



BUILDING AND CONSTRUCTION CONTRACT

This agreement (“Contract”) is entered into by T.I.B., Incorporated (“Contractor”) and Sky Medical Supply (“Owner”) and is effective as of 8/19/2021. Owner and Contractor agree as follows: **A 15% fee will be added to all work, material and labor** (The “Administrative Fee”) which is included in- not in addition to the contract price set forth below.

1. Description of the Work:

A. The “Work” consists of generally of the following described construction project: (Tenant Finish.)

Located at: 8340 Northfield Blvd Unit 1680, Denver, CO 80238

B. The Work shall be completed in accordance with the “Contract Documents”, which include this contract, any written change orders signed by the parties pursuant to paragraph 4 below, and the following attached and initialed documents:

Name of Date of Documents (Listed Below)

I. Contract bid breakdown on 8/19/2021

Number of Pages:

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C. The Work (does not include) and Contractor shall not be responsible for the following:

- a. Site preparation;
- b. Soils testing;

- c. Obtaining or paying for any necessary approvals, easements, assessments, use or occupancy of buildings;
 - d. Landscaping, including irrigation systems;
 - e. Driveways; and
 - f. Grading of the site after the Work is completed except in the immediate vicinity of the Work.
- 2. Contract Price: Owner agrees to pay Contractor for the Work as described in the Contract Documents the total price of **\$11,500.00** (the “Contract Price”). The parties acknowledge and agree that the Contract Price includes the Administrative Fee. Payment of the Contract Price is subject to additions or deductions in accordance with the provisions of this Contract, including but not limited to change orders (paragraph 4 below), allowances (paragraph 7 below) and progress payments (paragraph 6 below).
- 3. Responsibilities of Contractor. The Contractor’s duties and responsibilities in connection with the Work and execution of this Contract are as follows:
 - A. Contractor shall be solely responsible for all construction under this Contract, including the techniques, sequences, procedures, equipment, means and coordination of the work necessary to complete the Work. Contractor or its superintendent shall supervise and direct and shall give appropriate attention to the work.
 - B. Contractor shall provide and pay for all labor, materials and equipment, including tools, construction equipment and machinery, utilities, including water, housing costs transportation and all other facilities necessary for the proper completion of the Work in accordance with the Contract Documents.
 - C. Contractor shall provide Owner with updated construction schedules at least twice each calendar month.
 - D. Contractor shall pay all sales and other taxes required by law in connection with the Work and shall secure and pay for all licenses and permits necessary for completion of the work.

- E. Contractor shall comply with all laws, ordinances, rules, and regulations building codes or other orders of public authorities relating to the performance of the work.
 - F. Contractor represents and warrants to Owner that all materials used in the Work will be new, unless otherwise specified in the Contract Documents, of good quality, free of defects and in substantial conformity with the Contract Documents.
 - G. Contractor represents and warrants that all workmanship will be in conformance with the Contract Documents and applicable building codes.
 - H. Contractor agrees to keep the area around and adjoining the Work reasonably free of rubbish and waste caused by prosecution of the Work or caused by the Contractor or the subcontractors hired to complete the Work. Contractor further agrees to remove all such waste material and rubbish upon completion of the Work, including all of its tools, equipment, machinery, and surplus materials which shall be the property of the Contractor. Contractor agrees to conduct general cleaning of the structure upon completion of the Work.
 - I. Contractor shall allow Owner or Owner's representatives to inspect the Work during construction at reasonable times so long as such inspections do not unreasonably interfere with the progress of the Work.
4. Change Orders: Owner and Contractor agree that Owner may request changes in the Work in the nature of additions, deletions or modifications without invalidating this Contract. Owner agrees to make corresponding adjustments to the Contract Price and the time for the completion of the Contract. The Work shall be changed and the Contract Price and time of Completion shall be changed and the Contract Price and time of completion shall be changed only as set forth in a written change order signed by the parties. The change order will include a description of the changes in the Contract Price, the changes in the time for completion of the Work and the exact nature of the changes.

The Contract Documents such that the Owner can occupy and use the Work for its intended purposes. Contractor shall be excused from a delay in the date of Substantial Completion of the Work if such delay is caused by an Act of God, fire, labor disputes or unrest, prolonged transportation delays of necessary material. Unusual and unanticipated weather conditions or other similar causes beyond Contractor's reasonable control.

