



PREQUALIFICATION APPLICATION

SUBMIT TO:

Quest Civil Constructors, Inc.
ATTN: Subcontractor Prequalification
1903 West Parkside Lane, Suite 100
Phoenix, AZ 85027
Phone: (623) 581-9700
Fax: (623) 581-9710

Company Name: _____

Mailing Address: _____

Contact Name: _____

Telephone: _____

Date: _____

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SECTION 1.0**GENERAL INFORMATION**

1.1 Legal Name: _____
DBA (if applicable): _____
Website: _____
Estimating Contact(s): _____
Phone: _____ Email: _____

1.2 Principal Office
Street: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____

1.3 Regional Office (if different than Principal Office)
Street: _____
City: _____ State: _____ Zip: _____
Phone: _____ Fax: _____

1.4 Business Type (*check one*):
☐ Corporation
☐ Limited Liability Company
☐ Partnership
☐ Sole Proprietor
☐ Other – _____

Date Founded: _____

State of Formation: _____

Is company owned or controlled by a parent company or other organization? ☐ Yes ☐ No

If yes, please describe: _____

1.5 List key officers, managers and principals below:

Name	Position	Years with Company	Years of Experience

(Section 1.0, continued)

1.6 List all certifications below (i.e. SBE/ MBE/ WBE) and provide copies of certificates:

Agency	Certification Type (s)	Expiration Date

1.7 List all contractor license and professional registrations:

Issuing Authority	License No.	Class / Description	Expiration Date

1.8 Trades (select all that apply):

- | | | |
|---|--|--|
| <input type="checkbox"/> Blasting | <input type="checkbox"/> Gates | <input type="checkbox"/> Roofing |
| <input type="checkbox"/> Breakwater, Caisson Structures | <input type="checkbox"/> Gunite | <input type="checkbox"/> Seeding / Sodding |
| <input type="checkbox"/> Canals | <input type="checkbox"/> Highway, Street, and Bridge | <input type="checkbox"/> Septic System Contractors |
| <input type="checkbox"/> Carpentry / Framing | <input type="checkbox"/> Horizontal Drilling | <input type="checkbox"/> Shore Protection |
| <input type="checkbox"/> Cathodic Protection | <input type="checkbox"/> HVAC / Duct | <input type="checkbox"/> Shoring |
| <input type="checkbox"/> Cesspool Construction | <input type="checkbox"/> Instrumentation / Control | <input type="checkbox"/> Shotcrete |
| <input type="checkbox"/> Ceilings | <input type="checkbox"/> Iron Work | <input type="checkbox"/> Storage Tanks (Water) |
| <input type="checkbox"/> Channels | <input type="checkbox"/> Land Clearing / Leveling | <input type="checkbox"/> Soil Compacting |
| <input type="checkbox"/> Coating | <input type="checkbox"/> Landscaping | <input type="checkbox"/> Soil Test Drilling |
| <input type="checkbox"/> Cofferdams | <input type="checkbox"/> Drainage | <input type="checkbox"/> Survey |
| <input type="checkbox"/> Concrete | <input type="checkbox"/> Manholes / Structures | <input type="checkbox"/> Traffic Control |
| <input type="checkbox"/> Core Drilling / Test Boring | <input type="checkbox"/> Masonry | <input type="checkbox"/> Thermal / Moisture Protection |
| <input type="checkbox"/> Curb / Gutter / Sidewalk | <input type="checkbox"/> Mechanical Contractors | <input type="checkbox"/> Traffic Signal Installation |
| <input type="checkbox"/> Dams | <input type="checkbox"/> Metal Fabrication | <input type="checkbox"/> Tunneling |
| <input type="checkbox"/> Demolition / Wrecking | <input type="checkbox"/> Metal Work – Ornamental | <input type="checkbox"/> Shaft Construction |
| <input type="checkbox"/> Dewatering | <input type="checkbox"/> Millwork | <input type="checkbox"/> Underground Tank Removal |
| <input type="checkbox"/> Doors / Window | <input type="checkbox"/> Painting | <input type="checkbox"/> Underwater Construction |
| <input type="checkbox"/> Drainage System Installation | <input type="checkbox"/> Parks | <input type="checkbox"/> Utility Systems – Communication |
| <input type="checkbox"/> Dredging | <input type="checkbox"/> Paving | <input type="checkbox"/> Utility Systems – Gas |
| <input type="checkbox"/> Drywall Contractor | <input type="checkbox"/> Paver (Brick) | <input type="checkbox"/> Utility Systems – Oil |
| <input type="checkbox"/> Earth Retention Systems | <input type="checkbox"/> Pier Construction | <input type="checkbox"/> Utility Systems – Power |
| <input type="checkbox"/> Earthwork | <input type="checkbox"/> Pile Driving | <input type="checkbox"/> Utility Systems – Sewer |
| <input type="checkbox"/> Electrical / Wiring work | <input type="checkbox"/> Pipe-Jacking | <input type="checkbox"/> Utility Systems – Water |
| <input type="checkbox"/> Embankments | <input type="checkbox"/> Plumbing | <input type="checkbox"/> Wells |
| <input type="checkbox"/> Erecting Structural Steel | <input type="checkbox"/> Process Piping | <input type="checkbox"/> Welding |
| <input type="checkbox"/> Erosion Control | <input type="checkbox"/> Quality Assurance / Quality Control | <input type="checkbox"/> Other – _____ |
| <input type="checkbox"/> Excavation | <input type="checkbox"/> Railroads | <input type="checkbox"/> Other – _____ |
| <input type="checkbox"/> Falsework / Forming | <input type="checkbox"/> Remediation | <input type="checkbox"/> Other – _____ |
| <input type="checkbox"/> Fencing | <input type="checkbox"/> Rebar / Reinforcing Steel | <input type="checkbox"/> Other – _____ |
| <input type="checkbox"/> Fire Sprinklers System | <input type="checkbox"/> Reservoirs / Ponds | <input type="checkbox"/> Other – _____ |
| <input type="checkbox"/> Flood Control Structures | <input type="checkbox"/> Retaining Walls | <input type="checkbox"/> Other – _____ |
| <input type="checkbox"/> Flooring / Tile | <input type="checkbox"/> Revetment Construction | <input type="checkbox"/> Other – _____ |

SECTION 2.0 SUBCONTRACT AGREEMENT, BONDING & INSURANCE

- 2.1 Can your company meet Quest's standard agreement general conditions outlined in Exhibit II?** ☐ Yes ☐ No

If no, please explain: _____

- 2.2 Provide a letter from your bonding company confirming bonding capacity for single contract and aggregate capacity.**

Note: If required by Subcontract Agreement, subcontractors are to provide payment and performance bonds in the amount of 100% of the subcontract amount.

- 2.3 Provide a letter from your company's insurance broker stating your company can meet Quest's Insurance Policy Limits and Requirements (Section C9) outlined in of Exhibit II.**

SECTION 3.0 COMMITMENT TO SAFETY

- 3.1 Provide a letter from your insurance broker listing your company's workers' compensation Experience Modification Rate (EMR) for the years 2013, 2012 and 2011.**

Note: If the EMR is greater than 1.0, please describe the cause and what actions your company has taken to reduce the rate. Attached additional pages.

Provide a copy of your company's OSHA 300 and 300A logs for the years 2013, 2012 and 2011.

Has your company received any OSHA citations in the last three years?

☐ Yes ☐ No

If yes, provide the following information (*Attach additional pages if necessary*):

Date of violation: _____

Type of violation: _____

Describe what has been done to prevent similar violations from occurring: _____

- 3.2 Does your company have a written safety and health program / manual?**

☐ Yes ☐ No

If yes, include a copy of the entire program / manual.

Do you have a documented pre-job or new employee occupational safety and health orientation program?

☐ Yes ☐ No

Do you have a documented occupational safety & health training program for newly hired or promoted first line supervisors or foremen?

