SUBCONTRACTOR AGREEMENT

This Agreement is made and entered into this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_, \_\_\_\_\_\_ ("the Effective Date"), by and between Fort Collins Heating & Air Conditioning, Inc., whose address for purposes of notice is 208 Commerce Dr. Unit #4, Fort Collins, CO 80524 ("Contractor") and

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name of Subcontractor (Individual) Name of Subcontractor (Firm)

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Mailing Address City, State, Zip

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Office Phone Cell Phone Email

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Tax Identification No./Social Security No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter referred to as "Subcontractor").

In consideration of the promises and covenant of the parties set forth herein, the sufficiency of which is hereby acknowledged, Contractor and Subcontractor each agree to the following:

1. **Scope of Work.** Contractor will hire Subcontractor for future underlying work agreements for construction improvements in accordance with certain plans and specifications, the construction of which shall be included in underlying documentation upon agreement for specific Projects.

Subcontractor shall furnish, at its own cost, all labor, equipment, materials (new materials unless otherwise specified and unless agreed to in writing that Contractor is providing materials), tools, supplies (unless agreed to in writing that Contractor is providing supplies), temporary facilities, utilities and all other things necessary to construct and complete in every detail the work as more specifically described in Exhibit A, which is attached hereto and incorporated herein, and in accordance with the plans and specifications provided or made available by Contractor to Subcontractor (the "Work"). The Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms. The Subcontractor shall construct and complete the Work in an efficient, good and workmanlike manner, and according to standard practice and custom in accordance with this Agreement, plans and drawings, schedules, and all other construction documents provided to Contractor by Subcontractor (collectively "Contract Documents").

The Contract Documents are made a part of this Agreement and are incorporated herein by reference. Subcontractor has read and fully understands the Contract Documents. Subcontractor shall deliver to Contractor the Work ready and in complete accordance with the Contract Documents and any written changes from Contractor.

1. **Independent Contractor.** The parties agree that Subcontractor is an independent

contractor. Subcontractor has full control over its own tools and methods utilized in performing the Work. Subcontractor is not required to work exclusively for Contractor and Contractor shall not instruct Subcontractor as to how the Work shall be performed. Subcontractor shall not make any representation of an employment relationship between Contractor and Subcontractor and Subcontractor and Its employees and agents will not claim any employment benefits from Contractor. Subcontractor has no authority to contract for or bind Contractor. Subcontractor agrees that, as an independent contractor, it is not entitled to any employee benefits from Contractor or the homeowner, including but not limited to, any employee withholdings or liability for taxes, FICA, Medicare or Medicaid, medical or disability insurance, vacation or leave, pension, workers compensation insurance, or unemployment insurance benefits or other unemployment compensation. Subcontractor is obligated to pay federal and state income tax on any compensation paid through engagement of Subcontractor hereunder.

1. **Commencement of Work.** Time is of the essence and Subcontractor shall commence

 The Work pursuant to the applicable schedule In the Contract Documents and shall proceed diligently thereafter to completion. Subcontractor shall keep strict performance schedules as set forth In the Contract Documents and shall sequence and timely perform the Work so as not to delay other contractors or completion of the Project. Contractor may reorganize and adjust the Project schedule at its sole discretion and shall not be liable to Subcontractor for any cost incurred by Subcontractor as a result thereof. Subcontractor agrees that if its Work (or materials delivery) is not completed by the final completion date (or delivery date), or several portions of the Work are not completed in accordance with progress schedule, it will pay Contractor the amount of any such loss or damage Contractor may sustain or occur by reason of such delay, including without limitation, administrative and overhead expenses, interest and attorney’s fees incurred by Contractor and damage paid or payable by Contractor to any other person or entity. If Subcontractor Is delayed In completion of the Work by reason of change orders or by weather conditions, fire, unavoidable casualties, or acts of God beyond the control of Subcontractor, then the time of completion may be extended for such period of time necessary to cover any or all of the causes aforesaid. However, Subcontractor is in no way to be entitled to additional funds or damages from Contractor as a result of any delay Subcontractor may encounter on the job. Contractor may, at its sole discretion, cancel this Agreement at any time, and shall be liable to Subcontractor only for labor and materials rendered or supplied up to the date this Agreement is canceled.

Subcontractor shall turn the Work over to Contractor in good condition, free and clear of all liens and encumbrances and shall hold Contractor harmless from and indemnify Contractor from and against all such claims, liens, or encumbrances pending or threatened.

