

J. F. Davis Construction, L.L.C.

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J.F. Davis Construction

J.F. Davis Construction, L.L.C. Master Sub-Contractor Agreement

PART A - SUB-CONTRACTOR INFORMATION

Full Legal Name of Sub-Contractor

Corporation Partnership Sole Proprietorship Limited Liability Company Other:

Employer's Tax Identification Number or Social Security Number

Business Address:

Names of Officers, Partners, General Contractors and/or Members and their Home Address:

Contact Information	Telephone	Facsimile	Cellular	Electronic Mail
Business				
Emergency				

Insurance Coverage	Carrier	Policy Number	Agent	Expiration Date
Worker's Compensation				
General Liability				
Automobile Liability				

PART B - AGREEMENT PROVISIONS

THIS AGREEMENT, ("Agreement") is entered into by and between J.F. Davis Construction, L.L.C. ("General Contractor") and the sub-contractor named above ("Sub-Contractor"), and shall continue in full force and effect unless terminated by either General Contractor or Sub-Contractor pursuant to Section 7 below or as otherwise set forth in this Agreement.

Sub-Contractor and General Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

- Sub-Contractor Work Orders.** Sub-Contractor will furnish services to General Contractor as set forth in Sub-Contractor Work Orders executed by Sub-Contractor and General Contractor (the "Work"). Each

Sub-Contractor Work Order will incorporate this Agreement by reference and will become an Exhibit to this Agreement. Each Sub-Contractor Work Order (“Work Order”), together with the terms of this Agreement, is a separate contract that will be effective as of the Work Order date. If any terms of the Work Order conflict with the terms of this Agreement, the terms of the Work Order will take precedence in all cases.

2. **The Work.** Sub-Contractor will furnish at its own cost and expense all labor, equipment, materials, services and/or other items required to complete the Work for each project as described in the Work Order (the “Project”). Sub-Contractor will perform the Work in a first-class, good, and workman-like manner according to the highest standards of Sub-Contractor’s trade and in compliance with all building codes and applicable laws.
 - a. Sub-Contractor will promptly, at its own cost and expense, execute any incidental work necessary to complete a Project that is not explicitly covered by another trade so as not to delay the Project. This applies to minor incidental work only. All other additional work is subject to the written Change Order requirements set forth in Section 6 below.
 - b. Sub-Contractor will maintain a professional attitude at all times while on a General Contractor Project and will keep the job site safe and secure at all times.
3. **Price.** Sub-Contractor shall furnish all Work required by this Agreement as set forth in each Work Order for the price specified in the Work Order. Any amendments to the price or the scope of work shall only be effective upon written acceptance by General Contractor.
4. **Payment.** Sub-Contractor will adhere to the following payment procedures:
 - c. Sub-Contractor will notify General Contractor of its completion of the Work. Within a reasonable time thereafter, but no later than five (5) calendar days, General Contractor and Sub-Contractor shall inspect the Work. Within forty-eight (48) hours after such inspection, General Contractor shall deliver to Sub-Contractor a written punch list of the items that the General Contractor concludes must be completed in order for the Work to reach final completion.
 - d. If General Contractor delivers a written punch list to Sub-Contractor, Sub-Contractor shall complete the punch list items and, upon completion, deliver to General Contractor a written and signed notice of completion of the punch-list items. General Contractor and Sub-Contractor will re-inspect the Project and either (i) confirm that the Work has reached final completion, in which case, the General Contractor shall provide Sub-Contractor with a Statement of Final Completion; or (ii) General Contractor will submit another punch list to Sub-Contractor for completion. The punch list procedure described above will be repeated until all punch lists items have been completed.
 - e. Payment shall be due within Thirty (30) business days of the date of Final Completion, provided however, that no payments shall be due under this Agreement until:
 - i. Sub-Contractor has provided General Contractor with all warranty information, including manufacturer’s warranties for consumer products, guarantees, operating instructions, signed Work Order(s) and receipts; and,
 - ii. If requested by General Contractor, and to the extent permitted by the applicable laws, Sub-Contractor has delivered a full and complete release of all liens for materials and labor furnished in connection with the Work.

