



## LANDSCAPE COMPLETION AGREEMENT

THIS AGREEMENT, entered between Security Fire Department, hereinafter called the "Owner/ Developer," and El Paso County, as represented by its Planning and Community Development (PCD), hereinafter called the "County," shall become effective upon the date of approval of the Site Development Plan/Site Plan (including the Landscape Plan) by the PCD. This agreement shall terminate at the time of the completion of the landscape installation as approved on the Landscape Plan.

WHEREAS, Table 5.1 of the El Paso County Land Development Code identifies the requirement for Site Development Plan or Site Plan approval prior to establishing certain land uses; and

WHEREAS, Section 6.2.2 of the El Paso County Land Development Code identifies landscaping requirements to be satisfied in conjunction with establishing or modifying a land use where either a Site Development Plan or Site Plan are required; and

WHEREAS, a Landscape Plan is a component of Site Development Plan or Site Plan utilized to establish compliance of the proposed landscaping with the various LDC landscaping standards; and

Whereas, the Site Development Plan/ Site Plan for this property was approved by the PCD on May 17, 2021 under File Number PCD File #PPR -20-029, and included a Landscaping Plan; and

Whereas, the Landscape Plan associated with PCD File #PPR-20-029 was amended and approved by the PCD Executive Director on January 11, 2023 under File Number PCD File #COM-22-059, and

WHEREAS, Section 6.2.2.G.2.i of the El Paso County Land Development Code provides that all required landscaping be completed, inspected, and approved prior to the issuance (or authorization) of a Certificate of Occupancy or establishment of the use, except where surety acceptable to the Planning and Community Development Department Director guaranteeing the completion of the landscaping is provided, but also allows for acceptable assurances to be provided by an Owner/ Developer in the event the Owner/ Developer wishes to occupy the proposed structure prior to the installation of the required landscape improvements previously approved by the PCD; and

WHEREAS, the Owner/ Developer is the owner of property affected by said regulation located at 7600 Wayfarer Drive, Colorado Springs, CO 80925 (street address) and more particularly described as A tract of land located in the Northwest one-quarter of section 28, township 15 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado: and  
(Legal Description)

WHEREAS, the Owner/ Developer wishes to supply surety in the form of Subdivision Performance Bond (insert one of the following:)

- a) An Irrevocable Letter of Credit from \_\_\_\_\_  
in the amount of \$ \_\_\_\_\_
- b) Cashier's check in the amount of \$ \_\_\_\_\_
- c) Certificate of Deposit for the amount of \$ \_\_\_\_\_
- d) Subdivision Performance Bond of \$60,000.00
- e) (Any method other than that identified in a), b), c) and d) above must be a method acceptable to the Board of County Commissioners.

in order to occupy the proposed structure prior to the installation of the landscaping.

EXHIBIT A

ESTIMATE OF GUARANTEED FUNDS  
Landscaping Improvements

Landscaping improvements are as follows:

ITEM	TOTAL COST
1. Erosion Control Blanketing	\$6475.00
2. Irrigation	\$13,480.00
3. Compost (2cy/1000sf)	\$6500.00
4. Metal Edging	\$247.50
5. Trees, shrubs, and plantings	\$11,200.00
6. 1.5" Royal Granite	\$5250.00
7. Mulch	\$5000.00
8. Herbicide, fertilizer, & pre-emergents	\$700.00
9. Seeding	\$1850.00
10. Mobilization	\$650.00
11. Road base in detention pond	\$2200.00
TOTAL	\$ 53,552.50

Estimate prepared by: TRAX Construction Landscaping Division/TN Parker Construction, LLC.