4.  **Progress of Work.** Subcontractor agrees to commence and complete all phases of the Work to conform to the time schedule set forth in the Contract Documents. Should the Subcontractor fail to complete the Work within the time specified, the Subcontractor shall pay to the Contractor $100.00 per day for every day required to complete its work beyond the time specified, but this amount is In addition to any and all other rights the Contractor has to recover for damages and loss caused by Subcontractor. Subcontractor shall be responsible for all costs, expenses and damages resulting from Subcontractors concealment of defective or Improper work by other subcontractors.

1. **Supervision.** Subcontractor shall maintain a competent and experienced representative on the job at all times, with authority to make decisions and bind Subcontractor with respect to the Work and this Agreement and Modifications thereto (foreman"). All communications on the Project regarding the Work shall be between Contractors Project Superintendent and the foreman. The foreman shall carry all licenses and/or certificates required by the governing municipalities at all times while Subcontractor is performing the Work.
2. **Payment Schedule.** Contractor agrees to pay Subcontractor for the Work performed pursuant to this Agreement and any additions or deduction charges, which are agreed to in the manner provided herein. Subcontractor shall have no right to make a claim for any increase in the pricing schedule even if the cost of labor and materials or any other increase in Subcontractor's costs for any reason whatsoever.

Payment shall be in an amount equal to the value of the Work performed by Subcontractor during the payment period, less retainage if any, based on Contractor's allowance, therefore. Payment shall be made only if Subcontractor's progress and workmanship are satisfactory to Contractor and, if applicable, architect. Before receiving payment, Subcontractor shall furnish the Contractor with an affidavit and/or lien waiver, in form acceptable to Contractor, stating that all labor, materials, and other things used by Subcontractor in the performance of the Work have been timely paid for and no liens shall attach to the Project's property.

If, in the judgment of Contractor, any invoice and supporting documents do not correspond or comply with the requirements for payment, the invoice shall be returned to the Subcontractor for corrections and resubmitted for payment.

Contractor may withhold from the Subcontractor any and all sums of money (Including future payments under this Agreement) as Contractor, in its sole discretion, deems necessary to cover defective Work not remedied, to cure any defect in performance by Subcontractor, to cover Subcontractors compliance with the warranty of this Agreement, for payments that may be due or earned by laborers and/or materialmen, for furnishing labor and/or materials to the Project pursuant to the terms of this Agreement or any other agreement with any subcontractor, materialman or agent of the Subcontractor for failure of the Subcontractor to make proper payments to such subcontractor, materialman or agent, for reasonable doubt by Contractor that the Work can be completed for the unpaid balance and for evidence of damage to the work of another contractor.

Subcontractor hereby acknowledges that it is Contractor's normal practice and that Contractor reserves the right to withhold an amount of up to ten percent (10%) from any payment to Subcontractor for Work under this Agreement ("Retainage"). The Retainage will be held by Contractor for a period not to exceed ninety (90) days from acceptance of the completed Work by Contractor. If Subcontractor is in default under this Agreement, the ninety (90) day period will not begin to run until the later of the date the Work is completed, or the default is cured.

Final payment shall be due within 30 days after Work described in this Agreement is, In Contractor's determination, fully completed and performed in accordance with the Contract Documents, applicable ordinances and building codes, and this Agreement. Subcontractor shall furnish Contractor with receipts, vouchers, releases of claims of laborers, materialmen, and contractors performing work or furnishing material under this Agreement, all in a form satisfactory to Contractor, and It Is agreed that no payment hereunder shall be made, except at Contractors option, until and unless such releases are furnished.

1. **Ownership of Contract Documents.** Subcontractor agrees that all plans, specifications, drawings supplied by Contractor and the Contract Documents are the exclusive property of Contractor. If Subcontractor fails to return any such documents within 24 hours of Contractor's

request, Contractor, at is sole discretion and option, shall assess an amount of $100.00 per day that such documents are not returned, which may be applied against any payments due Subcontractor. The parties agree that such damages are difficult to ascertain and that said amount is an adequate and appropriate amount to be paid by Subcontractor.

