

# SUBCONTRACT AGREEMENT

THIS AGREEMENT made at Salt Lake County, State of Utah, this 5th day of January 2002 by and between Arnell-West, Inc., hereinafter referred to as the Contractor, and (**company name**), hereinafter referred to as the Subcontractor. We bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally firmly by these presents.

WITNESSETH: That for and in consideration of the covenants herein contained, the Contractor and Subcontractor agree as follows:

## 1. SCOPE OF WORK

That the work to be performed by Subcontractor under the terms of this agreement consists of the following:

Furnishing of all labor and material, tools, implements, equipment, scaffolding, permits, fees, sales and use tax, hookup charges, etc., as required to complete all (**description of work**) work for the construction project (**project**) located at (**address**) including, but not limited to:

(**scope of work**) as per plans and specifications.

When the Subcontractor does not install all material furnished under this Subcontract, such material as is not installed is to be delivered F.O.B. Jobsite unloaded in strict accordance with the plans and specifications as per (**architect**), architect, for the construction of the (**project**) for (**owner**), owner, for which construction the Contractor has the prime contract with the owner; together with all addenda or authorized changes issued prior to the date of execution of this agreement.

All work to be performed as set forth herein above shall be complete and shall be accomplished in accordance with the plans, specifications, addenda, shop drawings, and architect's directions received by Subcontractor. The Subcontractor further agrees that all work shall be done in a workmanlike manner, shall be acceptable to the Contractor, and shall comply in every detail to the Owner's plans and specifications.

The Contractor and the Subcontractor agree to be bound by the terms of the prime contract agreement, construction regulations, general conditions, plans and specifications as follows: **BID DOCUMENTS:** insofar as applicable to this Subcontract Agreement, and to that portion of the work herein described to be performed by the Subcontractor.

To the extent that the prime contract applies to the Subcontractor's work, Subcontractor shall assume toward the Contractor the same obligations as the Contractor has assumed toward the Owner. In the event of any doubt or question arising between the Contractor and the Subcontractor with respect to the plans and specifications, the decision of the Architect and/or Engineer shall be conclusive and binding.

## 2. PROSECUTION OF WORK, DELAYS, ETC.

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 time or times as the Contractor may direct, so as to promote the general progress of the entire construction and shall not, by delay or otherwise, interfere with or hinder the work of the Contractor or any other Subcontractor. The Subcontractor shall complete all work on time in accordance with the project CPM schedule including here-in the following activity time allowances:

(**duration**).

A minimum of a 7-day notice by telephone will be given to schedule a start date for work to be performed. Thereafter a 24-hour notice by telephone will be given as to the specific starting time for such work. Unless otherwise modified or agreed to by the job Project Manager in writing, all damages accrued by Contractor will be charged to the Subcontractor for the failure to begin work in accordance with the above telephone notice, failure to keep sufficient men and materials on the job to continue to work in a timely manner, or the failure to complete work on time and in accordance with the CPM Schedule. If activity starting dates change from the original CPM schedule, Subcontractor shall still be obligated to complete each activity within the time allowances listed in this section. Contractor will give telephone start notices as outlined in this section. The parties acknowledge that delay in performance is very costly to the Contractor, and that damages accrue for each and every day the contractor is required to allocate supervision and/or other personnel to the project. Subcontractors shall therefore pay the contractor the sum of \$500.00 per day for each working day that the subcontractor exceeds its allotted activity time. This pre-agreed liquidated damage amount approximates to the best of the

Subcontract Agreement -2-

parties' abilities the actual amount of damage caused to the contractor by reason of being delayed. The liquidated damage provision is intended to cover only time related damages, and does not include acceleration costs, owner assessed liquidated damages, damage for poor workmanship, damage to work provided by other subcontractors, damage from negligence, damage to the structure itself proximately caused by the delay, or other damages unrelated to the delay.

Any requests by the Subcontractor for extensions of time due to any cause shall be made in writing within 48 hours after the commencement of any delay. In the event Subcontractor fails to submit its request for extension within this time period, Subcontractor shall not be entitled to any compensation or extensions of time due to the delay and waives any claim therefore.

The Contractor may, without cause, interrupt, delay, re-direct work, modify the project CPM schedule in whole or in part for Contractor's convenience or promote the general progress of all construction work. The Subcontractor shall not be entitled to any additional time allowances set forth in Section 2 exclusive of any delay for convenience time. The Subcontractor shall not be entitled to any additional compensation for any delay caused by the Contractor unless prior written consent is given.