Date: 17<sup>th</sup>

Approved by Owner/Developer:  Date: 4-17-23

Atunuf Popovic  
Notary Public

[Signature]

4/28/23

Executive Director  
Planning and Community Development Department

Date

Approved as to Content and Form:

Lori L. Seagr  
Assistant County Attorney

THEREFORE, IT IS HEREBY AGREED:

1. The Owner/ Developer will construct and install, at its own expense, all of the landscape improvements as indicated upon the Landscape Plan approved by the Planning and Community Development said improvement costs attached hereto as "Exhibit A."
2. To secure and guarantee performance of its obligations as set forth herein, the Owner/ Developer is hereby providing surety in an amount covering all of the costs of material and labor associated with the Landscaping Plan. The surety shall be in the form of **Performance Bond**, negotiable for the amount of **\$60,000.00**, and shall extend for a period of at least ten (10) months, from the date of Site Development Plan/ Site Plan (including the Landscape Plan) approval until **January 31, 2024** (date).
3. Upon installation of the landscaping as indicated upon the Landscape Plan (approved by the PCD) and subsequent to inspection by the El Paso County for compliance with said Landscape Plan (or certification of by a landscape architect of compliance if authorized by the Planning and Community Development Department Director), the surety provided will be released upon written request from the Owner/ Developer.
4. Should the required landscape improvements not be installed within the thirty (30) days prior to the expiration of this Agreement to guarantee surety, the PCD may request release from the Board of County Commissioners of the surety.
5. Should the Owner/ Developer fail to install the landscape improvements (as indicated upon Exhibit A) within the specified time frame, the Owner/ Developer authorizes right-of-entry onto the property by the PCD and others that may be necessary to install said improvements in order to fulfill the requirements of this Agreement.
6. A Final Certificate of Occupancy may be authorized by the PCD based upon this completion agreement; however conditions may be placed upon that approval and failure to comply with the approved Landscape Plan, this agreement, or any conditions placed upon the issuance of the Certificate of Occupancy may be considered violations of the LDC pursuant to Chapter 11 of the LDC.

Signed and acknowledged this 17<sup>th</sup> day of APRIL, 2023.

[Signature]  
Owner/ Developer

**STACEY POPOVICH**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
NOTARY ID 20094028366  
MY COMMISSION EXPIRES 05/28/2026

400 Security Blvd., Security, CO 80911 (719) 392-3271  
(Address and Telephone Number)

Subscribed, sworn to and acknowledged before me this 17<sup>th</sup> day of April, 2023, by the parties above named.

My commission expires: 5/28/26

## **SUBCONTRACT AGREEMENT**

THIS AGREEMENT dated the 21st day of February, 2023 by and between **Trax Construction, Inc.**, hereinafter called the Subcontractor, and **TN Parker Construction, LLC**, hereinafter called the Contractor, is for work to be performed on **Security Fire Station No. 4** hereinafter called the Project, located at **7600 Wayfarer Drive, Colorado Springs, CO 80925**, for the use and benefit of **Security Fire Department**, hereinafter called the Owner, in complete accordance with plans prepared by **Orsillo Design**, hereinafter called the Architect. The parties hereby covenant and agree as follows:

### **Project Documents Acknowledgement:**

1. Project drawings titled "*Security Fire Station No. 4*". The specific sheet count and dates (including revision dates) are included as **Attachment A** to this subcontract.

### **Description of the work by the Subcontractor:**

1. Provide all equipment, material and labor, including supervision as required to complete the work of this subcontract in accordance with the project documents to the satisfaction of the Owner, Architect and General Contractor.
2. Provide all samples, submittals, shop drawings, and closeout documentation in accordance with the project documents to the satisfaction of the Owner, Architect and General Contractor.
3. Provide a safety book to the onsite field superintendent including safety procedures and MSDS sheets of chemicals located on site.

### **Specific inclusions:**

1. Furnish and plant all trees, shrubs, and plantings as shown on plan sheets LS-1 and LS-2 (revision date 12/16/2022)
2. Furnish and install all roll top galvanized edging, weed barrier fabric, decorative rock, topsoil, and compost/fertilizer as per plans and planting requirements.
3. Furnish and install native seeding and erosion control blankets as required at seeded areas and in detention pond.
4. Furnish labor & equipment to place road base in detention pond (Material NOT incl in this subcontract as it may be furnished by Owner)
5. Provide and install drip irrigation system for all plantings including "as built" drawings for irrigation system.
6. Subcontractor must maintain a safety/MSDS book on site relevant to their trade/scope of work.
7. Detailed closeout documents with maintenance and warranty information. Electronic submission is preferred.

