materials and/or equipment, supplies, defective workmanship or failure to follow the requirements set forth in the plans and specifications or specified by Contractor, then and in such event, Subcontractor shall, within 10 days after written notice from the Contractor, cause to be repaired and/or replaced any and all such defective workmanship, materials and/or equipment at Subcontractor's sole cost and expense during the aforementioned one year warranty period.

If Subcontractor fails to promptly correct the defective work according to the terms of this paragraph, Contractor shall have the privilege (but not the obligation) of making such corrections, and Subcontractor shall reimburse Contractor for such costs, plus pay Contractor an additional fee equal to 15% of such costs, as reimbursement to Contractor for its overhead. Contractor is hereby authorized to deduct such amounts from any monies due the Subcontractor. In the case of an emergency, Contractor may, at its option, without notice to the Subcontractor, take such action, as it deems necessary and proper to remove or terminate such emergency. Subcontractor agrees to promptly reimburse Contractor for all expenses incurred.

Subcontractor shall submit and assign to Contractor all factory warranties and equipment installed by subcontractors.

**6.3.1 PERIOD OF LIMITATION:** Nothing set forth in this Subcontract, including without limitation Subparagraphs \_\_\_\_\_ hereof, shall be construed to establish a period of limitation with respect to obligations of the Subcontractor other than its obligation to honor its warranty and to uncover and correct Subcontract Work. The one-year period for correction of work described in Subparagraph \_\_\_\_\_ related only to the specific obligation of the Subcontractor to correct the work, and has no relationship to the time within which the obligation to comply with the Subcontract Documents may be sought to be enforced, not to the time within

which proceedings may be commenced to establish Subcontractor's liability with respect to Subcontractor's obligations other than specifically to correct the Subcontract Work.

**6.3.2 CLEANUP:** Subcontractor shall keep the job site of the Work free and clear of all rubbish, debris and waste material arising from the Work performed by Subcontractor hereunder, and Subcontractor further agrees that Contractor may arrange for the removal of such rubbish, debris and waste material at Subcontractor's expense, if Subcontractor fails to remove the same in a timely manner.

**6.4 SAFETY OF PERSONS AND PROPERTY:** Subcontractor shall comply with all OSHA regulations, and any and all applicable federal, state, or local law or regulations relating to health and safety, as well any of Contractor's health and safety policies rules and regulations. The Subcontractor shall stop any part of the Subcontract Work, which the contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Subcontractor shall notify the contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if required by the Contractor. The Subcontractor shall indemnify the Contractor for all fines, penalties, costs, and expenses, including attorney's fees, incurred by or imposed on the contractor as a result of safety violations, which occur as a result of Subcontractor's performance of the Subcontract Work.

**6.5 PERMITS, FEES AND LICENSES:** Subcontractor warrants that Subcontractor has all necessary permits and licenses to perform the work. Subcontractor further agrees that Subcontractor shall be solely responsible for payment of all sales, use, and other applicable taxes for materials, labor, work, or services to be furnished or supplied by Subcontractor pursuant to the terms of this Subcontract, and that the contract price set forth in page one of this Subcontract includes all sums incurred for such taxes, permits, and licenses.

**6.6 DELEGATION OR SUBCONTRACTING OF DUTIES:** The Subcontractor shall not delegate, transfer, convey, subcontract, relinquish or otherwise dispose of the whole or any part of its duties under this Subcontract nor any Work Order without prior written approval of the Contractor. The Contractor's approval shall not be unreasonably withheld. Lower-tier subcontractors and suppliers approved by the Contractor on or before the effective date of the Subcontract may be listed below

## **6.7 MATERIALS SAFETY**

**6.7.1 HAZARDOUS SUBSTANCES:** In the event the Subcontractor encounters asbestos, polychlorinated biphenyl (PCB) or other hazardous substances at the site which potentially are harmful to persons or property, the Subcontractor shall take all steps required by the Subcontract Documents and by law to protect persons and property from injury or damage, including stopping the Subcontract Work in the affected areas and promptly advising the Contractor in writing of the conditions encountered at the site. Should the Subcontractor be required to stop work in any area of the Project as a result of hazardous substances located at the site, then the Subcontractor shall not resume its Subcontract Work in the affected area until (a) the hazardous substances have been removed or made harmless, (b) the Contractor and Subcontractor agree in writing to commence work in all or a portion of the area, (c) the Owner orders the work to proceed in the affected area and the parties agree, or (d) the matter is resolved through arbitration as provided for in this Subcontract.