- f. General Contractor may, at its option, issue joint checks in payment for the Work.
 - g. No payment made to Sub-Contractor pursuant to this Agreement shall be deemed to operate as an acceptance by General Contractor of any part of or all of the Work, shall be construed as a waiver by General Contractor as to Work later found defective, or shall release Sub-Contractor from its liability for defects, warranty work, repairs, and/or replacements.
 - h. General Contractor may reduce any payment due Sub-Contractor for any costs that General Contractor incurs or reasonably expects to incur as a result of Sub-Contractor's failure to comply with the terms of this Agreement or as a result of Sub-Contractor's failure to pay its agents or material suppliers.
5. **Commencement of the Work.** Sub-Contractor shall promptly commence the Work agreed to be performed herein upon General Contractor's verbal notification to proceed. Time is of the essence and Sub-Contractor agrees to commence promptly, prosecute diligently, and achieve substantial completion of the Work not later than the completion date set forth in the Work Order, subject to adjustments in contract time as provided pursuant to written Change Orders. Sub-Contractor shall at all times keep General Contractor fully informed as to the progress of the Work.
6. **Change Orders.** No additions, deletions, or modifications to the Work shall be valid without *written* approval in the form of Change Order from the General Contractor. Change Orders will describe the changes to the Work and will provide any change to the price or to the completion date.
7. **Termination.**
- a. **By General Contractor.** At its sole option, General Contractor may terminate this Agreement at any time for any reason. If General Contractor terminates this Agreement for a reason other than Sub-Contractor's breach of or failure to perform any obligation arising under this Agreement, General Contractor shall pay Sub-Contractor the applicable price for the Work which is completed and accepted by General Contractor less amounts retained pursuant to this Agreement. If this Agreement is terminated by General Contractor as a result of Sub-Contractor's breach or failure to perform any obligation arising under this Agreement, General Contractor shall have the right, in addition to all other remedies available to it, to retain all payments due to Sub-Contractor pursuant to Section 4.
 - b. **By Sub-Contractor.** Sub-Contractor shall have the right to suspend performance of the Work upon ten (10) business days prior written notice delivered to General Contractor if General Contractor should fail to act upon any fully documented request for payment after it is presented in accordance with all of the requirements of this Agreement.
8. **Default.** Sub-Contractor shall be in material default and breach of this Agreement if any of the following events occur:
- a. Sub-Contractor is negligent in the performance of the Work.
 - b. Sub-Contractor fails to comply with any provision of this Agreement.
 - c. Any person files or threatens to file a claim of lien or any other claim against General Contractor or the owner of the Property as a result of Sub-Contractor's acts or omissions.
 - d. Sub-Contractor is unable to meet its financial obligations, files for protection under the bankruptcy laws of the United States of America, or has a receiver appointed on account of insolvency.

9. **Remedies.** In the event Sub-Contractor breaches this Agreement, General Contractor may terminate this Agreement without prejudice to any other rights or remedies available to it under applicable laws or in equity, or General Contractor may but shall not be obligated to pursue any one or more of the remedies set forth below without terminating this Agreement.
- a. General Contractor may require Sub-Contractor, at its own expense, to cure such defaults as may exist in the performance of Sub-Contractor's obligations within seventy-two (72) hours after notification from General Contractor.
 - b. General Contractor may engage other persons to perform such portion of the Work or may furnish any materials, services, or other items required as General Contractor, in its sole discretion, may deem necessary to avoid delay in the progress of the Work.
 - c. General Contractor may pursue any other rights or remedies available to it under applicable laws or in equity.
 - d. In the event of termination, General Contractor will give Sub-Contractor a termination notice verbally or in writing, and Sub-Contractor shall vacate the Project immediately and submit an invoice and supporting documentation to General Contractor for Work completed.
 - e. Sub-Contractor will be charged a fee of \$100 per day for each calendar day of delay caused by a breach of this Agreement by Sub-Contractor. Such sum will be deducted from the amount due the Sub-Contractor. General Contractor shall pay amounts due to Sub-Contractor for work completed by Sub-Contractor and accepted by General Contractor through the date of termination less any amount retained due to Sub-Contractor's failure to meet its obligations under this Agreement. Payment, less assessed fees, will be processed within one (1) week of termination notice.
10. **Insurance.** Sub-Contractor shall, at its sole cost and expense, obtain and maintain the following insurance:
- a. Worker's Compensation insurance (including employers' liability) complying with applicable laws with minimum limits as required by applicable laws.
 - b. Commercial General Liability Insurance providing coverage on a full occurrence basis, with limits of not less than \$1 million each occurrence for bodily injury and property damage liability combined, \$2 million annual general aggregate, and \$1 million products and completed operations annual aggregate.
 - c. Each policy of insurance shall provide that such insurance shall not be cancelable, be subject to non-renewal, or otherwise be subject to material modification except with thirty (30) days prior written notice to the additional insureds.
 - d. The commercial general liability policy shall name General Contractor as an additional insured for both ongoing and completed operations. The additional insured shall be provided the same coverage as provided Sub-Contractor, and such additional insured coverage shall include completed operations coverage.