### **Unit Prices:**

The following unit prices are not included in the lumpsum contract pricing but shall apply for additional work as required if required:

1. Seeding outside of property if requested - \$0.10/sf
2. Erosion control blanketing outside of property if requested - \$0.35/sf
3. Furnish road base for detention pond if requested - \$600.00

1. The Subcontractor agrees to furnish all labor, materials, equipment, supervision, layout and scaffolding and perform all work as hereinafter described in accordance with the general conditions, special conditions, specifications and Contract Documents between the Contractor and the Owner. The Subcontractor hereby agrees to be bound to the Contractor by the same terms and to the same extent as the Contractor is bound to the Owner under the Contract Documents. Subcontractor agrees to perform this Agreement strictly in accordance with the terms of this Agreement and the Contract Documents subject to approval and acceptance of Subcontractor's work according to the Contract Documents. The Subcontractor, by its execution of this Agreement acknowledges that its has fully examined the Contract Documents and has had all questions answered to its satisfaction by the Architect/Engineer and Contractor. Where a provision of this Agreement is inconsistent with the Contract Documents, the more stringent requirement shall apply. Subcontractor agrees at the time of entering into this Agreement that no substitutions, except those as accepted by the Architect in writing, were contemplated in arriving at the amount of this Agreement. This Agreement is the sole agreement between the parties and supersedes any proposals, bids, negotiations or other agreements between the parties relating to the project covered by the Contract Documents, unless specifically included above.

2. The Subcontractor shall not commence work under this Subcontract until it has obtained, at its own cost and expense, all of the insurance required under the Contract Documents or the insurance with minimum limits of liability and coverage as stated below, whichever are greater, and delivered to Contractor certificates of insurance demonstrating the existence of coverage with insurance companies acceptable to the Contractor. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. All certificates of insurance shall clearly identify any policy exclusions for EFIS, mold or other exposures customarily covered by standard insurance policies. The policies of insurance shall include:

a. Worker's Compensation and Employers Liability Insurance as required by applicable State Laws for all of its employees to be engaged in work at the site of the project. Subcontractor shall require the sub-subcontractor(s) similarly to provide such insurance.

b. Comprehensive General Liability Insurance (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate. The Annual Aggregate Limit shall apply separately to each project. The CGL coverage shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. The Contractor, Owner and all other parties required by the Contract Documents, shall be included as additional insureds on the CGL. It shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, maintained by, or approved to, the additional insured. Subcontractor shall maintain CGL coverage for itself and all additional insured's for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 2 years after completion of the Work.

c. Automobile Liability Insurance with limits of at least \$1,000,000 each accident, with coverage for liability arising out of all owned, leased, hired and non-owned automobiles. The Contractor, Owner and all other parties required by the Contract Documents, shall be included as additional insured's on the auto policy.

d. Umbrella Liability Insurance with limits of at least \$1,000,000, and must include as insured all entities that are additional insured's on the CGL. Umbrella coverage for such additional insured's shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured's other than the CGL, Auto Liability and Employers Liability coverage's maintained by the Subcontractor.

e. Professional Liability / Errors & Omissions coverage with limits of \$1,000,000 if Design-Build services are rendered as a part of this agreement.

f. Contractor reserves the right to require Subcontractor to furnish in the full amount of this Agreement on forms approved by Contractor performance and payment bonds executed by a

surety authorized to do business in the State of Colorado or the state where the project is located and reasonably acceptable to Contractor. Unless the requirement for bonds was included in the information provided to Subcontractor at the time this Agreement, the cost of such bonds shall be paid by Subcontractor and presented to Contractor for payment as a separate line item on the schedule of values.

g. If provided for in the Contract Documents, the Contractor or the Owner shall effect and maintain Builders Risk Insurance upon the entire Work at the Site to the full insurable value thereof. The insurance shall insure against fire and those perils normally insured under so-called "all risk" policy insuring the risks of direct physical loss. Any deductible shall be apportioned amongst the parties involved in the loss unless provided otherwise in the Contract Documents. This insurance does not apply and the Contractor shall not be responsible for loss of or damage to: (a) any materials or equipment to be incorporated into the Work and not situated at the job site, (b) tools, equipment, appliances or other personal property owned, leased, or used by the Subcontractor or anyone employed by them in the performance of the Work, however caused. To the extent covered by the Builders Risk Policy, the Subcontractor and all sub-subcontractors waive any claim against the Owner and Contractor for damages covered by the Builders Risk Policy.

