



Good Day,

The prequalification information that you will need to provide to us to get your company set up as an active bidder in our system is contained within in this packet. The Subcontractor Pre-Qualification form, sample insurance cert, and master subcontract agreement draft are included.

**Please fill out the Pre-Qualification form and send back along with a copy of your proof of insurance (sample of what it should look like is attached) and any additional company certifications that you have (such as SBE, MBE, or manufacturer installer certifications). Also, please send a copy of your Experience Modification Rating letter from your Workers' Compensation Carrier.**

Please review the attached master subcontract agreement. Make sure that you are able to meet all the requirements of the contract. **Please include a note, on your company letterhead, acknowledging your acceptance of the terms of our subcontract agreement.**

We will verify references, insurance limits, licenses, and all other applicable information. If your company meets our requirements, then you will be added to our bidders list and begin to receive ITB's from us.

Thank you for your assistance in completing and returning these items. We look forward to working with you!

Sincerely,

***The Barker Contracting Estimating Department***

p 520.512.5781 | f 520.323.3834

[estimating@barkerone.com](mailto:estimating@barkerone.com)

2127 E. Speedway Blvd., Suite 101, Tucson, AZ 85719

License KB-01 ROC 196321

[www.barkerone.com](http://www.barkerone.com) | [facebook.com/BarkerContractingInc](https://facebook.com/BarkerContractingInc)



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**BARKER**  
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*Strong Foundations*

# Prequalification Form

[www.barkerone.com](http://www.barkerone.com)

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# Subcontractor Pre-Qualification Form

## Company & Contact Information:

*Please let us know some general information about your company:*

Full Legal Company Name: \_\_\_\_\_

Are you using another company name? If yes, please list DBA name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Website: \_\_\_\_\_

Primary Business Contact: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Business Owner Name: \_\_\_\_\_ Email: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Years in Business: \_\_\_\_\_ Number of Employees: \_\_\_\_\_ Do you have a safety program? \_\_\_\_\_

*Please let us know where you work and where you are licensed:*

State: \_\_\_\_\_ Region of State (N, SW, entire?): \_\_\_\_\_ License # \_\_\_\_\_

State: \_\_\_\_\_ Region of State (N, SW, entire?): \_\_\_\_\_ License # \_\_\_\_\_

State: \_\_\_\_\_ Region of State (N, SW, entire?): \_\_\_\_\_ License # \_\_\_\_\_

Please List & Attach Certification if you are a WBE, MBE, SBE, DBE, LBE, VBE, other: \_\_\_\_\_

## Insurance & Financial Information:

*Please let us know that you are set up with appropriate tax, banking, and insurance entities:*

Federal ID Number (FEIN): \_\_\_\_\_

State Tax ID Number: \_\_\_\_\_ State: \_\_\_\_\_

State Tax ID Number: \_\_\_\_\_ State: \_\_\_\_\_

Approximate Yearly Revenue: \$ \_\_\_\_\_ Average Project Amount: \$ \_\_\_\_\_

Bank Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Website: \_\_\_\_\_

Insurance Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Website: \_\_\_\_\_

Bonding Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Website: \_\_\_\_\_

Worker's Comp Carrier: \_\_\_\_\_ Policy #: \_\_\_\_\_

Experience Modification Rating: \_\_\_\_\_

\*\*\* ATTACH EVIDENCE OF COVERAGE (PROOF OF INSURANCE) \*\*\*

LIST PLAN LIMITS AND ABILITY TO ADDITIONALLY INSURE GENERAL CONTRACTOR AND OWNERSHIP



# Subcontractor Pre-Qualification Form

## Suppliers & Subcontractors:

*Please let us know about your suppliers:*

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Are Joint Checks required?** \_\_\_\_\_ **Percentage of Materials Purchased for a Project:** % \_\_\_\_\_

Description of Materials Purchased: \_\_\_\_\_

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Are Joint Checks required?** \_\_\_\_\_ **Percentage of Materials Purchased for a Project:** % \_\_\_\_\_

Description of Materials Purchased: \_\_\_\_\_

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Are Joint Checks required?** \_\_\_\_\_ **Percentage of Materials Purchased for a Project:** % \_\_\_\_\_

Description of Materials Purchased: \_\_\_\_\_

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Are Joint Checks required?** \_\_\_\_\_ **Percentage of Materials Purchased for a Project:** % \_\_\_\_\_

Description of Materials Purchased: \_\_\_\_\_

**Do you use any subcontractors to complete projects?** **Yes:** \_\_\_\_\_ **No:** \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_ Contact : \_\_\_\_\_ Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Description of work being performed: \_\_\_\_\_

Have you worked with this subcontractor in the past? \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_ Contact : \_\_\_\_\_ Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Description of work being performed: \_\_\_\_\_

Have you worked with this subcontractor in the past? \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_ Contact : \_\_\_\_\_ Email Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Description of work being performed: \_\_\_\_\_

Have you worked with this subcontractor in the past? \_\_\_\_\_



# Subcontractor Pre-Qualification Form

## **Trade & Experience Information:**

*Please tell us more about what you do and your experience:*

Trades Performed (list specification division #'s / scopes of work): \_\_\_\_\_

\_\_\_\_\_

Any Manufacturer Certifications?: \_\_\_\_\_

List any work-related lawsuits in the last 5 years: \_\_\_\_\_

\_\_\_\_\_

*Please tell us about projects you have recently completed (list 5 minimum):*

1 Project Title: \_\_\_\_\_ Location: \_\_\_\_\_

Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_ General Contractor: \_\_\_\_\_

2 Project Title: \_\_\_\_\_ Location: \_\_\_\_\_

Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_ General Contractor: \_\_\_\_\_

3 Project Title: \_\_\_\_\_ Location: \_\_\_\_\_

Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_ General Contractor: \_\_\_\_\_

4 Project Title: \_\_\_\_\_ Location: \_\_\_\_\_

Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_ General Contractor: \_\_\_\_\_

5 Project Title: \_\_\_\_\_ Location: \_\_\_\_\_

Contract Amount: \_\_\_\_\_ Date Completed: \_\_\_\_\_ General Contractor: \_\_\_\_\_

## **References:**

*Please give us three (3) general contractor references – MUST INCLUDE CONTACT NAME & EMAIL ADDRESS:*

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_



# Subcontractor Pre-Qualification Form

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***Please give us three (3) supplier references – MUST INCLUDE CONTACT NAME & EMAIL ADDRESS:***

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Company Name: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

***\*\*Please attach additional sheets as necessary if there is additional information you would like to provide and insufficient space.***

# Sample Subcontract Agreement

# **BARKER CONTRACTING, INC.**

2127 E. Speedway, Suite 101

Tucson AZ 85719

AZ Contractors License No. ROC196321 KB-01 Dual Building Contractor

## **MASTER CONSTRUCTION SUBCONTRACT AGREEMENT**

This Master Construction Subcontract Agreement ("Master Agreement") is made by and between Barker Contracting, Inc., an Arizona corporation, Arizona Registrar of Contractors KB-01 License ROC-196321 ("Contractor"), and **Empire Roofing, Inc.** an Texas Corporation ("Subcontractor"). Contractor and Subcontractor are sometimes referred to each as a "Party", and collectively, as the "Parties". Certain of the capitalized terms as used in this Master Agreement shall have the meaning given in the sections identified in Section 27.1. Contractor and Subcontractor agree as follows:

### **1. Project Agreements; Subcontract Documents.**

1.1 This Master Agreement establishes the terms and conditions that will apply to all labor, materials, equipment and other facilities and services ("Work") to be furnished after the Effective Date by Subcontractor for Contractor in connection with individual construction projects (each, a "Project"), regardless of the nature of the form of request, directive or authorization given to Subcontractor by Contractor, and whether or not the request, directive or authorization refers to or incorporates this Master Agreement by reference. This Master Agreement does not, however, obligate Contractor to contract with Subcontractor nor does it obligate Subcontractor to contract with Contractor, with respect to any particular Project.

1.2 Except as provided in Section 1.4 below, Subcontractor's engagement in connection with a Project shall be pursuant to a written agreement (each, a "Project Agreement") before Subcontractor commences Work in connection with the Project. Each Project Agreement will be substantially in the form attached as **Schedule I**. The terms and conditions of this Master Agreement will automatically be incorporated in the Project Agreement. The documents forming each Project Agreement (collectively, the "Subcontract Documents") shall consist of: (1) the Project Agreement; (2) this Master Agreement; and (3) the following, to the extent they are identified in the Project Agreement: (a) the contract (the "Prime Contract") between Contractor and the owner ("Owner") of the Project, and the general conditions, plans, specifications, drawings and all other documents incorporated or referenced therein (except its compensation terms); (b) the design, technical and other documents identified in the Project Agreement; and (c) Change Orders, Change Directives and Field Authorizations executed by Contractor after execution of the Project Agreement. The Subcontract Documents shall comprise one entire, integrated agreement of the Parties for the Project. Unless the context otherwise requires, all capitalized terms not specifically defined in a Project Agreement shall have the meaning given to them in this Master Agreement.

1.3 The terms and conditions of the Project Agreement will be determined by the Parties, and reduced by Contractor to a final form presented to Subcontractor for execution and return to Contractor, before Work is commenced. If Subcontractor commences Work without first executing and returning to Contractor the proposed form of Project Agreement received from Contractor, the Subcontractor shall be conclusively deemed to be Subcontractor's acceptance of, and agreement to promptly execute and deliver to Contractor, the form Project Agreement as proposed by Contractor, all as a condition precedent to any payment otherwise due to Subcontractor.

1.4 Subcontractor shall not be required to undertake any Work unless it is authorized by Contractor pursuant to a Project Agreement issued by Contractor; however, if Subcontractor does undertake Work requested by Contractor at any time during the Term of this Master Agreement, without a Project Agreement having been issued, the following shall apply: Subcontractor's commencement of Work in response to Contractor's request will be deemed Subcontractor's agreement that: (1) Contractor's request will be deemed issuance of a Project Agreement with respect to the Work requested; (2) Subcontractor will furnish, and be paid for, the requested Work in accordance with, and subject to the terms of this Master Agreement; and (3) every Dispute arising from the request, including any Dispute relating to the compensation, time for performance and scope of the Work requested, will be pursuant, and subject to, Sections 19 and 25.



2. The Work; Prime Contract; Interpretation; Cooperation.

2.1 Subcontractor will furnish all labor, materials, equipment, fixtures, tools, utilities, supervision, coordination, scheduling, insurance, expertise, shop drawings, transportation, commissioning, clean-up, waste disposal, and other construction facilities and services of every kind and description, necessary for the timely and proper performance of the Work in accordance with the Subcontract Documents. The fixtures, equipment and other materials provided for incorporation into the Project, whether or not specifically manufactured or fabricated for the Project, are sometimes referred to collectively as the "Construction Materials."

2.2 To the extent that provisions of the Prime Contract apply to the Work, Subcontractor shall assume towards Contractor all the obligations and responsibilities that the Contractor, by the Prime Contract, assumes towards Owner; and Contractor shall have the benefit of, in addition to and without limitation of the rights, remedies, and redress specified in this Master Agreement and the Project Agreement against Subcontractor that Owner, under the Prime Contract, has against Contractor.

2.3 Any inconsistency among or between any provision in any of the Subcontract Documents shall be resolved by an interpretation that results in the highest and best quality of Work, and the greatest obligation on the part of Subcontractor. Contractor's decisions regarding the requirements of the Subcontract Documents, including matters relating to aesthetic effect, and of Subcontractor's performance, shall be final and binding on Subcontractor, subject to Section 19.

2.4 Contractor will have the right to require Subcontractor to furnish, prior to execution of the Project Agreement, and thereafter, within five (5) Days after written request from Contractor if Contractor reasonably deems itself insecure, current financial statements, current information and authorization for Contractor to obtain a credit report from a nationwide reporting service of Contractor's selection regarding Subcontractor, and other financial information Contractor deems necessary to verify Subcontractor has sufficient financial resources for performance of the Work. The provision of financial information as provided in this Section 2.4 is a condition precedent to performance or continuation of the Work. Contractor will keep in confidence, and will not disclose to third-parties (other than its attorneys), the financial information obtained from Subcontractor except to the extent required by an arbitrator or court, in which event Contractor will agree to a suitable protective order limiting further release of the information.

2.5 Subcontractor will (1) coordinate its Work with the work of Contractors and others; and (2) take necessary precautions to protect work of other trades from danger or interference from Subcontractor's operations.

2.6 Subcontractor will not interfere with Contractor's relationship with Owner or any other contractors or subcontractors. Subcontractor will not deal directly with either Owner or its architects, engineers, consultants or other agents without prior written authorization in each instance from Contractor.

3. Subcontract Price.

3.1 Subject to the other provisions of the Project Agreement, as Subcontractor's compensation for the Work, Contractor shall pay Subcontractor the sum (the "Subcontract Price") identified in the Project Agreement, subject to additions and deductions as provided in the Subcontract Documents.