- e. Sub-Contractor for itself and on behalf of its insurers, to the extent legally possible without voiding the insurance required under this Agreement, hereby waives and releases the additional insured from liability for loss, damage, or loss of property at the construction site, which loss or damage is covered by said insurance. Sub-Contractor shall obtain a waiver of any subrogation right that its insurers may acquire against the additional insured by virtue of payment of any such loss covered by such insurance.
 - f. Sub-Contractor hereby agrees to immediately notify (or cause its insurers or insurance broker to notify) General Contractor of any notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which provides coverage to the additional insured.
11. **Warranty.** Sub-Contractor warrants and guarantees that all Work shall be free from defects for one (1) year from the date of completion of the Project, unless applicable laws provide for a longer warranty period, in which case Sub-Contractor's warranties shall survive for such longer period. Upon demand by General Contractor, on a timely basis and at Sub-Contractor's sole cost and expense, Sub-Contractor will provide all labor and material required to repair or replace any defects. Sub-Contractor will also pay for any damage to other work or additional costs resulting from said defects.
- a. Unless otherwise specified by General Contractor, warranty work shall be commenced within three (3) business days and shall be completed within fourteen (14) calendar days after Sub-Contractor has received notice of the existence of a defect.
 - b. If warranty work is an emergency, as determined by General Contractor in its sole discretion, General Contractor shall have the right to use any other person to perform the warranty work, at Sub-Contractor's sole cost and expense. General Contractor may, but is not obligated to, provide Sub-Contractor with the opportunity to make the emergency warranty work, and Sub-Contractor shall perform emergency warranty work at the request of General Contractor. Emergency warranty work shall be commenced within twenty-four (24) hours, including weekends, and shall be completed within two (2) calendar days after Sub-Contractor has received notice of the existence of an emergency from General Contractor.
12. **Forms.** Sub-Contractor will provide General Contractor with the following: (a) Colorado Independent Contractor Insurance Status documentation (provided by General Contractor); (b) W-9 form; (c) Certificate of Liability Insurance; (d) State of Colorado Certification & Affidavit Regarding Unauthorized Immigrants.
13. **Problems.** Sub-Contractor will promptly notify General Contractor or its Project Manager in person or via telephone of any problems associated with the Work or the Project. Sub-Contractor will be liable for any damages resulting from Sub-Contractor's failure to promptly notify General Contractor of problems related to the Work or the Project.
14. **Trash Removal.** Sub-Contractor will, at all times, keep the Project free from waste materials or rubbish arising out of the Work. All trash and debris resulting from the Sub-Contractor's work shall be placed by Sub-Contractor in an area or container designated by the General Contractor or removed from the Project at the Sub-Contractor's expense. General Contractor may assess a cleaning and/or removal fee against Sub-Contractor should Sub-Contractor fail to remove its trash and debris.