3. The Contractor agrees to pay the Subcontractor for the performance of its work the total sum of:

Proposal amount: **\$52,953.00** (Fifty Two Thousand Nine Hundred Fifty Three Dollars and Zero Cents).

These amounts are in current funds, subject to additions and deductions for changes as may be agreed upon, and to make payment on account thereof promptly in accordance with the following provisions:

a. The Subcontractor shall submit to the Contractor a schedule of values for all work covered by this Agreement within ten (10) days of the date of this Agreement. All billings shall be submitted to the Contractor on forms approved by the Contractor not later than the 25<sup>th</sup> day of each month including work to be completed during that month. Late requests, or requests not in proper format, will not be processed unless corrected and will then be processed the following month.

b. No payment under this Agreement will be considered due until five (5) days after receipt by Contractor of such payment from the Owner, and only when all conditions of this Agreement relative to sales tax information, payroll reporting requirements, insurance certificates, bond requirements, progress statement format and procedures, previous payment certification, release of claims and satisfactory rate of progress have been met. The Owner's payment to Contractor for the work is a condition precedent to Contractor's obligation to make progress payments or final payment to the Subcontractor and Subcontractor agrees to share this credit risk with Contractor. Should Owner's non-payment be due to the deficient, incomplete, non-conforming or otherwise substandard work of others and not of Subcontractor, then Contractor shall, a reasonable time after Owner has credited Contractor with performance of the work by Subcontractor, be obliged to pay Subcontractor for its work.

c. Unless a different amount is stated in this Agreement, a ten percent (5%) retention shall be held on all payment applications until final payment is made by Owner.

d. The Contractor reserves the right to withhold from any payment due hereunder a reasonable amount to protect the Contractor pending satisfactory settlement of any legitimate back charges by the Contractor, or claims or disputes involving subcontractors wherein the Contractor is directly or indirectly an interested party.

e. The Subcontractor shall receive final payment only when the entire work described herein is completed and accepted by the Owner. Acceptance of work or making final payment

shall not relieve Subcontractor of any liability for defects in work which thereafter may be discovered.

f. The Subcontractor agrees that monies received for the performance of this Agreement shall be held in trust as required by Colorado Law and used first for payment of labor, equipment and materials for this Agreement and said monies shall not be diverted to satisfy obligations of the Subcontractor on other contracts or for other purposes. Contractor reserves the right to disregard any assignment of Subcontractor's payment rights to a third party if necessary to carry out the requirements of this Article.

g. The Subcontractor agrees to pay not less than the scale of wages prescribed in the Contract Documents, or not less than the scale prescribed by law in case the Contract Documents provide no such scale. Subcontractor shall provide certified payroll information to the extent required in the Contract Documents.

4. The Subcontractor agrees that time is of the essence in the performance of this Agreement. Subcontractor will keep itself fully informed as to the progress of the job, begin work within seven (7) days after notification by the Contractor, prosecute the work continuously and without interruption with all necessary speed to complete the entire scope of work covered by this Agreement in accordance with the project schedule. If liquidated damages are provided for in the Contract Documents, the Subcontractor agrees to reimburse the Contractor for any liquidated damages that may be assessed against the Contractor which are attributable to or caused by the Subcontractor's failure to perform this Agreement. Contractor shall provide the project schedule and all project schedule updates to Subcontractor and Subcontractor shall be bound by such schedules unless objected to in writing by Subcontractor within five (5) calendar days. The Subcontractor agrees to prosecute its work, and the several parts thereof at such times and in such order as the Contractor considers necessary to keep the same sufficiently in advance of the other parts of the project and to avoid any delay in the completion of the construction as a whole. The Subcontractor acknowledges that it may be required to perform work out of the sequence originally planned as required by Contractor to maintain the progress of the project. Subcontractor agrees it has anticipated certain reasonable delays and disruptions as part of the Subcontract price to the extent customary in a project of the nature being undertaken by Contractor.

