

**PV CONSULTING, INC.  
SAMPLE MASTER SUBCONTRACT AGREEMENT**

**DATE:** 2005

**CONTRACTOR:** PV CONSULTING, INC.  
32051 Buffalo Creek Road  
Evergreen, CO 80439-7522  
303-674-1230  
303-512-7440 (Fax)

**SUBCONTRACTOR:** XXXXX

**PROJECT:** AS NOTED ON PROJECT SUBCONTRACTS

**PROJECT ADDRESS:** AS NOTED ON PROJECT SUBCONTRACTS

**OWNER:** AS NOTED ON PROJECT SUBCONTRACTS

**OWNER ADDRESS:** AS NOTED ON PROJECT SUBCONTRACTS

**SCOPE OF WORK:** Definition of the scope of work. The Work includes all items shown on the Contract Documents, and additionally, any items of work reasonably inferable from the Contract Documents or reasonably necessary to perform the work shown on the Contract Documents, including, but not limited to, all applicable taxes, engineering, equipment, hoisting, insurances, labor, ladders, layout, material, permits, scaffolding, shop drawings, submittals, supervision, support functions, tools, transportation, unloading, & other services incidental to & necessary for completion & proper execution of **XXXX & Other Miscellaneous Work** complete in accordance with addenda, drawings, general conditions, general requirements, plans, specifications, & other related documents as noted on change orders.

**PRICE:** AS NOTED ON PROJECT SUBCONTRACTS

**TIME:** AS NOTED ON PROJECT SUBCONTRACTS

**A) BASIC SAFETY PROVISIONS:**

- 1) Absolutely no alcoholic beverages or illegal drugs will be permitted on any project, on premises of the Corporation, Corporation's Project Location, or in a Corporation Vehicle after, before, or during working hours. Any violation of this policy is cause for immediate removal from such premises.
- 2) A clean work area must be maintained for the sake of accident free and efficient production. Subcontractor shall provide daily & final cleanup of debris & dirt for all work performed by Subcontractor. Storage equipment, materials, and refuse must be in an orderly fashion. The Contractor will clean up refuse caused by a Subcontractor if he deems it a safety hazard. The cost of this work will be charged back to the Subcontractor.
- 3) ACCIDENTS. All accidents, injuries, and near misses involving high potential for bodily injury or property damage must be reported to the Contractor immediately. A copy of the Subcontractor's investigative report must be sent to the Contractor's Project Manager.
- 4) All excavation and trenching work performed by a Subcontractor must be in strict accordance with OSHA requirements. Excavations must be laid back to an appropriate angle of repose for the soils involved, or an adequate shoring or tieback system installed to prevent collapse.

- 5) All Subcontractors must abide by the provisions of the Occupational Safety and Health Act as outlined in the Construction Standards, OSHA 2079, 29CFR, part 1926.
  - 6) CRANES. All lifts must use tag lines. No open hooks can be used on lifts.
  - 7) EQUIPMENT. Absolutely no riding on equipment not equipped with proper seating. Site speed not to exceed 10 MPH.
  - 8) FIRE CONTROL & FIRE PROTECTION EQUIPMENT. No fire barrels, hot boxes, or open fires. The Subcontractor must supply approved size ABC Fire Extinguisher for emergency use in the immediate area for his operations: Equipment – 5 LB; Fire Watch – 20 LB; Offices & Trailers – 10LB.
  - 9) FIRST AID. The Subcontractor must supply adequate first-aid supplies for his employees.
  - 10) FOOT PROTECTION. Leather work boots are required. Loafers, sandals, & tennis shoes (including steel-toe type) are not allowed.
  - 11) Guardrails and Perimeter Protection are installed to prevent access to wall and floor openings. If a Subcontractor removes and fails to replace a guardrail or perimeter protection line immediately, the Contractor will replace it and charge the cost of this work back to the Subcontractor.
  - 12) HARD HATS. Bump caps or metal hard hats are not permitted. Z 89.1 rated hard hats shall be worn at all times on any and all PV CONSULTING, INC. project sites.
  - 13) In the event the Subcontractor encounters on the site, material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) that has not been rendered harmless, the Subcontractor shall immediately stop Work in the area affected, and report the condition to the Contractor in writing. The Work in the affected area shall resume in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Contractor and Subcontractor, or in accordance with final determination by the Architect, through which arbitration is provided in this agreement. The Subcontractor shall not be required pursuant to Article 5 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).
  - 14) LADDERS. No damaged ladders or metal ladders are allowed on site.
  - 15) No glass containers are allowed on the job site.
  - 16) OSHA compliance officers are welcome on PV CONSULTING, INC. projects with proper management representation of the Contractor and all Subcontractors and agents.
  - 17) SCAFFOLDING. Full decking, full handrails, midrails, & toe boards are required on all scaffolds regardless of height.
  - 18) SIGNAGE. Bi-Lingual (English & Spanish) hazard & safety signs must be posted where hazards exist.
  - 19) The Subcontractor shall supply Personal Protective Equipment of the type approved by OSHA to his employees and agents.
- EYE PROTECTION - Must be worn when the operations being performed present a danger to eye injury.
- BODY HARNESS- must be worn when necessary, as defined by OSHA fall protection requirements.
- 20) TRUCKS. No more than three (3) persons are allowed in the cab of a truck. No riding in the back of a truck is allowed unless the truck is equipped with seats & seat belts.