☐ Yes ☐ No

Who conducts the training (*list name / title*): _____

Please check all elements below that are delivered by your training program:

- | | | |
|---|--|--|
| <input type="checkbox"/> Competent Person | <input type="checkbox"/> Incident Reporting | <input type="checkbox"/> Safety Tailgates |
| <input type="checkbox"/> Emergency Procedures | <input type="checkbox"/> Injury / Incident / Near-Miss | <input type="checkbox"/> Other-Specify _____ |
| <input type="checkbox"/> First Aid Procedures | <input type="checkbox"/> Job Hazard Analysis | |
| <input type="checkbox"/> Hazard recognition | <input type="checkbox"/> Respiratory Protection | |

Does your company require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

☐ Yes ☐ No

If yes, how often: _____

- 3.3 Does your company have a written substance abuse policy?**

☐ Yes ☐ No

If yes, check all elements below that apply:

- | | |
|---|---|
| <input type="checkbox"/> Pre-employment | <input type="checkbox"/> Post incident |
| <input type="checkbox"/> Random | <input type="checkbox"/> Reasonable suspicion |

(Section 3.0, continued)

- 3.4 Does your company designate an on-site safety representative?** ☐ Yes ☐ No
- Please check all training / certifications held by the on-site safety representative:
- ☐ OSHA 30 Hour ☐ CPR Training
- ☐ First Aid Certification ☐ Other: _____
- Does your company conduct field safety inspections to determine compliance with applicable federal, state, local and company regulations / procedures?** ☐ Yes ☐ No
- If yes, how often: _____
- Are inspection reports generated from the field safety inspections?** ☐ Yes ☐ No
- Who received copies of the report: _____
- Does your company have a follow up system to track items identified in the inspection reports?** ☐ Yes ☐ No
- Does your company conduct injury, incidents and near miss investigations?** ☐ Yes ☐ No

SECTION 4.0

PROJECT EXPERIENCE

- 4.1 Does your company have a Quality Assurance and Quality Control (QA/QC) plan?** ☐ Yes ☐ No
- If yes, include a copy of the QA/QC Plan.
- 4.2 Has the EPA (US Environmental Protection Agency) cited and assessed penalties against either your company or the owner of a project on which your company was the contractor, in the past ten years?** ☐ Yes ☐ No
- If yes, provide details (*attach additional pages if necessary*): _____

- 4.3 Please provide three trade references:**

Company Name	Address	Contact Person	Phone

- 4.4 Provide a list of projects completed in the past three years which demonstrate your company's expertise.**
Complete enclosed Exhibit I – Project Experience List.

CHECKLIST OF REQUIRED DOCUMENTS

- ☐ Copy of certification(s) (*if applicable*)
- ☐ Bonding capacity letter
- ☐ Letter of insurability
- ☐ OSHA 300 and 300A logs
- ☐ EMR Letter from insurance provider (*if applicable*)
- ☐ Safety and health program / manual
- ☐ Quality Assurance and Quality Control (QA/QC) Plan
- ☐ Exhibit I – Project Experience List

Exhibit I

PROJECT EXPERIENCE LIST

Project Name / Location	Owner	Role	Project Delivery Method	Contract Amount		Project Duration <small>(calendar days)</small>		Brief Description of Work Performed
		<input type="checkbox"/> Design Engineer <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Consultant	<input type="checkbox"/> Construction Manager at Risk <input type="checkbox"/> Job Order Contracting <input type="checkbox"/> Design/Build <input type="checkbox"/> Design-Bid-Build <input type="checkbox"/> Other: _____	Original		Original		
				Final		Final		
		<input type="checkbox"/> Design Engineer <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Consultant	<input type="checkbox"/> Construction Manager at Risk <input type="checkbox"/> Job Order Contracting <input type="checkbox"/> Design/Build <input type="checkbox"/> Design-Bid-Build <input type="checkbox"/> Other: _____	Original		Original		
				Final		Final		
		<input type="checkbox"/> Design Engineer <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Consultant	<input type="checkbox"/> Construction Manager at Risk <input type="checkbox"/> Job Order Contracting <input type="checkbox"/> Design/Build <input type="checkbox"/> Design-Bid-Build <input type="checkbox"/> Other: _____	Original		Original		
				Final		Final		
		<input type="checkbox"/> Design Engineer <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Consultant	<input type="checkbox"/> Construction Manager at Risk <input type="checkbox"/> Job Order Contracting <input type="checkbox"/> Design/Build <input type="checkbox"/> Design-Bid-Build <input type="checkbox"/> Other: _____	Original		Original		
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		<input type="checkbox"/> Design Engineer <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Consultant	<input type="checkbox"/> Construction Manager at Risk <input type="checkbox"/> Job Order Contracting <input type="checkbox"/> Design/Build <input type="checkbox"/> Design-Bid-Build <input type="checkbox"/> Other: _____	Original		Original		
				Final		Final		
		<input type="checkbox"/> Design Engineer <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier <input type="checkbox"/> Consultant	<input type="checkbox"/> Construction Manager at Risk <input type="checkbox"/> Job Order Contracting <input type="checkbox"/> Design/Build <input type="checkbox"/> Design-Bid-Build <input type="checkbox"/> Other: _____	Original		Original		
				Final		Final		

Attach additional pages if needed.

Exhibit II

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C1 – SUBCONTRACTOR RESPONSIBILITIES

C1.01 PERIODIC MEETINGS. SUBCONTRACTOR shall attend all meetings scheduled by CONTRACTOR, including but not limited to, preconstruction meetings, coordination meetings, progress meetings, partnering meetings and safety meetings.

C1.02 SAFETY – GENERAL. SUBCONTRACTOR is entirely responsible to perform all aspects of the WORK in a manner that shall not endanger persons, property or the environment, whether at or adjacent to the PROJECT. SUBCONTRACTOR is responsible for the proper investigation, analysis and mitigation of all risks associated with the performance of the WORK and shall establish its own safety program implementing safety measures, policies and standards, which conform to the requirements of the MAIN CONTRACT and this AGREEMENT. SUBCONTRACTOR shall provide all required training, personal protective equipment, safety equipment and first aid required to safely perform the WORK.

C1.03 SAFETY – REPRESENTATIVE. SUBCONTRACTOR shall designate a properly qualified, experienced and competent safety representative, acceptable to CONTRACTOR, who shall be present at the PROJECT while any WORK is performed.

C1.04 SAFETY – CONTRACTOR'S SAFETY PROGRAM. Establishment of a safety program by the CONTRACTOR shall not relieve the SUBCONTRACTOR of its safety responsibilities. CONTRACTOR reserves the right to stop all or any part of the WORK which the CONTRACTOR deems unsafe. SUBCONTRACTOR shall not be entitled to any additional compensation or schedule extension for any such stoppage. The CONTRACTOR's failure to stop the SUBCONTRACTOR's unsafe practices shall not relieve the SUBCONTRACTOR of the responsibility therefore.

C1.05 SAFETY – APPLICABLE STANDARDS. SUBCONTRACTOR shall observe and conform to any Federal, State and Local safety laws, rules, regulations and orders that are applicable to the WORK as may be required or recommended by any authority having jurisdiction over the PROJECT. SUBCONTRACTOR shall indemnify, hold harmless and defend CONTRACTOR from any costs, citations, fines or penalties attributable to SUBCONTRACTOR and assessed to CONTRACTOR by any authority having jurisdiction over the requirements of this Section. In the event such citations, fines or penalties are issued to CONTRACTOR, CONTRACTOR may issue payment and deduct the amount paid from payments due to SUBCONTRACTOR.

C1.06 SAFETY – RECORDS. SUBCONTRACTOR shall give CONTRACTOR prompt written notice of any incident involving personal injury requiring a physician's care, property damage or utility damage resulting from SUBCONTRACTOR's performance under this AGREEMENT. SUBCONTRACTOR shall maintain safety records required by any Federal, State and Local safety laws, rules, regulations and orders that are applicable to the WORK and shall furnish copies of such records upon request from CONTRACTOR.

C1.07 SAFETY – HAZARDOUS MATERIALS. SUBCONTRACTOR shall strictly comply and require the same compliance by its employees, lower tier subcontractors and suppliers, with all Federal, State and Local laws, rules, regulations and orders governing the acquisition, possession, usage, notification procedures, storage and disposal of hazardous materials of any nature that are utilized, produced or are a byproduct of the performance of this AGREEMENT. SUBCONTRACTOR shall implement a Hazard Communication Program and provide and maintain all necessary information, record keeping and training required therein. SUBCONTRACTOR shall submit Material Safety Data Sheets (MSDS) to the CONTRACTOR for all materials it intends to use on the PROJECT at least ten (10) calendar days prior to delivery to the PROJECT.

C1.08 DUST CONTROL. SUBCONTRACTOR shall continuously provide dust control for the WORK in compliance with all

Federal, State and Local laws, rules, regulations and orders and any PROJECT specific requirements or permits. If SUBCONTRACTOR fails to comply with such requirements, CONTRACTOR may take immediate action to maintain required compliance and any costs incurred by CONTRACTOR shall be deducted from payments due to SUBCONTRACTOR. SUBCONTRACTOR shall indemnify, hold harmless and defend CONTRACTOR from any costs, citations, fines or penalties attributable to SUBCONTRACTOR and assessed to CONTRACTOR by any authority having jurisdiction over the requirements of this Section. In the event such citations, fines or penalties are issued to CONTRACTOR, CONTRACTOR may issue payment and deduct the amount paid from payments due to SUBCONTRACTOR.