1. **Mutual Responsibility of Subcontractor.** Should the Subcontractor cause damage to any other subcontractor’s work, the Subcontractor agrees, upon due notice, to settle with such subcontractor by agreement or arbitration. If the Subcontractor causing damage to another subcontractor fails to pay all costs and expenses to repair the damage incurred, Contractor will withhold payment due the Subcontractor causing such damage so as to protect the other subcontractor from loss to correct such damage but withholding of payment does not limit Contractor's rights or remedies but is in addition thereto. The Subcontractor Indemnifies and hold's Contractor harmless from any loss, cost, expense, damage, or claim arising out of any damage to, or interference by Subcontractor with, any other subcontractor's work.
2. **Change Order. Extras and Deletions From the Work.** All labor and/or materials furnished by Subcontractor for the Project and pursuant to the Contract Documents shall be deemed to be Included within the contract price under this Agreement. Contractor may, at any time during the progress of said Project, make in writing changes, additions or omissions to the Work and the same shall not void this Agreement, but the value thereof as agreed upon such written authorization shall be added to or deducted from the contract price.

10. **Insurance.**

* 1. **Liability Insurance.** The Subcontractor shall, at its own expense, at all times during construction of the Project, maintain in force a policy or policies of insurance, written by one or more responsible insurance carriers approved by Contractor, which will insure the Contractor and the Subcontractor against liability for injury to or death of persons or loss or damage to property occurring in, about, or relating to the construction project and provide other coverage as required by Contractor, including but not limited to commercial genera) liability insurance and comprehensive automobile liability coverage. The liability under each such insurance shall provide coverage of at least $500,000.00 per incident or occurrence, and at least $1,000,000.00 general aggregate and alt other coverages as Contractor may require.
	2. **Workman's Compensation Insurance.** The Subcontractor shall maintain and keep in force all employees' insurance required under the laws of the State of Colorado and such other insurance as may be necessary to protect the Contractor against any other liability to person or property arising hereunder by operation of law, whether such law [s now in force or Is adopted subsequent to the execution hereof, with a minimum coverage for bodily Injury by accident and by disease of not less than $100,000.00 per claim.

c. **Subcontractors Failure to Insure.** Should the Subcontractor fail to keep in effect and pay for such insurance as the Subcontractor is required to maintain under the terms of this Agreement, the Contractor may do so, at its option and in its sole discretion, in which event the insurance premiums paid by the Contractor shall become due and payable forthwith. in the event Subcontractor fails to keep in effect and pay for such insurance and Contractor, at Its discretion, does not do so, Subcontractor shall have 2 days from the failure to keep such insurance in effect to cure such failure; failure to cure within the time frame shall constitute a material breach of this Agreement.

 d. **Contractor as Additional Insured.** All Insurance policies to be obtained by the Subcontractor under this Agreement shall name the Contractor and any others as required by Contractor as additional named insureds. All insurance policies must be in form reasonably acceptable to Contractor and all polices shall provide that they shall not be amended or canceled without at least 30 days prior written notice to Contract. All such insurance policies shall be provided by insurance companies reasonably acceptable to Contractor. Each insurance policy shall provide for a waiver of subrogation by endorsement or otherwise. All deductibles are subject to Contractors approval.

No Subcontractor shall be permitted on the construction site and shall not commence Work without first providing proof of insurance coverage of each policy to Contractor, in form acceptable to Contractor. Subcontractor shall also provide reasonable proof of such insurance at any time requested by Contractor. Contractor may require Subcontractor to stop all Work, at Subcontractor's expense, if any Insurance required is not maintained in full force and effect as required by this Agreement and Subcontractor shall be responsible for all loss and damage resulting therefrom.

**11**. **Warranty and Correction of Work After Final Payment.**  The Subcontractor guarantees

and warrants the Work and all materials and workmanship related thereto to be of good quality and free from defects and that it is in strict conformance with this Agreement and the Contract Documents. Subcontractor's guarantees and warranties shall in all cases survive termination of this Agreement. Subcontractor shall assign to Contractor and Its successors and assigns or, at Contractor's request, to the homeowner all of Subcontractor's rights under warranties or guarantees by suppliers or any material or equipment provided pursuant to this Agreement. The assignment of such guarantees and warranties shall not limit or terminate Subcontractor's obligations under this Agreement.