21) Weekly Safety Meetings are required. These meetings should be held by qualified personnel with a written record of topics and attendance going to the Contractor's Project Manager. In lieu of this, a Subcontractor can require his employees and agents to attend the Weekly Safety Meeting held by the Contractor.

22) WORK CLOTHING. All shirts must have a minimum of four (4) inches sleeve length over shoulders. No cutoffs, net shirts, shorts, tank tops, etc. are allowed.

**B) NO STRIKE CLAUSE:**

During the performance of this subcontract, the Subcontractor agrees as follows:

1) Notwithstanding any other provisions contained herein, and superseding any contrary term expressed herein, the Subcontractor agrees that in the event of any strike, picket, sympathy strike, Work stoppage, or other form of labor dispute at or affecting the construction site, whether that dispute or picket is in connection with the General Contractor, the Subcontractor, the Owner, or any other Contractor or Subcontractor on this construction site, the Subcontractor will continue to perform the Work required herein without interruption or delay. In the event the Subcontractor fails to continue the performance of the Work required herein without interruption or delay, due to such picket or other form of labor dispute, the General Contractor may terminate the services of said Subcontractor after giving twenty-four (24) hours written notice of an intent to do so, or the General Contractor may invoke any of the rights set forth in accordance with provision 19 of the Additional Provisions. Additionally, should the Subcontractor be party to one or more labor agreements, he shall take all responsible action to avoid any Work stoppage and, in the event a Work stoppage should occur, he shall, within twenty-four (24) hours, take any and all legal action provided for, or permitted by, such labor agreements in order to expedite the resumption of working on this project.

2) During the performance of the Work required by this Agreement the Subcontractor, its employees, and its suppliers, will use such entrance or entrances to the construction site as may be designated by the General Contractor. Further, the Subcontractor agrees to perform the Work included in this agreement at such times of the day and days of the week as may be designated by the General Contractor

**C) EQUAL OPPORTUNITY CLAUSE:**

1) The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation, and selection training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants, employment notices to be provided by the subcontracting officer, setting forth the provisions of this nondiscrimination clause.

2) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3) The Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice provided by the Department's subcontracting officer, advising the labor union or the worker's representative of the Subcontractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4) The Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5) The Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24,

1965, and by the rules, regulations, and relevant orders of the Secretary of Labor or pursuant thereto, will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this subcontract, or with any of such rules, regulations, or orders, this subcontract may be canceled, terminated, or suspended in whole or in part, and the Subcontractor may be declared ineligible for further Government subcontracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7) The Subcontractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order, unless excepted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that each provision will be binding upon each Subcontractor or Vendor. The Subcontractor will take such action with respect to any subcontract or purchase order, as the Department may direct, as a means of enforcing such provisions, including sanctions for noncompliance; provided however that if the Subcontractor becomes involved in or is threatened by, litigation with a Subcontractor or Vendor, as a result of such direction by the Department, the Subcontractor may request the United States to enter into such litigation, to protect the interests of the United States.

#### **D) PAYMENT**

Contractor's obligation to pay Subcontractor is expressly conditioned upon the Owner's payment to Contractor for Subcontractor's Work, and such payment from the Owner to Contractor for Subcontractor's Work shall be an express condition precedent to Contractor's obligation to pay Subcontractor hereunder.

#### **Progress payments**

Progress payments shall be made as follows:

(a) Within ten days of the execution of this Agreement, Subcontractor shall prepare and submit to the Contractor a schedule of values reasonably and accurately allocating the contract price to the items of work to be performed. The schedule of values shall not be front loaded or otherwise skewed. The Contractor shall review and revise the schedule of values as necessary to be reasonable and accurate. The schedule of values as established by the Contractor shall be used as the basis for progress billings.

