

MARK YOUNG



CONSTRUCTION  
INCORPORATED

Specification  
Section: \_\_\_\_\_  
  
Trade: \_\_\_\_\_

Please return completed form to: [prequalification@markyoungconstruction.com](mailto:prequalification@markyoungconstruction.com)

## **SUBCONTRACTOR PREQUALIFICATION**

### **SUBCONTRACTOR INFORMATION**

Company Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Email: \_\_\_\_\_

### **ORGANIZATION INFORMATION**

Trades: \_\_\_\_\_

Years in Business under present name: \_\_\_\_\_

Locations conducting business: \_\_\_\_\_

Minority Business     Woman-Owned Business     Disadvantaged Business Enterprise

How many employees, including temporary: \_\_\_\_\_

### **BONDING INFORMATION**

Surety Company: \_\_\_\_\_

Broker's Name: \_\_\_\_\_ Agent's Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Bond rate: \_\_\_\_\_%

### **REFERENCES**

Please provide a minimum of five (5) references consisting of General Contractors or Owners your Company has performed work for in the past five (5) years. Include Contact Name and Phone numbers.

1. Name \_\_\_\_\_ Phone \_\_\_\_\_

2. Name \_\_\_\_\_ Phone \_\_\_\_\_

3. Name \_\_\_\_\_ Phone \_\_\_\_\_

4. Name \_\_\_\_\_ Phone \_\_\_\_\_

5. Name \_\_\_\_\_ Phone \_\_\_\_\_

### **OSHA RECORD**

Go to [www.OSHA.gov](http://www.OSHA.gov) and print off OSHA record & staple to this prequal.

### **MARK YOUNG CONSTRUCTION, INC. SUBCONTRACTOR AGREEMENT**

In order to pre-qualify and/or perform work for Mark Young Construction, Inc., your Company must agree to sign

and perform all work pursuant for the required Mark Young Construction, Inc. subcontract which is attached to this form and listed on the Mark Young Construction, Inc. website. Once you have review this subcontract and you agree that it is acceptable, indicate agreement on behalf of your Company by checking the box below. If you do not agree to the terms of the required Mark Young Construction, Inc. subcontract DO NOT submit a proposal or a prequalification statement until mutual agreement of any deviations are agreed upon by Mark Young Construction, Inc. in writing.

(Company Name / DATE)

**verbally accepts** the Mark Young Construction, Inc. required subcontract and if selected to perform work by Mark Young Construction, Inc. we agree to enter into the Mark Young Construction, Inc. required subcontract without revision to its terms.

**COMMENTS:**

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*Please return completed form to: **prequalification@markyoungconstruction.com***

**OWNER NAME**  
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**ARTICLE 4. SCOPE OF WORK.**

The Subcontractor shall furnish all necessary management, supervision, labor, materials, supplies, equipment, tools, machinery, plant services, engineering and testing and/or any other act or thing required to diligently and fully perform all work set forth in agreement, including all work required to complete the installation of his work and which may not necessarily be noted in the specifications or detailed in the plans for the construction of this project, in accordance with the terms and provisions of the prime contract except as otherwise provided herein, between the Owner and the Contractor, including all the General and Special Conditions, Final Drawings and Specifications by the Architect and Engineer and other documents forming or by reference made a part of the contract between the Contractor and the Owner, all of which shall be considered part of this Subcontract, and the Subcontractor agrees to be bound to the Contractor and the Owner by the terms and provisions thereof. Subcontractor acknowledges his opportunity to inspect the Prime Contract, a copy of which is available in Contractor's Home Office.

**Subcontractor is required to provide a complete list of suppliers/sub-subcontractors on the project and shall prohibit the use of unauthorized suppliers/sub-subcontractors who are not on the list. Prior to any the performance of any work on the Project, Subcontractor shall submit to Contractor, in writing, for acceptance by Contractor, the names of the persons or entities proposed for any portion of Subcontractor's work including those who are to furnish materials or equipment**

**ARTICLE 5. BOND.**

Prior to commencement of his work the Subcontractor shall (**not required**) furnish a Performance and Payment Bond in an amount equal to the full Subcontract price. Such bond shall be on Contractor's form or a form satisfactory to Contractor and shall be with a surety satisfactory to Contractor.

**ARTICLE 6. DELIVERY POINT.**

When the Subcontractor does install all material furnished under this Subcontract, such material are to be delivered F.O.B., job site to **JOBSITE ADDRESS HERE**, including all applicable taxes.