Subcontractor agrees, at its own expense, to promptly and diligently remedy any defects which do not conform to the Contract Documents or which are, in any way, unsatisfactory to Contractor. Upon notification from Contractor, Subcontractor shall, within 48 hours, commence such work and furnish the labor and materials to correct, repair and complete such work as directed by Contractor. Subcontractor shall also pay for any damage to other work resulting therefrom, at the sole cost and expense of the Subcontractor. Should Subcontractor fail to commence repairs, corrections or completions satisfactory to Contractor within 48 hours after notice by Contractor, then Contractor shall have the right to engage others to make such repairs, corrections, or completions and shall have the right to deduct all such costs and damages related thereto against any amounts due Subcontractor or otherwise seek reimbursement. The remedies provided in this paragraph do not limit Contractors rights or remedies but are in addition thereto.

Notwithstanding, any other terms or conditions of the foregoing, the Subcontractor's warranty shall continue for a period of one (1) year from the date of issuance of a certificate of occupancy by any applicable governmental authority with respect to the Project, and shall continue with respect to any defect for which written notice of same is delivered to Contractor within thirty (30) days following the expiration of said I-year period.

**12. Indemnification.** Subcontractor agrees to indemnify, defend and hold harmless Contractor from all claims, demands, actions, liens, liability, expenses or damages for (l) injuries to property or person, including death, because of any act or omission of Subcontractor or any of its agents or employees (regardless of whether partially contributed to by acts or negligence of Contractor), or (ii) claims of lien or liens by others than Subcontractor, or (iii) from a breach of this Agreement by Subcontractor, or (IV) expense or liability incurred under unemployment compensation or workmen's compensation laws or social security laws In connection with employees of Subcontractor, Including a sum equal to benefits paid to those who were Subcontractors employees when the benefit payments are charged to Contractor under any permit plan or to its individual reserve account or otherwise pursuant to any law. Subcontractor agrees to indemnify, defend and hold harmless Contractor, its officers, directors, employees and agents from all claims, demands, actions, liens, liability, expense, or damages (including reasonable attorney fees and costs) occasioned wholly or in part by any act, omission, or negligence of Subcontractor, Including its agents, contractors, suppliers, employees, and persons directly or Indirectly controlled by Subcontractor, regardless of whether such act, omission or negligence is within or outside the scope of any of their duties under this Agreement. Subcontractor's indemnity obligations will not be diminished by the existence of any insurance required under this Agreement.

**13. Laws and Regulations**. The Subcontractor shall comply with ail federal, state, and local laws, ordinances, rules, and regulations, including all building codes, which in any way relate to the Work. Such compliance shall include, but not be limited to, the rules and regulations of the Occupational Safety and Health Administration (OSHA). In the event the Contractor is cited and fined for noncompliance by the Subcontractor, Contractor shall have the right, without waiver or limitation of any right Contractor may have under this Agreement or by law, to pay any necessary fines and costs and to withhold from the Subcontractor an amount necessary to reimburse Contractor for the amounts paid and/or bring suit against the Subcontractor for all damages arising out of the Subcontractors noncompliance.

**14. Hazardous Communication Standard**. Subcontractor is to provide Contractor's Hazardous Communication program and all required Materials Data Safety Sheets (MSDS) for all hazardous substances prior to bringing such substances on to the Project. ALL CONTAINERS SHALL BE PROPERLY LABELED. No hazardous substance shall be used unless the MSDS has first been provided. Subcontractor is responsible for training all employees who may be exposed to

to hazardous substances and must assist Contractor in training any other personnel on the project who may be exposed.

15. **Hazardous Waste.** Subcontractor is responsible for removal from the project of all

Subcontractors materials and trash that may appear on any EPA fist of Identified Hazardous Waste or that displays hazardous characteristic. Any material referenced herein may not be discarded into Contractor's trash disposal repositories at any time.

**16**. **Clean Up**. Subcontractor will clean up its own identifiable rubbish and remove it safelyfrom the job site. If Subcontractor fails to do so, the cost of removing the same will be charged directly to Subcontractor.

**17. Right to Terminate Agreement.** If Subcontractor at any time refuses or fails to fully perform the Work in accordance with this Agreement and Contract Documents, or if Subcontractor should be adjudged a bankrupt, has a receiver appointed for the Subcontractor's business or commits any act of insolvency, or makes any assignment for the benefit of creditors without Contractor's consent or fails to make prompt payment to his material suppliers, laborers, equipment suppliers, or has any legal action taken against Subcontractor, or takes any act which the Contractor deems would be detrimental to the Project, or allows a demand to be made, a claim to be made, or a lien to be filed by any person or entity against Contractor or against the Project or any part thereof, or disregards laws, ordinances, or the instructions of Contractor, or otherwise violates any provisions of this Agreement, Contractor may, at its sole option, after giving Subcontractor forty-eight (48) hours written notice without waiver or prejudice to any other right or remedy Contractor may have pursuant to this Agreement or pursuant to law, allow Subcontractor to cure the default within 48 hours or terminate this Agreement with the Subcontractor and take possession of the premises and all materials, tools, and appliances thereon and finish the work by whatever method Contractor may deem expedient.