(b) Subcontractor shall deliver monthly draws to the Contractor not later than the twentieth day of each month. The draw shall show the percentage of completion as of the date of the draw for each category of work on the schedule of values, and the value of materials stored on site for which Subcontractor requests payment. Absent written agreement otherwise, there shall be no payment for materials stored off site. The Contractor shall review the draw request, determine the amount properly due and incorporate any proper and supportable amounts requested into its draw requests to the Owner. The Subcontractor shall be entitled to progress payments in an amount equal to 90% of the value of work in place and materials stored on site as determined by the Contractor, provided that such payment will be due only to the extent Owner pays Contractor for such work. Contractor shall pay any sums properly due within five days of receipt of payment from the Owner. The amount of any progress payment may be reduced by third party claims, unpaid subcontractors or suppliers, defective work or other Subcontractor breach. If said requisitions are not delivered by the Subcontractor as above noted, payment may be withheld for an additional 30 days.

(c) The Subcontractor agrees to: Keep himself thoroughly informed as to the progress of the job; Begin work within five days after notification by the Contractor; prosecute the work continuously and uninterruptedly with all possible speed; and Complete the entire work covered by this subcontract in accordance with provision 18 of the Additional Provisions. No payments are to be made unless the Subcontractor's rate of progress, Work done and material furnished are satisfactory to the Contractor as herein agreed upon.

(d) Subcontractor shall accompany each draw request with lien waivers and other proper documentation showing full and proper payment to subcontractors and suppliers for work included in prior draws. Subcontractor shall also supply invoices, delivery tickets or other proper documentation of materials stored on site, and such other documentation as Contractor or Owner requests from time to time

(e) Contractor may, in its discretion, withhold funds, issue joint checks, make direct payments or take other steps to ensure the proper payment of subcontractors and suppliers.

(f) In the event of any dispute regarding the amount of payment determined by the Contractor, Subcontractor shall deliver written notice specifying the dispute within three days of the issuance of the Certificate of Payment. Absent such notice, Subcontractor shall be deemed to have accepted the Contractor's determination of Payment as correct. In the event of any dispute regarding the proper amount of any progress payments, Subcontractor shall continue work pending the resolution of such dispute.

### **Final Payment**

Final payment of any balance of the contract price shall be paid upon the full, proper and final completion of the Project in its entirety and acceptance thereof by the Owner, the Contractor and any applicable government authorities. The Contractor may, in its discretion, withhold from final payment appropriate sums to cover third party claims, defective or uncorrected work, unpaid subcontractors or suppliers, or other Subcontractor breach.

**E) SCHEDULE.** first, a clause limiting subcontractor delay damages to an extension of the contract time; second, an express notice of claim provision that they must comply with if they want an extension; and third, an identification of risks that do not justify an extension.

### **TIME**

(a) The work shall be completed in accordance with the scheduling requirements of the Contractor as determined from time to time during the course of the job. Unless otherwise noted, the work shall commence not later than is noted on subcontracts and be completed no later than is noted on subcontracts. (The Contract Time). If the work is not completed within the Contract Time, the Contract Price shall be reduced as noted on subcontracts. In addition, Subcontractor shall be responsible for any liquidated damages asserted by Owner against Contractor resulting from delays in Subcontractor's performance. Subcontractor acknowledges that it is essential that the work be completed on a timely basis because of the unique requirements of the Contractor and Owner. The parties recite and agree that the liquidated damages set forth above are reasonable in the circumstances.

(b) Subcontractor assumes all reasonably foreseeable risks of delay incidental to its performance. Subcontractor acknowledges and represents that it is fully familiar with, and assumes the risk of, the conditions applicable to the work, including: the construction season; winter conditions; high altitude; local weather conditions, including the likelihood of regular severe storms; housing, labor and transportation conditions; and other local and general conditions that may affect the work. Subcontractor further represents and acknowledges that certain aspects of the work inherent in the Project cannot be known with exactitude until work has begun. Subcontractor has accepted the above Contract Time and Price with full knowledge of these uncertainties, assumes the risk thereof, and will schedule and prosecute its work in a manner that will achieve performance of the work within the Contract Time despite such uncertainties.

(c) Subcontractor shall not be entitled to extensions for:

- (i) any delays in deliveries, whether usual or unusual;
- (ii) any delay in the performance of any supplier or subcontractor; or

(iii) severe or unusual weather conditions.

(d) Subcontractor shall not be entitled to additional compensation or any adjustment to the contract price for any delay, including those that may be caused by Owner, Architect or Contractor, its sole remedy being an extension to the Contract Time.

(e) If Subcontractor is delayed by circumstances beyond his control that were not reasonably foreseeable, which circumstances were not within the risks assumed by Subcontractor hereunder, Subcontractor shall provide written notice of such delay within seven days of the cause of the delay. Absent such notice, all claims for extension or contract adjustment are waived, and it shall be conclusively presumed that the circumstances do not warrant any adjustment to the Contract Time.

(f) Within seven days of the execution of this Agreement, Subcontractor shall provide Contractor with a reasonable and proper CPM schedule showing the manner of project performance, including the sequence and duration of all activities. Subcontractor shall regularly update the schedule and shall notify the Contractor of any material deviation from the schedule.