**ARTICLE 7. PAYMENT.**

(A) **Subcontractor shall bill from the Subcontract Schedule of values which shall be a complete, accurate, and detailed schedule of values of the various specific line items of the work, aggregating the total sum of this Subcontract, itemized and detailed as required by the Contractor and supported by such evidence as to its correctness as the Contractor may direct. This schedule of values, when approved by the Contractor, shall be used as the basis for making payments, unless it be found to be in error or in conflict with the Subcontractor's proposal or the procedures or determinations of the Owner regarding partial payments to the Contractor. NO PAYMENTS SHALL BE MADE UNTIL THIS REQUIREMENT IS SATISFIED. Contractor reserves the right, but is not required, to make any payment to Subcontractor, including payments due hereunder, by joint check made payable to the joint order of Subcontractor and such of Subcontractor's workmen, suppliers or sub-subcontractors, or any of Subcontractor's creditors having potential lien rights against the work, or any of them, whose claims against the Subcontractor shall, in Contractor's sole determination, be in jeopardy of nonpayment. The Joint Check Agreement is attached hereto as Exhibit G. Subcontractor shall not enlist the services of any vendor or sub-subcontractor to be paid by joint check if such vendor or sub-subcontractor will not execute the attached Joint Check Agreement without revision.**

The Contractor agrees to pay the Subcontractor for the performance of this Subcontract, as specified herein, subject to additions and deductions as hereinafter provided. Partial payments will be made to the Subcontractor each month in an amount equal to ninety percent (**90%**) of the value, computed on the basis of the prices set forth above, of the work performed hereunder, less the aggregate of previous payments, but as a condition precedent, such partial payments shall not become due to the Subcontractor until ten (10) days after the Contractor receives payment for such work from the Owner. If the Contractor receives payment from the Owner for less than the full value of work performed or of materials delivered to the site, the amount due to the Subcontractor shall be reduced accordingly.

No partial payment to the Subcontractor shall constitute approval or acceptance of work done or materials furnished hereunder. Upon complete performance of this Subcontract by the Subcontractor and final approval and acceptance of and payment for Subcontractor's work and materials by the Owner, the Contractor will make final payment to the Subcontractor of the balance due under this Subcontract within ten (10) days after full payment of such work and materials has been received by the Contractor from the Owner, and after Subcontractor has submitted a satisfactory lien release / waiver to Contractor as shown in **Attachment D**. Subcontractor is hereby notified and also agrees that his monthly invoice in the form of **Attachment D** to this Subcontract will be submitted to Contractor at 7200 Miller Place, Frederick, CO 80504. This invoice **must be received on or before the 25<sup>th</sup> of each month**; In the event Subcontractor's invoice is not received as stipulated above, Contractor will not include the costs of said

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invoice in Contractor's billing to the Owner and payment will not be made until the following pay period.

**(B) Notwithstanding anything to the contrary contained in or applicable to this Subcontract, and without any limitation as to time, Contractor shall not be obligated to make payments to Subcontractor under this Subcontract: (i) when such payments will leave a balance due Subcontractor which is less than the retained percentage plus an amount adequate to satisfy all obligations of the Subcontractor for labor, materials, supplies, tools, machines, plant, equipment, services, etc. furnished, or to be furnished, by Subcontractor in performance of the work required under this Subcontract; (ii) when Subcontractor is, or with reasonable probability (as determined by the Contractor) may become unable to comply with or completely perform this Subcontract; (iii) whenever the Contractor shall determine that the Project is being delayed or is in danger of being delayed by the work of the Subcontractor or by any failure of the Subcontractor to effect timely compliance with any of the technical, administrative or operational requirements of the Subcontract Documents, including subsequent instructions, job schedules ; (iv) pending satisfactory correction, repair, replacement and/or restoration of faulty or deficient work, materials, supplies, machines, equipment or plant, or any work rejected as not conforming with this Subcontract or the Subcontract Documents.** The Contractor may deduct from any amounts due or to become due to the Subcontractor any sums owed by the Subcontractor to the Contractor under this Subcontract or any other contract between the parties hereto; and in the event of any breach by the Subcontractor of any of the provisions or obligations of this Subcontract or any other contract between the parties hereto, or in the event of the assertion by any other person or entity of any claim or lien against the Contractor or the premises arising out of the materials provided to or work performed for Subcontractor, the Contractor shall have the right to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor and the premises from any and all loss, damage, expense, or attorney fees therefrom, until the lien or claim has been fully released or otherwise remedied to the satisfaction of the Contractor.

**(C) The Subcontractor agrees and covenants that money received for the performance of this Subcontract shall be used solely for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment, plant or services exclusively for this Project in connection with this Subcontract and having the right to assert liens or other claims against the land, improvements or funds involved in this Project or against any bond or other security posted by Contractor or Owner; that any money paid to the Subcontractor pursuant to this Subcontract shall immediately become and constitute a trust fund for the benefit of said persons and firms, and shall not in any instance be diverted by Subcontractor to any other purpose until all obligations arising hereunder have been fully discharged and all claims arising herefrom have been fully paid. The subcontractor agrees, as a condition precedent to payment hereunder, to furnish the Contractor with such partial and/or final releases and/or waivers of lien as the Contractor may from time to time request.** Upon request, Subcontractor shall provide Contractor with evidence satisfactory to it that Subcontractor has paid for all labor, service and materials included in any progress billing. Subcontractor shall also provide from all of its lower tier subcontractors and suppliers, full releases of claims and lien waivers against Contractor, Owner and the property upon which the Project is located, for all labor, service and materials included in any progress billing through the date of Subcontractor's application for payment.