**6.7.2 MSD Sheets:** Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Subcontract Work shall be submitted to the Contractor by the Subcontractor. MSD sheets.

**6.8 PROTECTION OF WORK:** Subcontractor shall be fully responsible for and shall protect the entire Subcontract Work (Including without limitation any material or equipment stored at the Project or off-site), until final acceptance of the Project by the Owner.

## **ARTICLE 7 INSURANCE**

**7.1 MINIMUM LIMITS OF LIABILITY:** Subcontractor shall secure and maintain in full force during the term of this Agreement: Comprehensive public liability insurance in the amounts of \$1,000,000 per occurrence for bodily injury and \$1,000,000 property damage; Workmen's Compensation insurance covering all workers on the job, as required by law, in an aggregate amount of \$250,000; Automobile liability insurance with limits for personal injury of at least \$1,000,000 each person/\$1,000,000 Each occurrence and for property damage at least \$1,000,000. Such insurance shall cover liability arising out of the use of Subcontractor of owned, non-owned, and hired vehicles in the performance of any Work hereunder. Subcontractor shall deliver copies of all such insurance policies or certificates evidencing same to Contractor prior to commencing any Work hereunder.

**ARTICLE 8  
CONTRACTOR'S OBLIGATIONS**

**8.1 AUTHORIZED REPRESENTATIVE:** The Contractor shall designate one or more persons who shall be the Contractor's authorized representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

**8.2 LAYOUT RESPONSIBILITY AND LEVELS:** The Contractor shall establish principal axis lines of the building and site upon which the Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to set out or perform its work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details of its Subcontract Work shall result in alignment of finish surfaces.

**ARTICLE 9  
INDEMNIFICATION**

**9.1 INDEMNIFICATION:** Subcontractor expressly agrees to indemnify and hold harmless Contractor against all loss, damage, or claim of whatsoever nature, arising out of the performance of the Work by Subcontractor.

**SUPERVISION OF WORK AND MATERIALS:** Subcontractor shall be responsible for the care and protection of all materials and/or equipment delivered to the job site for its account. Title to such materials and/or equipment shall not pass to Contractor until the same are permanently installed or attached to the Work, and such installation or attachment has been accepted by Contractor. Subcontractor retains all risk of loss and/or damage to such property until title so passes.

**WAIVER:** A waiver by Contractor of any breach or violation by Subcontractor of any provision of any Work Order or of this Agreement shall not constitute a waiver of any further or additional breach of the Agreement.

**ATTORNEY'S FEES:** Subcontractor hereby agrees to pay all Contractor's attorney's fees, court costs and all other legal fees that may be incurred by Contractor in the event of any legal dispute between Contractor and Subcontractor regarding this Subcontract, the Work and the performance of Subcontractor.

**SUCCESSORS AND ASSIGNS:** Subcontractor shall not assign or sublet this Agreement or any of its obligations or payments to become due hereunder without the prior consent of Contractor.

**MERGER OF PREVIOUS AGREEMENTS:** This Agreement, the plans and specifications, and any Work Orders issued hereunder constitutes the entire Agreement and may not be altered, amended or modified except by a writing signed on behalf of the parties hereto by duly authorized officer or agent.

**9.2 NO LIMITATION UPON LIABILITY:** To the fullest extent permitted by law, in any and all claims against the Owner, the Architect, Architect's consultants, agents and employees, the Contractor (including it affiliated, parents and subsidiaries) and other contractor or subcontractors, or any of their agents or employees, by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation under this Article 9 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the subcontractor under workers' or workmen's compensation act, disability benefit acts or other employee benefit acts.

**9.3 COMPLIANCE WITH LAWS:** The Subcontractor shall be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as "Laws") applicable to the Subcontract Work including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, and all other Laws with which the Subcontractor must comply according to the Subcontract Documents. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the subcontractor, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.