In the event Contractor terminates this Agreement, the Subcontractor shall not be entitled to receive any further payment until the Work is finished, Further, Subcontractor shall remain liable for any loss and damages which Contractor incurs by reason of Subcontractors default. If the unpaid balance for the Work performed exceeds the expense of finishing the Work, including compensation for additional architectural, managerial, and administrative services, and all other loss and damage resulting from Subcontractor default, including any attorney fees incurred by Contractor relating to Subcontractor's default, such excess shall be paid to the Subcontractor. If such expenses, loss, and damages exceed such unpaid balance, the Subcontractor shall pay the difference to Contractor. Any expenses, loss and damages incurred by Contractor by reasons of Subcontractor's default shall be paid by Subcontractor to Contractor together with interest at the rate of eighteen percent (18%) per annum until paid.

18. **Assignment and Subcontracting by Subcontractor.** The Subcontractor agrees that it will not assign this Agreement or any part thereof or subcontract any of the Work herein defined without the prior written approval of Contractor.

19. **Notice.** Any notice herein provided to be given shall be given to the Contractor and/or the Subcontractor at the address above shown or such other address as the said parties shall subsequently give proper notice of. Notice by mail shall be effective two (2) days after posting in a U.S. mail depository with sufficient postage attached addressed to the party to whom notice is to be given by certified or registered mail, return receipt requested. Notice given by actual delivery shall be effective upon delivery. Notice by fax shall be effective on the first business day immediately following the date of the fax to the party to whom notice is given.

20. **Severability.** Contractor and Subcontractor agree that if any one or more of the provisions of this Agreement are held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

21. **Modification.** This Agreement or any of the covenants or conditions may not be modified or waived or otherwise affected, except by written agreement signed by the parties. The parties agree that no estimate or bid by Subcontractor prior to the execution of this Agreement and no verbal agreement with Contractor or the architect, either before or after the execution of this Agreement, shall affect or modify any terms of this Agreement. If at any time Contractor shall wave any covenant or condition of this Agreement, either before or after the breach thereof, Contractor shall not thereafter be deemed to have consented to any further failure of subsequent full performance of any other covenants or conditions on the part of the Subcontractor.

22. **Binding Effect.** This Agreement shall be binding and inure to the benefit of the parties, their heirs, executors, personal representatives, successors, and assigns. This Agreement shall be assignable only by the Contractor. Subcontractor may not assign this Agreement or any part thereof without Contractors prior consent.

23. **Waiver of Jury Trial.** Contractor and Subcontractor hereby waive any right they may have to a trial by jury in any suit, action, proceeding claim or counterclaim based upon this Agreement or arising out of, or in connection with the Project. Any claim arising out of or related to this Agreement or the Project, shall be subject to arbitration if the matter in controversy (not including attorney fees and costs) is more than $15,000 or the stated jurisdictional amount that may be pursued In Colorado County Courts. If the amount that is in controversy, not including the attorney fees and costs of the claiming party, is $15,000 or less the claims may be pursued in the Larimer County Court, or its small claims division if the claims are within the jurisdictional limits of such court. Venue for the parties shall be in Larimer County, Colorado. If the claim is subject to arbitration, the party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded. Arbitration shall be governed by the Colorado Arbitration Act, as amended. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The parties shall mutually pick one arbitrator for any arbitration under this Agreement. In the event the parties cannot mutually pick one arbitrator, each party shall pick one arbitrator and those arbitrators shall pick a third arbitrator and all three arbitrators shall arbitrate. In any arbitration matter service of the notice may be made by first class mall, postage pre-paid, to the last known address of the party, or in person or by personal service.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first above written.

CONTRACTOR: SUBCONTRACTOR:

For Collins Heating & Air Conditioning Click or tap here to enter text.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Glenn Frank, President/GM

EXHIBIT A

Architectural Plan Set

Structural Plan Set

Subcontractor's Bid

Subcontractor's Project Schedule (only upon request)

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