(D) The Subcontractor shall submit a detailed breakdown of his price within five days of the date of this Subcontract.

(E) The Subcontractor agrees that all decisions by the Owner or his authorized representative under any "Disputes" provision or similar provision, if any, contained in the Prime Contract which also affects this Subcontract shall be binding upon the Subcontractor. For disputes which in any way involve the Owner, Architect, or other representative of the Owner, the remedies in the prime contract shall be the sole and exclusive remedy of the Subcontractor in connection with any matter suitable under any such "Disputes" provision or similar provision.

(F) The Subcontractor agrees that the Contractor shall be under no obligation to pay the Subcontractor for any work done on this construction Project, until the Contractor has been paid therefore by the Owner, and the provisions hereof, starting the time of progress and final payments and the amount thereof are subject to the express condition precedent that the Contractor shall receive from the Owner payment on behalf of Subcontractor on account of work done by the Subcontractor on this construction Project; otherwise the time when such payments are postponed until the Contractor has received same from the Owner. Subcontractor expressly agrees to accept the risk that he will not be paid for work performed in the event that the Contractor, for whatever reason, is not paid by the Owner for such work. The Subcontractor states that he relies primarily on the credit and ability of the Owner, and not of the Contractor, and thus the Subcontractor agrees that payment by the Owner to the Contractor for work performed by the Subcontractor shall be an express condition precedent to any payment obligation of the Contractor to the Subcontractor. The Subcontractor agrees that the liability of the surety on Contractor's payment bond, if any, for payment to the Subcontractor is subject to the same conditions precedent as are applicable to the Contractor's liability to the Subcontractor.

(G) Prior to acceptance of the first application for payment, Mark Young Construction, Inc. must have received from Subcontractor all of the following:

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1. An unrevised Executed Agreement of Subcontract
2. All Insurance Certificates
3. Payment & Performance Bonds (if required)
4. Submittal Schedule for Approval
5. Schedule of Values
6. Vendor/ Subcontractor List

Monthly draw requests without the above items submitted will be rejected and returned.

**ARTICLE 8. CHANGES.**

The Contractor may at any time by written order only, and without notice to the Subcontractor's sureties, make changes in, additions to and omissions from the work to be performed and materials to be furnished under this Subcontract, and the Subcontractor shall promptly proceed with the performance of the Subcontract as so changed, Contractor may also use details and means and methods of construction other than those indicated on the plans and specifications. If such changes should change the scope of work of Subcontractor then the Subcontractor price shall be equitably adjusted to the extent such adjustment is provided for in the prime contract, provided that the Subcontractor makes written claim thereof within ten days of the time any such change is ordered in writing by Contractor.

**ARTICLE 9. PROSECUTION OF THE WORK AND FINANCIAL CONDITION.**

(A) Time is of the essence. The Subcontractor shall furnish all labor, supervision, tools, equipment, materials and supplies necessary for the performance of this subcontract in a proper, efficient and workmanlike manner. The Subcontractor shall prosecute the work undertaken in a prompt and diligent manner whenever such work, or any part of it becomes available, or at such other time or times as the Contractor may direct, and so as to promote the general progress of the entire project, and shall not, by delay or otherwise, interfere with or hinder the work of the Contractor or any other subcontractor. Any materials that are to be furnished by the Subcontractor hereunder shall be furnished in sufficient time to enable the Subcontractor and Contractor to perform and complete his work within the time or times required. Upon written request by the Contractor, the Subcontractor shall furnish to the Contractor such evidence as the Contractor may require relating to the Subcontractor's ability to fully perform this subcontract in the manner and within the time specified herein.

(B) 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 satisfaction of the Owner and Contractor and all inspectors, oil, 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 to proceed with said cleaning, and backcharge the Subcontractor for the actual cost of said labor plus a reasonable percentage of such cost to cover supervision, insurance, overhead, etc.