**ARTICLE 10  
CHANGES, CLAIMS AND DELAYS**

**10.1 CHANGES:** In the event Subcontractor is delayed or prevented from furnishing the requisite labor, materials, and/or equipment in accordance with the terms and conditions herein prescribed because of strike, act of God, or other cause beyond its control; then and in such event, Contractor shall have the option during any such period of delay, to obtain the requisite labor, materials and/or equipment from a third party; and, further, if said delay continues for a period in excess of 30 days for any reason whatsoever, Contractor shall have the option to terminate this Agreement as to all future performance hereunder by Subcontractor. Other than for the above stated causes, if Subcontractor fails to perform timely and properly hereunder, at Contractor's options, and upon three days written notice to Subcontractor, the Contractor shall have the right to:

- a) Either terminate this Agreement, in which event all parties hereto shall be relieved of any further obligations hereunder;
- b) Not terminate this Agreement and obtain the required labor, materials and/or equipment for the work from such other sources and their parties and charge Subcontractor for the actual costs incurred plus 15% to be paid to Contractor for overhead in order to complete the Work. Further, Contractor shall have the right to also charge Subcontractor for any loss of income and/or profits sustained by Contractor as a result of Subcontractor's breach hereunder. It is expressly understood that Contractor shall have the unrestricted right to choose third parties to perform the work. Further, in the event Contractor shall elect to exercise its rights as provided herein above to accomplish any of the performance of said additional tasks within the period allotted therefor, each of the aforementioned options specified in subparagraphs (a) and (b) shall also be available to Contractor.
- c) In any event, to the contrary notwithstanding, it is expressly understood that Contractor may, at its sole option, terminate this Agreement without cause upon 20 days prior written notice to Subcontractor

**10.1.1 SUBCONTRACT CHANGE:** A Subcontract Change is a change in the Subcontract Work within the general scope of the Subcontract involving a change in the drawings, specifications or technical requirements of the Subcontract. When the Contractor so orders in writing, the Subcontractor, without nullifying this Subcontract, shall make any and all changes in the Subcontract Work, which are within the general scope of this Subcontract and any Work Order. Adjustments in the Subcontract Price or Subcontract Time, if any, resulting from such changes shall be set forth in a Subcontract Change Order pursuant to the Subcontract Documents. No such adjustments shall be made for any changes performed by the Subcontractor that has not been ordered in writing by the Contractor. A Subcontract Change Order is a written instrument prepared and signed by the Contractor and by the Subcontractor stating their agreement upon the change in the Subcontract Work, adjustment in the Subcontract Price and/or Subcontract Time.

**10.1.2 ADJUSTMENT IN SUBCONTRACT PRICE:** If a Subcontract Change Order requires an adjustment in the Subcontract Price, the adjustment shall be established by one of the following methods: (1) Mutual agreement on a lump sum with sufficient information to substantiate the amount; (2) Unit prices already established in the Subcontract Documents or if not established by the Subcontract Documents then established by mutual agreement for the adjustment; (3) A mutually determined cost plus a jointly acceptable markup for overhead and profit; or (4) As may otherwise be required by the Subcontract Documents.

**10.1.3 SUBSTANTIATION OF ADJUSTMENT:** If the Subcontractor does not advise the Contractor promptly of the Subcontractor's agreement or disagreement with a proposed adjustment, or if the Subcontractor disagrees with the proposed method of adjustment, the method and the adjustment shall be determined by the Contractor on the basis of reasonable Subcontractor expenditures and savings attributable to the change, including, in the case of an increase in the Subcontract Price, a reasonable markup for overhead and profit.

**10.1.4 INCIDENTAL CHANGES IN THE SUBCONTRACT WORK:** The contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work, which do not involve adjustments in the Subcontract Price or Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written orders shall be carried out promptly and are binding on the parties.

**10.2 CLAIMS:** A claim is a demand or assertion made in writing by the Contractor or the Subcontractor seeking an adjustment in the Subcontract Price and/or Subcontract Time, an adjustment or interpretation of the subcontract terms, or other relief arising under or relating to this Subcontract, including the resolution of any matters in dispute between the Contractor and Subcontractor in connection with the Project.