C1.09 ENVIRONMENTAL PROTECTION. SUBCONTRACTOR shall take all actions required to protect the environment from the effects of the WORK in compliance with all Federal, State and Local laws, rules, regulations and orders and any PROJECT specific requirements or permits. SUBCONTRACTOR shall notify CONTRACTOR immediately of any environmental damage resulting from SUBCONTRACTOR's activities. If SUBCONTRACTOR fails to mitigate environmental damage or to comply with environmental requirements, CONTRACTOR may take immediate action to mitigate damage or maintain required compliance and any costs incurred by CONTRACTOR shall be deducted from payments due to SUBCONTRACTOR. SUBCONTRACTOR shall indemnify, hold harmless and defend CONTRACTOR from any costs, citations, fines or penalties attributable to SUBCONTRACTOR and assessed to CONTRACTOR by any authority having jurisdiction over the requirements of this Section. In the event such citations, fines or penalties are issued to CONTRACTOR, CONTRACTOR may issue payment and deduct the amount paid from payments due to SUBCONTRACTOR.

C1.10 STORM WATER MANAGEMENT. SUBCONTRACTOR shall comply with the storm water pollution prevention plan (SWPPP) requirements of the MAIN CONTRACT and all Federal, State and Local laws, rules, regulations and orders.

C1.11 CLEAN UP. SUBCONTRACTOR shall clean up, remove and dispose from the PROJECT all excess earth spoils, waste materials, rubbish and debris resulting from the WORK at such frequencies as required by CONTRACTOR. Cleanup, removal and disposal of contaminated or hazardous material or waste shall be in accordance with Federal, State and Local laws, rules, regulations and orders and any PROJECT specific requirements or permits. If SUBCONTRACTOR fails to comply with such requirements, CONTRACTOR may take immediate action to maintain required compliance and any costs incurred by CONTRACTOR shall be deducted from payments due to SUBCONTRACTOR. SUBCONTRACTOR shall indemnify, hold harmless and defend CONTRACTOR from any costs, citations, fines or penalties attributable to SUBCONTRACTOR and assessed to CONTRACTOR by any authority having jurisdiction over the requirements of this Section. In the event such citations, fines or penalties are issued to CONTRACTOR, CONTRACTOR may issue payment and deduct the amount paid from payments due to SUBCONTRACTOR.

C1.12 SUPERVISION. The SUBCONTRACTOR shall employ a competent representative, acceptable to CONTRACTOR, who shall be in attendance at the PROJECT site at all times during the progress of the WORK. The SUBCONTRACTOR representative shall have full authority to act for, bind and obligate the SUBCONTRACTOR.

C1.13 LABOR LAWS. SUBCONTRACTOR shall comply with all Federal, State and Local labor laws, rules, regulations and orders. SUBCONTRACTOR shall pay and report all wages and fringe benefits in accordance with the terms and conditions required by the MAIN CONTRACT or any applicable labor agreements.

C1.14 LABOR RELATIONS. SUBCONTRACTOR shall have exclusive control of and responsibility for its own labor relations and agrees to work harmoniously with all other labor employed on the PROJECT. SUBCONTRACTOR shall employ only competent and

skilled personnel to perform the WORK. Should SUBCONTRACTOR be party to one or more labor agreements it shall take all reasonable action to avoid any work stoppage. Should a work stoppage occur, SUBCONTRACTOR shall, within twenty four (24) hours, take any and all legal action provided for or permitted by such labor agreements in order to expedite resumption of the WORK. SUBCONTRACTOR shall, if necessary, utilize to the fullest extent possible all rights that allow for hiring of replacement employees. SUBCONTRACTOR shall provide CONTRACTOR immediate written notice and complete information regarding any actual or potential labor dispute that could delay the timely performance of the WORK or PROJECT. SUBCONTRACTOR shall cooperate in any effort by CONTRACTOR to resolve work stoppages, slowdowns, boycotts, disturbances, strikes, picketing or labor disputes of any kind affecting the PROJECT. SUBCONTRACTOR agrees that in the event of any labor dispute at the PROJECT, regardless of whether that dispute relates to CONTRACTOR, SUBCONTRACTOR, OWNER, ENGINEER, other subcontractors or any other party, SUBCONTRACTOR shall continue to perform the WORK without interruption or delay. SUBCONTRACTOR acknowledges that CONTRACTOR may employ workers, other subcontractors or suppliers not covered by a labor agreement.

C1.15 PERMANENT MATERIALS / EQUIPMENT SUBCONTRACTOR shall furnish, unload, handle, store and incorporate permanent materials and equipment in sufficient quantities to facilitate the proper and expeditious execution of the WORK. Permanent materials and equipment shall be new and shall comply with all requirements of the MAIN CONTRACT. SUBCONTRACTOR shall provide CONTRACTOR forty eight (48) hours' notice prior to any deliveries to the PROJECT and shall obtain approval from CONTRACTOR of any storage or staging areas. CONTRACTOR reserves the right to assist the SUBCONTRACTOR in expediting its permanent materials and equipment without assuming the responsibility for said deliveries. Upon request, SUBCONTRACTOR shall furnish to CONTRACTOR copies of purchase orders complete with scheduled shipping and receiving dates.

C1.16 STRUCTURE LOADING. SUBCONTRACTOR shall not overload or cause to be overloaded any structures or conditions at or adjacent to the PROJECT. SUBCONTRACTOR shall determine and notify CONTRACTOR, in writing, of any loading limitations imposed on WORK structures or conditions.

C1.17 LOWER TIER SUBCONTRACTORS. Within seven (7) calendar days of issuance of this AGREEMENT, SUBCONTRACTOR shall submit a list of all lower tier suppliers and subcontractors to be used in the performance of the WORK including company name, license number(s), contact person, address and telephone number. SUBCONTRACTOR shall be responsible to ensure that each lower tier supplier or subcontractor complies with all the terms and conditions of this AGREEMENT and the MAIN CONTRACT.

C1.18 PROJECT SCHEDULE Time is of the essence with respect to the performance of the AGREEMENT. SUBCONTRACTOR agrees to:

- a) keep itself informed as to the overall progress of the PROJECT;
- b) commence and prosecute the WORK in a prompt, continuous and diligent manner whenever such WORK or any part of it, becomes available;
- c) commence and prosecute the WORK at such time or times as CONTRACTOR may direct, so as to promote the general progress of the entire PROJECT;
- d) provide efforts including, but not limited to, overtime, additional shifts, weekend work, additional labor resources and/or additional equipment resources as may be required to maintain the WORK and PROJECT schedule; and
- e) not delay or otherwise interfere with or hinder the work or progress of CONTRACTOR or other parties.

Within three (3) business days of issuance thereof, SUBCONTRACTOR agrees to notify CONTRACTOR of its objection or inability to comply with any directive, notification, order, schedule or revision thereof dealing with the time or times of its WORK performance. In absence of such notice to CONTRACTOR, SUBCONTRACTOR agrees to accept for incorporation herein any and all orders, notices, directives, schedules or revisions thereof which may be issued from time to time by CONTRACTOR.

C1.19 FAILURE TO TIMELY PERFORM. If substantial completion, final completion or any other milestone of the WORK or MAIN CONTRACT has not been achieved due to the acts or omissions of SUBCONTRACTOR or any of its lower tier subcontractors or suppliers, SUBCONTRACTOR shall reimburse the CONTRACTOR, as direct damages, for the liquidated damages assessed by the OWNER against the CONTRACTOR that are attributable to such delays. Further, whether or not such liquidated damages are so assessed, SUBCONTRACTOR agrees to pay CONTRACTOR all direct and indirect expenses attributable to managing and supervising the PROJECT during any period of time resulting from such SUBCONTRACTOR caused delay, including, but not limited to, craft and supervisory labor, labor benefits and burdens, construction equipment and tools, consumables, PROJECT overhead and facilities, legal and accounting fees, CONTRACTOR's general and administrative expenses, other damages and fifteen percent (15%) markup on all such expenses. SUBCONTRACTOR agrees that neither the payment of, nor any liability incurred for the payment of, such damages and expenses shall release SUBCONTRACTOR from its obligation to fully perform under this AGREEMENT. All such costs shall be deducted from any payments due or to become due to the SUBCONTRACTOR under this or any other AGREEMENT with CONTRACTOR. If the unpaid balance due to SUBCONTRACTOR exceeds the delay costs, the difference shall be paid to SUBCONTRACTOR.