**(C) If Contractor reasonably believes that the Subcontractor's financial condition has become impaired, unstable or unsatisfactory, the Subcontractor shall furnish additional security satisfactory to the Contractor within three (3) days after Contractor's demand for same is given to the subcontractor. If Subcontractor fails to comply or fails to furnish adequate additional security the Contractor shall have the option to terminate this Subcontract or to initiate such other action as the Contractor may deem necessary for the protection or preservation of his interests and/or the prevention of delay in the efficient and orderly progress of work on the Project.**

(D) The Subcontractor and Contractor agree as follows with respect to the assignment of such payments as may be due or as may become due under this Subcontract: (i) The Subcontractor will make no assignment of the proceeds hereof without the prior written consent of the Contractor, which consent shall not be unreasonably withheld; (ii) In no instance shall the Contractor be obligated to any assignee of the Subcontract on account of payments at any time made in good faith under any assignment and/or erroneously or inadvertently made to the assignor; (iii) The Contractor shall in no instance be liable to any assignee of the Subcontractor for any amount in excess of the net sums owing Subcontractor hereunder after first deducting any amounts for which subcontractor may otherwise be obligated or indebted to Contractor; (iv) By making an assignment of the proceeds hereof the Subcontractor waives any claim against Contractor resulting from Contractor's continued payment to the assignees or former assignees, notwithstanding notification to Contractor of termination of any such assignment; (v) By making an assignment of the proceeds hereof the Subcontractor agrees to assume full liability for the conveyance to assignees of any payments mistakenly, inadvertently, or otherwise made or addressed to Subcontractor, and subcontractor agrees to defend and hold harmless the Contractor from claim or action of any assignee related to this Subcontract. Subcontractor shall pay for all materials and supplies furnished and for all work, labor and services performed as required under this Subcontract, shall produce satisfactory evidence of such payment upon demand by the Contractor, and shall indemnify Contractor and Owner against and save them and the premises harmless from any and all claims, demands, liens or suits, including attorneys' fees and costs, for all such material and supplies purchased and for all work, labor and services performed by others than

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**Subcontractor relating to all work required to be performed under this Subcontract.**

**ARTICLE 10. BREACH/TERMINATION.**

(A) If the Subcontractor (i) fails or refuses to proceed with or to properly perform his work as directed by the Contractor, or (ii) fails or refuses to properly perform or abide by any terms, covenants, conditions, or provisions contained in this Subcontract, (iii) fails or refuses to obey laws, ordinances, regulations, or codes of conduct, (iv) **becomes insolvent or is unable to pay its vendors, sub-subcontractors or workers, or (v) in the event that any person who has provided labor or materials to Subcontractor asserts, or indicates that he will assert, any lien, claim, demand, or charge for nonpayment against the project or land or improvements, or against the Owner, the Contractor or any surety, and Subcontractor does not, within three (3) days of receiving a written demand from Contractor immediately bond around or remove such claim or lien,** then Subcontractor has breached the Subcontract. In the event of a breach by Subcontractor, Contractor may immediately terminate the Subcontractor without releasing or waiving any of his rights and remedies against the Subcontractor or the Subcontractor's sureties and without prejudice to any other right Contractor may be entitled to hereunder or by law. If Contractor terminates Subcontractor, Contractor has the right to take possession of the work, and all materials, tools, equipment, and appliances of the Subcontractor and finish the Subcontractor's work by whatever means, method or agency which the Contractor may, in his sole discretion, choose or without terminating this subcontract, the Contractor may, at his option, take any steps the Contractor deems advisable to secure any labor, materials, equipment, and services, and shall have a lien on and may take over all of the Subcontractor's equipment, tools, appliances and materials and may prosecute any of the foregoing remedies necessary. The Subcontractor agrees that he shall not be entitled to receive any further payment until after the Project shall have been completed. Moreover, if all monies expended by Contractor on costs, losses, damages, liquidated damages, extra expenses and attorney fees, exceed the unpaid balance of the Subcontract sum, the Subcontractor agrees to pay promptly to the Contractor, on demand, the full amount of such excess, including costs of collection, attorney's fees and interest thereon at the rate of twelve percent (12%) per annum until paid.

(B) The Contractor's determination and decision as to the Subcontractor's termination shall be conclusive and shall allow the Contractor's right to terminate as herein provided. The Subcontractor's liability hereunder shall include any and all sums paid, expenses and losses incurred, damages sustained, or attorney fees incurred by the Contractor, (i) in completing the work and providing labor, materials, equipment, supplies and/or re-letting the Subcontract, and (ii) in settlements, discharge, or compromise of any claims, demands, suits and judgments pertaining to or arising out of the work hereunder.

(C) The Contractor shall have the right to terminate this Agreement for Contractor's convenience. In the event Contractor chooses to terminate this Agreement, Contractor shall give Subcontractor written notice and Subcontractor shall be entitled to receive amounts due for completed work subject to the conditions set forth in Article 7 and elsewhere in the Agreement. Subcontractor shall not receive payment for profit for work not performed.

**ARTICLE 11. PERMITS, FEES, ETC.**

The Subcontractor agrees to pay the cost of all permits, fees, sales taxes, gross income tax, water, power, temporary heating and lighting, hoisting, proper protection of his own and existing work or work of the owner and others already in place, clean up and removal of his debris as may or may not be directed by the Contractor, furnishing and approval of samples, tests, shop drawings, as-built drawings, guarantees, reports, etc., connected with, called for, or necessary for his branch of the work.