In the event that the Subcontractor neglects and/or fails to supply the necessary labor and/or materials, tools, implements, equipment, etc., in the opinion of the Contractor then the Contractor shall notify the Subcontractor setting forth the deficiency and/or delinquency, and 24 hours after date of such notice, the Contractor shall have the right if he so desires, and in addition to the damages which may have been caused, to take over the work of the Subcontractor in full, and exclude the Subcontractor from any further participation in the work covered by this agreement; or, at his option the Contractor may take over such portion of the Subcontractor's work as the Contractor shall deem to be in the best interest of the Contractor, and permit the Subcontractor to continue with the remaining portions of the work. Whichever method the contractor might elect to pursue, the Subcontractor agrees to release to the Contractor for his use only, without recourse, any materials, tools, implements, equipment, etc. on site, belonging to or in the possession of the Subcontractor, for the benefit of the Contractor, in completing the work covered in this agreement; and, the Contractor agrees to complete the work to the best of his ability and in an economical manner available to him at the time. Any costs incurred by the Contractor in doing any such portion of the work covered by this agreement shall be offset against any moneys due or to become due under the terms of this agreement, and in the event the total amount due or to become due under the terms of this agreement shall be insufficient to cover the costs accrued by the Contractor in completing the work, then the Subcontractor and his sureties, if any, shall be bound and liable unto the Contractor for the difference.

Should the proper workmanlike and accurate performance of any work under this contract depend wholly or partially upon the proper workmanlike or accurate performance of any work or materials furnished by the Contractor or other subcontractors on the project, the Subcontractor agrees to use all means necessary to discover any such defects and report same in writing to the Contractor before proceeding with his work which is so dependent; and shall allow to the Contractor a reasonable time in which to remedy such defects; and in the event he does not so report to the Contractor in writing, then it shall be assumed that the Subcontractor has fully accepted the work of others as being satisfactory and he shall be fully responsible thereafter for the satisfactory performance of the work covered by this agreement, regardless of the defective work of others. Should the work of the Subcontractor cover, conceal, or make inaccessible any work performed by the Contractor or other subcontractors which has been installed not in accordance with plans, specification, or good workmanship, where such defective work is apparent, perceptible, and discernible by the Subcontractor, the Subcontractor shall either correct such work or report same in writing to the Contractor for correction; and shall allow the Contractor a reasonable time in which to remedy the defective work; and in the event the Subcontractor does not correct or report defective work as specified, and proceeds to cover, conceal, or make inaccessible said defective work, the Subcontractor then becomes responsible for, at his own expense, the removal, repair, and replacement of all work performed under this agreement as well as all dependent work performed by others as becomes necessary from uncovering, revealing, and making accessible the defective work.

The Subcontractor shall clean up and remove from the site on a daily basis or as approved in writing by the Contractor, all rubbish and debris resulting from his work. Failure to clean up rubbish and debris after receipt of notice from Contractor shall serve as cause for withholding further payment, at the option of Contractor, to Subcontractor until such time as this condition is corrected to the satisfaction of the Contractor. The Subcontractor shall be responsible for all dust control related to this work. The Subcontractor shall be responsible for the control of mud tracking and debris on offsite pavements and street caused by their own vehicles. Additional costs associated with failure to maintain adequate dust control measures shall be charged to the Subcontractor. Also, he shall clean up to the satisfaction of the inspectors, all dirt, grease marks, pavements, 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, the Contractor shall have the right, in addition to withholding payment, to proceed with the said cleaning, and to back charge the Subcontractor at the rate of \$30.00 per man-hour plus hauling and dumping fees.

Notwithstanding the other rights and remedies granted to Contractor in this agreement, the Subcontractor agrees to reimburse the Contractor for any and all liquidated damages that may be assessed against and collected from the Contractor by the Owner, and/or any and all acceleration costs accrued by Contractor, which are attributable to or caused by the Subcontractor's failure to furnish the materials and perform the work required by this Subcontract within the time fixed in the manner provided for herein.

