

# SUPPLIER 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 Supplier. 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 Supplier agree as follows:

## 1. SCOPE OF WORK

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

The Supplier herewith agrees to provide all labor, material, tools, implements, equipment, sales and use tax, licenses, etc. as required to supply all (**description of work**) including, but not limited to:

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

Project: (**project**)

All materials to be delivered under this contract shall be delivered F.O.B. Jobsite unloaded, tax included, at the location set forth in the description of the project herein above. All materials and supplies delivered pursuant to this agreement shall conform to and be in accordance with plans, specifications, addenda as follows: **BID DOCUMENTS**: . The Subcontractor agrees that all materials delivered shall be new unless otherwise specified, shall be complete and shall meet all specifications and types set forth in the plans, specifications, addenda, shop drawings and architect's directions received by Supplier, and shall be in addition to, acceptable to Contractor.

To the extent that the prime contract applies to the Supplier's work, Supplier 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 Supplier with respect to the plans and specifications, the decision of the Architect and/or Engineer shall be conclusive and binding. Should there be no supervising architect over the work, then the matter in question shall be determined as provided in Section 9 of the agreement.

## 2. TIMELY DELIVERY OF SUPPLIES, DELAYS, ETC.

The supplier agrees to make timely delivery of all goods and materials pursuant to this Agreement in accordance with the Job Schedule. An advance notice by telephone will be given to schedule the exact delivery date for the materials to be delivered. Unless otherwise modified or agreed to by the Project Manager in writing, all damages accrued by Contractor will be charged to the Supplier for the failure of the Supplier to deliver the materials in accordance with the job schedule and/or telephone notice. Materials are to be on-site as follows:

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(**duration**)

A minimum of a 7-day notice by telephone will be given to schedule a date for materials to be on-site. Thereafter a 24-hour notice by telephone will be given as to the specific time for materials to be on-site. Unless otherwise modified or agreed to by the Job Project Manager in writing, all damages accrued by Contractor will be charged to the Supplier for the failure to begin work in accordance with the above telephone notice, failure to keep sufficient men and materials available to continue to work in a timely manner, or the failure to complete work on time and in accordance with the job schedule.

Any requests by the Supplier 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 Supplier fails to submit its request for extension within this time period, Supplier shall not be entitled to any compensation or extensions of time due to the delay and waives any claim therefore.

In the event the Supplier neglects or fails to supply the necessary materials and/or goods as required by this Agreement, the Contractor shall have the right if he so desires, to obtain such goods and materials from an alternate supplier and in the most economical manner available to him at the time. Any costs incurred by the Contractor in obtaining such alternate

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supplier, including any additional costs in the materials themselves, shall be charged against any moneys due or to become due under the terms of this Agreement to the Supplier. In the event the total amount due or to become due under the terms of this Agreement shall be insufficient to cover the costs incurred by the Contractor in obtaining the alternate materials, the Supplier and his sureties, if any, shall be bound and liable to the Contractor for the difference.

Notwithstanding the other rights and remedies granted to Contractor in this agreement, the Supplier 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 Supplier's failure to furnish the materials within the time fixed in the manner provided for herein.

### 3. SUBMITTALS

Supplier 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 Supplier 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.

### 4. SURETY BOND

At the Contractor's option and expense, unless provided otherwise elsewhere in the Agreement and/or in the event the specifications require suppliers to furnish such bonds, the Supplier 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 performance of 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.

### 5. INSURANCE

Before commencing work on the project, Supplier and its suppliers 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 workers' compensation. If additional insurance coverage of 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 Suppliers' 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, and (6) independent contractor coverage. 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, (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 Supplier 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, Supplier shall supply to Contractor a new certificate of insurance that complies with the requirements of this

paragraph. Supplier shall indemnify Contractor and its insurance carriers for any failure to provide Contractor with the insurance required by this paragraph.

## 6. CHANGES, AND ADDITIONAL WORK

The Contractor shall have the right to add to or deduct from the materials supplied pursuant to this agreement. All modification request 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 Order 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 Supplier 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 keep accurate records of all materials and labor associated with the modification of work.

## 7. TIME LIMITS FOR PRESENTING CLAIMS

All claims of every nature and description made by the Supplier for extra compensation under this Agreement, including all claims arising by reason of Contractor's delay or Contractor's interference with the Supplier'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 supplier.

## 8. DISPUTES

In the event of any dispute between the Contractor and Supplier, 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 ruling of a board of arbitration. The expenses of such arbitration, including all attorney's fees and costs, if any, shall be awarded to the prevailing party as determined by the arbitrator. In the event arbitration is chosen, the Contractor and Supplier agree to be bound by the findings of any such boards of arbitration, finally and without recourse to any court of law.