**ARTICLE 12. DELAYS**

(A) In the event the Subcontractor's performance of this Subcontract is delayed or interfered with by acts of the Owner, Contractor or other subcontractors, it may request, as Subcontractor's exclusive remedy, an extension of the time for the performance of same, as hereinafter provided, but shall not be entitled to any increase in the Subcontract price or to damages or additional compensation as a consequence of such delays or interference, except to the extent that the prime contract entitles the Contractor to compensation for such delays and then only to the extent of any amounts that the Contractor may, on behalf of the subcontractor, recover from the Owner for such delays.

(B) No allowance for an extension of time, for any cause whatever, shall be claimed by , or made to, the Subcontractor unless the Subcontractor shall have made written request upon the Contractor for such extension within forty-eight (48) hours after the cause of such extension occurs, or, if the contract between the contractor and Owner provides for a shorter period, within sufficient time to permit the Contractor to give notice to the Owner within the time allowed by the prime contract for such notice.

(C) No allowance of an extension of time shall, in any event be made to the Subcontractor for delay by the Subcontractor in preparing drawings or securing approval of the Architect or Engineer when such drawings are not properly prepared or when the

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Subcontractor by the exercise of reasonable diligence and judgment could have anticipated and avoided the delay.

**ARTICLE 13. VENDOR DOCUMENTATION, EQUIPMENT AND LABOR.**

(A) For all work performed by Subcontractor, Contractor shall have the right upon three (3) days written notice to audit, inspect and copy Subcontractor's records including its contracts, purchase orders, books, accounts, time cards, estimates, schedules, correspondence and any and all other records or documents which may have a possible bearing upon the Subcontractor's work or the Subcontractor relationships and payments to vendors.

(B) The Subcontractor shall not place on the work any machines, equipment of which he is not sole owner without prior written notification to the Contractor setting forth the full name and address of the owner thereof.

(C) Notwithstanding any other provision contained elsewhere in this Subcontract Agreement, the Subcontractor agrees that, in the event of any picket or other form of labor dispute at the construction site, whether that dispute or picket is in connection with the Contractor, Subcontractor, or any other Contractor or Subcontractor on this construction site, Subcontractor will continue to perform the work required herein without interruption or delay. In the event Subcontractor fails to continue the performance of the work included herein, without interruption or delay because of such picket or other form of labor dispute, contractor may, upon giving Subcontractor full forty-eight (48) hours written notice thereof, cancel this Subcontract and finish work included in this Subcontract by any manner or means that Contractor deems desirable, and charge Subcontractor for any additional costs incurred thereby. Additionally, Contractor may withhold all moneys then due Subcontractor from any work previously performed until completion of the job when the contractor's true cost of finishing the work included herein can be calculated and deducted from all payments so withheld.

**ARTICLE 14. PROGRESS SCHEDULE.**

The Subcontractor shall confer with the Contractor regarding the schedule on which the various items of work must be completed. In addition, the Subcontractor agrees to complete the several portions and the whole of the work herein in accordance with updated progress schedules developed by contractor as such progress schedules may be modified from time to time by Contractor. The Subcontractor agrees to submit all drawings, lists, samples, etc., through Contractor for approval as called for in the specifications or other documents, or within fifteen (15) days of this Contract, whichever is earlier, and further agrees to order all of his materials within five (5) days after approval of said documents or samples and to procure delivery of same at the proper time and to arrange to start work on the said project as required and shall prosecute and complete the various portions and all of his work in accordance with above referred to progress schedule.

**ARTICLE 15. INSURANCE.**

Prior to the commencement of his work, the Subcontractor agrees, at his own expense, to procure and maintain during the entire progress of the work, including the warranty period, full statutory workmen's compensation, employer's liability insurance, bodily injury liability, automobile liability and property damage liability insurance with a carrier or carriers and on policy forms satisfactory to Contractor. Such liability insurance shall include premises-operations (including explosion, collapse, and underground coverage), elevators, independent contractors, products, completed operations and blanket contractual liability on all written contracts, all including broad form property damage coverage. Such liability insurance shall include the contractual or assumed liability of Subcontractor set forth in the following section. Prior to the commencement of work, and no later than five (5) days after the execution of this subcontract, whichever is earlier, subcontractor shall provide Contractor with copies of such policies upon request and shall provide Contractor with certificates of said insurance evidencing all of the coverages required herein and providing that such policies shall not be canceled or reduced in coverage until thirty (30) days after written notice shall have been given to Contractor of such cancellation or reduction in coverage. In the event of a threatened or actual cancellation for nonpayment of premium, Contractor may pay the same for Subcontractor and deduct the cost from any payment due Subcontractor. In the event Subcontractor shall fail or refuse to provide the coverages, certificates of insurance or copies of the policies as herein required, no payment of any portion of the subcontract sum shall be due and owing hereunder until such coverages are in place and certificates have been received by Contractor, and further, such failure or refusal shall be an act of default.