C1.20 COORDINATION WITH OTHERS. CONTRACTOR and SUBCONTRACTOR recognize that other parties will be performing work at the PROJECT. CONTRACTOR shall determine the time and order that various portions of the PROJECT shall be completed and the relative priority of the work of SUBCONTRACTOR and other subcontractors or parties. SUBCONTRACTOR shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the PROJECT. SUBCONTRACTOR shall coordinate its WORK, submittals, fabrication and deliveries with work of the CONTRACTOR, OWNER and all other subcontractors and suppliers, in a manner that shall maintain compliance with the MAIN CONTRACT and facilitate the efficient, safe and timely completion of the PROJECT.

SUBCONTRACTOR agrees that if the proper performance of any item of its WORK depends upon the proper performance of any item of work by the CONTRACTOR or another subcontractor which precedes SUBCONTRACTOR's WORK, to admit that by commencing the item of WORK, that the preceding work has been done in a proper manner and is accepted by the SUBCONTRACTOR. The CONTRACTOR shall be notified in writing of any exceptions prior to the SUBCONTRACTOR beginning WORK in such area.

No compensation shall be allowed for SUBCONTRACTOR's failure to coordinate the WORK and any removal, modification and/or reinstallation of WORK shall be at the SUBCONTRACTOR's expense.

C1.21 SUBMITTALS. SUBCONTRACTOR shall prepare and submit to CONTRACTOR all submittals required by the MAIN CONTRACT and necessary for the proper execution of the WORK. Submittals shall include, but not be limited to, shop drawings, installation instructions, layout drawings, product data, requests for information, certificates, warranties, samples, field logs, record documents and manuals. When required by the MAIN CONTRACT or any Federal, State and Local rules, regulations and

orders, submittals shall be prepared and approved by a professional engineer legally registered in the State of the PROJECT. CONTRACTOR and OWNER shall be entitled to rely upon the adequacy, relevant calculations, performance requirements, completeness and accuracy of SUBCONTRACTOR submittals. No review or approval or failure to review and approve SUBCONTRACTOR submittals by CONTRACTOR, ENGINEER or OWNER shall release or relieve SUBCONTRACTOR for compliance with the MAIN CONTRACT or this AGREEMENT. SUBCONTRACTOR shall coordinate its submittal activities to comply with the PROJECT schedule.

C1.22 PROJECT RECORD DOCUMENTS. SUBCONTRACTOR shall maintain at the PROJECT one (1) copy of all PROJECT record documents, including but not limited to, drawings, specifications, addenda, submittals, shop drawings, requests for information and change orders. The PROJECT record documents shall be labeled "Project Record Documents" and shall be maintained in good order at the PROJECT for the sole purpose of identifying buried or concealed work and recording changes, dimensions, sizes and details of the WORK. The PROJECT record documents shall be submitted and approved as a condition of final payment.

C1.23 WARRANTY. SUBCONTRACTOR warrants its WORK as required by the MAIN CONTRACT. SUBCONTRACTOR agrees to satisfy warranty obligations which appear within the warranty period established in the MAIN CONTRACT without cost to the CONTRACTOR or OWNER. Unless otherwise specified in the MAIN CONTRACT, SUBCONTRACTOR shall warrant its WORK for a period of one (1) year from the date of final acceptance of PROJECT. SUBCONTRACTOR shall furnish any special warranties required by the MAIN CONTRACT for the SUBCONTRACTOR's WORK as a condition of final payment.

C1.24 LEGAL COMPLIANCE. SUBCONTRACTOR shall at its own cost and expense:

- a) comply with and be bound by all Federal, State and Local laws, rules, regulations, orders, decrees, citations, standards and codes applicable to SUBCONTRACTOR and its WORK;
- b) obtain all required permits and licenses, except for those indicated to be provided by others in **Appendix A**; and
- c) pay all sales taxes, use taxes, Federal taxes, State taxes, payroll taxes and insurances, required to be paid under existing or subsequently enacted laws, rules or regulations, except for those indicated to be paid by others in **Appendix A**.

SUBCONTRACTOR shall furnish, upon CONTRACTOR's request, evidence that the foregoing obligations have been fulfilled.

If SUBCONTRACTOR fails to comply with such requirements, CONTRACTOR may take immediate action to maintain required compliance and any costs incurred by CONTRACTOR shall be deducted from payments due to SUBCONTRACTOR. SUBCONTRACTOR shall indemnify, hold harmless and defend CONTRACTOR from any costs, citations, fines or penalties attributable to SUBCONTRACTOR and assessed to CONTRACTOR by any authority having jurisdiction over the requirements of this Section. In the event such citations, fines or penalties are issued to CONTRACTOR, CONTRACTOR may issue payment and deduct the amount paid from payments due to SUBCONTRACTOR.

C1.25 INDEPENDENT CONTRACTOR. SUBCONTRACTOR shall act as an independent contractor and not as the agent of CONTRACTOR or OWNER in performing this AGREEMENT. SUBCONTRACTOR warrants that it is fully experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the WORK and shall perform the WORK hereunder in accordance with SUBCONTRACTOR's own means and methods. SUBCONTRACTOR shall maintain complete control over its employees, agents, subcontractors, suppliers and consultants. Nothing contained in this AGREEMENT or any lower tier agreement awarded by SUBCONTRACTOR shall create any contractual relationship between any such subcontractors,

suppliers or consultants and either the CONTRACTOR or OWNER. There are no third party beneficiaries to this AGREEMENT.

C2 – PAYMENT

C2.01 PROGRESS PAYMENTS. SUBCONTRACTOR shall submit progress applications for payment to CONTRACTOR for approval seven (7) calendar days prior to the date CONTRACTOR's progress application for payment is required to be submitted to OWNER. SUBCONTRACTOR's progress application for payment and all supporting documentation shall be itemized and submitted on the forms provided in **Appendix E**. Each SUBCONTRACTOR progress application for payment shall be accompanied by conditional progress payment lien waivers from the SUBCONTRACTOR and all its lower tier subcontractors and suppliers. Provided SUBCONTRACTOR is not in default hereunder, CONTRACTOR shall pay the amounts approved by CONTRACTOR and OWNER to SUBCONTRACTOR within seven (7) calendar days after receipt of payment by CONTRACTOR from OWNER.

C2.02 FAILURE TO PROVIDE PROGRESS APPLICATION FOR PAYMENT. In the event SUBCONTRACTOR does not submit to CONTRACTOR a progress application for payment seven (7) calendar days prior to the date the CONTRACTOR's progress application for payment is required to be submitted to OWNER, CONTRACTOR may, but shall not be required to, include an amount it deems proper for the WORK for the current progress payment period and SUBCONTRACTOR agrees to accept such approved amount.

C2.03 FINAL PAYMENT. Upon final acceptance of the WORK by CONTRACTOR and OWNER, SUBCONTRACTOR shall submit a final application for payment to CONTRACTOR for approval seven (7) calendar days prior to the date the CONTRACTOR's final application for payment is due to OWNER. SUBCONTRACTOR's final application for payment and all supporting documentation shall be itemized and submitted on the forms provided in **Appendix E**. SUBCONTRACTOR's final application for payment shall be accompanied by conditional final payment lien waivers from the SUBCONTRACTOR and unconditional final lien waivers from all its lower tier subcontractors and suppliers. Additionally, SUBCONTRACTOR shall satisfy CONTRACTOR's and OWNER's PROJECT closeout requirements; including, but not limited to, approved record documents and consent of SUBCONTRACTOR's Surety, if any. The CONTRACTOR shall make final payment to the SUBCONTRACTOR within seven (7) calendar days after receipt of final payment by CONTRACTOR from OWNER.

C2.04 RETENTION. CONTRACTOR shall withhold from each SUBCONTRACTOR payment the same percentage of retention as OWNER holds from each CONTRACTOR payment in accordance with the MAIN CONTRACT.

C2.05 PAYMENT FOR STORED PERMANENT MATERIALS / EQUIPMENT. Payment for permanent materials or equipment not incorporated into the WORK, but delivered and suitably stored at the PROJECT, shall be agreed upon in writing in advance and shall be in accordance with the MAIN CONTRACT. Title to stored permanent materials or equipment shall transfer to CONTRACTOR and/or the OWNER immediately upon the receipt of payment for stored materials; however, SUBCONTRACTOR shall bear the entire risk for loss or damage of stored permanent material or equipment until final acceptance of the PROJECT by the OWNER.