Subcontractor shall be responsible for his own work, property and/or materials until completion and final acceptance of the Contractor by the Owner, and shall bear the risk of any loss or damage until such acceptance, and shall pay promptly for all materials and labor furnished to the project. In the event of loss or damage, he shall proceed promptly to make repairs, or replacement of the damaged work, property and/or materials at his own expense, as directed by the Contractor. Subcontractor waives all rights Subcontractor might have against Owner and Contractor for loss or damage to Subcontractor's work, property or materials. The Subcontractor shall also exercise due diligence in protecting the work of the Contractor and other subcontractors so as not to damage said work during the moving and handling of materials, and the installation of the Subcontractor's work. Any such damage caused by the Subcontractor shall be repaired at the Subcontractor's own expense.

Contractor shall establish principal axis lines and levels, whereupon Subcontractor shall lay out and shall be strictly responsible for the accuracy of his work and for any loss or damage to other subcontractors engaged in work on the site by reason or failure of Subcontractor to set out or perform his work correctly. Contractor's participation in lay out beyond that established above shall not relieve Subcontractor of his responsibility hereunder.

This agreement does not include the use of any of Owner's or Contractor's equipment, hoisting services, facilities or storage, and if they are used by Subcontractor, such use shall be at his own risk and with Contractor's or Owner's consent as appropriate. Subcontractor agrees to hold Owner and Contractor harmless from any and all damages of every kind whatsoever resulting from such uses. He shall further return all such equipment, facilities or storage space to Contractor in as good a condition as when received, upon demand by Contractor, or at the completion of the job, whichever first occurs. The Contractor or Owner, as appropriate, shall be entitled to payment from Subcontractor of the reasonable rental value of all equipment, hoisting service, facilities, or storage used by Subcontractor.

Subcontractor assumes the risk during the term of this Agreement of all wage, price, and material increases and shall not be entitled to any additional payment on account thereof.

If the Subcontractor's work requires earth excavation, it shall be done in a safe manner and in accordance with all state, local and federal safety regulations. Unless otherwise modified or agreed to by Contractor in writing, all backfilling of excavated material shall be performed by replacing material in 6 inch layers and compacting before placing the next layer; compacting shall be by a suitable method as necessary to obtain a minimum density of 90% of maximum density by the "Modified Proctor" test, unless a higher density is required by other contract documents. If additional or less water in the material is required to obtain this density, it shall be added or removed as necessary. If, in the opinion of the Contractor, the compaction does not meet this requirement, the Contractor may have an independent soil-testing laboratory perform tests to determine the degree of compaction. If the tests show the required compaction has been obtained, then the cost of testing will be paid for by the Contractor. If the tests show the compaction to be less than required, the Subcontractor shall reimburse the Contractor for the costs of the tests and take action to compact or rebackfill the excavated areas until this provision is satisfied. Should earth settlement take place that results from noncompliance to this section such that dependent work is damaged or becomes not acceptable by Contractor, the Subcontractor, shall be responsible for such damage, and at his own expense, remove, repair and/or replace dependent work.

The Contractor assumes no responsibility whatsoever on account of any loss or damage to materials while on the Project site prior to installation. Further, the Contractor assumes no responsibility whatsoever on account of loss by theft or otherwise, of Subcontractor's tools or equipment while on the Project site.

The Subcontractor shall perform all work in compliance with all Federal, State, and Local safety regulations and standards, the Contractor's safety rules and policies, and in such a manner that will protect the Subcontractor's persons and others from injury. The Subcontractor shall require all persons, employees, workers, materialmen related to performance of this agreement to wear regulation hard hats while on the job site. If said persons are caught on jobsite not wearing hard hats after written notice has previously been given to comply with this provision, Subcontractor will be subject to a \$30.00 per occurrence fine to the Contractor. If any unsafe work is being performed by others on the project and is observed by the Subcontractor, he shall notify the Contractor of such for remedy.

### 3. SUBCONTRACTOR'S EMPLOYEES

Subcontractor shall employ only competent, experienced, careful and orderly persons upon the work and, upon notification from the Contractor that the conduct or workmanship of any of his employees is unsatisfactory, shall immediately remove such person or persons from the job site. Upon request, he shall furnish the Contractor with a list of all workmen used in connection with the work. Subcontractor shall be responsible for the payment of all wages and fringe benefits which become payable in connection with the work performed under this Agreement, and shall hold the Contractor harmless from all claims connected therewith. Subcontractor shall be responsible for and timely pay all employment obligations such as withholding and unemployment compensation and F.I.C.A. taxed wages, salaries, benefits, workers compensation insurance premiums, pension contributions and any other employment taxes or contributions required by any state, local, federal or union authority.