**F) CHANGES.**

(a) There shall be no increase to the contract price for changes or additions without the prior written approval of Contractor. Any extra or changed work performed by Subcontractor without such written approval (including work known to or requested by the Contractor, Owner or Architect) shall conclusively be presumed to involve no extra cost to the Contractor; further, absent such prior written approval, Subcontractor shall conclusively be presumed to waive any claim to additional compensation for such work.

(b) Such written approval of the Contractor may be in the form of a directive that work be performed even if the parties do not have a prior agreement as to whether such work is a change or addition, or an agreement as to the compensation for such work. In such event, Subcontractor shall perform the work, and the determination of entitlement and compensation shall be made at the completion of the work.

(c) Owner and Architect shall have no authority to make changes to the Subcontract Work without the participation and written approval of the Contractor. Neither Owner nor Contractor shall be liable for any work ordered by Owner or Architect without the participation and consent of the Contractor; all such work shall be at Subcontractor's sole risk and expense, and Subcontractor waives any entitlement to compensation for such work.

(d) Subcontractor shall be responsible for any problems associated from deviations from the plans and specifications that are not covered by a written change order.

**G) CLAIMS.**

(a) The notice, change order and remedy procedures provided for in this Agreement are of the essence. The parties acknowledge that the Contractor and Owner in administration of the contract and making payments hereunder are relying on such procedures and are entitled to protection against all claims that are not made strictly in accordance with the requirements of this Agreement. The Contractor may, in its sole discretion, waive these requirements of strict compliance in connection with any particular claim, notice or demand, provided that any such waiver or failure to insist on strict compliance shall not waive such requirements with respect to any other claim, notice or demand.

(b) Subcontractor shall, in addition to the requirements of this Subcontract, present any claim in the manner specified in the General Contract for claims of the Contractor to the Owner in such time as will enable the Contractor to properly present such claims to the Owner. No claim for additional compensation shall be recognized except to the extent such claim is approved and paid by the Owner.

(c) In the event Subcontractor wishes to make any claim for additional compensation of any kind or nature whatsoever, other than those covered by specific procedures or terms of this Agreement, Subcontractor shall provide Contractor with written notice of the claim not later than seven days after the event giving rise to the claim.

Absent such notice, all claims for contract adjustment are waived, and it shall be conclusively presumed that the circumstances do not warrant any adjustment to the Contract Time or Price. In addition, Subcontractor shall provide Contractor with a complete written itemization of all costs, losses or expenses claimed and/or incurred by Subcontractor as a consequence of any claim in each pay period along with the regular pay application. Subcontractor's claims shall be limited to those stated in the required submission, and absent such submission, it shall be conclusively presumed that the claim does not involve any loss, delay or expense during that pay period. Subcontractor expressly waives damages, price adjustment or monetary compensation of any kind to the extent of any failure to strictly comply with the requirements of this paragraph.

(d) In the event of any claim or dispute, Subcontractor shall continue to carry out the Work with due diligence and without delay, suspension or interruption pending the resolution of the claim or dispute.

#### **H) CLAIM RESOLUTION.**

Any claim, controversy or dispute hereunder shall be subject to binding arbitration at the election of the Contractor.

Such election shall be made within sixty days of the commencement of litigation by either party or service on the Contractor, whichever is later. In the event Contractor elects arbitration, proceedings shall be conducted through and under the rules of the American Arbitration Association, or such other forum as may be agreed upon by the parties. The arbitration may be consolidated with other parties, claims or proceedings related to the project. If the Contractor does not elect arbitration, the claim, controversy or dispute shall be decided in a Court of competent jurisdiction. The Court or Arbitrator(s), as the case may be, shall have the power, in the sound exercise of discretion, to award costs and attorneys fees to the party whose position is substantially favored.

#### **I) DEFAULT/TERMINATION.**

(a) In the event of default, the non-defaulting party shall give written notice specifying the default. The defaulting party shall have five days to cure the default. If not so cured, the non-defaulting party may pursue any remedy available at law or in equity, provide that Subcontractor shall not suspend work under any circumstances. In the event of litigation or arbitration as provided herein, the Court shall have the authority, in the sound exercise of discretion, to award the party whose position is substantially favored its costs and expenses, including reasonable attorney's fees.

(b) In the event of material breach by the Subcontractor, Contractor shall be entitled, in its discretion, to make its own arrangements for the completion of the work and the performance of Subcontractor's obligations. Contractor may utilize all work, material, equipment, tools, materials or supplies at the project, ordered in connection with the project, or paid for by Contractor. Pending completion, no further payments shall be made to the Subcontractor. Contractor may charge any such expenses to the Subcontractor, plus an overhead/profit fee of 20% and may withhold any balance of the contract price to apply to such expenses. In the event completion costs exceed the balance of the contract, Subcontractor shall reimburse the Owner for such expenses and any other loss or damage.