## 9. PAYMENTS

a. The Contractor agrees to pay to the Supplier for the satisfactory delivery of materials described herein the sum of **(amount)** in monthly payments for material delivered in any preceding month, in accordance with estimates attached here to prepared by the Supplier 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 Supplier's monthly estimate. At the sole option of the Contractor, payments made to the Subcontractor before receipt of payment by Owner may be considered with a 5% discount.

The procedure to be followed for payment shall be as follows: The Supplier shall prepare a Schedule of Values for the different categories of materials to be delivered the Supplier. The sum of all categories in the Schedule of Values shall equal the Agreement amount. By the 28th day of each calendar month, the Supplier 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 Supplier's progress billing as part of his progress billing to the Owner. To the extent that the Supplier's progress billing is approved by the Architect, Contractor and Owner and provided payment for such material has been received by the Contractor from the Owner, Contractor shall pay Supplier the amount of said progress billing, less the amounts paid on prior progress billing.

Any billing of the Supplier 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 Supplier.

b. Payments otherwise due to Supplier may be withheld by Contractor on account of: (1) defective materials delivered by the Supplier and not remedied, (2) claims filed by third parties arising out of the Supplier's materials or delivery, or upon the presentation of reasonable evidence indicating the probability of the filing of such claims, (3) failure of the Supplier to make payments to its suppliers or materialmen for work done or material furnished, (4) a reasonable doubt that this Agreement can be completed for the balance then owing the Supplier by Contractor, and (5) noncompliance with Agreement requirements such as but not limited to the receipt of: certificates of insurance, schedule of values, submittals, executed supplier agreement, approved change orders, 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 Supplier 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 suppliers. These provisions shall be applicable even though the Supplier has posted a full payment and performance bond.

#### 10. DEFAULT

In the event the Supplier shall default in any respect in the full, faithful, and punctual performance of any of its obligations contained in this Agreement, or the Supplier 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, Contractor shall have the right to terminate, in whole or in part, this Agreement and to obtain alternative supplies in accordance with the other provisions of this Agreement.

#### 11. 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 Agreement 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 Agreement. Contractor shall allocate a fair and equitable share of any moneys received from the Owner to the Supplier in accordance with the work performed.

#### 12. WARRANTY

In addition to any other warranties, general or specific set forth in the Agreement relative to the materials or equipment furnished under this Agreement, Supplier warrants that said materials or equipment will be new unless otherwise specified in the Agreement and that all materials shall be of good quality and free from faults and defects. The Supplier further warrants that all material, goods and equipment supplied under this Agreement shall comply in every respect with regulations, specifications and directions set forth in the plans, specifications and other documents and that the Supplier 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 Supplier shall pay for all damages directly and consequentially suffered by Contractor or the Owner as a result of defects, failure to perform in accordance with the terms of this Agreement, 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.

#### 13. INDEMNITY

Supplier 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 Supplier'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 Supplier, either arising out of its performance of this Agreement, or as such liability may be imposed and stipulated by the terms of the Agreement and the contract documents; limited, however, to Supplier's performance of the terms of this Agreement, but including without limitation such requirements of performance of the equipment and materials furnished and/or installed by Supplier 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.

#### 14. ASSIGNMENTS

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

15. GENERAL PROVISIONS

- a. When a conflict of conditions and requirements exist between the Contractor/Owner Agreement and contract documents, and the Contractor/Supplier Agreement and contract documents, the Supplier shall be responsible for the greater condition as/or as determined by the Contractor.
- b. Any back charges assessed to the Supplier, will be calculated at cost plus 10%.

16. 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:

Supplier: (supplier & address)

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

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

Supplier:  
By \_\_\_\_\_  
Title \_\_\_\_\_

Contractor: Arnell-West, Inc.  
By \_\_\_\_\_  
Title \_\_\_\_\_

License No. Utah #87-247452-5501

**ACORD™**

**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**

COMPANY  
**B**

COMPANY  
**C**

COMPANY  
**D**

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

**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 type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE	\$		
<input checked="" type="checkbox"/> HIRED AUTOS								
<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		
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE:				<input type="checkbox"/> INCL	<input type="checkbox"/> EXCL	EL EACH ACCIDENT	\$ 1,000,000
							EL DISEASE – POLICY LIMIT	\$ 1,000,000
							EL DISEASE – EA EMPLOYEE	\$ 1,000,000

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