15. **Indemnification.** Sub-Contractor will indemnify, defend and save harmless General Contractor and General Contractor's directors, shareholders, employees, agents, successors and assigns from and against all claims, suits, actions, demands, losses, judgments, settlements, fines and any liabilities, costs and expenses, attorneys' fees, and all other professional, expert or consultants' fees of every kind and nature whatsoever, which arise out of or are in any way connected with the Work performed, materials furnished, or services provided under this Agreement by Sub-Contractor. Sub-Contractor's duty to indemnify, defend, and hold harmless under this Section shall apply to any act or omission, willful misconduct, or negligent conduct, whether active or passive, on the part of Sub-Contractor.
- a. Sub-Contractor's duty to defend the indemnified parties is entirely separate from, independent of, and free-standing from Sub-Contractor's duty to indemnify the indemnified parties.
 - b. The provisions of this Section shall not apply to any claims which arise out of the sole negligence or willful misconduct of the General Contractor.
16. **Mechanics Lien.** Except to the extent prohibited by applicable law, as a condition precedent to Sub-Contractor's recording or filing of any lien under or relating to this Agreement, Sub-Contractor shall first submit a notice of intent to file a lien with General Contractor via certified U.S. Mail, first class, postage prepaid, and return receipt, along with all supporting documentation purporting to substantiate such lien enclosed therewith, and shall thereafter meet with General Contractor in person to review such documentation and surrounding circumstances. Sub-Contractor further agrees that Sub-Contractor shall not record or file any lien in any real property records until not less than ten (10) business days after General Contractor has received such supporting documentation, as evidenced by the date shown on the return receipt. Upon payment of all amounts due, Sub-Contractor will relinquish all lien rights and any other claims against the Property where the Work was performed.
17. **Assignment.** Sub-Contractor shall not assign or transfer this Agreement, or any part hereof, or make an assignment or transfer of any monies payable to Sub-Contractor pursuant to this Agreement, without the prior written authorization of General Contractor. Sub-Contractor understands that the responsibility for Work provided under this Agreement is not transferable to other sub-contractors or individuals (in whole or part) and Sub-Contractor agrees that all Work shall be performed by Sub-Contractor. This Agreement may be assumed by and shall inure to the benefit of General Contractor's successors and assigns without the consent of Sub-Contractor.
18. **Laws.** Sub-Contractor is aware of and understands all laws applicable to the Work. In the performance of the Work, Sub-Contractor shall give all notices required by, and shall otherwise fully comply with, all applicable laws. All Work shall be performed so that all approvals and all inspections of Governmental Agencies having jurisdiction over the Work can be obtained without delay or additional expense to General Contractor. Sub-Contractor SHALL BE SOLELY RESPONSIBLE FOR COMPLIANCE WITH THE PROVISIONS OF ALL APPLICABLE LOCAL, STATE AND/OR FEDERAL SOCIAL SECURITY, UNEMPLOYMENT COMPENSATION, WORKER'S COMPENSATION, SALES AND USE TAX, WITHHOLDING TAX AND OTHER TAX LAWS NOW OR HEREAFTER IN EFFECT, AND SHALL PAY ALL TAXES, CONTRIBUTIONS AND PREMIUMS REQUIRED THEREUNDER.

Sub-Contractor will comply with all health and safety laws, rules and regulations, and all health and safety policies, rules and directives issued by General Contractor.

Additionally, Sub-Contractor certifies that it has complied with and shall at all times during the term of this Agreement comply with the provisions of the Immigration Reform and Control Act of 1986, as amended. Sub-Contractor will require all persons employed by Sub-Contractor to complete and sign Form I-9 (or substitutes as prescribed by law) verifying their identities and authorization for employment.

19. **Independent Contractor.** Sub-Contractor, in the performance of Work, is an independent contractor, solely responsible for the employment, acts, omissions, control, and directing of its agents. Nothing contained in this Agreement shall authorize or empower Sub-Contractor to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of General Contractor or to bind General Contractor in a manner or make any representation, warranty, or commitment on behalf of General Contractor.

20. **Arbitration and Attorney's Fees.** All disputes hereunder shall be resolved by binding arbitration in accordance with rules of the American Arbitration Association. In any legal proceeding, lawsuit, arbitration, or action ("Action") to enforce or construe this Agreement or any provisions hereof, or to recover damages on account of breach hereof, the prevailing party shall be entitled to recover from the non-prevailing party litigation costs incurred by the prevailing party. Without limiting the foregoing, the term Action includes an action or claim brought in bankruptcy court or in post-judgment proceedings or appeals.

THE UNDERSIGNED have read, understand, and are authorized to sign this Agreement effective this

_____ day of _____ 2007.

J.F. Davis Construction, L.L.C.

Sub-Contractor

By: _____
General Contractor Authorized Signature

By: _____
Sub-Contractor Authorized Signature

Title: _____

Title: _____