5. Payment of the Contract Price: Payment of the Contract Price shall be as follows:
- A. On the first and the fifteenth of every month after Contractor commences the Work, Contractor shall submit to Owner, the Owners lender or Owner's agent and "Application for Payment"; and
 - B. The Application for Payment shall request payment for materials and work substantially completed by Contractor or provided to the project, and for deposits required for Change Orders and Allowances as set forth in Subpart D below and in paragraphs 4 and 7 here.
 - C. Owner shall pay Contractor or cause Contractor to be paid the amount in the Application for Payment within **(5) business days** from presentation of the Application by Contractor.
 - D. A deposit of 50% of the amount of any change order that increases the Contract Price shall be made to Contractor upon signing any change order. The balance of the amount due under any change order shall be made, due and owing with the regular progress payment made following completion of the Work completed as a result of the change order.
 - E. Prior to final payment, Contractor shall notify Owner that the Work is Substantially Complete. Within a reasonable time thereafter, Owner and Contractor shall make an inspection of the Work to determine the status of completion. If the Owner does not consider the Work to be Substantially Complete, Owner will notify Contractor in writing, giving the Contractor all reasons why Owner does not consider the Work to be Substantially Complete. If the Owner considers the Work to be Substantially Complete,

Owner and Contractor will agree upon the date the Work is Substantially Complete for the purpose of determining compliance with paragraph 5 above. At the same time, Owner and Contractor will, after thorough inspection of the work, make a final, comprehensive “punch list” of items to be completed or corrected before final payment and shall fix the time within which such items shall be completed or corrected.

Upon satisfactory completion of the final punch list, final payment shall be due and owing to Contractor.

6. Allowances: Attached here as Exhibit A is a list of allowance items to be included in the Work and the allowed cost of each item. The allowed costs of the allowances have been included in and are not in addition to the Contract Price set forth in paragraph 2 above. If the actual cost of any item listed on Exhibit A as an allowance is less than the allowed cost, then Owner shall receive a credit for the difference between the actual cost and the allowed cost. If the actual cost exceeds the allowed cost as listed on Exhibit A, the Owner shall pay Contractor for any such excess. Selection of allowance items shall be made in a timely and prompt manner and shall not cause progress on the Work to be delayed. The parties shall execute a change order for any variations in allowance items and the amount in the change order shall include a 16% fee for the Contractor. Notwithstanding any other part of this Contract, Contractor shall be paid a **deposit of 50%** of any allowance item before purchasing it if the item is unique as to color or style.

7. Waiver of Claims:

- A. Contractor, by accepting final payment, waives all claims against Owner except those that have been made in writing prior to final payment and which remain unsettled at the time of final payment.
- B. Owner, by making final payment, waives all claims against Contractor, except as follows:
 - a. Work required to be performed by Contractor in regards to any warranty as described in paragraph 12 below; and
 - b. Outstanding liens, claims, or debts arising out of the Contract.
 - c. Latent defects in the Work discovered by Owner subsequently to making final payment.

8. Subcontractors: Contractor shall hire and pay by draws from a bank or other lender for all subcontractors to complete the Work. Contractor agrees not to hire a subcontractor to whose employment the Owner reasonably objects. The Contractor shall not be required to hire a subcontractor to whose employment the Contractor reasonably objects.

9. Insurance:

- A. Contractor agrees to keep in full force and effect at Contractor's expense during the entire period of construction of the Work liability insurance in the amount of \$2,000,000 in order to protect Contractor from claims, under worker's compensation and other employee benefit laws, for bodily injury and death, and for property damage that may arise out of the Work whether directly or indirectly, caused by Contractor or by any subcontractor.
- B. Owner agrees to maintain in full force and effect at Owner's expense during the entire period of construction of the Work, property insurance protecting the structure and the land from hazards including fire, vandalism and other similar perils. Such insurance shall be in an amount at least equal to the Contract Price. Owner may also purchase its own liability insurance.

C. The Owner and Contractor shall each be entitled to require proof of such insurance. Owner and Contractor hereby waive all claims against each other for property damage or other damages or perils covered by insurance, except that Contractor shall be entitled to payment for all amounts due under this Contract from the proceeds of any such property insurance.