C2.06 TAX EXEMPTIONS. SUBCONTRACTOR agrees to comply with CONTRACTOR's written directions with respect to the purchase of items that may qualify for sales, use or other tax exemptions or credits, including providing documentation acceptable to CONTRACTOR to substantiate such exemptions or credits.

C2.07 DISCOUNT TERMS. If applicable, CONTRACTOR may take the discount provided in this AGREEMENT. Discount terms shall be

based upon the date the CONTRACTOR is required to submit each application for payment to the OWNER or the actual date the SUBCONTRACTOR's application for payment is received by CONTRACTOR, whichever is later. Discounts shall be based on the gross progress or final application for payment amount and no discount shall be taken from retention payments.

C2.08 PAYMENT IS NOT ACCEPTANCE. Approval and payment of SUBCONTRACTOR's applications for payment does not constitute or imply acceptance by CONTRACTOR, ENGINEER or OWNER for any portion of the WORK.

C2.09 PAYMENT CONTINGENT UPON AGREEMENT COMPLIANCE. CONTRACTOR may withhold progress payments if there is reasonable doubt that the WORK may not be completed in accordance with this AGREEMENT or the MAIN CONTRACT. CONTRACTOR shall convey such concerns in writing to SUBCONTRACTOR prior to withholding progress payments.

C2.10 PAYMENT OBLIGATIONS. SUBCONTRACTOR agrees to pay for all supervision, labor, materials, equipment, services, consumables and incidentals used in or in connection with the performance of this AGREEMENT and shall save and protect the WORK, CONTRACTOR and OWNER from all claims and liens. SUBCONTRACTOR agrees to pay its lower tier subcontractors and suppliers within seven (7) calendar days after receipt of progress payment from CONTRACTOR and to notify CONTRACTOR in writing within seven (7) calendar days of any disputed amounts withheld from lower tier subcontractors or suppliers for which the SUBCONTRACTOR was paid.

Any retention reduction by CONTRACTOR to SUBCONTRACTOR shall result in a corresponding retention reduction to SUBCONTRACTOR's lower tier subcontractors or suppliers, which shall be paid within seven (7) calendar days of the payment of the retention reduction to SUBCONTRACTOR. No contract between SUBCONTRACTOR and its lower tier subcontractors or suppliers may materially alter the rights of any lower tier subcontractors or suppliers to receive prompt payment and retention reduction as provided herein. SUBCONTRACTOR shall furnish satisfactory written evidence to the CONTRACTOR, when required, that it has complied with the requirements of this Section. In the event SUBCONTRACTOR fails to make payments in accordance with this Section, CONTRACTOR may withhold future payments, including retention, until proper payment has been made to lower tier subcontractors or suppliers, or deem the SUBCONTRACTOR in default of this AGREEMENT as outlined in Section C6.01.

C2.11 SATISFACTION OF LIENS AND PAYMENT CLAIMS. If any liens or claims are made by third parties against the WORK, PROJECT, OWNER, ENGINEER, CONTRACTOR or CONTRACTOR's surety as a result of SUBCONTRACTOR's performance or nonperformance of this AGREEMENT, SUBCONTRACTOR shall, within forty eight (48) hours after notice from CONTRACTOR:

- a) provide CONTRACTOR with release of such liens or claims from said claimant; or
- b) provide CONTRACTOR an executed copy of a bond satisfactory to CONTRACTOR for such liens or claims filed; or
- c) provide CONTRACTOR with written notice that the amount and/or entitlement of the claimant is in dispute and describe the nature of the dispute.

It is hereby agreed that if SUBCONTRACTOR either fails or refuses to provide the documents within the prescribed forty eight (48) hours:

- a) CONTRACTOR may retain sufficient monies from payments otherwise due to SUBCONTRACTOR until all claims, encumbrances and/or liens are satisfied; and/or
- b) SUBCONTRACTOR may be deemed in default of this AGREEMENT as outlined in Section C6.01.

C2.12 JOINT CHECKS. CONTRACTOR may make payments in the form of two party checks to SUBCONTRACTOR and its lower tier

subcontractors and/or suppliers whenever CONTRACTOR deems it necessary. SUBCONTRACTOR shall execute, and cause its lower tier subcontractors and suppliers to execute, CONTRACTOR's standard Joint Check Agreement.

C2.13 CONDITION PRECEDENT. SUBCONTRACTOR agrees, as a condition precedent to its right to receive any payment, that OWNER shall have paid the payment to CONTRACTOR and that payment of progress payments and final payment shall not become due and owing to the SUBCONTRACTOR until the OWNER has delivered such payment to CONTRACTOR. SUBCONTRACTOR recognizes the sole source of funding for this AGREEMENT shall be payments made by OWNER to CONTRACTOR.

C2.14 ASSIGNMENT OF FUNDS. SUBCONTRACTOR shall not assign or attempt to assign in any manner, payments accrued or to accrue under this AGREEMENT, without written consent of CONTRACTOR. No such assignment shall be binding on CONTRACTOR until accepted in writing by CONTRACTOR. In case SUBCONTRACTOR assigns, with permission, all or part of any payments due or to become due under this AGREEMENT, the instrument of assignment shall contain a clause stating: 'It is agreed that the right of the assignee, if any, to any monies due or to become due to SUBCONTRACTOR shall be subject to prior claims of other parties for services rendered or materials supplied in the performance of this AGREEMENT.'

C2.15 OFFSET. CONTRACTOR may apply any amounts due to SUBCONTRACTOR to offset any amounts due from SUBCONTRACTOR related to this or any other agreement between CONTRACTOR and SUBCONTRACTOR.

C3 – CHANGES / DIRECTIVES

C3.01 CHANGES. CONTRACTOR may from time to time, without invalidating this AGREEMENT and without notice to SUBCONTRACTOR's surety, issue written direction to change, add to or deduct from the WORK. SUBCONTRACTOR shall immediately proceed with such direction so as not to delay the progress of the WORK or PROJECT. If said direction causes an increase or decrease in the price or schedule of the WORK, SUBCONTRACTOR shall, within three (3) business days, submit a change proposal for approval by CONTRACTOR and, if necessary, OWNER. All SUBCONTRACTOR change proposals shall be in a format providing sufficient detail acceptable to CONTRACTOR and, if necessary, OWNER and/or ENGINEER, to allow a thorough evaluation of requested price and schedule modifications. Failure to timely submit a change proposal or to keep segregated time and cost records, shall waive any claim by SUBCONTRACTOR to a modification of this AGREEMENT. SUBCONTRACTOR shall take all reasonable actions to avoid or limit any losses, reduce the length and effect of any delay and to minimize the costs incurred or to be incurred because of any change to WORK. Any modifications affecting the scope, price or schedule of the WORK shall be executed under the conditions of the AGREEMENT and detailed in a written subcontract amendment on the form provided by CONTRACTOR.

C3.02 DIRECTIVES. It is agreed that the SUBCONTRACTOR shall be bound to the same extent that the CONTRACTOR is bound by the directives, rulings and decisions of OWNER and/or ENGINEER as may pertain to the WORK.

C4 – INDEMNIFICATION

C4.01 INDEMNIFICATION. SUBCONTRACTOR shall assume entire responsibility and liability for all damages or injury to all persons, whether employees or otherwise, and to all property, including loss of use thereof, to the extent it arises out of or in any manner related to any acts, omissions or negligence of SUBCONTRACTOR, SUBCONTRACTOR's lower tier subcontractors, anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

To the fullest extent permitted by law, SUBCONTRACTOR shall defend, indemnify and hold harmless CONTRACTOR, ENGINEER, OWNER and all of their affiliated companies, partners, joint ventures, officers, directors, members, designees, shareholders, employees, successors and assigns, from and against all claims, damages, losses, penalties, intellectual property law violations and expenses including but not limited to, attorney's fees and court costs arising or allegedly arising out of, the performance or failure in performance of SUBCONTRACTOR, the WORK and all the obligations provided in this AGREEMENT.

This indemnification is not intended to require indemnification of CONTRACTOR for losses, damages or liabilities of any kind caused by the sole negligence or willful misconduct of CONTRACTOR.

C4.02 NO LIMIT ON INDEMNIFICATION. In all claims against CONTRACTOR or OWNER by anyone directly or indirectly employed by SUBCONTRACTOR or anyone for whose acts SUBCONTRACTOR may be liable, the indemnification obligation shall not be limited in any way on the amount or type of damages, compensation or benefits payable by or for SUBCONTRACTOR and SUBCONTRACTOR expressly waives any immunity or limitation under workers' compensation acts, disability benefit acts or other employee benefit acts.