#### 4. SUBMITTALS

Subcontractor agrees to complete all shop drawings, submittals, brochures, samples, etc. and to obtain approval thereof in a timely and diligent manner so that no delay will result to the progress of the work. Any such delay caused by the Subcontractor for failure to complete said submittals, shall be subject to the conditions of other delays as described in Section 2 of this agreement. Project end submittals such as maintenance and operational manuals, warranties and guarantees, brochures, as-built records, etc. must be provided to the Contractor before final payment is made.

If Subcontractor needs any information such as returned submittals, field verifications, colors, etc. prior to ordering and/or fabricating materials, it is the Subcontractor's responsibility to notify the Contractor in writing what information is needed and when it is needed in order to meet the Contractor's CPM schedule. If the Subcontractor fails to give this written notice, Subcontractor will be expected to meet the Contractor's schedule and shall become responsible for all damages which may result from delays to the project as outlined in Section 2 of this agreement.

In the event the Subcontractor is an electrical, mechanical, plumbing, heating, air conditioning, fire sprinkling, lawn sprinkling, drainage, or utility Subcontractor, then prior to receiving final payment, he must furnish the Contractor with complete and accurate "as built" drawings and records relating to improvements as required. "As-built" records shall be maintained at all times during construction showing exact location and dimensions of all main lines, branch lines, valves, drains, clean outs, etc. in accordance with plans and specifications.

#### 5. SURETY BOND

At the Contractor's option and expense, unless provided otherwise elsewhere in the Agreement and/or in the event the specifications require subcontractors to furnish such bonds, the Subcontractor agrees to furnish to the Contractor a surety bond guaranteeing the faithful performance of this agreement and the payment of all labor and material bills in connection with the execution of the work covered by this agreement. The bond is to be written by a surety company designated or approved by the Contractor, and in a form entirely satisfactory to the Contractor.

#### 6. PERMITS, LICENSES, FEES, TAXES, ETC.

The Subcontractor shall, at his own expense, apply for and obtain all necessary permits and licenses and shall conform the work performed hereunder strictly to the laws and ordinances in force in the locality where the work under the project is being done, insofar as applicable to work covered by this agreement. The Subcontractor shall hold harmless the Contractor against liability by reason of the Subcontractor's failure to pay federal, state, county or municipal taxes, or otherwise comply with this paragraph.

#### 7. INSURANCE

Before commencing work on the project, Subcontractor and its subcontractors of every tier will supply to Contractor duly issued certificates of insurance, which names Contractor and owner as additional insureds as per ISO Form CG20101185 or its equivalent. This certificate (see attached Exhibit "A" for sample certificate) will show in force the following insurance for commercial general liability, automobile liability, and worker's compensation. If additional insurance coverage or greater policy limits are required by the contract documents, said provisions shall control:

a. Commercial general liability policies on an occurrence basis with a deductible not to exceed \$1,000 per occurrence that includes coverage for liability assumed under any oral or written contract relating to the conduct of Subcontractors' business, including this contract, and also including (1) broad form property damage liability coverage; (2) premises-operations coverage; (3) explosion and collapse hazard coverage; (4) underground hazard; (5) products and completed operations hazard coverage; (6) independent contractor coverage; and (7) in such case where the Subcontractor's work

Subcontract Agreement -5-

includes "Exterior Insulation Finish System" (EIFS), EIFS liability coverage with "EIFS Liability Coverage Included" so noted on the certificate of insurance. Coverage shall be primary and non-contributing. The limit of liability shall be not less than \$1,000,000 for each occurrence and in the aggregate for bodily injury, and not less than \$1,000,000 for each occurrence and in the aggregate for property damage, or \$1,000,000 combined single limit.

b. Automobile liability policy in comprehensive form affording coverage for owned, hired, and non-owned automobiles. The limits shall be not less than \$1,000,000 for bodily injury and property damage combined, \$1,000,000 for each accident. (No aggregate on automobile insurance).

c. Worker's Compensation insurance shall comply with the statutory form.

The liability insurance policies, including commercial general liability, automobile liability, and excess liability, shall be endorsed to provide: (1) that Contractor and Owner are additional insureds, and listed as such on insurance certificates, (2) that the insurance afforded by the policies shall apply to Contractor as though a separate policy had been issued to Contractor, and (3) that the coverage afforded to Contractor is primary and any other insurance in force for Contractor will be excess and will not contribute to the primary policies.