3.2 The Subcontract Price shall be subject to adjustment only by Change Order, Change Directive and/or Field Authorization executed by an authorized agent of Contractor, as provided in Section 18, and unless Contractor has issued a Change Order, Change Directive or Field Authorization, the Subcontract Price shall be Subcontractor's entire and exclusive compensation for all direct and indirect expenses incurred in connection with the Work, whether at the home office, site, or elsewhere.

3.3 The Project Agreement shall include as an exhibit a written schedule of values acceptable to Contractor ("Schedule of Values"). The Schedule of Values will apportion the Subcontract Price among its respective elements as approved by Contractor, and shall be used by Contractor for informational purposes and as one basis for evaluating Subcontractor's requests for payment.

3.4 Any line item identified in the Schedule of Values as a contingency ("Contingency") shall be deemed to belong solely to Contractor, and may not be drawn upon or reallocated by Subcontractor without Contractor's prior written approval. Subcontractor shall include with each Progress Invoice an itemization of each draw from the Contingency (by date, payee, purpose and amount of each transfer or payment) made during the previous billing period, together with a copy of Contractor's written approval for the draw. Unless the Project Agreement incorporates a Schedule of Values that conspicuously designates a line item as a Contingency, the Subcontract Price shall be deemed not to include any Contingency amount of any kind or nature.

3.5 If the Schedule of Values qualifies the pricing shown in a line item with the term "allowance:" (each, an "Allowance Item"), the following shall apply: (1) Subcontractor shall not place any order for any Allowance Item until after Contractor has given written approval of the specific item to be selected, its cost, and the resulting adjustment to the Subcontract Price; and (2) the Subcontract Price shall be increased or decreased by Change Directive by the amount that the cost of the Allowance Item, as approved by Contractor (without markup for profit, if any) is greater or less than the amount shown in the Project Agreement's Schedule of Values for the Allowance Item. Except to the extent the Schedule of Values conspicuously designates a line item as an Allowance Item, the Subcontract Price shall be deemed not to include any Allowance Item of any kind or nature.

3.6 If the Schedule of Values identifies any item ("Unit Price Item") for which a unit price ("Unit Price") and extended price ("Unit Price Extension Amount") are provided, the following shall apply: (1) the Unit Price shall represent Subcontractor's sole and exclusive compensation for all direct and indirect costs, profit and overhead and taxes for the furnishing and installation of the Unit Price Item; (2) each Progress Payment for a Unit Price Item shall be based upon Contractor's estimate of the number of units furnished or installed during the period for which payment is requested, times the respective Unit Price shown in the Schedule of Values; (3) the total compensation for a Unit Price Item shall be an amount equal to the Unit Price times the number of units actually furnished or installed, as determined by Contractor after Subcontractor's Work has been completed; and (4) the Subcontract Price will be adjusted by Change Directive to the extent the cumulative total compensation for all Unit Price Items, as determined by Contractor, exceeds the total of the respective Unit Price Extension Amounts shown in the Schedule of Values. Except to the extent the Schedule of Values conspicuously designates a Unit Price Item (including the Unit Price and Unit Price Extension Amount), the Subcontract Price shall be deemed not to include any Unit Price Item of any kind or nature.

#### 4. Scheduling; Completion; Progress Schedule; Time Extension.

4.1 Time is of the essence with respect to Subcontractor's obligations.

4.2 Subcontractor shall commence, perform and complete the Work progressively as directed by Contractor. The directive may be verbal, provided it is memorialized in writing by Contractor within a reasonable time. Contractor shall also have the right, but not the obligation, to issue (and revise from time to time) written progress schedules (each, when issued to Subcontractor, a "Progress Schedule") establishing, among other things, milestone dates for completion of various elements of the Work. Subcontractor shall schedule and otherwise perform its Work so as to meet all milestones established by the Contractor in its scheduling directives and/or Progress Schedules, as they may be revised or amended from time to time, without adjustment to the Subcontract Price. If, at any time during performance of the Work, Contractor reasonably believes that Subcontractor will not be able to complete the Work within the time established by Contractor's current schedule for the Work, Contractor may direct Subcontractor to take any necessary steps, including, but not limited to, the use of labor on an overtime basis, without limitation, to accelerate the Work or any applicable element thereof, so that Subcontractor may complete the Work within such currently scheduled time.

4.3 Subcontractor will furnish written status reports to Contractor on a monthly basis, except as otherwise directed by Contractor, stating: (1) whether the Work is on schedule in accordance with Contractor's schedules; (2) if Subcontractor anticipates any delays; and (3) if the Work is not on schedule and/or Subcontractor anticipates delays, identifying Subcontractor's plan for mitigation. Additionally, if and to the extent requested by Contractor, Subcontractor will furnish periodic reports with information on the status of materials and equipment in the course of preparation, manufacture or transit.

4.4 Subcontractor shall be responsible to Contractor for Subcontractor's pro-rata share, as determined by Contractor, of any liquidated damages assessed against Contractor by Owner by reason of delays caused by or contributed to by Subcontractor, or any person or entity for whose acts Subcontractor may be liable.

4.5 The term "Day" as used in this Master Agreement and each Project Agreement shall mean a calendar day in all cases except only when included within the term "Business Day". The term "Business Day", when used in this Master Agreement or a Project Agreement, shall mean a Day on which the State of Arizona transacts public business.

5. Performance and Regulatory Warranties.

5.1 Subcontractor warrants to Contractor that: (1) the Work shall be: (a) in accordance with the requirements of the Subcontract Documents, and (b) free from defects; (2) all Construction Materials shall be new and in excellent condition, except to the extent specifically provided otherwise in the Subcontract Documents; and (3) Subcontractor, and each of its Lower Tier Persons (a) now hold, and at all times while any Work is furnished, will hold, all licenses, registrations and other approvals necessary for the lawful furnishing of the Work, and (b) shall perform their respective obligations with the professional diligence and care required in the Prime Contract. The warranties set forth in this Section are in addition to and not in limitation of any other warranty or remedy required by Law or by the Subcontract Documents.

6. Superintendent; Sub-subcontractors; Vendors; Personnel.

6.1 Subcontractor shall employ at the site a competent superintendent (the "Superintendent"). The Superintendent shall be present at the site during performance of the Work, and will attend all coordination, scheduling, safety and other meetings relating to Subcontractor's Work as may be required by Contractor. Subcontractor will not change the Superintendent after the Superintendent has been approved by Contractor, without Contractor's written consent to the change.

6.2 A "Sub-subcontractor" is a person or entity that has a direct written contract with Subcontractor (each, a "Sub-subcontractor") to furnish any element of the Work, or to deliver any Construction Materials to the site or other property that is owned or controlled by Contractor. A "Vendor" is a Sub-subcontractor who sells, but does not attach or install, Construction Materials that are not specially manufactured or fabricated for the Project. The Sub-subcontractors, Vendors and other lower tier persons and entities who furnish any labor, equipment, professional services, Construction Materials or other Work, are sometimes collectively referred to in this Master Agreement as the "Lower Tier Persons". Subcontractor will identify in writing, within five (5) Days after written request from Contractor, all Sub-subcontractors and other Lower Tier Persons furnishing any portion of the Work.

6.3 Subcontractor may engage a Sub-subcontractor, subject to the following express conditions precedent: (1) Subcontractor will remain responsible for the Sub-subcontractor as if Sub-subcontractor's Work had been performed by the Subcontractor; (2) the Sub-subcontractor meets the qualifications required of Sub-subcontractors under the Subcontract Documents; (3) Subcontractor has entered into a Sub-subcontract with the Sub-subcontractor that meets the requirements of this Section 6.

6.4 Except as provided in Section 6.5, with respect to Vendors, each Sub-subcontract shall: (1) state that the Sub-subcontract is subject to, and specifically incorporates the terms and conditions of the Project

Agreement (except its compensation terms); (2) name Contractor as an intended third party beneficiary of the Sub-subcontract, entitled to enforce its terms and conditions directly against the Sub-subcontractor, without liability for benefits received; (3) bind and obligate the Sub-subcontractor to Subcontractor as Subcontractor is bound and obligated to Contractor under the Subcontract Documents; (4) contain an indemnity equivalent to the indemnity of Section 20, naming as indemnitees the Indemnitees identified in Section 20; (5) acknowledge that Sub-subcontractor will comply with the insurance requirements of Schedule III; (6) contain Sub-subcontractor's consent to joinder as a party to any arbitration or other dispute resolution proceeding in which Contractor or Subcontractor is a party and which arises out of or relates to the Sub-subcontractor's performance or nonperformance of the Sub-subcontract; (7) contain the Sub-subcontractor's consent to assignment of the Sub-subcontract to Contractor in the event of a termination of this Master Agreement for cause, subject to the following terms and conditions: (a) Contractor shall not be required to accept the assignment, but Contractor may elect to do so, in its sole discretion, by delivering written Notice to Sub-subcontractor, and (b) Contractor shall not be under any obligation to compensate Sub-subcontractor with respect to amounts due under the Sub-subcontract for which Contractor has paid Subcontractor; (8) include a termination for convenience clause equivalent to Section 24.2; (9) contain Sub-subcontractor's acknowledgment and agreement to comply with the records maintenance and confidentiality provisions as provided in Sections 22 and 23, respectively; (10) contain Sub-subcontractor's assignment to Contractor of Sub-subcontractor's Work Product and Sub-subcontractor's agreement to comply with Section 13.2; (11) contain Sub-subcontractor's agreement to comply with all Site Rules established by Owner and Contractor; and (12) contain any other provision required under the Subcontract Documents.

6.5 Each Sub-subcontract with a Vendor shall: (1) be in writing; (2) specifically incorporate the requirements of the Subcontract Documents insofar as applicable to the Construction Materials to be furnished; and (3) if the Vendor shall be responsible for making any delivery to the Project site, the Sub-subcontract must provide the Vendor will also: (a) obtain, and maintain during the term of its contractual obligations, the commercial general liability, workers' compensation and automobile liability insurance required of Sub-subcontractors as provided in the Project Agreement, and (b) comply with all Site Rules established by Owner and/or Contractor.

6.6 By permitting a Sub-subcontractor to commence any of its element of the Work, Subcontractor shall be conclusively deemed to have warranted to Contractor the requirements of this Master Agreement have been fulfilled as to the Sub-subcontractor. Subcontractor shall be solely responsible and liable to Contractor for the proper and timely performance of the Work by each Sub-subcontractor in compliance with the requirements of the Subcontract Documents. Subcontractor shall furnish a copy of any Sub-subcontract to Contractor within two (2) Business Days after it is requested by Contractor; however, Contractor shall have no obligation to make such a request, or to review any Sub-subcontract when received, and no review, non-review, objection or failure to object by Contractor shall relieve Subcontractor and its Sub-subcontractors from their responsibilities for fulfilling the requirements of this Master Agreement. Subcontractor will not change a Sub-contractor without Contractor's written direction or consent to the change.

6.7 Subcontractor will take all steps necessary and appropriate to ensure no employee of Subcontractor or a Lower Tier Person will be recruited, interviewed, screened and employed in connection with the Work unless Subcontractor or the Lower Tier Person, as applicable, verified the employee's authorization to work in the United States in compliance with all applicable Laws, including without limitation, 8 U.S.C.A. 1324a, et. seq. (the "Immigration Reform and Control Act"), and A.R.S. § 23-211, et. seq. (the "Legal Arizona Workers Act"). Subcontractor will enroll, and cause each of its Lower Tier Persons, to: (1) enroll in the federal E verify program as required by A.R.S. § 23-212; and (2) verify the social security number of each of employee with the Social Security Administration prior to placement.

6.8 Contractor shall have the right to require Subcontractor to remove, and promptly replace with a person acceptable to Contractor, any employee of Subcontractor, a Sub-subcontractor, an employee of a Sub-subcontractor, or other Lower Tier Person whose performance and/or behavior is not acceptable, in Contractor's discretion.

6.9 Satisfaction of the requirements of this Section is a condition precedent to the right of a Sub-subcontractor to commence or continue any Work, and to the payment of any amounts otherwise payable to Subcontractor for the Sub-subcontractor.

7. Progress Payments.

7.1 Contractor will make progress payments (each, a "Progress Payment") to Subcontractor, based on amounts received from Owner for Subcontractor's Work as provided in this Section and elsewhere in the Subcontract Documents.

7.2 Subcontractor will submit monthly invoices (each, a "Progress Invoice"). Except to the extent the Project Agreement specifically provides otherwise, each Progress Invoice shall be submitted not later than seven (7) Days prior to the date for the Contractor's submission of a progress payment application under the Prime Contract.

7.3 The Progress Invoice shall be in a form acceptable to Contractor to identify the Work for which payment is requested, indicate the percentage of completion of each portion of the Work, and provide the following as of the end of the period for which payment is requested: the amount due for each Contractor approved Change, specifically itemized for each Change Order, Change Directive and Field Authorization, and the amount requested for each pending Change Order Proposal. With each Progress Invoice, Subcontractor shall submit the following documentation, in form and substance reasonably acceptable to Contractor: (1) delivery tickets, invoices, test results, notices, and all other backup required under the Prime Contract and/or Project Agreement; (2) the Work Product generated by Subcontractor through the time for which payment is requested; (3) conditional and unconditional waivers and releases on progress payment from Subcontractor and its Lower Tier Persons as provided in Section 9.1; and (4) any additional documentation reasonably required by the Contractor or Owner. Subcontractor shall not be entitled to have a Progress Invoice reviewed by Contractor or incorporated in Contractor's progress payment application to Owner unless and until Subcontractor's Progress Invoice, accompanying documentation, and waivers and releases are approved by Contractor as being in accordance with the requirements of the Subcontract.

