



SUBCONTRACT AGREEMENT

____ (“Subcontractor”) is hereby authorized by BluSky Restoration Contractors, LLC (BluSky) to mobilize and commence the following scope of work. Subcontractor represents that they are experienced and qualified to perform the referenced subcontract work. Subcontractor shall complete the work below:

Scope Of Work

{ } Attachment A: Subcontractor’s Proposal may be utilized to define the Scope of Work and pricing if none is set forth herein or in other BluSky purchase order. ALL OTHER TERMS AND CONDITIONS ARE EXPRESSLY EXCLUDED. In the event of an ambiguity, contradiction, or competing term, condition or provision between this Subcontract Agreement and Subcontractor's Proposal or any other agreement, this Subcontract Agreement shall control and govern to the exclusion of all other documents.

Subcontractor agrees to furnish and pay for all materials, labor, transportation, tools, equipment, knowledge, skills, supervision, incidentals, and insurance required to perform the Scope of Work (“Work”) in a professional manner free of defects in accordance with the highest standards of the trade. The Work is ALL INCLUSIVE, therefore, any additions required to complete the Work are included in this Subcontract Agreement, including everything necessary to pass inspection by Owner, BluSky, and any local governing body with the applicable jurisdiction where the project is located. There will be no change orders for Work which could have been discovered by Subcontractor prior to signing Subcontract Agreement and/or which should have been reasonably known to exist by a qualified Subcontractor in this trade. Subcontractor must be present for all inspections that pertain to its Work. Subcontractor shall comply with all safety regulations including daily submission of Job Hazard Analysis (JHA) or Job Safety Analysis (JSA), maintain cleanup on a daily basis and coordinate its work with the BluSky and/or other subcontractors. Subcontractor shall assume all risk and liability for loss or damage to Subcontractor’s materials, tools, or equipment due to Subcontractor’s negligence. Subcontractor will perform daily site clean-up related to his work or that of his workers. Subcontractor will be fined \$25.00/day for failing to clean jobsite. Subcontractor is responsible for security for its work tools and materials. Subcontractor agrees to indemnify and hold harmless both Owner and BluSky for any claims, directly or indirectly, on account of loss or damage to its Work tools or materials.

Subcontract Amount: \$ _____ **Project No:** _____ **Project Name:** _____

Start Date: _____ **Completion Date:** _____ **Liquidated Damages \$** _____

Invoicing and Payment: Upon Completion of the Subcontract Work, Subcontractor shall submit an invoice to BluSky along with a notarized lien release verifying that upon receipt of payment Subcontractor and all its laborers, materialmen, and suppliers waive their lien rights to Work. BluSky may withhold 10 percent retainage on Work. BluSky will release such payment when the project has been completed and accepted by Owner. **Subcontractor invoices that are received by BluSky by the first of the month will be paid on the first day of the following month. Invoices will only be approved for Work that is complete at the time of receipt. Subcontractor further waives claims for interest on delayed payments. Payment by BluSky shall not be deemed acceptance of non-compliant Work nor acceptance or approval of billing for items not explicitly set forth in the contract.**

THE TERMS AND CONDITIONS FOLLOWING ARE PART OF THIS SUBCONTRACT AGREEMENT.

TERMS & CONDITIONS

Performance Time and Liquidated Damages for Delay: Time is of the essence in performance of Work, Subcontractor shall provide BluSky with a proposed Schedule acceptable to BluSky, or, in lieu thereof, as directed by BluSky. Failure to comply with the Schedule constitutes Default. Subcontractor shall be liable for any damages for delay sustained by BluSky caused directly or indirectly by Subcontractor, including but not limited to damages, liquidated or otherwise, for which BluSky is liable to Owner and BluSky’s overhead and expenses related to managing and supervising the prime contract work during such periods of delay. BluSky

shall not be liable to Subcontractor for delay to Work for any reason whatsoever. Should Subcontractor be delayed in the Work by BluSky, then BluSky shall owe Subcontractor therefore only an extension of time for completion equal to the delay caused, and then only if written claim for delay is made to BluSky within forty-eight (48) hours from the time of the beginning of the delay.