No work shall be performed by Subcontractor until certificates of insurance have been delivered to Contractor that comply with the requirements of this paragraph. The certificates shall provide that the insurers will give 30 days written notice to Contractor before cancellation or modification of any policy. Upon the modification, expiration, or cancellation of any policy, Subcontractor shall supply to Contractor a new certificate of insurance that complies with the requirements of this paragraph. Subcontractor shall indemnify Contractor and its insurance carriers for any failure to provide Contractor with the insurance required by this paragraph.

## 8. CHANGES, AND ADDITIONAL WORK

The Contractor shall have the right to add to or deduct from the work performed by the Subcontractor pursuant to this agreement. All modification requests shall be in writing on Contractor's "Change Order/Additional Work Authorization Worksheet", signed by the Job Superintendent or other authorized representative of the Contractor and shall set forth the amount of money, conditions, and/or terms to be added to or deducted from this agreement. The worksheet is to be used by Contractor and Owner to determine validity of requests, and fairness of moneys, terms, and conditions. The "Change Order/Additional Work Authorization Worksheet" is not to be construed to be an approved amendment to this agreement, all Change/Additional Work Order requests are conditional upon the approval by Owner and/or Contractor. The Subcontractor agrees, upon receipt of such Contractor's Worksheet, to proceed with the work as modified so as not to delay progress of the work; and shall (1) keep accurate records of all materials and labor associated with the modification of work and (2) record all labor performed on the modification or work daily in the Contractor's "Job Log" booklet.

The Subcontractor agrees that in no event shall he undertake additional work except upon the prior written approval of the Contractor's job superintendent and that no change orders by the Subcontractor will be allowed without the prior written approval of Contractor's job superintendent.

## 9. TIME LIMITS FOR PRESENTING CLAIMS

All claims of every nature and description made by the Subcontractor for extra compensation under this Agreement, including all claims arising by reason of Contractor's delay or Contractor's interference with the Subcontractor's work, shall be made within twenty days after the occurrence of the event giving rise to the claim, or within twenty days after the claimant first recognizes or should have recognized the condition or facts giving rise to the claim, whichever is shorter. Claims shall be made by written notice, sent certified mail, with return receipt requested to the Contractor, describing the nature of the claim and the facts giving rise thereto. No claim shall be recognized or paid unless timely submitted in this manner.

In computing damages for any claim arising for Contractor interference or delay, any amount claimed for profit, overhead (including home office overhead), or loss or productivity shall not exceed ten percent (10%) of the total direct costs to the subcontractor.

## 10. DISPUTES

In the event of any dispute between the Contractor and Subcontractor covering the scope of the work, the dispute shall be settled in the manner provided by the contract documents. If none be provided, and if there arises any dispute concerning matters in connection with this agreement, then such disputes shall, at the sole option of the Contractor be settled by court of law or ruling of a board of arbitration consisting of three members, one selected by the Contractor, one by the

## Subcontract Agreement -6-

Subcontractor and the third member shall be selected by the first two members. The expenses of such litigation or arbitration, including all attorney's fees and costs, if any, shall be awarded to the prevailing party as determined by the court of law or arbitrator. In the event arbitration is chosen, the Contractor and Subcontractor agree to be bound by the findings of any such boards of arbitration, finally and without recourse to any court of law.

## 11. PAYMENTS

a. The Contractor agrees to pay to the Subcontractor for the satisfactory completion of the herein described work, not to exceed the sum of **(amount)** in monthly payments of the work performed in any preceding month, in accordance with estimates attached here to prepared by the Subcontractor and as approved by the Contractor; such payments to be made within 7 days after payments are received by the Contractor from the Owner covering the monthly estimates of the Contractor, including the approved portion of the Subcontractor's monthly estimate. If payment is requested by the Subcontractor prior to the receipt of payment to the Contractor from the Owner, at the sole option of the Contractor, early payments made to the Subcontractor may be considered with a 5% discount.