7.4 Provided a properly completed Progress Invoice is received by the Contractor not later than seven (7) Days prior to the date for the Contractor's submission of a progress payment application to Owner, Contractor shall include Subcontractor's Work covered by that application in the next progress payment application Contractor is entitled to submit to Owner, subject to the provisions of A.R.S. § 32-1129.02(C). If a Progress Invoice is not received by Contractor within the time provided in this Section 7.4, it shall be included by Contractor in the next succeeding progress payment application submitted to Owner, subject to the provisions of the Subcontract Documents.

7.5 Subject to Sections 9 and 10, Contractor shall pay Subcontractor the amounts received from Owner for Subcontractor on Contractor's progress payment application to Owner, within seven (7) Days after Contractor receives payment from Owner.

8. Final Payment for a Project.

8.1 Subcontractor may submit its request for final payment ("Final Invoice") after: (1) the Work has been completed in accordance with the requirements of the Subcontract Documents; and (2) Contractor has received (a) the as-builts, warranties, guarantees, manuals, extra materials, keys, and other project close out items required by the Subcontract Documents, and (b) the Work Product generated or arranged for by Subcontractor and its Lower Tier Persons, and (c) and return of any Confidential Information furnished to Subcontractor. The Final Invoice shall be accompanied by conditional and unconditional waivers and releases on Final Payment as provided in Section 9.1.

8.2 Subject to Section 10, Contractor shall pay Subcontractor the amounts received from Owner on account of Subcontractor's Final Invoice seven (7) Days after Contractor receives the payment from Owner. Subcontractor's acceptance of final payment shall constitute a waiver of all Disputes that have not been perfected by timely submission as Subcontractor Claims prior to Subcontractor's submission of its Final Invoice.

9. Lien Waivers and Releases.

9.1 As a condition of any payment otherwise due for a Project, Subcontractor will furnish with each Progress Invoice and the Final Invoice, lien waivers and releases on Progress Payment and final payment from Subcontractor and each Sub-subcontractor and other Lower Tier Person, as provided in Schedule II. A request for payment from Subcontractor shall not be deemed complete unless it includes the waivers and releases, from Subcontractor and its Lower Tier Persons, as provided in Schedule II.

10. Additional Terms and Conditions of Payment to Subcontractor.

10.1 Contractor's receipt of payment from Owner for Work performed under the Project Agreement is an express condition precedent to Contractor's obligation to pay any sums otherwise due to Subcontractor in connection with the Work. The parties intend to limit Subcontractor's right of payment exclusively to funds Contractor receives from Owner for Subcontractor's Work and from no other sources. Subcontractor accepts the risk Contractor will not receive all or part of payment for the Work from Owner for any reason including, without limitation, Owner's inability to obtain loan proceeds from a construction lender, breach of a contract and/or insolvency.

10.2 Subcontractor shall not be entitled to reimbursement for any Construction Materials that are not incorporated into the completed construction except to the extent Contractor has issued its approval in writing, which approval may be conditioned upon Owner's prior approval and/or Contractor's receipt of contracts, bills of sale, proof of insurance and storage arrangements, or other agreements satisfactory to Contractor's satisfaction to protect its interests.

10.3 No review, approval, acceptance or failure to comment by Contractor or any of its representatives with respect to any Progress Invoice, Final Invoice or other request for payment from Subcontractor, and no payment made by Contractor to Subcontractor, shall constitute acceptance of any Work or operate as an acquiescence to, or waiver of, any departure in the Work from the requirements of the Subcontract Documents, unless the departure is specifically approved by Contractor, in writing.

10.4 All payments received by Subcontractor shall first be used to pay for all material, equipment and labor supplied by or to Subcontractor in connection with a Project and all such sums shall be held in trust for the persons entitled thereto. Subcontractor will not request any payment from Contractor for Work furnished by a Sub-subcontractor that Subcontractor does not intend to pay to the Sub-subcontractor. Additionally, Subcontractor shall pay each of its Sub-subcontractors, within seven (7) Days after receipt by Subcontractor of each Progress Payment or final payment, the full amount received for the Sub-subcontractor's work based on work completed or materials supplied under the Project Agreement, as provided in A.R.S. § 32-1129.02(B). Subcontractor shall furnish satisfactory evidence, within five (5) Days after request from Contractor, as a condition precedent to receipt of any payment otherwise due to Subcontractor, to verify compliance with the above requirements.

10.5 In the event of any actual or potential claim or condition that may, in Contractor's reasonable opinion, result in losses, damages, judgments or expenses, including attorneys' fees and litigation expenses (collectively, "Losses and Expenses") for which Contractor is entitled to reimbursement or indemnity under the Subcontract Documents or which Contractor may incur by reason of Subcontractor's breach of the Project Agreement and/or resulting from due to tax levy, garnishment or other similar process received by Contractor from Subcontractor's creditors, Contractor may withhold, setoff or recoup from any payment due or thereafter to become due to Subcontractor under the Project Agreement, or under any other agreement, an amount sufficient in Contractor's opinion to cover all such actual and anticipated Losses and Expenses. No interest shall be paid to

Subcontractor on any amounts so withheld, setoff or recouped. If the actual Losses and Expenses incurred by Contractor exceed the balance due to Subcontractor, Subcontractor shall pay the difference to Contractor forthwith. This Section 10.5 governs over any other provision of the Project Agreement.

10.6 Contractor will have the right to require Subcontractor to accept a joint check with a Sub-subcontractor and/or to execute a joint check agreement with Contractor and a Sub-subcontractor, in form and substance acceptable to Contractor, provided Contractor has reason to conclude Subcontractor may have failed to timely pay the Sub-subcontractor amounts due for the Sub-subcontractor's portion of the Work. Each joint check will be deemed, when issued to be given to one of the payees, to be payment on account of, and be credited against, the Subcontract Price.

10.7 Subcontractor consents to direct communications between Contractor and Subcontractor's Sub-subcontractors, other Lower Tier Persons and/or creditors for purposes of verifying account balances, deliveries, credit arrangements, claims, and all other matters pertaining to the Project Agreement. Subcontractor will execute and deliver to Contractor, within three (3) Days after request, any written authorization Contractor reasonably requests to effectuate this Section 10.7.

## 11. Liens and Stop Notices.

11.1 Provided Contractor has paid Subcontractor sums received from Owner for Subcontractor's Work, Subcontractor will not suffer or permit any liens or stop notices by its Lower Tier Persons. Subcontractor shall furnish and record, at no cost to Contractor, all statutory and other bonds necessary to release and discharge the Project from any such lien and to result in the release of funds withheld by Subcontractor, Contractor or any lender in response to any such stop notice. If Subcontractor does not release any lien or stop notice recorded or filed by any Lower Tier Person contrary to this Section 11, within ten (10) Days after receipt of written demand from Contractor, Contractor may: (1) cause to be recorded the payment bonds, lien discharge bonds, or stop notice release bonds necessary to release and discharge the lien and/or to result in release of funds held in response to the stop notice or bonded stop notice pursuant to applicable Law; or (2) in the alternative, Contractor may thereafter retain, out of any amount due or to become due to Subcontractor with regard to such Lower Tier Person one hundred fifty percent (150%) of the face amount claimed in the lien, stop notice or bonded stop notice together with any additional sums Contractor considers necessary to protect Contractor from loss or expense arising from such lien, stop notice or bonded stop notice; and, in either case, Subcontractor shall reimburse Contractor for all resulting expenses reasonably incurred by Contractor, including, but not limited to, bond premiums, recording charges, reasonable attorneys' fees and disbursements. The provisions of this Section 11 shall not limit the rights otherwise available to Contractor under applicable Law, including, without limitation, the right to seek relief under A.R.S. § 32-420.

## 12. Subcontractor and Sub-subcontractor Insurance; Bonds.

12.1 Subcontractor will obtain and maintain, and will require its Sub-subcontractors and other Lower Tier Persons to obtain and maintain, until after completion of the Work of the Project Agreement, or such later date as may be required under the Subcontract Documents, insurance in accordance with the requirements of Schedule III and payment and performance bonds as stated in the Project Agreement. As an express condition precedent to any payment otherwise due to Subcontractor, Subcontractor shall furnish certificates, endorsements and other evidence Subcontractor and its Sub-subcontractors and other Lower Tier Persons carry the insurance and have obtained the bonds required by Schedule III, and the Project Agreement, all in form and substance satisfactory to Contractor, both before Work is commenced with respect to any Project Agreement, and at such other times as may be requested by Contractor to verify continued coverage. If requested by Contractor, Subcontractor will provide promptly, but not later than ten (10) Days after request, a certified copy of the policies of insurance carried by Subcontractor and its Sub-subcontractors and other Lower Tier Persons. All insurance and bonds will be procured at Subcontractor's or Sub-subcontractor's expense.

13. Submittals; Work Product.

13.1 Subcontractor will promptly furnish complete catalogs, samples, material lists, shop drawings and other submittals (each, a "Submittal") required by the Subcontract Documents or requested by Contractor. Subcontractor shall be responsible for delays because of its failure to do so and for any deviation from the Subcontract Documents. All deviations from the requirements of the Subcontract Documents shall be noted clearly on each Submittal and by separate cover letter in which Subcontractor shall describe the deviation with reference to the specific Subcontract Document and shall state reasons for the deviation. Approval by Contractor of a Submittal will not constitute approval of any deviation from the requirements of the Subcontract Documents, unless the deviations have been so noted on the Submittal and separate cover letter. Subcontractor will not order materials or commence Work until the applicable shop drawings or other Submittals have been approved by Contractor and the other persons designated in the Subcontract Documents to approve Submittals.

13.2 Subcontractor hereby conveys and assigns to Contractor the reports, studies, Submittals, data, logs, calculations, drawings, and other work product ("Work Product") generated or obtained by Subcontractor and its Lower Tier Persons in connection with the Work, together with the copyrights in them. Subcontractor may retain a copy for its use in connection with the Work, but may not utilize any Work Product in connection with any other project without Contractor's prior written permission. Contractor acknowledges Subcontractor and its Lower Tier Persons shall have the non-exclusive right and license to utilize the following in connection with other projects: (1) the industry standard details; (2) general building elements; (3) drawings, plans or specifications that depict or describe means or methods; and (4) any other industry standard subcomponent of the Work Product that does not embody a design or concept substantially similar to a concept utilized in the Project and are not Confidential Information. Subcontractor warrants to Contractor that all Work Product generated or arranged for by Subcontractor or its other Lower Tier Persons in connection with the Work shall not infringe on the contractual or proprietary rights of other parties.

14. Health and Safety; Hazardous Substance; Waste Disposal.

14.1 As between Contractor and Subcontractor, Subcontractor shall be solely responsible for the safety and health effects of the Work as it may impact all persons and property whether or not under the control of Subcontractor. Subcontractor shall at all times: (1) provide proper traffic control, warnings, and all other measures necessary to protect Contractor, Owner and their respective employees, invitees, licensees, and agents, and all other third persons from illness, sickness, death, personal injury or property damage arising from or relating to the Work; and (2) maintain a safe working environment, in full compliance with all applicable Laws relating to occupational health and safety and drugs in the workplace. If requested by Contractor, and without relieving the Subcontractor of its sole and exclusive responsibility, as between Contractor and Subcontractor, for the protection of the health and safety of all persons impacted by the Work, Subcontractor shall adopt and implement a mandatory drug and alcohol testing program for Subcontractor and any Lower Tier Persons, and adhere to any job site safety program and/or rules, all in accordance with Contractor's requirements, the Subcontract Documents and applicable Laws. Subcontractor shall report to Contractor promptly, but not later than within twenty-four (24) hours, any injury Subcontractor becomes aware of and which occurred at the site.

14.2 The term "Hazardous Substance" means any element, compound, mixture, solution, particle or substance which is or may become dangerous, or harmful to the health and welfare of life or the physical environment if not used, stored or disposed of in accordance with applicable law, such as, but not limited to, explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances and related materials, and including without limitation: (1) any substance or material included within the definitions of "hazardous substances," "hazardous wastes," "special wastes," "regulated substances," "toxic substances," "hazardous pollutants" or "toxic pollutants" in any of the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 6901, the Toxic Substances Control Act, the Clean Air Act and/or the Clean Water Act, as the foregoing may be amended from time to time, or any regulations promulgated thereunder, and any analogous state, local or other governmental laws, rules



or regulations; (2) any "PCBs" or "PCB items," as defined in 40 CFR § 761.3; (3) any "asbestos," as defined in 40 CFR § 763.63; and (4) any other substance identified as "hazardous substance" or "hazardous material" under the Prime Contract.