Changes and Change Orders: The Subcontractor may be asked by BluSky, without invalidating the Subcontractor Agreement, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions to the Work. Subcontractor, prior to the commencement of such changed or revised Work, shall promptly submit to BluSky any Proposed Change Order for adjustment to the Subcontract Agreement or performance Schedule because of such changed or revised Work. All Change Orders shall be in writing, signed and authorized by BluSky and no additional work shall be performed by Subcontractor that is not provided under this Agreement without a written and executed Change Order, signed by both the Subcontractor and BluSky. This requirement of a writing shall not be modified by the application of the "course of performance" doctrine. The Parties agree the U.C.C. shall not apply to this Subcontract Agreement. Subcontractor shall incur all cost associated for such additional work that was performed without a written and executed Change Order. Subcontractor also hereby acknowledges and agrees that the limit of its claims and recovery against BluSky arising hereunder and/or for work performed for BluSky is limited to the agreed upon contract price (as modified by written change orders signed by BluSky) and that any other actual, consequential, special, incidental, exemplary or other damages are not recoverable and are waived.

Indemnification: To the fullest extent permitted by law, the Subcontractor agrees to indemnify and hold harmless BluSky and the Owner and all their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance, or failure in performance of the Work under this Subcontract Agreement, provided that any such claim, damage, loss or expense is: (i) attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom; (ii) caused by the negligence, breach of contract, willful misconduct or other legal fault of Subcontractor or any one directly or indirectly employed by him or anyone for whose acts he may be liable. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this provision. In any and all claims against BluSky or any of its agents or employees by an employee of the Subcontractor, anyone directly or indirectly employed by him or any for whose acts he may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Worker's Compensation Acts, Disability Benefits Acts, or other Employee Benefit Acts.

Insurance: Prior to starting Work, the Subcontractor shall procure and maintain in force, Worker's Compensation Insurance, Employers Liability Insurance, Comprehensive General Liability Insurance with contractual coverage, Automobile Liability Insurance. Subcontractor will not be paid for Work completed until such documentation is furnished. If Subcontractor fails to provide insurance certificates, then BluSky may deduct insurance expenses from such payments. Review of the Certificates of Insurance by BluSky shall not relieve or decrease the liability of the Subcontractor hereunder. BluSky shall be named as Additional Insured and Certificate Holder on Certificate. **Subcontractor also waives its right to subrogation against BluSky and Owner and agrees to indemnify and hold BluSky harmless from all actions of Subcontractor.** Unless otherwise provided in this subcontract, the Subcontractor's Comprehensive General and Automobile Liability Insurance, as required shall be written for not less than the limits of liability as follows:

- Contractor's Comprehensive General Liability, General Aggregate: Not less than \$1,000,000.00 naming BluSky as additional insured..
- Workmen's Compensation Insurance, not less than \$500,000 for each occurrence, for all employees of Subcontractor.
- Auto Liability Insurance, Not less than \$500,000.00 per occurrence.
- Required Insurance shall be non-cancellable without ten (10) days written notice to BluSky.
- BluSky shall be named as Additional Insured on CGL policy and Subcontractor waives its right to subrogation against BluSky and/or Owner.

Warranty: The Subcontractor represents and warrants that it shall perform all Work in a workmanlike manner free from all faults and defects. Subcontractor shall perform the Work in full compliance with all government ordinances, codes, rules, and/or statutes. Subcontractor shall exercise due care and skill in performing the Work consistent with the highest standards in the applicable trade. Subcontractor further agrees to reimburse Owner and/or BluSky for all costs and damages incurred as a result of Subcontractor's breach of any such warranty. Subcontractor shall warranty workmanship and materials for a period of one-year. The one-year warranty shall commence upon Owner's final written acceptance of Work under the Prime Contract between Owner and BluSky.

Safety: Subcontractor under this Subcontract shall comply, and shall cause all subcontractors to comply with all requirements of Occupational Safety and Health Act (OSHA) of 1970 and all other applicable federal, state, and local health, safety and environmental laws, rules, order and regulations.

Subcontractor under this Subcontract will disclose all information related to past safety performance and will submit subcontractors own safety program for review.