(c) The Contractor may terminate the Contract without cause for its convenience at anytime. In the event of such termination, the District shall pay Subcontractor all reasonable costs incurred in connection with the work, plus a pro rata portion of Subcontractor's anticipated profit for the completed project.

#### **J) INDEMNIFICATION.**

Subcontractor shall indemnify Contractor from all claims, losses and damages arising out of Subcontractor's work hereunder or from Subcontractor's breach of any term hereof, including costs, investigation expenses, expert expenses and attorney's fees incurred by Contractor in the investigation and defense of such claims.

**K) ADDITIONAL PROVISIONS OF THE MASTER SUBCONTRACT:**

- 1) "General Contract" as used in this subcontract means the contract between the Contractor and the Owner with respect to the Work described in Section 1 of this subcontract, together with all the provisions, general conditions, plans, drawings, specifications, and addenda which are made a part thereof or referred to therein.
- 2) The Subcontractor agrees to furnish all materials and to perform all Work required by this subcontract strictly in accordance with the General Contract.
- 3) Insofar as the provisions of the General Contract do not conflict with specific provisions herein contained, they and each of them are hereby incorporated into this subcontract as fully as if completely rewritten herein, except that all of said non-conflicting provisions are amended as follows: wherever the "Owner" is referred to therein, the word "Contractor" shall be substituted therefore and wherever the "Contractor" is referred to therein the word "Subcontractor" shall be substituted therefore. The Subcontractor agrees not to violate any term, convent, or condition of said general contract.
- 4) The Subcontractor shall furnish the Contractor with partial releases and waivers of lien from his material, men, and creditors, as the Contractor may request on labor and/or material and/or other claims, and final releases and waivers of lien at the time of final payment on this subcontract.
- 5) The Subcontractor shall furnish, if requested by the Contractor, sworn affidavits, in accordance with the form provided by the Contractor, which shall state amounts due, amounts paid, and other information clearly to indicate the financial condition of the Subcontractor, insofar as it pertains to labor and material furnished and to be furnished under this subcontract, and the Contractor may take such steps as he may deem necessary to protect himself against any claim. If at any time the Contractor shall determine that the Subcontractor's financial condition has become, in his opinion, unsatisfactory, the Subcontractor shall furnish satisfactory security to the Contractor within three days after written notice to his last known address and, in default of furnishing said security, the Contractor shall have the option to cancel this contract. In case of such cancellation the rights of the Contractor shall be the same as if the Subcontractor had failed to perform this contract in whole or part.
- 6) Regardless of the terms of payment provided for herein, the Contractor shall not be required to make payments that would leave a balance due to Subcontractor insufficient to cover the retained percentage plus an amount sufficient to satisfy all obligations of the Subcontractor for labor, materials, equipment, etc., furnished by the Subcontractor hereunder.
- 7) The Subcontractor agrees that monies received for the performance of this contract shall be held in trust and used first for labor and material entering into this work, and said monies shall not be diverted to satisfy obligations of the Subcontractor on other contracts or for other purposes.
- 8) The Subcontractor agrees to indemnify and hold harmless the Owner and Contractor against all costs or claims for transportation, freight, and express on men, materials, and equipment to and/or from the job, and for all other incidental expenses in connection with his work, and to prepay the transportation charges on all materials, etc., shipped.
- 9) The Subcontractor agrees not to pay less than the scale of wages prescribed in the General Contract, or not less than the scale prescribed by law, in case the General Contract Provides no such scale. If the Subcontractor fails to comply with the preceding sentence, the Contractor shall have the option to cancel this contract forthwith, in addition to exercising any or all other rights given the Contractor hereunder in the event of breach hereof, including but not limited to all penalties in the General Contract.
- 10) The right is reserved by the Contractor to require changes in deviation from, additions to, and omissions from the work herein contracted, and the subcontract price shall be adjusted accordingly. Before proceeding with any change, deviation, addition, or omission, the Subcontractor will first obtain written authorization from the Contractor. The Subcontractor shall have no dealings with the Owner or his authorized representatives in regard to changes, extras, or omissions in connection with this work, but must deal only with the Contractor. No extra charges will be accepted



from the Subcontractor without prior written approval from the Contractor's Job Superintendent or other designated personnel.