5. Should the Subcontractor fail to provide sufficient materials, equipment, or workmen to meet the work schedules, become insolvent or unable to perform, refuse to follow the plans and specifications or in any other way fail to act in accordance with the terms hereof, it is agreed the Contractor shall have the right to:

a. Terminate this Agreement in accordance with applicable provisions of the Contract Documents after three (3) days written notice and right to cure given the Subcontractor as provided herein.

b. Withhold payments on account of labor and material already furnished until such time as satisfactory progress is resumed and maintained.

c. Upon two (2) days written notice and right to cure given to the Subcontractor as provided herein, hire additional workmen, purchase materials, rent equipment or employ others to perform such portions of the work under this Agreement and for the account of the Subcontractor, without terminating this Agreement.

d. Notwithstanding any other provision contained elsewhere herein, and superseding any contrary term expressed herein, 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, the Subcontractor, the Owner, or any other contractor or subcontractor on this construction site, the Subcontractor will continue the performance of the work included herein, without interruption or delay. As a result of such picket or other form of labor dispute, the Contractor may terminate the services of said Subcontractor after giving forty-eight (48) hours

written notice of intent to do so. The terminated Subcontractor may then be replaced at the discretion of the Contractor and all extra costs involved in doing so shall be payable by the terminated Subcontractor. 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 that may be designated from time to time by the Contractor. Further, 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 Contractor from time to time.

e. Nothing herein shall be construed to limit the Contractor's right to recover damages from the Subcontractor for delay, malperformance, or nonperformance of this Agreement. Satisfactory progress is understood to mean the degree of progress which will enable the Contractor and other Subcontractors to meet required work schedules.

6. The Subcontractor agrees to promptly remove all trash, debris, packing crates, excess or waste materials, etc. resulting from his work and to leave the areas in which he has worked broom clean. It shall be the responsibility of the Subcontractor to properly cover and protect the work of others from damage or soiling through the performance of this Agreement and he shall promptly clean, restore, replace or pay for the replacement of any such work damaged in the performance of his own work. Cleanup or cleaning work not regularly and promptly performed by Subcontractor when so ordered by Contractor's superintendent may upon twenty-four (24) hours written notice be performed by others for Subcontractor's account. It is also agreed and understood that the Subcontractor is to do all cutting and patching related to their work.

7. The Subcontractor warrants to Contractor that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the work of Subcontractor will be free from defects not inherent in the quality required or permitted, and that Subcontractor's work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Subcontractor agrees to promptly correct, without cost to the Owner or Contractor any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the contract documents, and if no such period is stated in the contract documents, then such guarantees shall be for a period of one (1) year from date(s) of acceptance of the project by the Owner. Such warranty obligation of Subcontractor includes all cost to remove or correct work of Subcontractor or others not otherwise covered by said warranty in order to perform warranty work. This warranty shall be in addition to all other warranties and remedies, express or implied under the law and the Contract Documents.

8. No extra work or changes under this Agreement shall be performed without written notice from the Contractor. No modifications of Agreement prices shall be made and no work of lesser value than called for in plans and specifications shall be accepted, except on written change orders signed by the Contractor. To the extent Subcontractor has a claim that would constitute a claim which the Contractor could assert against the Owner as provided in the Contract Documents, Subcontractor agrees to make any claims for adjustment to the subcontract price or subcontract time to the Contractor in the same manner as provided in the Contract Documents for like claims of the Contractor upon the Owner, and in such time as will enable the Contractor to present such claims to the Owner for payment or recognition. The Contractor will not be liable to Subcontractor for any claim not timely or properly presented, or in excess of the amount allowed by the Owner. If a claim is not one which can be asserted by the Contractor against the Owner, Subcontractor agrees to provide written notice to Contractor within three (3) calendar days of the date when the Subcontractor knew of the facts giving rise to the event for which a claim for adjustment to the subcontract price or subcontract time is made; otherwise, such claim shall not be valid. Subcontractor shall provide a full accounting within ten (10) days after the extent of damage is known or the cause of damage ceases, otherwise same will be considered void by both parties.

9. The Subcontractor is to obtain and pay all licenses and permits and to pay any and all fees associated with obtaining them. Subcontractor shall comply with all applicable State, Federal and local laws, ordinances and applicable rules and regulations of any State, Federal and local regulatory body having jurisdiction over the project and the terms of the Contract Documents.

This obligation shall include, but not be limited to, State, Federal and local laws and regulatory rules and regulations concerning the generation of hazardous wastes, safety, OSHA, storm water runoff, employment discrimination and affirmative action, utility notification and building codes. Subcontractor and any sub-subcontractors, labor brokers or temporary help agencies used by Subcontractor shall comply with the Immigration Reform and Control Act of 1986, as amended and all laws regarding the employment of persons who are not U.S. citizens. If the Owner is a state agency or political subdivision of the State of Colorado, Subcontractor agrees to certify to Contractor that Subcontractor shall not knowingly employ or contract with an illegal alien to perform work on the project on the form provided by Contractor. Subcontractor acknowledges the Contractor's obligations under §8-17.5-102, C.R.S. to terminate this subcontract if within three days of receiving notice that Subcontractor is employing or contracting with illegal aliens, Subcontractor does not stop employing or contracting with illegal aliens or provides information to establish that Subcontractor has not knowingly employed or contracted with an illegal alien. Subcontractor shall be liable to Contractor for any damages caused to Contractor as a result of a violation of this paragraph.

**10.** Subcontractor agrees to indemnify the Contractor against and save the Contractor harmless from any and all claims or suits or liability for injuries to property, injuries to persons including death, and from any and all claims, suits or liability on account of any act or omission of Subcontractor or any of his officers, agents, employees or anyone acting under the direction or control of Subcontractor.

**11.** The Subcontractor agrees to indemnify and save harmless the Contractor and Owner from any and all manner of claims suits for infringements of patents or violations of patent rights, including all costs connected to same.

**12.** After payment by Contractor, the Subcontractor agrees to hold the Contractor harmless from any and all liens and all claims of persons furnishing material or labor or appliances in connection with this Agreement. If at any time during progress of work hereunder and before final payment of Agreement price, there should be evidence of any lien or verified claim for which Contractor or Owner of premises may become liable, Contractor shall have the right to retain out of any money then due, or thereafter to become due to Subcontractor under this Agreement, an amount sufficient to completely indemnify it against any such lien or claim. If, after completion of this Agreement and final payment of Agreement price, any such lien or claim shall appear, Subcontractor shall completely indemnify Contractor or Owner against any loss or damage which may be suffered by reason thereof. The Contractor may also require satisfactory evidence as to the status of any of his accounts with any material supplier or labor account at any time. Within ten (10) days of the date of this Agreement, Subcontractor shall provide Contractor with a list of its proposed sub-subcontractors and material suppliers.

**13.** When labor only is furnished by the Subcontractor, Subcontractor agrees to use Contractor's material without waste, and agrees to pay for any material ruined or damaged on account of negligence or carelessness. In the event the Subcontractor uses any of the Contractor's equipment or services, it will be subject to independent agreement between the Contractor and Subcontractor.

**14.** This Agreement is payable at the office of the Contractor in Colorado Springs, Colorado. Final payment shall become due at the time of the final approval by the Architect/Engineer or Owner. Such time shall be only when all obligations and agreements, except as provided herein, are fully carried out by the Subcontractor. The Subcontractor agrees to present in writing a full, detailed, and itemized statement of any claims and accounts together with the Owner's acceptance of its work, including all just credits to Contractor, and to give in writing all information at its command that may be called for concerning accounts and claims, and give the Contractor a reasonable time to consider same. In case of disagreement, each party agrees to make an honest and diligent effort to arrive at correct and true settlement of each item, claim, and account so presented and all facts material to them, and to reduce in writing all points agreed upon and also all matters still left in dispute. Said writings when signed by the parties shall be the basis of all future effort or actions towards settlement of Subcontractor claims. Matters and facts not

presented to itemized statement and signed writings above referred to, shall be considered immaterial and waived by the Subcontractor and shall not be brought to issue at a later date by Subcontractor. Subcontractor agrees to provide to Contractor all documents and other information required of Contractor by the Contract Documents relating to the Owner's rights to audit the costs incurred by Subcontractor in the performance of its work or any change order work. Subcontractor will be bound by the determinations made as a result of any audit conducted by the Owner as it affects the cost of work performed by Subcontractor and the compensation Subcontractor will receive for the work.