14.3 Subcontractor shall not bring to, or prepare on, the Project site, nor shall any of Subcontractor's agents or Lower Tier Persons bring upon or prepare on the Project site, any Hazardous Substances, subject to the following: Subcontractor may bring to the site any Hazardous Substance if: (1) the Hazardous Substance is required by the Subcontract Documents, or included in any Construction Materials required by the Subcontract Documents; (2) Subcontractor shall have given prior Notice to Contractor identifying the Hazardous Substance and the specific provision of the Subcontract Documents that requires its use or inclusion; and (3) Subcontractor shall properly manage, handle, utilize, remove and/or dispose of the Hazardous Substance in accordance with the Subcontract Documents and applicable Law.

14.4 If Subcontractor discovers any pre-existing material on the site it reasonably believes to be a Hazardous Substance, Subcontractor shall immediately: (1) discontinue Work in the affected area leaving the suspected Hazardous Substance uncovered as it was found (taking reasonable precautions to protect persons and property and prevent the movement, spread or disturbance of the suspected Hazardous Substance in accordance with applicable Laws); and (2) notify Contractor in writing. Subcontractor shall resume operations in the affected area only after Contractor has determined by reasonable means that the material is either not a Hazardous Substance or has been mitigated in accordance with applicable Law. If the remedy directed by Contractor results in a delay to the critical path of the Work, and if Subcontractor did not cause, suffer or permit the release of the Hazardous Substance or otherwise improperly handle or care for the Hazardous Substance, Subcontractor shall be entitled to an equitable adjustment of the time to complete its Work, and /or the Subcontract Price, subject to Section 19.

14.5 Subcontractor shall maintain proper precautions so that the amount of waste resulting from Subcontractor's Work is at all times kept at minimum and confined within the portion of the site under Subcontractor's control. Subcontractor will remove its waste daily, pursuant to a plan approved by Contractor, and disposed of at a disposal facility in accordance with applicable Law. If Subcontractor fails to clean up as provided in the Subcontract Documents, Contractor may charge Subcontractor for the Subcontractor's appropriate share of clean up costs and deduct such costs from payment due Subcontractor under the Subcontract Documents.

15. Laws Generally; Notice of Investigation; Site Rules.

15.1 Subcontractor and each of its Lower Tier Persons shall comply with, and give notices required by all federal, state, county and local statutes, rules, regulations, codes, ordinances, executive orders, permits and other legislative, executive, or judicial requirements and/or decisions (collectively, "Law(s)") applicable to the performance of the Work, whether or not specifically mentioned in the Subcontract Documents, including, but not limited to, those pertaining to contractor licensing, occupational health, medical records, protected health information, safety, disabilities, building codes, construction standards, licensure, social security, employment, workers compensation, immigration, wages, payrolls, health, discrimination, equal employment opportunity, civil rights, storm water, solid wastes, medical wastes and other Hazardous Substances, grading, air pollution, dust control, water pollution, waste disposal, human remains, land use, historic preservation, endangered or threatened species, navigable waters, waters of the United States and tributaries thereof.

15.2 Subcontractor will secure, and pay for, all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of Subcontractor's Work.

15.3 To the fullest extent permitted by applicable Law, Subcontractor will notify Contractor, and require its Lower Tier Persons to notify Contractor, in each case within twenty-four (24) hours after a demand for records or notice of audit is received and/or any inspection or other investigation is commenced by any federal, state or local governmental agency that relates to the Work, including, without limitation: (1) any inspection or investigation of the site relative to a determination of compliance with any Laws or permits pertaining to Hazardous

Substances, waste, dust control, air quality, water pollution, storm water runoff, endangered species, navigable waters, occupational health or safety; and (2) any inspection, audit or other investigation, whether on or off the site, that is initiated by any federal or state authorities to verify the immigration and/or worker authorization status of any employees of Subcontractors or any of its Lower Tier Persons.

15.4 Subcontractor will comply with and enforce any rules ("Site Rules) promulgated and/or enforced by Contractor and/or by Owner governing ventilation, safety, traffic regulations, elevator access, parking, space utilization, confinement of operations, staging of work, access, no access zones, times of Work, cease and desist orders, use of Owner's property, behavior, and such other matters not involving the means, method, techniques or manner of performance of the Work that Contractor or Owner deems pertinent. The issuance or non-issuance, enforcement or non-enforcement of any Site Rules by Contractor or Owner shall not relieve Subcontractor from its sole and exclusive responsibility to Contractor and Owner for taking all appropriate precautions, in accordance with applicable Laws, to ensure the health and safety of persons and property with respect to the Work.

16. Improper or Differing Conditions.

16.1 If at any time Subcontractor encounters conditions at the site that are not suitable for the proper and accurate performance of any of the Work including, without limitation, deficiencies in the design or in the condition of existing construction, conditions in or beneath the site that differ materially from indications in the Subcontract Documents, or other improper or differing conditions that may adversely impact the Work and that are not provided for in the Subcontract Documents (collectively, "Improper or Differing Conditions"), Subcontractor shall promptly discontinue Work in the affected area, leaving the Improper or Differing Conditions as they are found (taking reasonable precautions for the protection of persons and property), notify Contractor (immediately by phone or email, followed by written notice within twenty-four (24) hours identifying the Improper or Differing Conditions with specificity), and await clarification and direction before Subcontractor proceeds with any Work that may be affected. If the Improper or Differing Conditions must be corrected before Subcontractor resumes or starts its Work, Subcontractor will postpone its Work until notified by Contractor that the correction is completed. If the Improper or Differing Conditions should not have been reasonably anticipated by a prudent subcontractor during review of the site prior to execution of the Project Agreement, Subcontractor shall be entitled to equitable adjustment of the time to complete its Work and/or of and Subcontractor's Price for any resulting critical path delays or additional expenses incurred by Subcontractor, subject to Section 19. If Subcontractor proceeds with Work after discovery of an Improper or Differing Condition without notifying Contractor and deferring applicable Work as provided in this Section, Subcontractor shall be liable and responsible to Contractor for all resulting losses, liabilities, damages, and expenses and Subcontractor shall be deemed to have waived any right to prosecute a Subcontractor Claim arising from the Improper or Differing Conditions.

17. Inspections; Uncovering Work; Correction of Work During Construction; Contractor Right to Take Over Work.

17.1 Subcontractor shall notify Contractor when the Work is ready for each inspection of any kind or nature required by the Subcontract Documents, with sufficient lead time for the inspection to be arranged for and performed by the date required by Contractor so as not to delay the Work. Subcontractor shall have an authorized representative present at all inspections of the Work.

17.2 Contractor shall have the right to require Subcontractor to uncover Work for additional inspection and testing. If the Work had been covered without Subcontractor's compliance with all applicable inspection and approval requirements of the Subcontract Documents, Subcontractor shall properly remedy or replace all nonconforming or deficient Work, and adjacent property damaged thereby, to Contractor's satisfaction, and Subcontractor shall pay the costs Contractor reasonably incurs in connection with uncovering, testing, inspection and remedial work, subject to Section 19. If the Work had been covered in accordance with the requirements of the Subcontract Documents, Contractor shall pay the costs Subcontractor reasonably incurs in connection with the uncovering, testing, inspection and remedial restoration work, subject to Section 19.

17.3 Subcontractor shall promptly, but not later than two (2) Days after demand, remove and replace, at Subcontractor's expense, any Work that is rejected by Contractor or Owner as defective, deficient or otherwise not in conformity with the Subcontract Documents.

17.4 If Subcontractor fails or neglects to cure any delay, defect, deficiency or non-conformity in the Work, and if the delay, failure or neglect continues for more than forty-eight (48) hours, or such longer time as may be provided by Contractor in a written Notice to Subcontractor specifying the delay, defect, deficiency or non-conformity Contractor may, effective upon delivery of written Notice, without terminating the Project Agreement and in addition to any other remedy Contractor may have, take over the applicable portion of the Work and take whatever steps are necessary to perform the Work and/or to cure the delay, defect, deficiency or non-conformity. Subcontractor will pay Contractor the reasonable expenses Contractor incurred to cure the delay, defect, deficiency or non-conformity.

18. Changes; Change Directives; Field Authorization.

18.1 Changes (each, a "Change") in the scope of the Work (including, without limitation, additional and/or deductive Work) or in the time for its completion (including, without limitation, a suspension of all or part of the Work or an order for acceleration of performance) may be accomplished without invalidating the Project Agreement by Change Order, Change Directive, or Field Authorization as provided in this Section 18.

18.2 A "Change Order" is a written amendment to the Project Agreement, executed on behalf of both Contractor and Subcontractor that specifies the Change, and the adjustment, if any, to the Subcontract Price and/or time to complete the Work.

18.3 If Contractor issues a written request ("Request for Change Order Proposal") that Subcontractor submit a Change Order proposal, Subcontractor will do so promptly, but not later than two (2) Business Days after request from Contractor, on a form acceptable to Contractor (each, a "Change Order Proposal"), and in accordance with a procedure established by Contractor for the administration of Change Order Proposals. The Change Order Proposal shall include Subcontractor's technical proposal for implementation of the proposed Change, together with the Subcontractor's proposal for the resulting adjustment, if any, to the Subcontract Price and/or time for completion of the Work. Contractor's Request for Change Order Proposal and Subcontractor's Change Order Proposal shall be substantially in the form attached as Schedule IV (or its equivalent as determined by Contractor. If Subcontractor desires to propose a Change Order without having been requested to do so by Contractor, Subcontractor must use the Change Order Proposal portion of the form attached as Schedule IV. Subcontractor will receive no compensation for preparation of a Change Order Proposal. If the Parties cannot reach agreement within ten (10) Days after Contractor has received a Change Order Proposal, Contractor shall have the right, exercisable in its sole discretion, to reject the Change Order Proposal and/or issue a Change Directive, as provided in Section 18.4.

18.4 A "Change Directive" is a written directive issued by Contractor, substantially in the form attached as Schedule V (or its equivalent as determined by Contractor) specifying the required Change, together with Contractor's determination of the corresponding adjustment (if any) in the Subcontract Price and/or time for completion of the Work. Contractor may issue a Change Directive without first issuing a Request for Change Order Proposal. Upon receipt of the Change Directive, Subcontractor shall proceed with the Change as directed, whether or not Subcontractor agrees with the adjustment, if any, to the Subcontract Price or the time for performance of the Work provided in the Change Directive. Subcontractor must preserve its right to later dispute Contractor's determinations by delivering a written Subcontractor Claim to Contractor within three (3) Business Days after receipt of the Change Directive; otherwise, the written Change Directive shall be binding on Subcontractor and Subcontractor shall be deemed to have waived its right to pursue a Subcontractor Claim and the Change Directive shall automatically have the full force and effect of a Change Order as if it has been signed on behalf of Subcontractor.

18.5 A "Field Authorization" is a written directive executed by Contractor, substantially in the form attached as Schedule VI, (or its equivalent as determined by Contractor), and directing a minor Change, as determined by Contractor in its sole discretion. Upon receipt of a Field Authorization, Subcontractor will proceed with the minor Change as directed, whether or not Subcontractor agrees with the compensation and/or time extension, if any, provided in the Field Authorization. The absence of any provision in the Field Authorization for compensation and/or time extension will be deemed to be Contractor's determination the minor Change is within the original scope of the Work and should be performed without additional compensation or time. Subcontractor will be deemed to have accepted the compensation and/or time extension provided in the Field Authorization unless Subcontractor submits its proposed pricing and/or time extension to Contractor, in the form of a Subcontractor Claim, within three (3) Business Days after receipt of the Field Authorization; otherwise, the Field Authorization shall be binding on Subcontractor.

18.6 Subcontractor shall not be compensated or receive any time extension for a Change unless: (1) the Parties have executed a Change Order with respect to the Change; or (2) prior to commencement of the Change, Subcontractor has received either (a) a Change Directive, or (b) a Field Authorization as provided in this Section 18.

18.7 Except only to the extent specifically provided in the Subcontract Documents, the amount of mark-up for overhead and profit to be included in any Change Directive, Change Order or Field Authorization shall be limited to, and shall not exceed, fifteen percent (15%) of the cost of the Changed Work.

19. Subcontractor Claims.

19.1 The right of Subcontractor to prosecute a claim for any extension of the time for performance of the Work or increase in the Subcontract Price that is otherwise permissible under this Master Agreement shall be subject to the condition precedent that in each case Subcontractor shall have submitted written Notice (a "Subcontractor Claim") to Contractor within three (3) Business Days after Subcontractor first knew or should have known of the matter, occurrence or event that is the basis for the Subcontractor Claim. The Subcontractor Claim shall furnish sufficient detail to apprise Contractor of the basis for the Subcontractor Claim, and shall include a reasonable estimate of the anticipated amount of compensation or time the Subcontractor anticipates it will request. Only one such Notice shall be necessary in the case of a continuing delay. The Subcontractor Claim shall include each certification or other supporting documentation required by the Subcontract Documents, and additional documentation as may be reasonably requested by Contractor, and shall be promptly supplemented during the course of the Work as additional information becomes available to Subcontractor. The procedures of Section 25 shall apply to resolution of all Disputes arising from Subcontractor Claims. If Subcontractor fails to submit a Subcontractor Claim within three (3) Business Days after Subcontractor first knew or should have known of the basis therefor, Subcontractor shall be deemed to have waived the right to later submit or prosecute a Subcontractor Claim arising from such matter, occurrence or event.