**10.2.1 CLAIMS RELATING TO OWNER:** The Subcontractor agrees to make all claims against the Contractor for which the Owner is or may be liable, wholly or in part, in the same manner and within the time limits provided in the General Contract for like claims by the Contractor against the Owner and in sufficient time for the Contractor to make such claims against the Owner in accordance with the General Contract. The Contractor agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor in the manner provided in the General Contract for like claims by the Contractor against the Owner. Contractor shall, on behalf of Subcontractor, diligently prosecute any claims for additional time or money against the Owner. Contractor shall not settle or compromise any such claims without prior consent and authorization of the Subcontractor. The Subcontractor shall be afforded full opportunity to participate in the negotiations and resolution of any such claims, and Subcontractor shall bear all costs and expense, including attorney fees, associated with the prosecution of such claims. Contractor shall immediately pay to Subcontractor any amounts it actually receives from the Owner related to such claim, less deduction for any expenses or fees, including attorney fees and the value of any time incurred by Contractor, in the prosecution of such claims. Contractor's liability to Subcontractor for any such claims shall be limited solely to the amounts which are received by Contractor from Owner upon such claims, less the deductions set forth above. Contractor's receipt of payment from Owner shall be a condition precedent to Contractor's obligations to Subcontractor on any such claims.

**10.2.2 CLAIMS RELATING TO CONTRACTOR:** The Subcontractor shall give the Contractor written notice of all claims not waived within seven (7) calendar days of the date when the Subcontractor knew or should have known of the facts giving rise to the event for which claim is made; otherwise, such claims shall not be valid.

**10.2.3 DELAY/TIME EXTENSION:** If the Subcontractor is delayed in the performance of the Subcontract Work for any reason beyond the Subcontractor's control, and without the Subcontractor's fault or negligence, including delays caused in whole or in part by the Contractor, Owner, Architect or any other persons, entities or events or if the Subcontract Work is delayed by order of the Contractor, Owner or an authorized representative of either, or if the Subcontract Work is delayed for any reason or cause for which the Contractor, Owner or Architect concludes has resulted in excusable delay, then the Subcontractor shall be entitled to an extension of the Subcontract Time in which to complete the Subcontract Work. Said extension shall be set forth in a Subcontract Charge Order for such time as the parties may agree is reasonable. Subcontractor shall not be entitled to any additional form of recovery for delay, including specifically any monetary damages for delay, except that Contractor shall pay to the Subcontractor the net amount, if any, which Contractor may be paid by the Owner resulting from delays caused in whole or part by the Owner. The net amount payable to the Subcontractor under the immediately preceding sentence shall be determined by subtracting from any amount paid the Contractor by the Owner the cost (including experts' and attorneys' fees) reasonably incurred by Contractor that are allocable to Contractor's efforts to obtain such payment from the Owner.

**10.2.4 LIQUIDATED DAMAGES:** If the General Contract provides for liquidated or other damages for delay beyond the completion date set forth in the Contract, and such damages are assessed by the Owner against the Contractor, then the Contractor may assess such damages against the Subcontractor in proportion to its share of the responsibility for such delay and damage. Nothing in this Subparagraph 10.3.1 shall limit the Contractor's right to claim all actual damages sustained by the Contractor as a result of Subcontractor delay.

## **ARTICLE 11 ARBITRATION**

**11.1 ARBITRATION:** At the option of the Contractor, to be exercised in its sole discretion, all claims, disputes and other matters in question arising out of, or relating to, this Subcontract, or the breach thereof, except for claims which have been waived, shall be decided by binding arbitration. The parties shall attempt in good faith to agree on an arbitrator or panel of arbitrators and the rules or other standards under which the arbitration shall be conducted. If the parties cannot agree after engaging in such good faith efforts, the arbitration shall be conducted in accordance with the Fast-track proceedings in the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Notwithstanding other provision in this Subcontract, or choice of law provisions to the contrary, this agreement to arbitrate shall be governed by the Colorado Uniform Arbitration Act, 13-22-201 et seq., C.R.S., which shall not be superseded or supplemented by any other arbitration act, statute or regulation. Notwithstanding any other provision hereof, the Contractor shall have the option, at its sole discretion, to allow or require some limited discovery procedures in connection with any arbitration proceeding, including no more than three (3) depositions, twenty-five (25) written interrogatories (including subparts) and twenty-five (25) requests for production of documents (including subparts), and no more than ten (10) requests for admissions (including subparts). In no event shall the applicable statutes of limitation for arbitration be made when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would bar a notice of demand. The location of the arbitration proceedings shall be at the office of the American Arbitration Association of Denver, Colorado, unless the parties agree otherwise.