C4.03 RISK OF LOSS. SUBCONTRACTOR shall be responsible for its own WORK, property, equipment and materials, whether at or away from the PROJECT, and shall bear the entire risk of any loss or damage until final acceptance by CONTRACTOR, ENGINEER and/or OWNER.

C4.04 USE OF CONTRACTOR MATERIALS, TOOLS AND EQUIPMENT If CONTRACTOR agrees to allow SUBCONTRACTOR to use CONTRACTOR's materials, tools or equipment, SUBCONTRACTOR shall do so at its sole risk and shall indemnify and hold CONTRACTOR harmless from any claims against relating to such use.

C5 – INSURANCE AND BONDS

C5.01 GENERAL REQUIREMENTS. Prior to commencing the WORK and as a condition of payment, SUBCONTRACTOR shall purchase and maintain at its own expense insurance coverage in compliance with this AGREEMENT. Insurance coverage shall comply with all the requirements set forth in Section C9 – INSURANCE POLICY LIMITS AND REQUIREMENTS TABLE or the MAIN CONTRACT, whichever is greater. The insurance carriers, forms, certificates and requirements of the policies shall be satisfactory to CONTRACTOR.

C5.02 EVIDENCE OF INSURANCE. SUBCONTRACTOR shall deliver to CONTRACTOR, concurrent with the execution of the AGREEMENT and upon renewal of any insurance policy, certificates of insurance as evidence that the required insurance coverage and limits are in full force and effect. Certificates of insurance must reference the PROJECT and AGREEMENT and shall include attachments of applicable endorsement forms.

C5.03 CLAIMS MADE COVERAGE. Except for professional liability policies, claims made policies are not acceptable.

C5.04 CANCELLATION. Each insurance policy required by the AGREEMENT shall contain a provision that the insurance company or its designee shall give CONTRACTOR written notice:

- a) 30 days before coverage is non-renewed by the insurance company; and
- b) Within ten (10) business days after cancellation of coverage by the insurance company.

Prior to commencing the WORK and upon renewal or replacement of the insurance policies, the SUBCONTRACTOR shall furnish the CONTRACTOR with ACORD Certificates of Insurance until two (2) years after substantial completion or longer if required by the AGREEMENT. In addition, if any

insurance policy required by the AGREEMENT is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits or is to be cancelled, the SUBCONTRACTOR shall give CONTRACTOR prompt written notice upon actual or constructive knowledge of such condition.

C5.05 LICENSING AND RATING. All insurance carriers shall be authorized and licensed to transact business in the State in which the PROJECT is located and, with the exception of workers' compensation insurance, shall have a current A.M. Best rating of A-VII or better.

C5.06 DEDUCTIBLE AND SELF INSURED RETENTIONS. The deductible or self insured retention under any insurance policy shall be borne by SUBCONTRACTOR. No insurance policy provided by SUBCONTRACTOR shall contain a deductible or self insured retention in excess of ten thousand dollars (\$10,000) and all such deductibles and self insured retentions shall be declared on all certificates of insurance.

C5.07 NO LIMITATION OF LIABILITY. The insurance requirements herein shall not be deemed or construed as a limitation of SUBCONTRACTOR's liability for any losses hereunder that are insured, under insured or not insured.

C5.08 UMBRELLA AND EXCESS COVERAGE. The minimum insurance coverage required herein may be achieved by the use of an umbrella or excess liability policy in combination with primary employer's liability, general liability and/or automobile liability policies.

C5.09 COPIES OF POLICIES. SUBCONTRACTOR shall provide certified copies of all insurance policies including all endorsements required herein within seven (7) business days of CONTRACTOR's written request.

C5.10 FAILURE TO MAINTAIN. If SUBCONTRACTOR fails to maintain the minimum insurance coverage as set forth herein, CONTRACTOR shall have the right, but not the obligation, to either purchase the insurance coverage at SUBCONTRACTOR's expense or terminate this AGREEMENT for default.

C5.11 LOWER TIER SUBCONTRACTOR INSURANCE. SUBCONTRACTOR shall cause all of its lower tier subcontractors to purchase and maintain insurance coverage equivalent to that required of SUBCONTRACTOR in this AGREEMENT. SUBCONTRACTOR shall furnish certificates of insurance, including additional insured endorsement forms, evidencing insurance coverage applicable to each lower tier subcontractor.

C5.12 BONDING REQUIREMENT. Performance Bond and Payment Bond may be required by CONTRACTOR as indicated by selection of the **Performance / Payment Bonds Required** box on the first page of this AGREEMENT. If the Performance / Payment Bonds Required box is checked, SUBCONTRACTOR shall furnish Performance Bond and Payment Bond on forms furnished by CONTRACTOR, each for the full amount of this AGREEMENT, within ten (10) days of execution of this AGREEMENT. The Performance Bond and Payment Bond shall be provided by a surety acceptable to the CONTRACTOR and must be signed by an authorized corporate officer of SUBCONTRACTOR. The cost of the Performance Bond and Payment Bond shall be included in the AGREEMENT PRICE in **Appendix A-2**.

C5.13 FAILURE TO PROVIDE BONDS. In the event SUBCONTRACTOR fails to provide the required Performance Bond and Payment Bond, CONTRACTOR may terminate this AGREEMENT in accordance with Section C6 of this AGREEMENT.

C6 – DEFAULT AND TERMINATION

C6.01 DEFAULT. SUBCONTRACTOR may be deemed in default of this AGREEMENT, if SUBCONTRACTOR refuses, fails or becomes unable to:

- a) supply sufficient properly skilled workers or construction equipment; or

- b) provide specified or sufficient materials or permanent equipment; or
- c) maintain the WORK schedule; or
- d) maintain or comply with the quality requirements of the MAIN CONTRACT; or
- e) correct deficient WORK; or
- f) make prompt payment to its workers, lower tier subcontractors or suppliers; or
- g) provide required insurance or bonds; or
- h) comply with Federal, State and Local laws, rules, regulations or orders; or
- i) comply with a material provision of this AGREEMENT.

C6.02 NOTICE TO CURE DEFAULT If SUBCONTRACTOR is deemed to be in default, CONTRACTOR shall issue SUBCONTRACTOR a written notice of default and allow SUBCONTRACTOR the opportunity to promptly commence and continue satisfactory correction of such default.

If SUBCONTRACTOR fails within three (3) business days after written notification from CONTRACTOR to promptly commence and continue satisfactory correction of such default, then CONTRACTOR without prejudice to any other rights or remedies shall have the right to any or all of the following remedies, without further notice:

- a) supply workers, materials, consumables, equipment, incidentals and other facilities as the CONTRACTOR deems necessary for the satisfactory correction of such default and charge the default costs outlined in Section C6.04 to the SUBCONTRACTOR;
- b) contract with one or more additional subcontractors to perform such part of the SUBCONTRACTOR WORK as the CONTRACTOR shall determine will provide the most expeditious correction of the default and charge the default costs outlined in Section C6.04 to the SUBCONTRACTOR;
- c) withhold any payments due or to become due to SUBCONTRACTOR.

C6.03 TERMINATION FOR DEFAULT If SUBCONTRACTOR fails to commence and satisfactorily continue correction of a default within three (3) business days after written notification is issued, CONTRACTOR may, in lieu of or in addition to the remedies set forth in Section C6.02, issue a written notice of termination to the SUBCONTRACTOR and the SUBCONTRACTOR's surety, if any.

Upon termination, the CONTRACTOR may take any actions deemed necessary to maintain the orderly progress of the WORK and PROJECT and charge the default costs outlined in Section C6.04 to the SUBCONTRACTOR, including:

- a) use of any materials or consumables furnished, belonging to or ordered by SUBCONTRACTOR, whether at the PROJECT or elsewhere;
- b) use, without expense to CONTRACTOR, of any facilities, equipment or tools belonging to the SUBCONTRACTOR and located at the PROJECT with such facilities, equipment and tools being returned to SUBCONTRACTOR upon completion and acceptance by OWNER of WORK, provided however that CONTRACTOR shall have lien rights against such facilities, equipment and tools if default costs exceed payments due to SUBCONTRACTOR;
- c) furnishing materials and permanent equipment required to complete the WORK;
- d) employment of replacement workers or subcontractors to complete the WORK.

SUBCONTRACTOR shall not be entitled to any further payment until the WORK has been completed and accepted by the OWNER and payment therefore has been received by the CONTRACTOR and subject to Section C6.04.