Subcontractor agrees to provide a competent full time onsite supervisor during all site activates and advise his/her name to BluSky without undue delay, including any changes of this person. BluSky shall be entitled to require the Subcontractor to provide evidence supporting the competence of the designated supervisor.

Subcontractor under this Subcontract shall agree to conduct all operations safely, in order to prevent injuries to persons and damage to property. Subcontractor will endeavor to take all practical steps to maintain safe, healthful job conditions. Adequate protective and corrective equipment must be used to minimize existing accident and health hazards.

Subcontractor shall submit a daily Job Hazard Analyses (JHA) or Job Safety Analyses (JSA) for review by BluSky. This document shall identify the daily upcoming potential hazards and preventive measures including proper use of equipment, personal protective equipment (PPE), fall protection and ladder usage.

Subcontractor shall submit written verification acknowledging receipt of a copy of BluSky's safety and health program and is committed to complying with it. See Attachment "B"

As a Subcontractor you have, by accepting this Subcontract, obligated yourself to conduct all operations within BluSky's safety policy and this subcontract.

The Subcontractor shall provide adequate instruction and training (to recognized standards where available) for his employees and subcontractors. BluSky shall be entitled to require the Subcontractor to provide evidence of the competence of his staff and that such instruction and training has been given.

The Subcontractor must maintain high standards of housekeeping; keep its work site, vehicles and accommodation clean, tidy and free of unnecessary obstructions. All walkways must be kept clear of materials and free from any substance likely to cause harm to anyone.

Subcontractor is required before working at height or on any roof, to identify roofing material. Safe access and a safe work place must be provided by subcontractor, for example by use of crawling ladders, crawling boards, barriers, handrails and toe boards. Materials shall be prevented from falling and notices warning of overhead work, displayed at ground level when appropriate. Where the work presents any risk of fire or causes the exposure of flammable materials on the roof, or work area, the Subcontractor shall provide suitable fire extinguishers and its employees or agents and subcontractors, were appropriate, must be trained in their use. BluSky will

provide a 3rd party training and inspection of fall protection equipment and subcontractors plan prior to any work commencing on any roof. Inspections will be performed during working operations.

The Subcontractor agrees that the prevention of accidents to workers engaged in the Work under this Subcontract is the responsibility of the Subcontractor. The Subcontractor agrees to comply with all laws, regulations and codes concerning safety as shall be applicable to the Work and to the safety standards established by BluSky during the progress of the Work. When so ordered, the Subcontractor agrees to stop any part of the work which the BluSky deems unsafe until corrective measures satisfactory to the BluSky have been taken, and further agrees to make no claim for damages growing out of such stoppages. Should Subcontractor neglect to adopt such corrective measures, BluSky may elect to implement such and deduct the cost thereof from payments due or to become due the Subcontractor, or, terminate Subcontractor's right to proceed, and have the work safely completed by others for Subcontractor's account.

Alcohol and Drug Testing: Drugs and alcohol use or being under the influence thereof, on site is not permitted. Anyone identified as using such or under the influence will be immediately removed from the site.

All of Subcontractor's employees operating commercial motor vehicles and subject to the commercial driver's license requirements must comply with the federal motor carrier safety regulations alcohol and drug-testing program.

Personal Protective Equipment: Subcontractor must furnish its employees with the proper type of personal protective equipment required by the work, i.e.:

- a. **HARD HATS** must be furnished to Subcontractor's employees and worn at all times when the work requires hard hats to be worn.
- b. **EYE & EAR PROTECTION** of an approved type must be provided to and actually worn by Subcontractor's employees when the operations being performed present a danger of eye or ear injury.
- c. **FALL PROTECTION & SEAT BELTS** must be furnished and worn whenever Subcontractor's employees are working in an area where falls from heights are possible. Construction equipment equipped with R.O.P.S. (Roll Over Protective System) must also be equipped with back-up alarms and safety belts; which must be used.
- d. **BRIGHT COLORED SAFETY VESTS** must be furnished and worn by Subcontractor's employees when working in areas immediately adjacent to vehicle traffic and working near or on construction equipment while in the eye of the public.
- e. **ELECTRICAL SAFETY** must comply with Lock out/Tag out and G.F.I. (Ground Fault Interrupter) Protection. All extension cords will be inspected monthly.

Safety Meetings: Subcontractor is expected to conduct a "Tool Box" or "Tailgate" type safety meeting at least once a week with all employees onsite. These meetings will be presided over by Subcontractor's supervisor and documented and submitted to BluSky.

Three Strike Rule: On all BluSky construction projects a Three Strike Rule will be operated. This means that any person &/or Subcontractor working on site will be permanently removed from site after violating Site Safety Rules on three occasions.

First violation: The person & Subcontractor involved will be given a verbal warning which shall be recorded.

Second violation: The person involved will be given a further warning and sent home for a day. The subcontractor will be fined \$500.00

Third violation: The person's manager will be instructed to permanently remove them from site and the subcontractor will stand down all operations for a safety orientation meeting. All necessary costs for this safety orientation meeting will be back charged to subcontractor and subcontractor will be fined \$1,000.00.

Quality of Work and Additional Obligations of Subcontractor:

1. Subcontractor shall supervise and direct the Work and shall cooperate with BluSky in scheduling and performing the Work to avoid conflict, delay in or interference with the work of BluSky, other Subcontractors or Owner's own forces.
2. Subcontractor shall promptly submit Samples, Submittals, Shop Drawings, and Product Data when required by BluSky or the Owner with reasonable promptness and in required sequence outlined by BluSky or Owner, as to cause no delay in the Work.
3. Subcontractor shall submit a Schedule of Values allocated to various parts of the Work, aggregating the Subcontract Amount. The Schedule of Values must be approved by BluSky prior to Subcontractor making any applications for payment. The Subcontractor's shall submit applications for payment based on the Schedule of Values.
4. Periodic progress reports on the Work of this Subcontractor shall be provided to BluSky regarding information on the status of materials, equipment which may be used in the course of performance of the Work, Subcontractor's workforce on the job, and other information that may be requested by BluSky regarding the Work.
5. Subcontractor agrees that BluSky or the Owner shall each have the authority to reject Work of the Subcontractor that does not conform with BluSky'S Contract with the Owner. BluSky or the Owner's decisions on matters relating to aesthetic effects shall be final and binding on the Subcontractor.
6. All Work shall comply with all manufacturer and supplier requirements concerning installation and product warranty standards, local codes and be in conformance with the highest standards of the applicable trade.
7. If Subcontractor finds a discrepancy in the Scope of Work, Drawings, Specifications and other contract documents, Subcontractor shall request a written clarification from BluSky. If Subcontractor does not notify BluSky in writing and continues with Work, Subcontractor shall incur all costs and damages associated with such Work and correction thereof.
8. No smoking is allowed on BluSky jobsites. A \$25.00 fine per incident shall be imposed on Subcontractor for violating this policy.
9. Construction shall comply with all safety regulations of the Federal, State and municipal authorities, and particularly, agrees to comply with all requirements to the Occupational Safety and Health Act of 1970, and all regulations promulgated by the U.S. Department of Labor under the terms thereof.
10. Subcontractor shall be responsible for the inspection of portions of the Work already performed to determine that such portions are in proper condition to receive subsequent Work. Commencement of Work constitutes acceptance of same.
11. Subcontractor agrees to cooperate with BluSky in providing any third party required documentation in order for BluSky to receive payment.
12. Subcontractor further agrees to cooperate and participate with BluSky in any statutory proceedings concerning construction defect claims.

Dispute Resolution: All disputes between BluSky and Subcontractor shall be resolved through the Colorado Courts. Colorado law shall apply exclusively and Venue for all proceedings shall be Arapahoe County, Colorado. The parties acknowledge, consent, and submit to the personal jurisdiction of the Colorado courts. In the event legal proceedings are commenced, Subcontractor agrees to pay BluSky its costs and reasonable attorneys' fees in addition to other damages.

Subcontractor Exclusivity:

Absent BluSky’s written approval, Subcontractor shall not:

1. Perform, assign or delegate its duties under this Contract to another, nor shall it, directly or indirectly, contract with Owner, or accept payment from Owner for the Work of this Subcontract; nor,
2. Solicit Owner to enter into a contract, nor accept from Owner an offer, to perform, directly or indirectly, any work for the Owner, for one (1) year after the completion of the Work under this Subcontract Agreement.

Subcontractor acknowledges that the identity of and the contracting agents for the Owner (“Proprietary Information”) was previously unknown to it. BluSky and Subcontractor agree that the Proprietary Information is the property of BluSky. BluSky and Subcontractor agree that this Subcontractor Exclusivity provision is a material consideration to BluSky entering into this Subcontract Agreement.

In the event of violation of this Subcontractor Exclusivity, Subcontractor agrees to pay to BluSky all sums paid by BluSky to Subcontractor pursuant to this Contract as well as all monies Subcontractor receives for Work/work, as the case may be, in violation of this provision.

Subcontractor Default:

In the event that Subcontractor fails to cure any delay or defect in performance of work per BluSky's direction then BluSky may in its sole discretion and election, at any time, terminate Subcontractor's further performance and backcharge Subcontractor for costs to remedy the delay or defect as well as for any additional costs BluSky incurs, above the subcontract price, to complete Subcontractor's scope of work and including any other consequential or liquidated damages BluSky incurs including costs and attorneys' fees.

In the event of termination, to the extent materials have been ordered, Subcontractor, specifically and irrevocably, by execution hereof, directs such suppliers to thereafter, upon demand of BluSky, to respond to and deliver the materials in accordance with BluSky’s instructions and Subcontractor releases and waives any claims against such suppliers and shall indemnify and hold the suppliers harmless in the event of BluSky’s direct instruction.

Subcontractor further acknowledges and agrees that at any time, regardless of Subcontractor termination or continued performance or substantial completion, BluSky may backcharge Subcontractor by tender of invoice for the same.

Backcharges may include, without limitation, costs of additional properly skilled workmen, materials, equipment, tools, supplies, overhead, supervisory fees, insurance, and any other expenses or fees incurred to remedy any delay or stoppage in work, to complete the work, or to correct the work, (including after substantial completion), or for any settlement of BluSky with a property owner in full or partial satisfaction of claims involving Subcontractor's work or performance thereof.

BluSky may deduct the backcharges, including without restriction thereto, all charges, expenses, losses, costs and damages incurred as a result of the Subcontractor’s default from any money then due or thereafter to become due to the Subcontractor under this Subcontract Agreement or any other Subcontract Agreement then in existence between BluSky and Subcontractors, specifically including costs and legal fees incurred by BluSky. Subcontractors understand that this means BluSky may set off damages or claims it has on one Project against monies due or to become due to Subcontractor on another Project Subcontractor is performing for BluSky.

The remedies provided in this provision are in addition to, and not in lieu of, any other remedies, legal or equitable, available to BluSky whether provided under this Subcontract or otherwise. In the event of legal proceedings concerning Subcontractor’s default, Subcontractor agrees to pay and agrees that the Court and/or the Arbitrator, if applicable, shall award to BluSky its costs and legal fees in addition to actual damages sustained.

Waiver of Lien: Subcontractor knowingly and unconditionally hereby waives its rights pursuant to State law, and/or equitably, to a Mechanic’s Lien and Subcontractor releases BluSky for any claims to trust funds or for an accounting for monies paid by Owner on this project. Subcontractor agrees to look only to BluSky for payment of the Subcontract Amount.

Termination for Convenience: BluSky may at any time and for any reason, terminate this Subcontract Agreement for convenience upon written notice to Subcontractor. In such event, Subcontractor shall be entitled to its costs and profit thereon only upon Work performed to date of Termination.

Assignment: Subcontractor shall not be permitted to assign or subcontract any portion of the Work.

Entire Agreement: This Agreement contains the entire Agreement of the parties. All prior agreements respecting the subject matter hereof are of no force or effect. All modifications to this Agreement shall be in writing signed by both parties, there are no verbal agreements to this Subcontract Agreement.

BluSky Restoration Contractors, LLC

Subcontractor: _____

Signed: _____

Signed: _____

Date: _____

Date: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: 9767 E. Easter Avenue, Centennial, CO 80112

Address: _____