**11.2 AWARD:** The award rendered by the arbitrator(s) shall be final and judgement may be entered upon it in accordance with the Colorado Uniform Arbitration Act in any court having jurisdiction.

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

## **ARTICLE 12 RECOURSE BY CONTRACTOR**

### **12 FAILURE OF PERFORMANCE:**

**12.1.1 NOTICE TO CURE:** If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or it fails to make prompt payment to its workers, sub-subcontractor or suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of the Subcontract, the Subcontractor may be deemed in default of this Subcontract. If the Subcontractor fails within twenty four (24) hours after written notification to commence and continue satisfactory correction of such default, with diligence and promptness, then the Contractor without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies: (1) Supply such number of workers and quantity of materials, equipment and other facilities as the Contractor deems necessary for the satisfactory correction of such default, which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees; (2) Contract with one or more additional contractors, to perform such part of the Subcontract Work as the Contractor shall reasonably determine will provide the most expeditious correction of the default and charge the cost thereof to the Subcontractor; (3) In the event of an emergency affection the safety of persons or property, the Contractor may proceed to commence and continue satisfactory correction of such default, without first giving twenty four (24) hours written notice to the Subcontractor, but shall give prompt written notice of such action to the Subcontractor.

**12.1.2 TERMINATION BY CONTRACTOR:** If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) working days after written notification issued under Subparagraph 12.1.1 then the Contractor may, in lieu of or in addition to the remedies set forth in Subparagraph 12.1.1, issued a second written notification to the Subcontractor. Such notice shall state that if the Subcontractor fails to commence and continue correction of the default within twenty four (24) hours of the second written notification, the Subcontract may be terminated and the Contractor may use any materials, implements, equipment, appliances or tools furnished by or belonging to the Subcontractor to complete the Subcontract Work. The Contractor shall issue a written notice of termination to the Subcontractor at the time the Subcontract is terminated. The Contractor also may furnish those materials, equipment and/or employ such workers or subcontractors, as the Contractor deems necessary to maintain the orderly progress of the work. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees shall be deducted from any moneys due or to become due the Subcontractor under this Subcontract or under any other subcontract between Contractor and Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense exceeds the unpaid balance of the Subcontract Price. If the unpaid balance of the Subcontract Price exceeds the expense of finishing the Subcontract Work, such excess shall be paid to the Subcontractor.

**12.1.3 USE OF SUBCONTRACTOR'S EQUIPMENT:** If the Contractor performs work under this Article, or subcontracts such work to be so performed, the Contractor and/or the persons to whom work has been subcontracted shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, belonging or delivered to the Subcontractor and located at the Project for the purpose of completing any remaining Subcontract Work. Immediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

**12.1.3 IMPROPER TERMINATION:** Should Contractor take action pursuant to Subparagraph 12.1, and should it subsequently be determined that the termination effectuated pursuant to Subparagraph 12.1 was improper or otherwise wrongful, such termination shall be deemed to be a termination for convenience pursuant to Subparagraph 12.3 hereof.



## **12.2 SUSPENSION OR TERMINATION BY OWNER FOR CONVIENCE**

**12.2.1 NOTICE; LIMITATION ON LIABILITY:** Should the Owner order the Contractor in writing to suspend, delay, or terminate the performance of the Contract or any part which affects the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Owner, and not due to any act or omission of the Contractor, or any other person or entity for whose acts or omissions the Contractor maybe liable, then the Contractor shall so notify the Subcontractor in writing and, upon written notification, the Subcontractor shall immediately suspend, delay, interrupt, or terminate this Subcontract or that portion of the Subcontract Work as ordered by Contractor. In the event of an Owner suspension, delay, or termination for convenience as described in Subparagraph 12.1.3, the Contractor's liability to the Subcontractor for any damages caused to the Subcontractor by said order, including any claims for adjustments in the Subcontract Price and/or Subcontract Time, shall be extinguished by the Contractor pursuing said damages and claims against the Owner, on the Subcontractor's behalf and at the Subcontractor's expense, and by awarding and paying over to the Subcontractor any additional time and/or money obtained from the Owner on the Subcontractor's behalf. At the Subcontractor's option, the Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of said damages and claims against the Owner through mediation, arbitration and/or litigation, and to permit the Subcontractor to prosecute said damages and claims, in the name of the Contractor and for the use and benefit of the Subcontractor. The Contractor's liability to the Subcontractor for any damages and claims caused by the Owner's suspension, delay or termination for convenience shall be fully extinguished by the Contractor awarding and paying over to the Subcontractor any additional time and/or money obtained from the Owner on the Subcontractor's behalf through the conclusion of the mediation, arbitration, and/or litigation process.

## **12.3 TERMINATION BY CONTRACTOR FOR CONVENIENCE**

**12.3.1 NOTICE:** The Contractor may, at any time, terminate this Subcontract for the Contractor's convenience and without cause, by providing seven (7) calendar days written notice to Subcontractor.

**12.3.2 SUBCONTRACTOR'S ACTIONS:** Upon receipt of written notice from the Contractor of such termination for the Contractor's convenience, the Subcontractor shall: (1) Cease operations as directed by the Contractor in the notice; (2) Take all actions necessary or that the Contractor may direct, for the protection and preservation of the Subcontract Work; and (3) Except for Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing sub-subcontracts and purchase orders and enter into no further sub-subcontracts and purchase orders.

**12.3.3 PAYMENT:** In the event of such termination for the Contractor's convenience, the Subcontractor shall be entitled to receive payment for Subcontract Work properly executed, and all costs incurred by reason of such termination; provided, however, that the Subcontractor shall not be entitled to receive payment for any overhead and profit on the Subcontract Work not executed.

## **ARTICLE 13 GENERAL PROVISIONS**

**13.1 GOVERNING LAW:** This Subcontract shall be governed by the law of the State of Colorado

**13.2 SEVERABILITY AND WAIVER:** The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

**13.3 ATTORNEYS' FEES:** Should the Contractor employ an attorney to institute suit or demand arbitration to enforce any of the provisions hereof, to protect its interests in any manner arising under this Subcontract, or otherwise to evaluate or enforce the Contractor's rights under this Subcontract, the contractor shall be entitled to recover reasonable attorneys' fees, costs, charges, and expenses expended or incurred therein.

**13.4 NON-ASSIGNMENT:** The Subcontractor shall not assign the whole nor any part of the Subcontract, the Subcontract Work any Work Order, nor any accounts or receivables resulting from the Subcontract, without prior written approval of the Contractor.

**13.5 JOINT CHECKS:** The Contractor may, in its sole discretion, make any payment to Subcontractor hereunder through a check or checks made payable to the joint order of subcontractor and such of Subcontractor's subcontractors, suppliers, or others, or

any of Subcontractor's other creditors having potential or actual rights or claims against the Project or any receivables or other proceeds otherwise due Subcontractor under this Subcontract

**13.6 ENTIRE AGREEMENT:** This Subcontract and any Work Order are solely for the benefit of the signatories hereto and represent the entire and integrated agreement between the parties hereto and, unless specifically referenced herein, supersedes all prior negotiations, representations, or agreements, either written or oral.

**13.7 FAMILIARITY WITH SUBCONTRACT DOCUMENTS:** Execution of this Subcontract by Subcontractor shall be conclusive evidence that Subcontractor has read and understood all of the Subcontract Documents referred to in Article 3 of this Subcontract.

**13.8 EFFECTIVE PERIOD:** This Subcontract shall remain in effect for a period not to exceed two (2) years from the date set forth above, subject to the termination provisions set forth herein.

**13.9 NO OBLIGATIONS:** Neither Contractor nor Subcontractor shall be required to execute any particular Work Order pursuant to this Subcontract. Contractor does not agree to provide any minimum nor any maximum number of Work Orders nor volume or type of work to Subcontractor pursuant hereto.

**CONTRACTOR:**

**SUBCONTRACTOR:**

**PARK RANGE CONSTRUCTION INC.  
2755 South Raritan Street  
Englewood, Colorado 80110  
(303) 781 – 8936**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_