All warranties shall survive any default hereunder and SUBCONTRACTOR shall remain responsible to CONTRACTOR for such warranty obligations.

C6.04 DEFAULT COSTS. Default costs include all direct and indirect expenses associated with curing the default or performing the WORK, including craft and supervisory labor, labor benefits and burdens, construction equipment and tools, permanent materials and equipment, consumables, PROJECT overhead and facilities, subcontracts, legal and accounting fees, CONTRACTOR's general and administrative expenses, damages and fifteen percent (15%) markup on all such expenses.

Default costs shall be deducted from any payments due or to become due to the SUBCONTRACTOR under this or any other subcontract agreement with CONTRACTOR. If the unpaid balance of the AGREEMENT AMOUNT exceeds the default costs, the difference shall be paid to SUBCONTRACTOR. If the default costs exceed the unpaid balance of the AGREEMENT AMOUNT, SUBCONTRACTOR agrees to pay the difference to CONTRACTOR within seven (7) calendar days of written notice by CONTRACTOR.

C6.05 SUBCONTRACTOR BANKRUPTCY. Upon the appointment of a receiver for SUBCONTRACTOR or upon SUBCONTRACTOR making an assignment for the benefit of creditors or if SUBCONTRACTOR seeks protection under the Bankruptcy Code or commits any other act of insolvency, CONTRACTOR may, absent any applicable legal limitation, terminate this AGREEMENT upon three (3) business days written notice to SUBCONTRACTOR and SUBCONTRACTOR's surety, if any, unless SUBCONTRACTOR, the surety or the trustee:

- a) promptly cures all breaches;
- b) provides adequate assurance of future performance;
- c) compensates CONTRACTOR for any losses resulting from such breaches; and
- d) assumes the obligations of SUBCONTRACTOR within the statutory time limits.

If SUBCONTRACTOR is not performing in accordance with this AGREEMENT at the time of entering an order for relief or at any subsequent time, CONTRACTOR, while awaiting the decision of SUBCONTRACTOR, SUBCONTRACTOR's surety or SUBCONTRACTOR's trustee to reject or to accept this AGREEMENT and provide adequate assurance of ability to perform hereunder, may avail itself of the remedies outlined in Section C6.02.

C6.06 CONTRACTOR'S TERMINATION FOR CONVENIENCE. At CONTRACTOR's convenience, CONTRACTOR may, at any time or for any reason, terminate this AGREEMENT, in whole or in part. Upon receipt of written notice of termination for convenience, SUBCONTRACTOR shall, unless directed otherwise, immediately discontinue the WORK and placing of orders and subcontracts concerning the performance of this AGREEMENT. If requested, SUBCONTRACTOR shall also make every reasonable effort to procure cancellation of all existing orders and subcontracts with terms satisfactory to CONTRACTOR, or at the option of CONTRACTOR, provide CONTRACTOR the right to assume those responsibilities directly. SUBCONTRACTOR shall thereafter only perform such WORK as may be necessary to preserve and protect the WORK and protect material and equipment stored at or away from the PROJECT or in transit thereto. Upon such termination, SUBCONTRACTOR shall be entitled to payment, deducting previous payments made, in accordance with the provisions of this AGREEMENT for the reasonable cost of the WORK completed in conformity with this AGREEMENT, including reasonable overhead and profit on the actual WORK performed. In no case shall payment exceed the AGREEMENT AMOUNT. SUBCONTRACTOR shall not be entitled to any claim or lien against CONTRACTOR or OWNER for any additional compensation, lost profits or damages in case of such termination.

C6.07 OWNER'S SUSPENSION OR TERMINATION FOR CONVENIENCE. If OWNER has the right to suspend or terminate the MAIN CONTRACT, in whole or in part, for convenience,

whether or not the CONTRACTOR is in default, then CONTRACTOR has the right to suspend or terminate the AGREEMENT upon the same terms and conditions. SUBCONTRACTOR's rights, obligations and remedies upon suspension or termination for convenience shall be limited to the corresponding rights, obligations and remedies available to CONTRACTOR under the MAIN CONTRACT. In the event of suspension or termination for convenience by OWNER of the MAIN CONTRACT, or portion thereof relating to the WORK, CONTRACTOR shall suspend or terminate the AGREEMENT for convenience and SUBCONTRACTOR shall not be entitled to any compensation for such suspension or termination except to the extent and in the amount that CONTRACTOR actually receives payment from OWNER with respect to the suspension or termination of the WORK.

C6.08 TERMINATION RECORDS. Upon written notice of termination of this AGREEMENT, all records, data, plans, specifications, reports, estimates, summaries, lower tier subcontracts, materials, purchase orders, completed WORK, WORK in progress and such other information as may have been accumulated by SUBCONTRACTOR in performing this AGREEMENT shall become the property of and be delivered to CONTRACTOR within seven (7) calendar days.

C7 – DISPUTES

C7.01 SPIRIT OF COOPERATION. SUBCONTRACTOR and CONTRACTOR are committed to cooperating with each other and agree to communicate regularly to avoid or minimize claims, disputes, disagreements or controversies. SUBCONTRACTOR and CONTRACTOR each commit to resolving any such claims, disputes, disagreements or controversies in an amicable, professional and expeditious manner to avoid unnecessary losses, delays or disruptions to the PROJECT, WORK, SUBCONTRACTOR, CONTRACTOR, OWNER or other parties. SUBCONTRACTOR and CONTRACTOR shall diligently continue to perform all AGREEMENT obligations pending the final resolution of any claim, dispute, disagreement or controversy.

C7.02 DISPUTE RESOLUTION PROCESS – SUBCONTRACTOR/ CONTRACTOR. Claims, disputes, disagreements or controversies between the SUBCONTRACTOR and CONTRACTOR shall first be attempted to be resolved at the PROJECT level through discussions between SUBCONTRACTOR and CONTRACTOR. If a resolution cannot be reached and upon the written request of either party, SUBCONTRACTOR and CONTRACTOR shall each appoint a senior representative whom shall meet as soon as conveniently possible, but no later than seven (7) calendar days after the request is made. Prior to any meeting between the senior representatives, the parties shall exchange relevant information that will assist the parties in resolving its claim, dispute, disagreement or controversy. If the disputed claim is resolved through this dispute resolution process, the parties agree to implement the resolution within three (3) calendar days from the resolution date. If, after meeting, the senior representatives determine that the claim, dispute, disagreement or controversy cannot be resolved on satisfactory terms, the parties agree that all claims, disputes, disagreements, controversies and other matters in question arising out of or relating to this AGREEMENT between the SUBCONTRACTOR and CONTRACTOR, shall be decided by arbitration in accordance with the prevailing Construction Industry Arbitration Rules of the American Arbitration Association, unless the parties mutually agree otherwise. The award rendered by the arbitrators shall be final and judgment may be entered in accordance with applicable law in any court having jurisdiction thereof. SUBCONTRACTOR agrees to pursue claims or disputes for which OWNER may be responsible in accordance with Section C7.03.

C7.03 DISPUTE RESOLUTION PROCESS – SUBCONTRACTOR/ OWNER. SUBCONTRACTOR agrees to pass claims or disputes for which OWNER may be responsible through the CONTRACTOR to the OWNER pursuant to the dispute resolution procedures in the

MAIN CONTRACT, which are specifically incorporated herein and made a part of this AGREEMENT. All SUBCONTRACTOR claims shall be submitted at such times as will enable CONTRACTOR to timely present the claim to OWNER. CONTRACTOR shall not be liable to SUBCONTRACTOR for any claim not timely or properly presented. Nothing herein shall require CONTRACTOR to certify a claim when it cannot do so in good faith. In the event of a claim, or as otherwise deemed necessary by CONTRACTOR or OWNER, SUBCONTRACTOR's accounting and other applicable records shall be available to CONTRACTOR or OWNER for review.

SUBCONTRACTOR shall be responsible for all claim preparation costs, including reasonable attorney fees, incurred by CONTRACTOR in pursuit of SUBCONTRACTOR claims. CONTRACTOR shall not be liable to SUBCONTRACTOR unless and until, and only to the extent, the claim is allowed and paid for by the OWNER, approval and payment of such being a condition precedent to payment by CONTRACTOR. It is expressly understood and agreed in connection with the determination of SUBCONTRACTOR's interest in such claims or disputes that CONTRACTOR shall never be liable to SUBCONTRACTOR to any greater extent than OWNER is liable to CONTRACTOR.