11) The Subcontractor shall carry and pay for (1) Workmen's Compensation Insurance and (2) Comprehensive General and Automotive Liability Insurance providing bodily injury and property damage coverage, including contractual liability coverage. See Insurance Attachment "A" for limits and special requirements. Subcontractor hereby agrees to defend at its own costs and to indemnify and hold harmless the Contractor, its agents and employees, from any and all liability, damages, losses, claims, and expenses, howsoever caused, resulting directly or indirectly from or connected with the performance of this agreement, irrespective of whether such liability, damages, losses, claims and/or expenses were actually or allegedly caused through negligence of Contractor, its agents, employees or other Subcontractors, excepting only such liability, damages, losses, claims, and expenses as shall have been occasioned by the sole negligence of the Contractor, its agents and employees.

12) The Subcontractor does agree to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Unemployment Insurance and/or Old Age Retirement Benefits, Pensions, or Annuities, now or hereafter imposed by the Government of the United States, and/or by the government of any state or territory of the United States, which are measured by wages, salaries or other remuneration paid to persons employed by the Subcontractor on work performed under the terms of the subcontract.

13) The Subcontractor shall route all equipment and materials to be used in the execution of this contract as designated by the Contractor, providing the transportation costs are not increased by so doing. It is expressly agreed that the carrier so designated shall be the agent of the Subcontractor and not the agent of the Contractor.

14) Subcontractor agrees not to remove guards or safety appliances, except on authority of Contractor's Superintendent, and to replace such guards and appliances promptly. Failure to make such replacement will authorize the Contractor to do such work and charge the costs thereof to Subcontractor.

15) This subcontract includes all charges, addenda, etc., to date, and constitutes the entire understanding of the parties and supersedes any prior proposals, understandings, correspondence and/or agreements.

16) The Subcontractor shall not assign nor subcontract this contract or any part thereof of any interest therein without first obtaining written consent of the Contractor.

17) Subcontractor may not assign or attempt to assign funds accrued or to accrue under this contract without first obtaining written consent of Contractor and no such assignment shall be made binding on Contractor unless and until accepted in writing by the Contractor.

18) The Subcontractor agrees to perform his Work and the several parts thereof, at such times in such order as the Contractor considers necessary, to keep the same sufficiently in advance of the other parts of the Work and to avoid any delay in the completion of the construction as a whole. The Subcontractor shall reimburse the Contractor for any loss or damage, included but not restricted to, any liquidated damages which may become due the Owner under the General Contract, and extra expense paid or incurred by the Contractor which is due to (1) Subcontractor's failure to deliver any and all materials and/or supply labor, furnish equipment or services, etc., as required herein, and/or (b) Subcontractor's failure to properly perform any and all Work, in keeping with the progress of the general construction Work, and/or (c) to properly perform any term, covenant or condition contained in this subcontract. If the Subcontractor refuses to proceed with his work as directed by the Contractor, or fails to perform said work in accordance herewith, in whole or in part, or fails to perform any term, covenant, or condition contained in this subcontract, the Contractor, may at Contractor's option, upon three (3) days written notice to the Subcontractor's latest know address, take any steps Contractor deems advisable, to secure any labor and/or materials, equipment, services, etc., and may take over all of the Subcontractor's equipment, materials, etc., and perform the Work to completion. In case the Contractor deems the forgoing procedure necessary, all monies expended and all of the losses, damages, and extra expenses shall be deducted from the contract price herein stated, and if such expenditures, together with said losses, damages and extra expenses, exceeds the amount otherwise due to the Subcontractor hereunder, the Subcontractor agrees to pay to the Contractor on demand the full amount of such excess, together with interest thereon at the rate of twelve percent per annum until paid.

19) The Subcontractor shall promptly amend and make good any defective materials and/or workmanship to the entire approval and acceptance of the Contractor, Owner, and/or Architect and their authorized representatives. Should the Subcontractor refuse or neglect to proceed at once with the correction of rejected or defective materials and/or workmanship after receiving notice to do so, it is agreed that the Contractor shall have the right and power to have the defects remedied or the changes made at the expense of the Subcontractor, and the Subcontractor agrees to pay to the Contractor on demand any and all losses and/or expense paid or incurred by the Contractor in remedying such defects and/or making such changes, together with interest thereon at the rate of twelve percent per annum until paid, in addition to all other loss, damage, and extra expense which Subcontractor may become liable for under this subcontract.

20) The Subcontractor shall effectively secure and protect his materials and Work and shall bear and be liable for all loss and/or damage of any kind in connection therewith, at any time prior to the final acceptance thereof, unless said loss or damage is caused solely by the negligence of the Contractor and subject to the provisions of Section 25 hereof, as they may apply. The Subcontractor shall reimburse the Contractor on demand for any breakage or other damage to other Work or materials occasioned by the Subcontractor in the execution of this subcontract.

21) If the Subcontractor deems that surfaces or Work to which his Work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to the Contractor before proceeding or taking remedial action, otherwise Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, or damage resulting from said condition, and Contractor shall be relieved of all liability in connection therewith.