19.2 If the Subcontractor Claim is due to alleged action or inaction by Owner or any of its agents or others for whom Owner is or may be liable, and if Contractor agrees to sponsor the Subcontractor Claim against Owner, Subcontractor shall cooperate with Contractor, at Subcontractor's sole expense, as requested by Contractor in connection with Contractor's preparation and presentation of the sponsored Subcontractor Claim. The sponsored claim shall be resolved according to the Prime Contract's dispute resolution procedures. Subcontractor will furnish all Notices of claim and supporting documentation to Contractor at least ten (10) Days prior to the time within which Contractor is required to submit the Notices of claim and documentation to Owner under the Prime Contract. Contractor shall have liability to Subcontractor on such claim only to the extent Contractor receives payment from Owner as a result of the claim, less an amount equal to the costs and expenses, including staff payroll, attorneys' fees, and other expenses Contractor has incurred in connection with the claim, together with reasonable profit and overhead. Subcontractor shall be bound by Contractor's determination, made in good faith, as to apportionment of any amounts received from Owner for claimants, including other subcontractors whose work is affected by any act or omissions of Owner (or any person or entity for whom Owner is responsible). Contractor shall not be obligated

to sponsor any Subcontractor claim against Owner if Contractor reasonably determines that the claim asserted by Subcontractor is invalid, untimely, unreasonable, in bad faith, or contrary to Law.

20. Indemnity.

20.1 To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Contractor, Owner and their respective officers, directors, members, managers, shareholders, employees, representatives and agents (including the Owner's architect, if any) (each, an "Indemnitee"; collectively, "Indemnitees"), for, from and against any and all claims, demands, liabilities, damages, settlements, judgments, causes of action and all other losses and expenses, including attorneys' fees and consultants' fees incurred in the evaluation, settlement or satisfaction thereof (each, a "Demand or Damage"; collectively, "Demands or Damages"), resulting from the negligence or the failure to perform a responsibility under the Subcontract Documents, of Subcontractor or of any Lower Tier Person or other person for whom Subcontractor is responsible. This obligation to defend, indemnify and hold harmless the Indemnitees includes any Demand or Damage of any kind, whether based on a tort, contract (including the Subcontract Documents), strict liability, quasi contract, equity, statute, intellectual property, conversion, trespass, environmental, or other legal theory, and whether the Demand or Damage arises from an alleged death, personal injury, sickness, property damage (including damage to the Work), patent infringement, copyright infringement, lien, stop notice, tax levy, garnishment, warranty (express or implied), loss of use or any other economic loss, release of a Hazardous Substance, breach of any of the Subcontract Documents, violation of a Law or other claimed injury or damage. The foregoing indemnity, hold harmless and defense obligations shall not apply and do not purport to indemnify, to hold harmless, or to defend an Indemnitee from Demands or Damages resulting from the sole negligence of such Indemnitee (or of any person or entity for whom such Indemnitee is responsible). Subcontractor's defense obligations under this Section will be subject to the requirements that defense counsel will be reasonably acceptable to the Indemnitee, the Indemnitee will be given contemporaneous copies of all pleadings and correspondence transmitted or received by defense counsel, the opportunity to participate in the defense and the right to approve any compromise or settlement (which shall not unreasonably be disapproved). The successful party in any action or arbitration to enforce this Section 20.1 shall be awarded its reasonable attorneys' fees, litigation expenses and other costs incurred in connection with the action or arbitration.

21. Correction Warranty.

21.1 Subcontractor warrants to Contractor and Owner that Subcontractor shall remove and properly replace or repair any of its Work that is found to be contrary to the Subcontract Documents or otherwise defective, without regard to whether the defect is material or has caused damage to the claimant ("Non-conforming Work") (whether before final completion or within two (2) years thereafter), and shall properly repair and restore any adjacent property damaged in connection with such removal, replacement or repair, all at Subcontractor's sole cost and expense after receipt of written Notice from Contractor specifying the Non-conforming Work, within twelve (12) hours, or such longer time as may be specified in the Notice. If Subcontractor does not accomplish such removal, replacement or repair within the time set in such Notice, Contractor may thereafter perform all necessary removal, replacement or repair, and Contractor shall be reimbursed by Subcontractor, upon demand, for Contractor's resulting costs, expenses and other damages. All corrective Work will have an extended warranty equal to two (2) years after completion of the corrective Work. This two (2) year correction warranty is in addition to, and without limitation on, any other warranty, claim, right or remedy available to Contractor or Owner under applicable Law, whether discovered before or after the above described two (2) year period. This two (2) year correction warranty shall supplement any other warranties or right of action available to Contractor or Owner under applicable Law.

22. Subcontractor and Sub-subcontractor Records.

22.1 Subcontractor shall maintain and preserve, and shall require its Sub-subcontractors and other Lower Tier Persons to maintain and preserve, detailed records in accordance with the requirements of the Prime Contract and the other Subcontract Documents. Contractor and its properly authorized representatives shall be

afforded access at all times on reasonable advance notice to inspect, audit and/or review, and make copies of, all such records (including data stored electronically).

23. Confidentiality; Publicity; Non-Solicitation.

23.1 Subcontractor shall treat all information relating to a Project, including, without limitation, financial information (e.g., the Subcontract Price, cost per square foot, and other cost information contained in the Subcontract Documents), discussions, drawings and specifications and other Subcontract Documents, Work Product, memoranda, and all materials relating to the Project and all information supplied to Subcontractor by Contractor (collectively, the "Confidential Information") as Contractor's strictly confidential and proprietary information. Subcontractor shall not permit the release of Confidential Information to other parties or make any public announcement or publicity releases without Contractor's prior written authorization, and such Confidential Information shall not be used or disclosed to third persons by Subcontractor, without Contractor's prior written approval. Subcontractor shall also require its Sub-subcontractors and other Lower Tier Persons to comply with this confidentiality requirement. The Confidential Information generated or received by Subcontractor and its Lower Tier Persons shall be delivered to Contractor as a condition precedent of any final payment or payment on termination otherwise due to Subcontractor.

23.2 Subcontractor will not cause, suffer or permit the solicitation for hire by Subcontractor, of any employees of Contractor at any time during the Term of this Master Agreement, without Contractor's prior written approval.

24. Termination.

24.1 The failure of Subcontractor or any of its Lower Tier Persons to comply with any obligation under the Subcontract Documents shall constitute a default of Subcontractor. In the event of a default, Contractor may terminate the Project Agreement effective immediately upon delivery of written Notice of termination if, in Contractor's reasonable opinion, such failure is not curable within a reasonable time after Notice. In the event of a default that in Contractor's reasonable opinion could be cured within a reasonable time Contractor may give Subcontractor written Notice specifying the failure and stating Contractor's intention to terminate the Project Agreement if Subcontractor does not either cure, or obtain Contractor's approval for a plan of cure, within forty-eight (48) hours, or such longer time as Contractor shall state in the Notice. If Subcontractor fails or neglects to cure the noticed failure within the time allotted in the Notice, or if Subcontractor fails to diligently prosecute a Contractor approved plan of cure to completion, Contractor may, at its election, and without prejudice to any other right or remedy it may be entitled to hereunder or by applicable Law, terminate the Project Agreement (and, at Contractor's election, any other Project Agreement and/or this Master Agreement) for cause effective on delivery of written Notice of termination and Contractor may, without prejudice to any other remedy Contractor may have, complete the Work through alternate means in whatever manner Contractor deems appropriate. Subcontractor shall have no right to any further payment until after Contractor has completed the Work and determined the amount of its costs, expenses and damages resulting from the termination. If the unpaid balance of the Subcontract Price exceeds the costs Contractor incurs to complete the Work, plus other expenses and damages incurred by Contractor resulting from the Subcontractor Default, Contractor shall pay Subcontractor the difference. If the expenses of completing the Work plus Contractor's damages exceed such unpaid balance, Subcontractor shall pay the difference to Contractor upon demand.

24.2 A Project Agreement may be terminated without cause: (1) by Contractor, for Contractor's convenience; or (2) if Owner terminates the related Prime Contract for Owner's convenience. A termination for convenience will be effective as of the date provided in the Notice of termination given by Contractor or by Owner, which shall be delivered to Subcontractor. The Notice of termination for convenience may direct the sequence and manner in which the termination shall be implemented. Subcontractor shall implement the termination as directed in the Notice, and Subcontractor shall terminate for convenience all existing agreements with Lower Tier Persons. Except for Work to be performed as directed in the Notice of termination, Subcontractor shall be compensated in

such event only for Work performed and expenses incurred in connection with the Project prior to the termination date, less prior payments, based on invoices submitted and payable as provided in Sections 8, 9 and 10. Subcontractor shall not be entitled to charge for, or to receive, compensation, overhead or profit for Work it did not perform.

24.3 Except as specifically provided otherwise by Contractor in writing, its termination of this Master Agreement shall not be deemed to terminate any Project Agreements for which the Work has not yet been completed, and Contractor's termination of a Project Agreement shall be deemed to terminate only the Project Agreement(s) specified in the Notice of termination. Notwithstanding Contractor's termination of this Master Agreement, its terms and conditions shall remain in full force and effect with respect to each Project Agreement that is not specifically also terminated by Contractor.

24.4 Contractor may suspend Subcontractor's performance of the Work of a Project Agreement, in whole or in part, for cause, or for convenience and without cause, effective upon delivery of written Notice specifying: (1) the effective date and time of the suspension, which may be immediate as determined by Contractor in its sole discretion; and (2) the Work, or portion thereof, to be suspended. Subject to Sections 8, 9 and 10, Subcontractor will be entitled to compensation the pro-rata portion of the Work furnished through the date of suspension and, if the suspension was not due to the negligence or failure to perform a responsibility under the Subcontract Documents of Subcontractor or any of its Lower Tier Persons, Subcontractor shall also be entitled to compensation for the demobilization and remobilization expenses it reasonably and necessarily incurred in connection with the suspension that cannot be mitigated with reasonable efforts. Suspension of a Project Agreement shall be without prejudice to Contractor's right to later terminate the Project Agreement as provided in this Section 24.

24.5 Subcontractor may suspend or terminate or suspend performance under a Project Agreement as provided in A.R.S. § 32-1129.04.

24.6 Subcontractor shall not be entitled to any payment otherwise due in the event of any termination of the Project Agreement unless it has first delivered to Contractor the Work Product, and the Confidential Information generated or obtained by Subcontractor and its Lower Tier Persons.

25. Dispute Resolution; Waiver of Jury Trial.

25.1 Each claim, controversy and dispute (each, a "Dispute"; collectively, "Disputes") between Contractor and Subcontractor arising out of or relating to the Work, any Project Agreement or this Master Agreement shall be resolved in accordance with this Section 25.

25.2 The Dispute shall be initiated by written demand for resolution of Dispute submitted by the claimant to the other Party. The written demand shall include a detailed statement of the nature of the Dispute, its basis, and relief sought. If the demand is based on a Subcontractor Claim, Subcontractor shall attach a copy of the Subcontractor Claim and related supplements.

25.3 Except only as provided in Section 25.4, the Dispute shall be resolved by progressive negotiation, mediation and trial to a court without a jury in accordance with this Section 25.3. The Parties shall first endeavor to settle the Dispute through direct negotiation by the Parties' Project Representatives for a period of thirty (30) Days during which Subcontractor will furnish such scheduling, cost and other records and information (including access to Subcontractor's employees, Sub-subcontractors or other Lower Tier Persons for interviews) relating to the Dispute as Contractor may reasonably request. If the Parties' Project Representatives are unable to resolve a Dispute within thirty (30) Days after its initiation, the Dispute shall be submitted forthwith to the Parties' chief executive officers (or other representative appointed by the Parties). If these representatives are unable to resolve the Dispute within thirty (30) Days after submission to them, the Dispute shall be submitted forthwith to non-binding mediation before a mediator to be selected by the Parties, but if they cannot agree upon a mediator within ten (10) Days, the

mediator will be appointed, and the mediation administered, by the American Arbitration Association. The procedures for the mediation (including the requirement for exchange of information) shall be established by the mediator. If the Parties have not settled the Dispute, despite good faith efforts, with sixty (60) Days after the mediator has been selected, unless the Parties agree in writing to a longer period, then either Party may thereafter commence a civil action, to be tried by a judge without a jury as provided in Section 25.5.

25.4 The following are the only exceptions to the requirements of Section 25.3: (1) Subcontractor shall not be entitled to initiate or prosecute any mediation, or commence a civil action in connection with any Disputes arising from claims deemed waived by Subcontractor as provided in Sections 16, 18 and/or 19; (2) Contractor shall not be required to initiate, participate in or exhaust negotiation and mediation prior to its commencement of an action to challenge and seek discharge or release of a lien or stop notice, or to seek specific performance or other injunctive relief to enforce any provision of this Master Agreement, any Project Agreement, or any confidentiality obligation of Subcontractor or its Lower Tier Persons; and (3) Contractor shall have the right to require the Dispute be submitted to resolution by binding arbitration in any arbitration between Owner and Contractor, provided the Dispute between Subcontractor and Contractor has an issue of fact or law in common with the subject matter of the issues to be arbitrated between Owner and Contractor; Subcontractor hereby consents to joinder as a party to any such arbitration in which Contractor and Owner are parties and which arises in whole or in part out of the Work.

25.5 The exclusive venue for all civil actions arising from any Project Agreement or this Master Agreement shall be a court of competent jurisdiction in Tucson, Arizona, and the action shall be tried to the court without a jury as provided in Section 25.8.

25.6 Subcontractor and Contractor shall each bear without right to recover from the other Party, its own expenses, attorneys' fees, cost and litigation expenses incurred in connection with any negotiation or mediation as provided in this Section 25, or otherwise incurred in connection with a Dispute. The successful Party in any arbitration or litigation arising out of this Master Agreement, or any Project Agreement, shall be awarded its reasonable attorneys' fees and costs incurred in connection with such proceeding, including, but not limited to, professional (paralegal) fees, consultants' fees, expert fees, exhibit expenses, and all other related costs and expenses of every kind or nature, whether or not taxable by statute.

25.7 Subcontractor shall diligently continue performance of the Work pending resolution of any Subcontractor Claim or Dispute unless directed otherwise by Contractor in writing, or as specifically permitted A.R.S. § 32-1129.04 of the Prompt Payment Statutes.

**25.8 AFTER CONSULTING WITH LEGAL COUNSEL OF THEIR OWN CHOOSING, SUBCONTRACTOR AND CONTRACTOR, ON BEHALF OF THEMSELVES AND ANY PERSON OR ENTITY ACTING BY, THROUGH OR UNDER THEM, KNOWINGLY AND INTENTIONALLY AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION OR JUDICIAL PROCEEDING RELATING TO OR CONCERNING, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, OR ANY PROJECT AGREEMENT BETWEEN CONTRACTOR, SUBCONTRACTOR AND ALL PERSONS ACTING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR. THIS WAIVER SHALL APPLY TO THIS AGREEMENT, ANY FUTURE AMENDMENTS, SUPPLEMENTS OR MODIFICATIONS OF THIS AGREEMENT, EACH PROJECT AGREEMENT TO BE ISSUED HEREUNDER, AND EACH FUTURE CHANGE ORDER, CHANGE ORDER PROPOSAL, CHANGE DIRECTIVE AND/OR FIELD AUTHORIZATION ISSUED IN CONNECTION WITH A PROJECT AGREEMENT. NOTWITHSTANDING THE FOREGOING: IF CONTRACTOR IS REQUIRED TO TRY A LAWSUIT COMMENCED BY A THIRD-PARTY BEFORE A JURY, AND BELIEVES SUBCONTRACTOR IS LIABLE, IN WHOLE OR IN PART, FOR THE CLAIMS BEING MADE IN THE LAWSUIT, THEN, AND ONLY THEN, THIS WAIVER OF JURY TRIAL SHALL NOT APPLY.**



25.9 One Thousand and No/100 Dollars (\$1,000.00) of the sums to be paid to Subcontractor under each Project Agreement shall be deemed separate and independent consideration for the rights granted to Contractor, and the waiver of the right to jury trial, as provided in this Section 25.

26. Assignment.

26.1 Contractor may assign or transfer this Master Agreement, including all warranties, express or implied, without Subcontractor's consent.

26.2 Subcontractor shall not, during the Term of this Master Agreement, without the prior written consent of Contractor, which shall not be unreasonably withheld: (1) sell, transfer, assign or delegate any interest in this Master Agreement or any rights or obligations of Subcontractor hereunder; or (2) cause, suffer or permit: (a) any sale, transfer or assignment of more than a cumulative total of twenty percent (20%) of the stock, membership or other equity ownership interest in Subcontractor, or (b) the issuance of more than a cumulative total of twenty percent (20%) of any new stock or other equity ownership in Subcontractor. Any such purported assignment, delegation, transfer or issuance without Contractor's written consent shall be void.

27. Definitions; Schedules.

27.1 Certain of the capitalized terms used in this Master Agreement have the meaning given in the sections identified below:

<u>DEFINITION</u>	<u>SECTION</u>
Additional Insureds .....	Schedule III
Allowance Item .....	§ 3.5
Business Day .....	§ 4.5
Change .....	§ 18.1
Change Directive .....	§ 18.4
Change Order .....	§ 18.2
Change Order Proposal .....	§ 18.3
Confidential Information .....	§ 23.1
Construction Materials .....	§ 2.1
Contingency .....	§ 3.4
Contractor .....	Preamble
Day .....	§ 4.5
Demand(s) or Damage(s) .....	§ 20.1
Dispute(s) .....	§ 25.1
Effective Date .....	Above Signature
Field Authorization .....	§18.5
Final Invoice .....	§ 8.1
Hazardous Substance(s) .....	§ 14.2
Improper or Differing Conditions .....	§ 16.1
Indemnitee(s) .....	§ 20.1
Law(s) .....	§ 15.1
Legal Arizona Workers Act .....	§ 6.7
Losses and Expenses .....	§ 10.5
Lower Tier Persons .....	§ 6.2
Master Agreement .....	Preamble

Non-Conforming Work.....	§ 21.1
Notices .....	§ 28.1
Owner.....	§ 1.2
Party(ies).....	Preamble
Prime Contract .....	§ 1.2
Progress Invoice.....	§ 7.2
Progress Payment.....	§ 7.1
Progress Schedule .....	§ 4.2
Project .....	§ 1.1
Project Agreement.....	§ 1.2
Project Representative.....	§ 29.3
Representatives .....	§ 29
Request for Change Order Proposal.....	§ 18.3
Retention.....	Schedule I, ¶ 15
Schedule of Values.....	§ 3.3
Site Rules .....	§ 15.3
Sub-subcontract.....	§ 3.2
Sub-subcontractor .....	§ 3.2
Subcontract Documents .....	§ 1.2
Subcontract Price .....	§ 3.1
Subcontractor .....	Preamble
Subcontractor Claim .....	§ 19.1
Submittal(s).....	§ 13.1
Superintendent .....	§ 6.1
Term.....	§ 31.1
Uninsured Loss .....	Schedule III
Unit Price .....	§ 3.6
Unit Price Item.....	§ 3.6
Unit Price Extension Amount.....	§ 3.6
Vendor .....	§ 6.2
Work .....	§ 1.1
Work Product.....	§ 13.2

27.2 The following schedules and exhibits, identified by the section in which they are first referenced, are incorporated by this reference:

<u>Exhibit</u>	<u>Title</u>	<u>First Reference</u>
Schedule I	Form of Project Agreement	§ 1.2
Schedule II	Waivers and Releases	§ 9.1
Schedule III	Insurance Requirements	§ 12.1
Schedule IV	Request for Change Order Proposal/ Change Order Proposal	§ 18.3
Schedule V	Form of Change Directive	§ 18.4
Schedule VI	Form of Field Authorization	§ 18.5

## 28. Notices.

28.1 Any communication or notice required to be issued or given under this Master Agreement or a Project Agreement (each, a "Notice") shall be effective only if: (1) the Notice is in writing; and (2) delivered in person or by private express overnight delivery service (delivery service charges prepaid), certified or registered

mail (return receipt requested), facsimile transmission or electronic mail to the physical or electronic address given in Section 29. A Notice shall be deemed to have been delivered to the Party as of the date of receipt, if received on a Business Day before 5:00 PM at the address for Notices identified in Section 29, or as of the next Business Day if received after 5:00 PM, and the burden of proof of the place and time of delivery shall be on the Party giving the Notice. Notices transmitted by facsimile or with electronic signature shall be as valid as an original. A Party may change its Project Representative, or the information for giving Notice, by giving Notice of the change, in writing, in accordance with this Section.

29. Representatives.

29.1 Contractor hereby designates the following persons as its: (1) representative for receipt of all Notices under this Master Agreement; and (2) backup representative for receipt of Notice under a Project Agreement if Subcontractor is not able to accomplish delivery of Notice on Contractor's Project Representative identified in the Project Agreement:

Marcy McLaughlin  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

29.2 Subcontractor hereby designates the following persons as its: (1) representative for receipt of all Notices under this Master Agreement; and (2) backup representative for receipt of Notice under a Project Agreement if Contractor is not able to accomplish delivery of Notice on Subcontractor's Project Representative identified in the Project Agreement:

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

29.3 The Project Agreement will identify party representatives (each, a "Project Representative"). A Party's Project Representative will be authorized to bind the Party on all matters relating to the Work and to receive all Notices required or permitted to be given to the Party under the Subcontract Documents.

30. Additional Provisions.

30.1 Subcontractor's relationship to Contractor is in all respects that of an independent contractor. Except only to the extent specifically directed in the Subcontract Documents with respect to a particular element of the Work, Subcontractor shall be solely responsible for the manner in which the Work is performed by Subcontractor consistent with Subcontractor's obligations under this Master Agreement. Subcontractor shall not be deemed an employee of Contractor for any purpose. This Master Agreement shall, in no respect, be construed to create a partnership, joint venture or agency between Contractor and Subcontractor. Neither Contractor nor Subcontractor shall have the right or power to bind or obligate the other for any liabilities or obligations without its prior written consent.

30.2 Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power or privilege under any provision of this Master Agreement, or with respect to any occurrence, shall operate as a waiver with respect to such provision or occurrence thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any right, remedy, power or privilege. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

31. Effective Date; Term.

31.1 This Master Agreement shall apply to and govern all Work furnished by Subcontractor from and after the Effective Date, except only to the extent of commitments previously made by Subcontractor regarding the maximum amount Contractor would be charged for a Project Agreement, which prior agreements will continue in effect without change. The term of this Master Agreement ("Term") shall continue in effect from the Effective Date until it is terminated as provided in Section 24 or amended by the Parties.

32. Counterparts; Integration; Inurement; Cumulative Remedies; Severability; Survival.

32.1 This Master Agreement and each Project Agreement may be executed in counterparts, and all counterparts will together comprise one (1) instrument. This is the entire agreement of Contractor and Subcontractor, and it supersedes all negotiations and any prior agreements between them relating to the Work. This Master Agreement shall inure to the benefit of and be binding on the successors and assigns of the Parties. No other documents are included unless incorporated herein by reference. All rights and remedies provided in this Master Agreement and a Project Agreement are cumulative and the exercise or assertion of one or more rights or remedies shall not affect any other rights or remedies allowed by Law or equity, this Master Agreement or any Project Agreement. Any provision of this Master Agreement, or a Project Agreement, which is prohibited, unenforceable, or not authorized in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or non-authorization without invalidating the remaining provisions of this Master Agreement and the Project Agreement, or affecting the validity, enforceability, or legality of such provision in any other jurisdiction. Except as specifically provided otherwise in this Master Agreement or any Project Agreement, each warranty, representation, indemnification provision, insurance requirement, and every other right, remedy and responsibility of Contractor or Subcontractor under this Master Agreement shall survive completion of each Project, or the earlier termination of this Master Agreement.

IN WITNESS WHEREOF, CONTRACTOR AND SUBCONTRACTOR HAVE ENTERED INTO THIS MASTER CONSTRUCTION SUBCONTRACT AGREEMENT AS OF THE 20th DAY March, 2017 (THE "EFFECTIVE DATE").

CONTRACTOR:

**Barker Contracting, Inc.**

**an Arizona corporation**

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

Name: Brian A. Barker

Title: President

SUBCONTRACTOR:

**Empire Roofing, Inc.**

**an Texas Corporation**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Registrar of Contractors License: \_\_\_\_\_

Init.

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PREQUALIFICATION SAMPLE BAKER CONTRACTING, INC.

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**SCHEDULE I**

**Form of Project Agreement**

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

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2127 E. Speedway  
Tucson, AZ 85719  
Ph. (520) 323-3831 Fax (520) 323-3834  
ROC 196321 KB-01 Dual Building Contractor

**TO:** ABC Vendor  
1000 Z Street  
Anytown, AZ 85799

**RE:** Sample Project (Project)  
Also referred to as Barker  
Job #

This Project Agreement ("Project Agreement") sets forth the terms and conditions of our agreement to engage you as our Subcontractor for the Project. That certain Master Construction Subcontract Agreement, made as of \_\_\_\_\_, by and between Barker Contracting, Inc., as Contractor, and ABC Vendor, as Subcontractor ("Master Construction Subcontract Agreement"), is hereby incorporated in and applies to this Project Agreement. All capitalized terms appearing in this Project Agreement shall have the meaning given to them in the Master Construction Subcontract Agreement.

#### TERMS & CONDITIONS

1. <u>The Project:</u>	Sample Project
2. <u>Subcontractors Work:</u>	Described on <b>Exhibit A</b> , and generally referred to as: Subcontractors work
3. <u>Owner:</u>	Owner Information
4. <u>Owner's Architect:</u>	Architect
5. <u>Prime Contract:</u>	That certain agreement between Owner and Contractor entitled , Sample Project made as of Enter Date, including its Exhibits, special, supplemental and general conditions, plans, specifications and drawings, and other documents incorporated therein (except only any terms of compensation to Contractor). Subcontractor acknowledges a copy of the Prime Contract has been made available to Subcontractor for review



6. <u>Subcontract Documents:</u>	<p>6.1 The BC Master Construction Subcontract Agreement, between Contractor and Subcontractor;</p> <p>6.2 This Project Agreement;</p> <p>6.3 The Prime Contract and other documents enumerated therein;</p> <p>6.4 The "Plans and Specifications" generally described as Sample Project, and referenced in more detail on <b>Exhibit B</b> to this Project Agreement; and</p> <p>6.5 Insert any additional Subcontract Documents</p>
7. <u>Subcontract Price:</u>	\$ Subcontract Amount
8. <u>Schedule of Values:</u>	The Schedule of Values is attached as <b>Exhibit C</b>
9. <u>Allowance Items:</u>	Allowance Items, if any, and the respective Allowances are as provided on <b>Exhibit C.</b>
10. <u>Unit Price Items:</u>	Unit Price Items, if any, and the respective Unit Price Extension Amounts are identified on <b>Exhibit C.</b>
11. <u>Start Date:</u>	In accordance with the Progress Schedule attached as <b>Exhibit D.</b>
12. <u>Insurance:</u>	Subcontractor will furnish the insurance per the Master Construction Subcontract Agreement.
13. <u>Subcontractor Payment and Performance Bond Requirements:</u>	Payment and Performance Bonds to be furnished by Subcontractor are as follows:
14. <u>Subcontractor's Monthly Progress Invoice:</u>	Is due to Contractor by the twenty-fifth (25th) Day of each month.
15. <u>Retention:</u>	Retention to be held by Owner from progress payments otherwise due to Contractor for the Work, as provided in the Prime Contract is 10%. Contractor will pay retention to Subcontractor if and to the extent Owner releases the corresponding retention to Contractor, subject to the Subcontract Documents.

16. <u>Other Special Conditions:</u>	
17. <u>Project Representatives:</u>	18.1 The Contractor's Project Representative and his or her information for delivery of Notices is:  18.2 The Subcontractor's Project Representative and his or her information for delivery of Notices is:
18. <u>Counterparts:</u>	This Project Agreement may be executed in counterparts, each of which shall be treated as an original.

**CONTRACTOR:**

BARKER CONTRACTING, INC., an Arizona corporation

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

Name: \_\_\_\_\_

Its: Project Manager

**ACCEPTANCE**

We accept and agree to the proposal set forth in this Project Agreement. We hereby agree to perform the Work in accordance with the terms and conditions of the Project Agreement, the Master Construction Subcontract Agreement and the other Subcontract Documents

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**SUBCONTRACTOR:**

ABC Vendor

**SAMPLE ONLY**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

License #: \_\_\_\_\_

Init.

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**EXHIBIT A**

**SCOPE OF WORK**

This work shall include, but is not limited to:

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

**EXHIBIT B**

**Plans & Specifications**

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

**EXHIBIT C**

**SCHEDULE OF VALUES; UNIT PRICE ITEMS & ALLOWANCES**

1. The Schedule of Values is attached to, and hereby incorporated in, this **Exhibit C.**

2. Unit Price Items are: (if any)

<u>Item</u>	<u>Unit Price</u>	<u>Estimated Quantity</u>	<u>Extended Unit Price</u>
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The unit price shall include Subcontractor's entire and complete compensation, including profit and overhead, for each unit furnished.

3. Allowance items are:

<u>Item</u>	<u>Allowance</u>
-------------	------------------

Allowances shall be selected, and their pricing be determined, before procurement by Subcontractor as provided in the Subcontract Documents.

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

**EXHIBIT D**

**PROGRESS SCHEDULE**

**(Cover Sheet)**

The Initial Progress Schedule is Attached, and incorporated by this reference, to this **Exhibit D**

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

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## SCHEDULE II

### WAIVERS AND RELEASES

#### (General Requirements)

1. With each Progress Invoice and Final Invoice, Subcontractor shall furnish all waivers and releases in form and substance required under the Prime Contract. If the Prime Contract does not establish requirements for waivers and releases, the following shall apply as the minimum requirement: Subcontractor must fulfill with respect to proving waivers and releases on progress payment and final payment: (1) with each Progress Invoice, Subcontractor shall furnish conditional waivers and releases on progress payment from Subcontractor and from each of its Lower Tier Persons for whom payment is requested, together with unconditional waivers and releases on progress payment from Lower Tier Persons through the cutoff date for the most recent payment made by Contractor; and (2) with its Final Invoice, Subcontractor will furnish its conditional waiver and release on final payment, together with unconditional waivers and releases on final payment from each Lower Tier Person.

2. Each conditional waiver and release on progress payment, unconditional waiver and release on progress payment, conditional waiver and release on final payment and unconditional waiver and release on final payment shall be in the forms attached as Schedules II-1, II-2, II-3 and II-4, respectively.

3. Each conditional waiver and release on progress payment and each conditional waiver and release on final payment shall state the amount that, when received, shall waive all claims through the cutoff date for which the payment is requested, be without qualification or exception, show no disputed claims, be executed by a person having authority to do so, and otherwise in form and substance acceptable to Contractor.

4. Each unconditional waiver and release on progress payment and unconditional waiver and release on final payment shall be in form and substance reasonably acceptable to Contractor to verify that the claimant has been paid in full.



**SCHEDULE II-1**

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**  
**(Pursuant to A.R.S. § 33-1008)**

Project: SAMPLE Project

Job No.: \_\_\_\_\_

On receipt by the undersigned of a check from \_\_\_\_\_  
(Maker of Check)

in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_  
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the job of \_\_\_\_\_

(Owner)

located at \_\_\_\_\_ to the following extent: This release covers a progress  
(Job Description)

payment for all labor, services, equipment or materials furnished to the jobsite or to  
\_\_\_\_\_, through \_\_\_\_\_ only and does not cover any retention,

(Person with whom undersigned contracted) (Date)

pending modifications and changes or items furnished after that date. Before any recipient of this document relies on it, that person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Date: \_\_\_\_\_ SAMPLE ONLY  
(Company name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

Init.  
/

**SCHEDULE II-2**

**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**  
**(Pursuant to A.R.S. § 33-1008)**

Project: SAMPLE Project

Job No.: \_\_\_\_\_

On receipt by the undersigned of a check from \_\_\_\_\_  
(Maker of Check)

in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_  
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the job of \_\_\_\_\_  
(Owner)

located at \_\_\_\_\_  
(location of job)

This release covers the final payment to the undersigned for all labor, services, equipment or materials furnished to the jobsite or to \_\_\_\_\_ except for disputed claims in the

(Person with whom undersigned contracted)  
amount of \$ \_\_\_\_\_. Before any recipient of this document relies on it, the person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this final payment to promptly pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Date: \_\_\_\_\_ SAMPLE ONLY  
(Company name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

Init.  
/

**SCHEDULE II-3**

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**  
**(Pursuant to A.R.S. § 33-1008)**

Project: SAMPLE Project

Job No.: \_\_\_\_\_

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for all labor, services, equipment or material furnished to the jobsite or to \_\_\_\_\_ on the job of \_\_\_\_\_  
(Person with whom undersigned contracted) (Owner)  
located at \_\_\_\_\_

(Job Description)

and does hereby release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the above referenced project to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to \_\_\_\_\_ through \_\_\_\_\_ only and does not  
(Person with whom undersigned contracted) (Date)  
cover any retention, pending modifications and changes or items furnished after that date.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Date: \_\_\_\_\_

**SAMPLE ONLY**

(Company name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.**

Init.  
/

**SCHEDULE II-4**

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**  
**(Pursuant to A.R.S. § 33-1008)**

Project: SAMPLE Project

Job No.: \_\_\_\_\_

The undersigned has been paid in full for all labor, services, equipment or material furnished to the jobsite or to \_\_\_\_\_, on the job of \_\_\_\_\_  
(Person with whom undersigned contracted) (Owner)  
located at \_\_\_\_\_ and does hereby waive and release any right to mechanic's lien,  
(Job Description)  
any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, except for disputed claims for extra work in the amount of \$ \_\_\_\_\_.

The undersigned warrants that he either has already paid or will use the monies he receives from this final payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project.

Date: \_\_\_\_\_

**SAMPLE ONLY**

\_\_\_\_\_  
(Company name)

by: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.**

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PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

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### SCHEDULE III

#### SUBCONTRACTOR AND SUB-SUBCONTRACTOR INSURANCE AND BOND REQUIREMENTS

Subcontractor shall furnish and maintain, and cause its Sub-subcontractors to furnish and maintain, in full force and effect until completion and acceptance of the Work and final payment, insurance and bonds in accordance with, and subject to, the following provisions:

- A. Subcontractor shall purchase and maintain the following policies of insurance, to be issued by a carrier with a rating from A.M. Best & Company of A-VII or better, and which shall as a minimum, afford the following types of coverage:

- .1 Workers' Compensation in the statutory limits and Employers' Liability, with limits of not less than \$1,000,000.00 per claim, endorsed to waive subrogation against Contractor, its officers, shareholders, directors, employees and representatives. If any class of employee engaged in the Work is not protected by Worker's Compensation statutes, Subcontractor shall provide special insurance for the protection of such employees not otherwise protected, which is similar to the foregoing coverage.
- .2 Subcontractor shall purchase and maintain the following policies of insurance:

Commercial General Liability Insurance, on an occurrence basis, written on an ISO form CG 001 or its equivalent, with minimum limits as follows:

Bodily Injury and Property Damage	\$1,000,000.00 for each occurrence;
Personal Injury and Advertising Injury	\$1,000,000.00 for each occurrence;
Products and Completed Operations Liability	\$2,000,000.00 Aggregate;
General Aggregate	\$2,000,000.00; and
Per Project Aggregate	\$2,000,000.00

The Commercial General Liability policy shall also: (1) be endorsed for each project with the per Project Aggregate endorsement; (2) written or endorsed so as to delete any limitation or exclusion of liability relating to (a) earth movement, or soil subsidence, (b) explosion, collapse or underground hazard, (c) construction management operations, or (d) the type or use of building or structure; (2) be written or endorsed to provide "your work" coverage (including both ongoing and completed operations coverage) arising out of work performed for the Contractor by Subcontractor; (3) be endorsed with an additional insured endorsement that (a) names as additional insured ("Additional Insureds") for each project, Contractor, the Owner identified in each Project Agreement and their respective officers, directors, employees, representatives and agents; and others as required in the Prime Contract: (b) provides additional insured status for the Additional Insureds both before and after completion of the project and (4) be endorsed to (a) stipulate that the insurance afforded shall be primary insurance and that any insurance carried by the Additional Insureds shall be excess and not contributory to that provided by the Additional Insureds, and (b) to waive subrogation against the Additional Insureds.

The products and completed operations coverage, and the Additional Insured status shall be extend, for each Project, from the date of commencement of the Work for the Project until expiration period established in the statute of repose, A.R.S. 12-552.

- .3 Business Auto Coverage providing for coverage of all owned, non-owned and hired vehicles with limits of not less than \$1,000,000.00 per occurrence for bodily injury and property damage.
- .4 Umbrella/Excess Liability providing coverage in excess of the limits specified above in a minimum of \$2,000,000.00 per occurrence.
- .5 Any other insurance required by the Prime Contract.
- B. Each policy of insurance required by Paragraph A shall: (1) have a deductible not exceeding \$10,000.00; (2) provide that attorneys' fees shall be outside the policy's liability limits and shall be unlimited; and (3) contain a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) Days' prior written notice has been given to Contractor.
- C. Subcontractor shall require each of its Lower Tier Persons, as a condition of furnishing any Work on the Project, to: (1) purchase and maintain continued workers' compensation, employers' liability, commercial general liability, and business automobile coverage (including endorsements) required in Paragraph A and meeting the special requirements of Paragraph B above, with such lesser limits of coverage as Contractor may accept in its sole discretion; and (2) furnish evidence of such insurance to Contractor prior to commencement of its respective portion of the Work and thereafter as provided in this Schedule III.
- D. Contractor shall not be responsible for any uninsured loss or damage to the Work that is not incorporated into the Project, nor shall Contractor be responsible for any uninsured loss or damage to materials, tools, equipment, appliances, or any other items used or to be used in the Work, regardless of location, whether or not on site, in transit or in storage, not incorporated into the Project, and regardless of how such loss or damage is caused. Rather, the risk of such uninsured loss shall be borne by Subcontractor, and its Lower Tier Persons. "Uninsured Loss" means any loss that may be incurred that is not covered by, or is less than the deductible of, any policy in force for the Project.
- E. Subcontractor waives all rights of subrogation against the Contractor, its officers, directors, shareholders or employees and representatives to the extent of all losses or damage to the Project covered by any policy of insurance.
- F. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment.
- G. Certificates of insurance and endorsements acceptable to Contractor shall be filed with Contractor: (1) by Subcontractor, prior to commencement of the Work; and (2) by each Sub-subcontractor or other Lower Tier Persons prior to commencement of its respective elements of Work on the site, showing all insurance coverages required above are in force for the Lower Tier Person. Failure of Contractor to enforce these or any other of the insurance requirements of the Subcontract Documents shall not be deemed a waiver of Subcontractor's obligation to furnish and maintain all insurance required of Subcontractor, and its Lower Tier Persons under the Subcontract Documents.
- H. Subcontractor shall, within ten (10) Days after request, provide Contractor with additional certificates of insurance, endorsements, declaratory pages, or other proof as requested by Contractor to verify that all required insurance is in effect; and Subcontractor shall provide to

Contractor certified copies of all policies and endorsements obtained in compliance with this **Schedule III**. Contractor shall be entitled to communicate directly with the respective insurance agents of Subcontractor and its Lower Tier Persons to verify amounts, coverage, deductibles, and other terms of insurance carried by Subcontractor and/or its Lower Tier Persons.

- I. Contractor shall furnish to Subcontractor, within a reasonable time after written request, copies of the certificates and endorsements of insurance required of Contractor under the Prime Contract.
- J. Contractor shall, upon written request of Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract Documents.
- K. Subcontractor shall furnish all performance and payment bonds required by the Subcontract Documents.
- L. Subcontractor's compliance with the insurance requirements of the Subcontract Documents is an affirmative material obligation of Subcontractor, and shall be a condition precedent to any payment otherwise payable to Subcontractor.

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.



PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

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**SCHEDULE IV**

**REQUEST FOR CHANGE ORDER PROPOSAL/CHANGE ORDER PROPOSAL**

**(Cover Sheet)**

NOTE: THE CHANGE ORDER PROPOSAL SECTION OF THE FOLLOWING FORM MUST BE SUBMITTED BY SUBCONTRACTOR WHETHER OR NOT THE PROPOSAL IS INITATED BY A REQUEST FROM CONTRACTOR, OR THE PROPOSAL IS INITATED BY SUBCONTRACTOR

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

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## REQUEST FOR CHANGE ORDER PROPOSAL

Date Issued: \_\_\_\_\_

Barker Contracting Job # \_\_\_\_\_

To: \_\_\_\_\_ ("Subcontractor")

Contractor hereby directs Subcontractor to submit its proposal, within two (2) Days, for the following Change. Capitalized terms as used in this Request and Change Order Proposal shall have the meaning given to them in the Master Construction Subcontract Agreement between Contractor and Subcontractor.

### Description of proposed Change

Barker Contracting Inc., an Arizona corporation

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

### PROPOSAL FOR CHANGE ORDER

Subcontractor hereby submits the following Change Order Proposal:

1. Subcontractor will perform the proposed Change for the following adjustment to the Subcontract Price.

<u>Element of Work</u>	<u>Adjustment to Subcontract Price</u>

2. The time impact on account of the above-described Change is proposed to be:

☐

No change.

☒

Increase time to complete Work as follows: (Describe) \_\_\_\_\_

We acknowledge we are not authorized to start any Work in connection with the foregoing Change Order Proposal unless and until we receive a Change Order or Change Directive executed on behalf of Contractor.

Dated: \_\_\_\_\_

Subcontractor

By: **SAMPLE ONLY** \_\_\_\_\_

Its: \_\_\_\_\_

**CONTRACTOR ACTION.**

- ☐ Accepted - Our Signature Constitutes a Change Order;
- ☐ Rejected;
- ☐ Under Consideration. Do not commence changed work unless a Change Order or Change Directive has been issued.

Dated: \_\_\_\_\_

Barker Contracting, Inc., an Arizona corporation

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

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

**SCHEDULE V**

**FORM OF CHANGE DIRECTIVE**

**(Cover Sheet)**

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

PREQUALIFICATION SAMPLE BARKLEY CONTRACTING, INC.

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## CHANGE DIRECTIVE

Date Issued: \_\_\_\_\_

Barker Contracting Job # \_\_\_\_\_

To: \_\_\_\_\_ ("Subcontractor")

1. Directive. Contractor hereby directs the following Change to the Work:

### Description of Change

2. Subcontract Price. The revision to the Subcontract Price on account of the above-described Change Directive is as follows:

The original Subcontract Price:	\$
The net changes by previously authorized Change Orders and Change Directives:	\$
The revised Subcontract Price, prior to this Change Directive was:	\$
The Subcontract Price will be increased by this Change Directive in the amount of:	\$
The new Subcontract Price including this Change Directive will be:	\$

3. Schedule. The time for performance of the Work on account of this Change Directive is **not to be revised unless the box is checked and the blank completed**:

☐ Revised as follows: \_\_\_\_\_.

4. Authorization. Subcontractor is authorized and directed to proceed with or implement the Changes identified above.

Dated: \_\_\_\_\_

Barker Contracting, Inc., an Arizona corporation

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

### SUBCONTRACTOR'S ACKNOWLEDGEMENT

We acknowledge receipt of the foregoing Change Directive. We recognize that if we disagree with the revisions set forth above, we must preserve our rights by noting our disagreement on this Change Directive, and submitting a Subcontractor Claim within three (3) Business Days, as provided in the Master Construction Subcontract Agreement.

Dated: \_\_\_\_\_

Subcontractor

By: **SAMPLE ONLY** \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

License No.: \_\_\_\_\_



PREQUALIFICATION SAMPLE BARKLEY CONTRACTING, INC.

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**SCHEDULE VI**

**FORM OF FIELD AUTHORIZATION**

**(Cover Sheet)**

PREQUALIFICATION SAMPLE BARKER CONTRACTING, INC.

PREQUALIFICATION SAMPLE BARK CONTRACTING, INC.

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**FIELD AUTHORIZATION**  
**(MINOR CHANGES ONLY)**

Date Issued \_\_\_\_\_

Barker Contracting Job # \_\_\_\_\_

To: \_\_\_\_\_ ("Subcontractor")

THIS IS YOUR AUTHORIZATION TO PROCEED WITH THE FOLLOWING MINOR CHANGES REQUESTED BY BARKER CONTRACTING'S JOBSITE SUPERINTENDENT, SPECIFICALLY INCLUDING:

**Description of Minor Change Authorized**

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

UNLESS STATED OTHERWISE IN THIS FIELD AUTHORIZATION, WE HAVE DETERMINED THIS MINOR CHANGE IS WITHIN THE ORIGINAL SCOPE OF THE WORK AND WILL THEREFORE NOT BE COMPENSABLE AND WILL NOT INVOLVE ADDITIONAL TIME.

YOU WILL BE DEEMED TO HAVE ACCEPTED OUR DETERMINATION REGARDING COST AND TIME UNLESS, WITHIN THREE BUSINESS (3) DAYS YOU DELIVER TO US YOUR PROPOSAL FOR PRICING AND TIME EXTENSION. SEE MASTER CONSTRUCTION SUBCONTRACT SECTION 18.5.

PLEASE PROCEED AS SOON AS POSSIBLE.

Dated: \_\_\_\_\_

Barker Contracting, Inc., an Arizona corporation

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

**ACCEPTED**

Dated: \_\_\_\_\_

Subcontractor

By: SAMPLE ONLY

Init.

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**BARKER**  
CONTRACTING

*Strong Foundations*

# Insurance Requirements

[www.barkerone.com](http://www.barkerone.com)

2127 E. Speedway Blvd., Suite 101, Tucson, AZ 85719

p 520.323.3831 f 520.323.3834

LICENSE KB-01 ROC 196321



**ATTN: ESTIMATOR • Here are insurance requirements for Barker Contracting projects. Please consult with your insurance agent to find out what additional costs will be incurred for you to carry this insurance with the proper/additional waivers and endorsements. Please include that cost in your base bid. A change order will NOT be issued for insurance costs after you are awarded the subcontract.**

## **Certificate of Liability Insurance Requirements Guide**

### **Give this to your Insurance Agent**

Attached you will find the example of an insurance certificate outlining the required coverages by Barker Contracting, Inc. (BCI) as per the Master Subcontract Agreement.

#### **For the General Liability:**

- Written on an Occurrence Form (ISO form CG0001) with Limits as required by the Master Subcontract Agreement.
  - Bodily Injury and Property Damage \$1,000,000 for each occurrence
  - Personal Injury and Advertising Injury \$1,000,000 for each occurrence
  - Products and Completed Operations Liability \$2,000,000 Aggregate
  - General Aggregate \$2,000,000 Aggregate
- Barker Contracting, Inc. endorsed to the policy as Additional Insured for “Ongoing” **AND** “Completed Operations” (et al, as required of BCI by the contract with the Owner).  
**\*\*\*NOTE: FORM # MUST BE REFERENCED ON CERTIFICATE AND COPIES OF THE ENDORSEMENT(S) MUST BE ATTACHED TO THE CERTIFICATE ISSUED TO CERTIFY COVERAGE.**
- Waiver of Subrogation in favor of BCI (et al, as required of BCI by the contract with the Owner) endorsed to the policy. **\*\*\*NOTE: FORM # MUST BE REFERENCED ON CERTIFICATE AND COPIES OF THE ENDORSEMENT(S) MUST BE ATTACHED TO THE CERTIFICATE ISSUED TO CERTIFY COVERAGE.**
- Primary and Non-Contributory endorsed to the policy in favor of BCI (et al, as required of BCI by the contract with the Owner). **\*\*\*NOTE: FORM # MUST BE REFERENCED ON CERTIFICATE AND COPIES OF THE ENDORSEMENT(S) MUST BE ATTACHED TO THE CERTIFICATE ISSUED TO CERTIFY COVERAGE.**
- Per Project Aggregate endorsed to the policy. **\*\*\*NOTE: FORM # MUST BE REFERENCED ON CERTIFICATE AND COPIES OF THE ENDORSEMENT(S) MUST BE ATTACHED TO THE CERTIFICATE ISSUED TO CERTIFY COVERAGE.**

#### **For the Workers Compensation:**

- Statutory Limits.
- Waiver of Subrogation in favor of BCI (et al, as required of BCI by the contract with the Owner) endorsed to the policy. **\*\*\*NOTE: FORM # MUST BE REFERENCED ON CERTIFICATE AND COPIES OF THE ENDORSEMENT(S) MUST BE ATTACHED TO THE CERTIFICATE ISSUED TO CERTIFY COVERAGE.**

## **Certificate of Liability Insurance Requirements Guide**

### **Give this to your Insurance Agent**

#### **For the Auto:**

- Combined Single Limit of \$1,000,000
- Hired and Non-owned Auto Coverage
- Included under the Excess Coverage

#### **For the Excess/Umbrella:**

- Occurrence Form
- Limit of \$2,000,000 extending all other coverages

THIS IS MEANT TO BE A GUIDE OF WHAT THE CERTIFICATE SHOULD INCLUDE AND A SAMPLE OF HOW THE CERTIFICATE SHOULD LOOK. IN NO WAY DO THESE DOCUMENTS REPRESENT A COMPLETE LIST OF THE OBLIGATIONS OUTLINED IN THE MASTER SUBCONTRACT AGREEMENT. NOR DO THESE DOCUMENTS CHANGE THE MASTER SUBCONTRACT AGREEMENT IN ANY WAY. PLEASE REVIEW THE MASTER SUBCONTRACT AGREEMENT IF YOU HAVE ANY QUESTIONS. ALL OTHER TERMS AND CONDITIONS AS PER OUTLINED BY THE BCI MASTER SUBCONTRACT AGREEMENT SURVIVE THIS GUIDE



## SAMPLE CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

DATE ISSUED

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>YOUR INSURANCE AGENT'S INFORMATION</b>		<b>CONTACT NAME:</b> Agent Contact Info Here <b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> <b>YOUR COMPANY NAME AS IT APPEARS ON YOUR SUBCONTRACT AGREEMENT ("DBA" VERBIAGE IS ACCEPTABLE)</b>		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
		<b>INSURER A :</b>		
		<b>INSURER B :</b>		
		<b>INSURER C :</b>		
		<b>INSURER D :</b>		
		<b>INSURER E :</b>		
<b>INSURER F :</b>				

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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 IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY	X	X	POLICY #			EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY			POLICY #			COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB	X	X	POLICY #			EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 2,000,000
	DED \$ RETENTION \$						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A	POLICY #			<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Reference "Any & all projects" or specific project on certificate. Barker Contracting, Inc. and Owner are endorsed on general liability for ongoing and completed operations per enclosed form(s) #. Primary and non-contributory coverage applies per enclosed form #. Waiver of subrogation applies on general liability per enclosed form #. Waiver of subrogation applies on workers compensation per enclosed form #.

**\*\*FORMS MUST BE REFERENCED AND ATTACHED TO CERTIFICATE\*\***

## CERTIFICATE HOLDER

## CANCELLATION

<b>Barker Contracting, Inc.</b> <b>2127 E Speedway, #101</b> <b>Tucson, AZ 85719</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b> <b>AGENT'S/REPRESENTATIVE'S SIGNATURE</b>