Subcontractor's liability insurance shall have the following minimum limits or the limits required by the prime contract if greater:

Certificate of Insurance (or standard "Acord" form furnished by Subcontractor's Insurance Carrier or Agent) must have an original signature. Xerox copies are not acceptable.

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All insurance certificates must name Mark Young Construction, Inc., **OWNER'S NAME HERE**, (Owner), and **ARCHITECT'S NAME HERE** (Architect) and their respective Directors, Officers, Agents and employees and each of them must be named as the additional insured to the fullest extent permitted by law. To the extent permitted by law, all of the Subcontractor's liability insurance coverage shall be deemed primary insurance to any other or similar insurance Contractor may obtain for its own benefit, which shall be excess or secondary but not contributing insurance. The insurance policies shall include a waiver of subrogation in favor of Mark Young Construction, Inc. and the other additional insureds. Subcontractor shall provide all deductible and/or self-insured retention amounts for all coverage on the requested insurance certificate.

The following types of insurance are required:

1) **Comprehensive Liability**

This policy must be an occurrence-based rather than a claims-made policy. Limits shall be as follows:

Bodily Injury and/or Property Damage – Combined Single Limit - \$ 2,000,000

General aggregate/\$1,000,000 per occurrence

Liability policy will be endorsed to provide per project aggregate form CG2503 or a similar form if approved by Contractor.

The following inclusions must be covered:

- a) Premises - Operations
- b) Explosion/Collapse Hazard
- c) Underground Hazard
- d) Products/Completed Operations Hazard
- e) Broad Form Contractual
- f) Independent Contractors
- g) Comprehensive Form
- h) Broad Form Property Damage
- i) Personal Injury
- j) Must carry Waiver of X.C.U. Exclusion applicable to the type of work being done.
- k) Job-site/project pollution limit of liability \$500,000 for bodily injury, property damage and clean-up
- l) Subsidence

2) **Motor Vehicle Liability**

Bodily Injury and/or Property Damage – Combined Single Limit - \$ 1,000,000 per accident.

Coverage is to extend to owned, non-owned and hired automobiles.

3) **Excess or Umbrella**

Bodily Injury and/or Property Damage – Combined Single Limit to \$ 1,000,000 annual, aggregate/\$1,000,000 per occurrence



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- 4) **Worker's Compensation** - State of Colorado Statutory; Applicable Federal and Employer's Liability - \$500,000/\$500,000/\$500,000. A waiver of subrogation in favor of the Contractor and Owner is required. Subcontractor shall not exclude Officers and Directors from Worker's Compensation coverage.

If this Subcontractor elects to subcontract any part of the work to be performed, with the written permission of Mark Young Construction, Inc. only, it is this Subcontractor's responsibility to acquire and/or provide all of the above insurance and indemnity requirements for the work subcontracted, prior to the start of said work.

Enclosed with Mark Young Construction, Inc.'s billing package is an example of the proper form of the insurance certificate required for this project, including, limits, format and verbiage.

Subcontractor shall furnish all required certificates of insurance prior to performing work. Should Subcontractor perform work prior to furnishing required certificates of insurance, Subcontractor shall not be entitled to payment until said certificates are furnished to Contractor.

**ARTICLE 16. INDEMNIFICATION.**

To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**ARTICLE 17. POSSESSION PRIOR TO COMPLETION.**

Whenever it may be useful or necessary for the Contractor to do so, the Contractor shall be permitted to occupy or use any portion of the work which has been either partially or fully completed by the subcontractor before final inspection and acceptance thereof by the Owner, but such use or occupation shall not relieve the Subcontractor of his guarantee of said work and materials nor of his obligation to make good at his own expense any defect in materials or workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner. Provided, however, the Subcontractor shall not be responsible for the maintenance of such portion of the work as may be used or occupied by the Contractor, nor for any damage thereto that is due to or caused by the negligence of the Contractor during such period of use or occupancy.

**ARTICLE 18. OTHER CONTRACTS.**

(A) It is understood and agreed that the work provided for in this Subcontract constitutes only a part of the work being performed for the Owner by the Contractor and other subcontractors. The Subcontractor therefore, agrees to perform the work called for in this Subcontract in such a manner that it will not injure, damage or delay any other work performed by the Contractor or any other subcontractor, and further agrees to pay the Contractor for any damage or delay that may be caused to such other work by the Subcontractor or by his agents or employees.

(B) Subcontractor shall be bound by the terms and provisions of the prime contract, and all documents incorporated therein. However, it is mutually agreed that in case of any conflict between any of the terms and conditions of this Subcontract Agreement and of the prime contract, plans, specifications and other general contract documents, this Subcontract Agreement shall govern.

**ARTICLE 19. SHOP AND DESIGN DRAWINGS.**

(A) If Subcontractor shall make changes in design, including dimensional changes, either through shop drawings or actual field work he shall accept all responsibility for structural and functional adequacy and acceptance of such changes by Owner or Architect. Any structural or functional inadequacies which may develop because of such changes shall be remedied by the Subcontractor in spite of any approvals given by Owner or Architect unless such change is specifically included in a change order as provided for in ARTICLE 8. In addition, the costs of additional work, redoing or repairing work incurred by other trades or Contractor resulting from such changes shall be borne by the Subcontractor;

(B) If Subcontractor is responsible for design drawings, he shall accept all responsibility for structural, functional and design adequacy of such drawings and acceptance by Owner and Architect of such drawings. Any structural or functional failure or

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inadequacy which may result from such design drawings shall be remedied by the Subcontractor. In addition, Subcontractor shall bear all resultant costs such as work by other trades or contractor, architectural and engineering charges, loss of rent, and any damages.

(C) If this Subcontract is based on preliminary, outline or otherwise unfinished Plans and Specifications, the Subcontractor accepts responsibility for cooperating and coordinating with Architect and other trades in developing final Plans and Specifications so as not to impose additional work or cost on other trades or Contractor or to cause an increase in the Subcontract price. If the final Plans and Specifications change the scope of work of this contract then the Subcontract price will be equitably adjusted to the extent such adjustment is provided for the prime contract.

(D) Subcontractor shall forward to Mark Young Construction, Inc. all submittals as required by every section covering the work of this agreement.

**Complete shop drawings, product data, etc. shall be submitted within seven (7) days from the date of this Agreement.**

Submittal quantities are to be provided as follows and/or as referenced elsewhere in the Contract Documents (Samples and Shop Drawings):

Shop Drawings:	5 Blue-lines
	1 Sepia
Product Data:	7 Copies
Catalog Cuts:	7 Copies
Samples:	3 Each

All shop drawings must clearly identify the project by name and Architect's project number. Also provide clear space five inches wide and ten inches high in the lower right hand corner of each sheet for approval stamps and notes.

When directed to do so, this Subcontractor shall submit samples for approval at the Subcontractor's expense, with all shipping charges prepaid.

Only shop drawings bearing the Architect's and Contractor's stamp showing general review stamp of approval are to be used for fabrication and construction.

Subsequent to the Owner/Architect/Engineer approval of any shop drawings and/or schedules, this Subcontractor shall revise the shop drawings and/or schedules and reissue four (4) approved copies for construction. These documents shall bear the label "Approved for Construction."

All catalog cuts must be clearly indicated on each page as to which item is being submitted.

No payment will be made until all submittals, samples and shop drawings have been received by Contractor. All as-built drawings, operation and maintenance manuals, guarantees, warranties, and all project close-out requirements must be submitted to and reviewed by Mark Young Construction, Inc. prior to release of Subcontractor's final payment.

If during the submittal process or course of construction additional information is required, it is to be requested in the written form of a request for information. The request for information is to be submitted in a timely fashion allowing a minimum of fourteen (14) calendar days for a formal response.

**ARTICLE 20. INDEPENDENT CONTRACTOR.**

The subcontractor specifically warrants that Subcontractor is an independent contractor and neither Subcontractor, or any of its employees are employees of Contractor. Subcontractor further warrants that Subcontractor's employees who will perform work on this Project shall be under the direction and control of Subcontractor, not Contractor, and that the Subcontractor and its employees are customarily engaged in the trade which is set forth in Subcontractor's scope of work for this Project. Subcontractor warrants and represents that it is an employing unit subject as an employer to all applicable Unemployment Compensation statutes so as to relieve the Contractor of any responsibility or liability for treating Subcontractor's employees as employees of the

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Contractor for the purpose of keeping records, making reports and payment of unemployment compensation taxes or contributions; and the Subcontractor agrees to indemnify and hold the Contractor harmless and reimburse it for any expense or liability incurred under said statutes in connection with employees of the Subcontractor, including a sum equal to benefits paid to those who were Subcontractor's employees, where such benefit payments are charged to the Contractor under any Merit Plan or to its individual Reserve Account pursuant to any state unemployment compensation statute.

**ARTICLE 21. COMPLIANCE WITH LAW.**

The Subcontractor further agrees as regards (i) the production, purchase and sale, furnishings and delivering, pricing, and use or consumption of materials, supplies and equipment; (ii) the hire, tenure or conditions of employment of employees and their hours of work and rates of and the payments of their wages, (iii) the keeping of records, making of reports, and the payment, collection, or deduction of Federal, State and local taxes and contributions, and (iv) the performance of this contract in all other respects, that the Subcontractor will keep and have available all necessary records and make all payments, reports, collections and deductions, and otherwise do any and all things so as to fully comply with all Federal, State, and local laws, ordinances, rules and regulations and utility requirements and all applicable safety regulations in regards to any and all said matters insofar as they affect or involve the Subcontractor's performance of this Subcontract, all so as to fully relieve Contractor from and protect it against any and all responsibility or liability therefore or in regard thereto.

**ARTICLE 22. PROTECTION OF WORK.**

Except as provided in Article 17 above, the Subcontractor specifically agrees that it is responsible for the protection of his work until final completing and acceptance thereof by the Owner and that within the limits of contractor's responsibility, he will make good or replace, at no expense to the contractor or the Owner, all losses and any damage to his work which occurs prior to said final acceptance.

**ARTICLE 23. ARCHITECT-ENGINEER.**

The words "Architect" or "Engineer" as used herein refer to the person appointed by the Owner to supervise the work of the Contractor on behalf of the Owner.

**ARTICLE 24. ASSIGNMENT.**

The Subcontractor shall not, in whole or in part, assign or sublet this Subcontract or the proceeds thereof without the written consent of the Contractor.

**ARTICLE 25. SAVINGS CLAUSE**

Should any provision, article, or language in this Agreement be declared contrary to law, the portion of the specific provision, language or provision will be discarded and all other provisions shall remain in full force and effect.

**ARTICLE 26. PRIOR UNDERSTANDINGS OR REPRESENTATIONS/INTEGRATION.**

This Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, bids, proposals, representations or agreements, either written or oral for which the Contractor assumes no responsibility.

**ARTICLE 27. CAPTIONS.**

The captions at the beginning of each ARTICLE of this Subcontract are for convenience only and are to be given no weight in construing the provisions of this Subcontract.

**ARTICLE 28. ADDITIONAL PROVISIONS.**

(A) **ACCIDENT REPORTS:** The Subcontractor will supply to the Contractor a complete report on any serious job injury to any of their employees within 24 hours of such occurrence.

(B) **OVERTIME PAY:** It is understood that to meet certain requirements it may be necessary to perform some work tasks during off-hours. Any overtime incurred by the Subcontractor in the performance of this work, are the responsibility of the Subcontractor.

(C) **TEST AND INSPECT:** The Subcontractor shall set up, arrange coordinate and obtain all inspections for their work, as required by any authorized agency or applicable code. Arrangements for the inspection of any area, system equipment, etc., needing testing or inspection prior to being covered up, must be made by the subcontractor in sufficient time to allow for inspection.

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(D) **HOISTING:** The Subcontractor, unless specifically called out elsewhere in the Subcontract, shall be responsible for hoisting its own materials, supplies and equipment.

(E) **CLEAN-UP:** The Subcontractor shall perform all clean-up to a broom clean conditional for all their work covered by this agreement on a daily basis.

(F) **EEO:** The Subcontractor is responsible for complying with all EEO, MBE, WBE, DBE, etc., requirements of the contract.

(G) **SURVEY AND PRIMARY ENGINEERING CONTROLS:** The Contractor or Owner will provide initial primary survey control for the Subcontractor. It shall be the responsibility of the Subcontractor to maintain and preserve all stakes and other marks established by the Contractor or Owner and if such stakes or marks are destroyed by the Subcontractor, they will be replaced at their expense.

(H) **MSDS:** Prior to the start of your jobsite work, submit a Material Safety Data Sheet (MSDS) for each substance you or your Subcontracts intend to use on jobsite which is classified as a hazardous substance by Federal or State agencies. Submit the MSDS's to the Project Manager.

**ARTICLE 29. WARRANTY.**

Subcontractor warrants all labor and materials for the same time period as the Contractor warrants all labor and materials to the Owner. Notwithstanding the above, Subcontractor warrants all labor and material for at least one year from final completion of the project.

**ARTICLE 30. DISPUTES.**

All disputes which arise from this subcontract or the performance of work on this project or in any way related to this project shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. Should Contractor be in a dispute with Owner involving the Subcontractor or the Subcontractor's work, Contractor, at Contractor's option, may require Subcontractor to join in that same dispute resolution proceeding. Should Contractor prevail in any arbitration the Arbitrator shall award Contractor reasonable attorney fees.

**ARTICLE 31. WATER INTRUSION**

Subcontractor shall protect its work, the work of other subcontractors, contractor's work, and the project from weather damage and water intrusion. In the event water intrusion occurs from weather or any other cause due to Subcontractors failure to carry out its obligations in accordance with this paragraph, Subcontractor shall be responsible for the cost to remedy all damages caused thereby, including but not limited to testing and remediation of mold and toxic substances before and after remediation occurs.