22) The Subcontractor shall provide, at his own expense, whatever storage sheds, workshops, and offices are necessary for the performance of this subcontract, and shall remove the same and thoroughly clean premises at the completion of the Work.

23) The Subcontractor shall clean up and remove from the site as directed by the Contractor, all rubbish and debris resulting from his Work. Also he shall clean up to the satisfaction of the inspectors, all dirt, grease, marks, etc. from walls, ceilings, floors, fixtures, etc., deposited or placed thereon as a result of the execution of this subcontract. If the Subcontractor refuses or fails to perform this cleaning as directed by the Contractor, the Contractor shall have the right and power to proceed with said cleaning, and the Subcontractor will on demand repay to the Contractor the actual cost of said labor plus a reasonable percentage of such cost to cover supervision, insurance, overhead, etc.

24) It is understood and agreed it has been the practice of the Contractor to carry Builders' Risk Fire Insurance in the amount of his estimate of full insurance to the insurable value, including subcontracts. To the extent that such insurance is carried by the Contractor on the General Contract, the Subcontractor will have an interest in the insurance policy; however, the provisions of this section do not make it mandatory upon the Contractor to carry any insurance whatsoever for the benefit of the Subcontractor. Subcontractor agrees he will assume the responsibility to determine whether Builders' Risk Insurance is in force. In the event the Contractor should elect to carry Builders' Risk Insurance, and only in such event, the Subcontractor agrees to submit immediately, for the purpose of determining values under the insurance coverage, a complete breakdown of this contract price showing materials, labor, expendable tools, suppliers or any other thing or article of value, the cost of which is included in the contract price stated in this agreement.

25) The Subcontractor shall furnish promptly all samples, lists, drawings, cuts, schedules, etc., required in connection with his Work, but approval of the same does not relieve him of his responsibility of complying with the requirements of the drawings and specifications. All transportation costs on samples and drawings furnished by the Subcontractor shall be paid by him.

26) The Subcontractor shall furnish all guaranties, bonds, operating instructions, etc., as required by the specifications.

27) If the Subcontractor makes use of the Contractor's hoisting facilities, he shall pay for this service unless otherwise stated herein.

28) The Subcontractor shall hold the Contractor harmless from any liability including costs and expenses including

reasonable attorney's fees, for or on account of, any patented or unpatented invention, article, or appliance manufactured or used in the performance of this subcontract, including their use by the Owner.

30) The Subcontractor shall not place on the Work any equipment of which he is not the sole owner unless he obtains written permission from the Contractor.

29) Anti-Discrimination: (a) The Subcontractor, in performing the Work required by this contract, shall not discriminate against any employees or applicants for employment because of race, creed, color, or national origin; (b) The Subcontractor agrees that the provision of paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a "subcontract" is defined as any contract entered into by the Subcontractor with any individual, partnership, association, corporation, estate, trust, other business enterprise, or other legal entity, for a specific part of the Work to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw materials shall not be considered as a subcontract.

30) Waiver of any breach hereof shall not constitute a wavier of any subsequent breach of the same or any other provision hereof.

35) Subcontractor shall, at its own expense, conform to the basic safety policy of the Contractor, and comply with all specific safety requirements promulgated by any requirements for the Occupational Safety and Health Act of 1970, the Construction Safety Act of 1969, and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer such Acts. Subcontractor shall have and exercise full responsibility for compliance hereunder by its agents, employees, material men, and subcontractors, generally and in particular, in respect to its portion of the Work on this project, and shall itself comply with said requirements, standards, and regulations, and require and be directly responsible for compliance therewith, on the part of its said agents, employees, material men, and subcontractors, and shall receive, respond to, defend, and be responsible for, all citations, assessments, fines, or penalties, which may be incurred by reason of its failure, or failure on the part of its agents, employees, material men, or subcontractors, to so comply.

36) Subcontractor agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual based on race, color, religion, sex, national origin, or age, and agrees to comply with any approved local plan with respect thereto. Subcontractor agrees to undertake an approved affirmative action program that shall be acceptable to the Contractor and the Owner.

37) PV CONSULTING, INC., shall be named as an additional insured on Subcontractor's Liability Insurance.

38) Regarding Independent Contractors status, Colorado Compensation Insurance Authority requires the following statement: an Independent Contractor is not entitled to worker's compensation benefits, and the Independent Contractor is obligated to pay federal and state income taxes on any monies earned pursuant to the contract relationship.

By signing below, Contractor and Subcontractor agree to all provisions included herein.

**CONTRACTOR: PV CONSULTING, INC.**

**SUBCONTRACTOR:**

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

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

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

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

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

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

**PV CONSULTING, INC.**  
**Insurance Attachment A**

Your contract with PV CONSULTING, INC. (Contractor) requires you to provide evidence of insurance coverage. No Subcontractors will be allowed to provide work or service for us until properly completed Certificates of Insurance have been received and approved by us.

The Subcontractor is required to purchase and maintain the following Subcontractor's Liability insurance, specifying the following minimum limits and coverages, or those limits and coverage's outlined in the Contractor's Contract with the Owner, whichever is greater:

**WORKERS' COMPENSATION INSURANCE**

Workers' Compensation and Employers' Liability Insurance as required by applicable State Law for all of your employees including individual owner, partners or corporate officers.

A Waiver of Subrogation in favor of the Contractor shall be attached to the policy (include endorsement on the Insurance Certificate)

|  |  |
|--|--|
| Workers' Compensation Coverage             | Statutory Coverage as required by State in which the job (Coverage A) is located.                                    |
| Employers' Liability Coverage (Coverage B) | \$500,000 Limit of Liability, each accident<br>\$500,000 Disease - Policy Limit<br>\$500,000 Disease - Each Employee |

**GENERAL LIABILITY INSURANCE**

Commercial General Liability Insurance must be carried with at least the following limits of liability:

|   |             |
|---|-------------|
| General Aggregate                         | \$2,000,000 |
| Products - Completed Operations Aggregate | \$2,000,000 |
| Personal & Advertising Injury             | \$1,000,000 |
| Each Occurrence                           | \$1,000,000 |
| Fire Damage Legal Liability               | \$ 50,000   |
| Medical Expenses                          | \$ 5,000    |

The following coverages must be included:

- 1) Premises Operations
- 2) Independent Contractors Protective
- 3) Explosion/Blasting

- 4) Underground/Collapse
- 5) Contractual
- 6) Products/Completed Operations
- 7) Broad Form Property Damage
- 8) Personal/Advertising Injury
- 9) General Aggregate Limit (applies to each project)
- 10) PV CONSULTING, INC, their subsidiaries, directors, officers, employees and agents shall be included as Additional Insured under the Subcontractor's policy, and the policy shall be endorsed to be primary and non-contributory with any insurance maintained by PV CONSULTING, INC, their subsidiaries, directors, officers, employees and agents (show endorsement on the Insurance Certificate)
- 11) Products and Completed Operations Insurance shall be maintained by the Subcontractor for a minimum of 1 year after final payment, and the subcontractor shall continue to provide evidence of such coverage to the Contractor on an annual basis during the aforementioned period.
- 12) Sub-Subcontractors shall comply with all the provisions of Attachment A.

#### **AUTOMOBILE LIABILITY INSURANCE**

Bodily Injury and Property Damage Combined \$1,000,000 each Accident  
Including owned, hired, and non-owned autos

#### **UMBRELLA LIABILITY INSURANCE**

Umbrella Liability Insurance must be carried with at least the following limits of liability: \$0 Combined Single Limit each occurrence.

#### **ADDITIONAL INSURED**

The Contractor must be endorsed on your General Liability Automobile and Umbrella Liability Policies as an "Additional Insured".

#### **NOTICE OF CANCELLATION OR MATERIAL CHANGE**

Subcontractors must certify the Contractor will receive 30 days advance notice of any cancellation, non-renewal, or material change in Subcontractor's insurance coverage.

#### **CERTIFICATES OF INSURANCE**

The Subcontractor shall furnish a Certificate of Insurance, on forms provided by the subcontractor, showing that the above insurance is in force stating policy numbers, dates of expiration, limits of liability, and coverage there under and further providing that the insurance will not be cancelled or changed until the expiration of thirty (30) days after written notice of such cancellation or change has been mailed to and received by the Contractor. Such notice shall be mailed certified mail, return receipt requested.

If the Subcontractor fails to procure and maintain such insurance the Contractor shall have the right (but is not obligated) to procure and maintain the said insurance, and the Subcontractor shall pay the cost thereof, and provide all necessary information to effect such insurance.

Maintenance of the forgoing insurance coverage shall in no way be interpreted as relieving the Subcontractor of any responsibility hereunder, and the Subcontractor may secure, at his own expense, such additional insurance as he deems necessary.

### **SPECIAL PROVISIONS**

Insurance coverage carried by the Subcontractor shall not be subject to limitations, conditions or restrictions deemed inconstant with the intent of the Insurance Requirements to be fulfilled by Contractor. Contractor's decision thereon shall be final.

All policies are to be written through companies duly entered and authorized to transact that class of insurance in the state in which the job is located.

Approval, disapproval, or failure to act by the Contractor regarding any insurance supplied by the Subcontractor shall not relieve the Subcontractor of full responsibility or liability for damages and accidents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Subcontractor from liability.

No special payments shall be made for any insurance that the Subcontractor may be required to carry; all are included in the Contract Price and in the Contract Unit Prices.

SAMPLE