The procedure to be followed for payment shall be as follows: The Subcontractor shall prepare a Schedule of Values for the different categories of work to be performed by Subcontractor. The sum of all categories in the Schedule of Values shall equal the Subcontract amount. By the 25th day of each calendar month, the Subcontractor shall submit to the Contractor a progress billing, on Contractor's Payment Request Form, which shall be based on the Schedule of Values, and the billing shall reflect the percentage completion in each category at the time of submission. The Contractor will include Subcontractor's progress billing as part of his progress billing to the Owner. To the extent that the Subcontractor's progress billing is approved by the Architect, Contractor and Owner and provided payment for such work and material has been received by the Contractor from the Owner, Contractor shall pay Subcontractor the amount of said progress billing, less the amounts paid on prior progress billing, and also less retention of 5%, which shall be withheld from all progress billings. This retention shall be paid at the time of final payment after such retention has been paid by the Owner to the Contractor. A retention billing must be received by the Contractor from the Subcontractor before retention will be released.

Any billing of the Subcontractor which is either untimely, not on Contractor's Payment Request Form, or without sufficient explanation shall not be paid until the following month and/until sufficient documentary explanation is provided by the Subcontractor.

b. Payments otherwise due to Subcontractor may be withheld by Contractor on account of: (1) defective work performed by the Subcontractor and not remedied, (2) claims filed by third parties arising out of the Subcontractor's work, or upon the presentation of reasonable evidence indicating the probability of the filing of such claims, (3) failure of the Subcontractor to make payments to its subcontractors or materialmen for work done or material furnished, (4) a reasonable doubt that the Subcontract can be completed for the balance then owing the Subcontractor by Contractor, and (5) Noncompliance with Agreement requirements such as but not limited to the receipt of: certificates of insurance, schedule of values, submittals, Subcontractor's license number, "as-built" drawings and records, etc. Without prejudice to any other rights specified herein or given to it by operation of law, Contractor specifically reserves the right to write joint checks to Subcontractor and its material suppliers and/or subcontractors, if in Contractor's judgment it is necessary to do so in order to insure payment to the materialmen and/or subcontractors. These provisions shall be applicable even though the Subcontractor has posted a full payment and performance bond.

## 12. SUPPLIERS AND MATERIALMEN

Upon execution of this agreement the Subcontractor shall provide to the Contractor a list of suppliers and materialmen from whom the Subcontractor shall purchase any and all materials and supplies used in connection with the performance of this agreement. Such list shall be attached hereto as Exhibit "A". In connection with the use of suppliers and materialmen, the Subcontractor agrees as follows:

a. That the Subcontractor shall use only those persons or entities on Exhibit "A" in connection with the performance of this agreement and shall not receive materials, supplies or labor from persons or entities other than those listed on Exhibit "A" without giving prior written notice to the Contractor.

b. That the Subcontractor shall be responsible for deliveries of labor or material for this project and shall coordinate delivery of such with the Job Superintendent employed by the Contractor, or his authorized agent, and that the Contractor, and the Owner of the project, shall have no liability for the payment of any supplies or labor which are not verified as provided herein. The parties hereto specifically acknowledge that the verification identified in this paragraph shall be for the exclusive purpose of insuring that specific goods and materials were used in this project. Therefore, the signature of

#### Subcontract Agreement -7-

any agent of the Contractor on a bill of lading, receipt or other document of a supplier of the Subcontractor shall not be construed as an acceptance of the quantity, quality or condition of such goods or as an agreement on the part of the Contractor to pay for such goods. Nothing herein shall relieve the Subcontractor from the responsibility to insure that he has received the goods ordered and that they are in usable condition.

c. The Subcontractor herewith appoints the Contractor as his agent for the sole and limited purpose of inquiring of all materialmen and suppliers used by the Subcontractor in performance of this agreement as to the status of the Subcontractor's account with such suppliers with regard to materials or supplies used on this project and insuring that such accounts are paid at the time the Subcontractor is paid in accordance with this agreement.

### 13. LIENS AND CLAIMS

The Subcontractor shall fully protect, indemnify, defend and save harmless Contractor and the Owner as the case may be from and against any and all liens and/or claims of laborers, mechanics, materialmen and subcontractors of the Subcontractor hereunder. In the event that any such lien shall be filed or claim asserted, the Subcontractor shall promptly remove discharge such lien or claim; provided however, nothing herein will require Subcontractor to pay any claim or lien which Subcontractor in good faith disputes if Subcontractor is currently and diligently contesting such claim or lien at its own expense, and provided further that Subcontractor has, within 72 hours after the filing of any such contested claim or lien, procured a surety bond sufficient to release said claim, deposited with Contractor cash equal in amount to the amount that would be required to release the same. Failure to remove, discharge or secure such lien as provided herein shall constitute a material breach of this subcontract, entitling Contractor to terminate this subcontract, or take such other available remedies, including but not limited to removal, discharge, bonding, or by payment to discharge the same. If the Subcontractor shall fail to so remove, discharge or secure the same, Contractor shall have the right to take such actions. The amount of any payment, costs and/or expenses made or incurred by Contractor in connection with removal or discharge of any such lien or claim may be deducted by Contractor from payments of amounts then due or thereafter to become due to the Subcontractor, whether under this contract or from any other source. Any such action by Contractor shall not exonerate or release the payment and performance bonds of Subcontractor.