10. Termination:

A. If, through no act or fault of Contractor, the progress on the Work is suspended for a period of more than (30) days by Owner or under an order of Court or other public authority, or if the Owner fails to make any payment called for in paragraph 6 above, where such failure shall continue for a period of ten (10) days after receipt by Owner of written notice thereof from Contractor, or if Owner substantially breaches any provisions of this Contract and, after receiving written notice of the breach, fails to correct the breach within ten business days, then Contractor may on seven days written notice to Owner terminate this Contract. In such event, Contractor shall be entitled to recover from Owner payment for all work executed and completed, and any actual and reasonable out of pocket expenses incurred by Contractor, plus the Administrative Fee.

B. If Contractor files a petition in bankruptcy or is adjudged insolvent, or if Contractor repeatedly fails to supply sufficiently skilled workers and subcontractors or suitable materials and equipment, or if Contractor repeatedly fails to make prompt payments to subcontractors or vendors for labor, materials or equipment, or if Contractor repeatedly disregards laws, ordinances, rules or regulations, or if Contractor substantially breaches any provision of this Contract, then Owner shall provide written notice to Contractor of any such breach or default on the part of Contractor. If Contractor fails to remedy or cure any breach or default identified by the Owner in such notice within ten business days of receipt of notice, or fails to provide a reasonable and realistic plan for remedying any such default

or breach within a reasonable time, then Owner may terminate this Contract and take possession and control of the Work and all materials located on or about the Work. In the event of termination by Owner, all equipment, tools and machinery of Contractor shall be promptly returned to Contractor and Owner shall be entitled to complete the Work in a reasonable and expedient manner. In such case, Contractor shall be paid for all Work executed and completed and any actual and reasonable out of pocket expense. In addition, if the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, such excess shall be paid to Contractor. If the costs of completing the Work exceed such unpaid balance, however, Contractor will pay the difference to Owner.

11. Warranties:

- A. All materials warranties are transferred to Owner effective as of the date of final payment of the Contract Price.
- B. If, within one year after the date of Substantial Completion of the Work, any part of the Work is found to be defective and written notice of such defect is provided to Contractor, Contractor shall promptly, without cost to the Owner and in accordance with the Contract Documents and Owner's written instructions, correct such defective work or, if appropriate, remove it and replace with non-defective work. The correction of defective work shall include, in addition to correction of the defective work itself, repair of those items damaged by the defective work. Contractor shall not be responsible for any defect in the work caused by abuse or misuse, modification not completed by the Contractor, inadequate maintenance or normal wear and tear.

12. Failure to Make Timely Payment/Attorneys' Fees: In addition to any other remedy allowed by law, Contractor shall be entitled to recover interest of 10% per year on any payment not paid by Owner when due. Pursuant to this contract. In the event of any proceeding, claim or action being filed or instituted between the parties with respect to this Contract, the prevailing party will be entitled to receive

from the other party all costs, damages and expenses, including reasonable attorney's fees incurred by the prevailing party in connection with that action or proceeding.

13. Statute of Limitations: The statute of limitations shall begin to run, and any alleged claim for relief shall accrue, on any claims against Contractor, at the time of Substantial Completion.

14. Notices: Any notice provided for or concerning this Contract shall be in writing and shall be deemed sufficiently given when sent by certified US mail, or by hand delivery, to the following addresses of Owner and Contractor, or to any other address designated in writing by Owner or Contractor:

IF TO OWNER:

Sky Medical Supply
8340 Northfield Blvd Unit 1680
Denver, Colorado 80238

IF TO CONTRACTOR:

T.I.B. Incorporated
4785 Elati St., Ste.33
Denver, Colorado 80216

15. Miscellaneous Provisions:

- A. This Contract shall be governed by and construed in accordance with the laws of the State of Colorado.
- B. Jurisdiction and venue for any dispute arising out of this Contract shall be in the State Courts of Colorado in Jefferson County.
- C. This Contract represents the complete agreement between the parties and supersedes prior negotiations, representations or agreements, whether written or oral.
- D. This Contract and the duties and obligations to perform the Work may not be assigned or transferred by either party without the prior, express written consent of both parties.
- E. Any modification of this Contract shall be binding only if made in writing and signed by the parties to this Contract.
- F. All times stated in this Contract or in the Contract Documents are of the essence hereof.

OWNER: _____

By: _____
(Hussien Hassen) Date:
Its: Owner or other (Owner)

CONTRACTOR: T.I.B., Incorporated

Tib Bidgood By: _____
Tib Bidgood Date:
Its: President