**15.** No allowance of an extension of time, for any cause whatever, shall be claimed by the Subcontractor or be made to him unless the Subcontractor shall have made written request to the Contractor for such extension within seventy-two (72) hours after the cause for such extension begins, and unless the Contractor and Subcontractor have agreed in writing upon the allowance of additional time to be made.

**16.** Subcontractor agrees to pay all state and federal taxes of every nature, and that if this work is to be performed in a state foreign to the state of the incorporation, in the event the Subcontractor is a corporation, then and in that event, the Subcontractor agrees to domesticate in the foreign state for the purpose of carrying out this Agreement. In this connection, it is understood and agreed that the Subcontractor shall pay all social security and state unemployment taxes in connection with its work, together with any and all required sales, use and federal and state taxes.

**17.** The Subcontractor definitely agrees that under no condition will it remove from the job site any materials for which the Contractor or project becomes liable under the Federal Miller Act or similar state statute, without express written permission from the Contractor.

**18.** All notices which may be required to be given by either party to the other shall be in writing and shall be deemed received, (a) the day of hand delivery; (b) the day of receipt of a facsimile; (c) three (3) calendar days after depositing United States Mail, postage prepaid; or (d) the date of transmission by e-mail to the e-mail address provided by Subcontractor. Subcontractor shall establish the capability to communicate with Contractor electronically via the Internet and e-mail, for the distribution of documents and other uses as determined by Contractor.

**19.** Subcontractor may terminate this Agreement for a material breach by Contractor of its obligations under this Agreement. In the event Subcontractor feels Contractor is in breach of any of its obligations to Subcontractor, Subcontractor shall provide Contractor with written notice setting forth the basis of the breach and provide Contractor with five (5) working days to cure the default. If Contractor fails to make a bona fide and effective effort to correct or substantially cure the default within the cure period, Subcontractor may terminate this Agreement and shall be entitled to recover its lost profits associated with Contractor's default. If the claimed breach is disputed by Contractor, Subcontractor shall continue its work under this Agreement and commence the dispute resolution process.

**20.** It is understood and agreed that both parties to this Agreement have read and understand the Contract and all plans and specifications connected therewith. This Agreement shall be interpreted under the laws of the State of Colorado and any suit brought on this Agreement shall be brought in El Paso County, Colorado.

a. Any reference herein to the term "indemnify" shall be construed to include attorneys' fees and court costs (including expert's fees).

b. If Contractor has to defend against any actual or threatened mechanic's lien, Miller Act or similar lien claims or bond claims threatened or brought because of Subcontractor's alleged failure to pay its Subcontractors, material men, laborers, or suppliers, or because of Subcontractor's failure to perform under this Agreement, the Subcontractor shall pay Contractor

(and Contractor shall have the right to retain from any amounts due or to be due Subcontractor) all of Contractor's attorneys' fees and costs (including expert's fees).

21. The Subcontractor shall not assign or sublet this Agreement or any part thereof without the written consent of the Contractor.

22. Waiver of any breach thereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. Except as provided above, no changes to this Subcontract will be binding on the parties unless agreed to in writing and signed by both parties. Although drawn by Contractor, this Subcontract shall in the event of any disputes over its meaning or application, be interpreted fairly and reasonably according to Colorado Law and neither more strongly for nor against either party.

IN WITNESS WHEREOF, the parties have executed this Agreement, by their proper officers or fully authorized agents. Subcontractor agrees to execute and return this Agreement to Contractor within ten (10) days of receipt or this Agreement will be deemed to be accepted by Subcontractor's commencement of work.

Subcontractor:

TRAX Construction, Inc.  
555 Ford Street  
Colorado Springs, CO 80915



By (signature of authorized individual)

Kevin Losinski, Landscape Manager

By (printed name & title)

General Contractor:

TN Parker Construction, LLC.  
111 Swope Avenue  
Colorado Springs, CO 80909



By (Thomas Neil Parker, President)