### 14. DEFAULT

In the event the Subcontractor shall default in any respect in the full, faithful, and punctual performance of any of its obligations contained in the Subcontract, including those items set forth in Section 11 b. above, and further including the prompt payment for its labor and materials, and such default shall not be cured within 72 hours (or such longer period as the Contractor may authorize in writing) after receipt of written notice thereof from the Contractor, or the Subcontractor shall become insolvent or shall make an assignment for the benefit of creditors, or shall file or become involved in any reorganization or other proceeding in bankruptcy, or shall fail to adequately man the job, then, in any such event, Contractor shall have the right to terminate, in whole or in part, this Subcontract. Upon termination, Contractor shall have the right to take possession of the work to be performed by the Subcontractor hereunder and of all material, tools, equipment and appliances of the Subcontractor.

### 15. TERMINATION

In addition to the rights of termination set forth herein, it is understood that underlying the mutual obligations and responsibilities entered into by the parties of this Subcontract, is the continued performance with respect to the Agreement that exists between Contractor and Owner, as the case may be. If, for any reason, the Agreement between Contractor and Owner is breached, rescinded, or terminated, for any reason, Contractor shall have the right to immediately terminate this Subcontract. Contractor shall allocate a fair and equitable share of any moneys received from the Owner to the Subcontractor in accordance with the work performed.

### 16. WARRANTY

In addition to any other warranties, general or specific set forth in the Agreement relative to the work, materials or equipment furnished under this Subcontract, Subcontractor warrants that said materials or equipment will be new unless otherwise specified in the Agreement and that all workmanship and materials shall be of good quality and free from faults and defects. The Subcontractor shall remove, replace and/or repair at its own expense and at the convenience of Contractor and/or Owner any faulty, defective or improper work, materials or equipment discovered at any time within one year from date of final acceptance of the project (as defined by the contract documents), by Owner, Architect or Contractor or for such longer period as may be prescribed by law or by the terms of any applicable special guarantee required by the contract documents. In addition, the Subcontractor shall pay for all damages directly and consequentially suffered by Contractor or the Owner as a result of defects in the work, failure to perform in accordance with the terms of

Subcontract Agreement -8-

this Subcontract, or breach of the warranties contained herein, and all costs and expenses necessary to correct, remove, replace and/or repair the work and any other work or property which may be damaged in correcting, removing, replacing or repairing.

#### 17. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of the subcontract, the Subcontractor agrees to not discriminate against any employee because of race, color, creed, sex or national origin as outlined in the Equal Opportunity Clause of the Regulations of Executive Order 10925 of March 6, 1961 as amended by Executive Order 11246 of September 24, 1965. The executive orders and the respective regulations are made part of this subcontract by reference.

#### 18. TERMS OF LABOR AGREEMENTS

It is hereby understood and agreed that for the work covered by this subcontract, the Subcontractor is bound and will comply with the terms and conditions of the labor agreements to which the general contractor is a party, insofar as said labor agreements lawfully require subcontractors to be so bound.

#### 19. INDEMNITY

Subcontractor agrees to defend, indemnify and hold Contractor and/or Owner harmless from and against any and all claims, suits, losses or liability, including attorney's fees and litigation expenses, and including unsafe place to work or similar types of claims arising out of Subcontractor's work, for or on account of injury to or death of persons, or damage to or destruction of property, occurring in relation to or on account of any act or omission, or alleged act or omission, of Subcontractor, either arising out of its performance of this Subcontract, or as such liability may be imposed and stipulated by the terms of the Agreement and the contract documents; limited, however, to Subcontractor's work, but including without limitation such requirements of performance of the equipment and materials furnished and/or installed by Subcontractor in accordance with the contract documents and including any and all damages arising on account thereof which may be claimed by the Contractor and/or Owner. Subcontractor further agrees to defend, indemnify and hold Contractor and/or Owner and such others as required in the Agreement harmless from and against any and all claims, suits, losses or liability, including attorney's fees and litigation expenses, for or on account of the infringement upon any patent right held or owned by others of any materials, processes or equipment furnished or installed by Subcontractor pursuant to this Subcontract.