CONTRACTOR retains the sole right to settle all claims against OWNER so long as it does so in good faith. If a settlement or decision is achieved that does not separately identify SUBCONTRACTOR's recovery, CONTRACTOR shall make a good faith apportionment of the proceeds. SUBCONTRACTOR's recovery of any claim for damages, equitable price adjustment or schedule extension shall be limited to the SUBCONTRACTOR's equitable share of the amounts recovered by CONTRACTOR from the OWNER after paying all claim expenses, including attorney fees.

C7.04 PREVAILING PARTY COSTS. In any dispute arising out of this AGREEMENT, the prevailing party shall be entitled to recover from the other party all costs and expenses necessarily incurred in connection therewith, including reasonable attorney fees.

C8 – MISCELLANEOUS PROVISIONS

C8.01 ASSIGNMENT SUBCONTRACTOR shall not, without written consent of CONTRACTOR, assign, subcontract or transfer any portion of the WORK or this AGREEMENT and if so approved SUBCONTRACTOR shall, within three (3) business days, provide a complete copy of any such agreement, including all supporting documentation. SUBCONTRACTOR shall incorporate the relevant portions of this AGREEMENT into all lower tier subcontracts, purchase orders and consulting agreements.

C8.02 EQUAL OPPORTUNITY. CONTRACTOR is an Equal Employment Opportunity employer. SUBCONTRACTOR shall comply with all Equal Employment Opportunity, Affirmative Action and related Federal, State and Local laws, rules, regulations and orders applicable to the performance of this AGREEMENT.

C8.03 AGREEMENT CLARIFICATION. Should SUBCONTRACTOR discover inconsistencies or omissions in this AGREEMENT or the MAIN CONTRACT, SUBCONTRACTOR shall notify the CONTRACTOR in writing within three (3) business days. Upon receipt of said notice, CONTRACTOR shall provide written instructions to SUBCONTRACTOR as to the measures to be taken and SUBCONTRACTOR shall comply with said instructions.

C8.04 NON DISCLOSURE SUBCONTRACTOR agrees that any data or other information created by or provided to SUBCONTRACTOR as it relates to the performance of this AGREEMENT is confidential and may constitute proprietary information, trade secrets or a service invention. SUBCONTRACTOR shall not, during the term of this AGREEMENT and thereafter, disclose to any third party any information obtained in connection with the performance of this AGREEMENT, unless the information is, at the time of disclosure, already in the public domain or SUBCONTRACTOR obtains

written consent from CONTRACTOR for such disclosure. In the event that SUBCONTRACTOR is requested or legally required to disclose any information, it is agreed that SUBCONTRACTOR shall provide CONTRACTOR with prompt written notice of such request or requirement so that an appropriate protective order or similar relief may be sought or a waiver of this provision by mutual agreement may be reached.

C8.05 REMOVAL OF SUBCONTRACTOR PERSONNEL. CONTRACTOR may request that SUBCONTRACTOR remove any employee, lower tier subcontractor or supplier, whom in the reasonable opinion of CONTRACTOR engages in misconduct, is incompetent or negligent in the performance of his or her duties, fails to conform with the AGREEMENT or engages in any conduct which compromises the safety, health or protection of property and the environment. Further, SUBCONTRACTOR shall remove and replace any employee, lower tier subcontractor or supplier as directed by OWNER.

C8.06 COMMUNICATION WITH OTHERS. SUBCONTRACTOR shall direct all communications with OWNER or ENGINEER with regard to the WORK, MAIN CONTRACT or PROJECT through CONTRACTOR.

C8.07 EMERGENCY. In the event of an emergency, CONTRACTOR may take any action reasonably designed to prevent or mitigate harm to the WORK, PROJECT, people, property and the environment.

C8.08 APPROVALS. Approval of the WORK by CONTRACTOR, ENGINEER and/or OWNER shall not be deemed acceptance of or an assumption of responsibility by CONTRACTOR, ENGINEER and/or OWNER for any error or omission in the WORK.

C8.09 GOVERNING LAW. This AGREEMENT shall be governed by the laws of the State in which the PROJECT is located.

C8.10 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this AGREEMENT shall not affect the validity or continuing force and effect of any other provision.

C8.11 NO WAIVER OF PERFORMANCE. The failure of either party to insist in any instance upon the performance of any of the terms, covenants or conditions of this AGREEMENT or to exercise any right herein, shall not be construed as a waiver of such term, covenant, condition or right with respect to further performance.

C8.12 HEADINGS. Headings are inserted as a matter of convenience and reference purposes only and are not part of this AGREEMENT.

C8.13 SURVIVAL. SUBCONTRACTOR's obligations under this AGREEMENT shall not be released and shall specifically survive the completion of all SUBCONTRACTOR obligations, final payment to SUBCONTRACTOR and termination of this AGREEMENT for any reason.

C8.14 ENTIRE AGREEMENT. This AGREEMENT constitutes the entire agreement of the parties and supersedes all prior quotes, proposals, agreements, negotiations or representations, whether verbal or written.

C9 – INSURANCE POLICY LIMITS AND REQUIREMENTS TABLE

POLICY / COVERAGE TYPE	LIMITS	COVERAGE REQUIREMENT
GENERAL LIABILITY General Aggregate Completed Operations Personal Injury Each Occurrence	\$1,000,000 \$1,000,000 \$1,000,000 \$1,000,000	<ul style="list-style-type: none"> Coverage must be at least the minimum coverage amount as indicated in the Limits column of this table or the MAIN CONTRACT, whichever is greater. The policy shall be written on unaltered Insurance Service Office (ISO) occurrence form CG 00 01, current edition, or a substitute form, providing equivalent or broader coverage. <p>The general aggregate limit shall apply separately to this PROJECT</p> <p>WAIVER OF SUBROGATION – A waiver of subrogation must be endorsed in favor of the CONTRACTOR and OWNER and their affiliates, subsidiaries, officers, directors and employees and any others required by MAIN CONTRACT. A copy of the endorsement or policy provision must be provided with the certificate of insurance.</p> <p>ADDITIONAL INSURED – CONTRACTOR and OWNER and their affiliates, subsidiaries, officers, directors and employees must be named as Additional Insured for liability arising out of the operations and completed operations of the SUBCONTRACTOR. The SUBCONTRACTOR shall provide evidence of additional insured endorsement, using ISO additional insured endorsement CG 20 10 and CG 20 37. Coverage shall be maintained for the benefit of the CONTRACTOR for two (2) or more years following final acceptance of the WORK.</p> <p>PRIMARY – The policy shall be primary insurance with respect to any other insurance or self-insurance programs afforded to or available to CONTRACTOR and OWNER.</p>
AUTOMOBILE Combined – Single Limit	\$1,000,000	<ul style="list-style-type: none"> Coverage must be at least the minimum coverage amount as indicated in the Limits column of this table or the MAIN CONTRACT, whichever is greater. Coverage must apply to all owned, hired and non-owned vehicles. The policy shall be written on Insurance Service Office (ISO) occurrence form CA 00 01, current edition, or a substitute form, providing equivalent coverage. <p>ADDITIONAL INSURED – CONTRACTOR and OWNER and their affiliates, subsidiaries, officers, directors and employees must be named as additional insured on form CA 2048. A copy of the endorsement or policy provision shall be submitted with the certificate of insurance evidencing coverage. Endorsements or policy provisions limiting coverage to SUBCONTRACTOR's sole negligence are not acceptable.</p>
WORKERS' COMPENSATION Employer's Liability Disease – Policy Disease – Employee	STATUTORY \$500,000 \$500,000 \$500,000	<ul style="list-style-type: none"> Coverage must be at least the minimum coverage amount as indicated in the Limits column of this table or the MAIN CONTRACT, whichever is greater. <p>STATE LAWS – Coverage shall comply with the laws of the State in which the PROJECT is located.</p> <p>WAIVER OF SUBROGATION – A waiver of subrogation must be endorsed in favor of the CONTRACTOR and OWNER and their affiliates, subsidiaries, officers, directors and employees for WORK performed under the AGREEMENT. A copy of the endorsement or policy provision must be provided with the certificate of insurance.</p>
UMBRELLA / EXCESS LIABILITY Aggregate Each Occurrence	As required to meet coverage limits	<ul style="list-style-type: none"> When umbrella/excess liability is being used in combination with primary coverage for employer's liability, general liability and/or automobile liability, coverage limits shall meet the minimum coverage amount for each policy as indicated in the Limits column of this table. Coverage shall follow form and be at least as broad as the primary coverage. CONTRACTOR reserves the right to raise limits as deemed necessary.