#### 20. SUBCONTRACTING, ASSIGNMENTS

Subcontractor shall not let, assign or transfer this Subcontract, any part thereof or any interest therein, without prior written consent of Contractor.

#### 21. GENERAL PROVISIONS

a. In the event of any conflict between any provisions of the conditions or requirements or specifications existing between the Contractor/Owner Agreement, the contract documents, or this Subcontract Agreement, and contract documents, then the Contractor, in its sole discretion, shall determine which provision applies.

b. Whenever it may be useful or necessary to the Contractor to do so, the Contractor shall be permitted to occupy and/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 and/or occupation shall not relieve the Subcontractor of guarantee of said work and materials nor of his obligation to make good at his own expense any defect in materials and workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner.

c. Any backcharges assessed to the Subcontractor will be calculated at cost plus 10%.

d. Subcontractor shall not place any signs, posters, or advertising at the job site except safety signs and those that may be required by federal, state, or local laws, ordinance, and regulations, without first obtaining permission and approval from the Contractor. If permission is granted, Contractor may require a degree of uniformity of Subcontractor's sign.

e. Where and when applicable for Preliminary Lien Notices the Lender and Owner are as follows:

Lender:

Subcontract Agreement -9-

Owner: (owner & address)

22. NOTICES

In the event this agreement requires that notice be filed, the same shall be deemed served if placed in the United States mail, postage prepaid, to the parties at the following addresses:

Subcontractor: (subcontractor & address)

Contractor: **Arnell-West, Inc.**  
**3441 South 2200 West**  
**Salt Lake City, UT 84119**

IN WITNESS WHEREOF, The Contractor and Subcontractor signify their understanding and agreement with the terms hereof by affixing their signatures hereunto.

Subcontractor: \_\_\_\_\_

Contractor: Arnell-West, Inc.

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

License No. \_\_\_\_\_

License No. Utah #87-247452-5501



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
4/30/2002

**PRODUCER**  
Acordia Mountain West, Inc.  
Insurance Agency  
P.O. Box 957  
Salt Lake City, UT 84110  
Phone: 801-246-1905 Fax: 801-328-0637

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**COMPANIES AFFORDING COVERAGE**

COMPANY  
**A XYZ Insurance Company**

**INSURED**  
ABC Construction Co., Inc.  
1234 South 4567 East  
Salt Lake City, Utah 84121

COMPANY  
**B**

COMPANY  
**C**

COMPANY  
**D**

**COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<b>GENERAL LIABILITY</b>	XYZ 000009999-02	04/30/02	04/30/03	GENERAL AGGREGATE	\$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG	\$ 2,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY	\$ 1,000,000
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> EIFS Liability*				FIRE DAMAGE (Any one fire)	\$ 300,000
					MED EXP (Any one person)	\$ 5,000
A	<b>AUTOMOBILE LIABILITY</b>	XYZ 000009999-02	04/30/02	04/30/03	COMBINED SINGLE LIMIT	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INSURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE	\$
<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY:	
					EACH ACCIDNET	\$
					AGGREGATE	\$
	<b>EXCESS LIABILITY</b>				EACH OCCURENCE	\$
	<input type="checkbox"/> UMBRELLA FORM				AGGREGATE	\$
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM					\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	ABC 0000000009	04/30/02	04/30/03	WC STATUTORY LIMITS	OTHE-ER
	EL EACH ACCIDENT				\$ 1,000,000	
	EL DISEASE - POLICY LIMIT				\$ 1,000,000	
	EL DISEASE - EA EMPLOYEE				\$ 1,000,000	
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE:	<input type="checkbox"/> INCL <input type="checkbox"/> EXCL				

**OTHER**  
Arnell-West, Inc. and (owner) are added to the general liability as additional insured and primary per endorsement CG2010 (11/85) with respect to this job only.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
(List Project Number and Name)

\*Required if work includes "EIFS"

**CERTIFICATE HOLDER**

Arnell-West, Inc.  
3441 South 2200 West  
Salt Lake City, Utah 84119-3456

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE