

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: November 18, 2014

ITEM SUMMARY, JUSTIFICATION, and/or SPECIAL CONSIDERATIONS:

Acceptance of new subcontractor for Select Development and Construction

Project\Roadway: Magee Road-La Cañada Drive to Oracle Road (S.R. 77)

CONTRACT NUMBER (If applicable): CT-TR-14*99

STAFF RECOMMENDATIONS:

Approve Subcontractor request as indicated.

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST : \$ 0 _____ and/or REVENUE TO PIMA COUNTY: \$ _____

FUNDING SOURCE(S): _____
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium Dist. Fund, etc.)

ADVERTISED PUBLIC HEARING: YES NO

BOARD OF SUPERVISORS DISTRICT: 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ All _____

IMPACT:

IF APPROVED:

Select Development & Construction will be able to use this subcontractor to meet the DBE goal.

IF DENIED:

Select Development & Construction will not meet the DBE goal.

DEPARTMENT NAME: Transportation

CONTACT PERSON: Denise M. Fair, CPM

TELEPHONE NO: 740-2829

DIVISION MANAGER: Thomas J. Kilargis, P.E.

DEPARTMENT DIRECTOR: Priscilla S. Cornelio, P.E.

PCDOT SUBCONTRACTOR REQUEST FORM

(BOS Approval Required)

It is PCDOT's responsibility to insure that prime contractor's employ subcontractors in accordance with various Federal, State and Pima County regulations

Project Name: Magee Rd., La Canada Dr. to Oracle Rd. (S.R. 77)

PC WO# 4MRLCO

Proj. ID STP-PPM-0(209)D

TRACS# 0000 PM PPM SS693 01C

(Federal Project)

(Federal Project)

Prime Contractor: Select Development and Construction

Address: 5401 S. Arcadia Avenue

City, State, Zip Tucson, AZ 85706

Phone: 520-664-0299

Requested Subcontractor: Diggum Excavating

Address: 3220 W. Appaloosa

City, State, Zip: Tucson, AZ 85742

Phone 520-297-6384

Subcontractor ROC# 206971KA

Sub Contract Amount \$ 400,741.50

DBE/SBE ☒ Y ☐ N (If Yes, additional documents required)

Description of Subcontractor work: Landscaping

Reason for Additional Subcontractor: Fulfill project DBE requirements.


(Attach additional sheets if necessary)

Desired start date: Immediately


Certification:

The Prime Contractor certifies the following:

- A) Subcontractor has received all applicable documents per the contract.
- B) The Prime Contractor and Subcontractor will execute subcontract containing the above described work, and a copy of Wage Determination(if applicable).
- C) Upon execution, Prime Contractor will send PCDOT Field Engineering, Contract Administration copies of above signed subcontract.

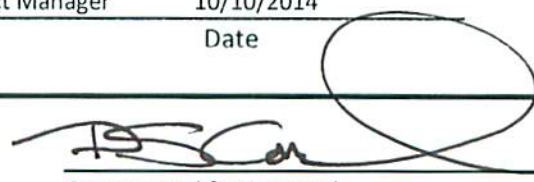

Authorized Signature Prime Contractor

Project Manager 10/10/2014
Title Date


Recommend for Approval

Thomas J. Kilargis, P.E.

Division Manager, Field Engineering


Recommend for Approval

Priscilla Cornelio, P.E.

Director, Department of Transportation

BOS Approval Date

CONTRACTS ADMINISTRATION
VERIFICATION OF CONTRACTOR LICENSE

ARIZONA REGISTRAR OF CONTRACTORS

<http://www.rc.state.az.us/>

LOCAL TELEPHONE # 628-6345

TODAYS DATE: Nov. 6, 2014

REGISTRAR CONTACT PERSON: Internet

PROJECT: 4MRLCO~Magee Rd. Improvements: La Cañada Dr. to Oracle Rd.

CONSTRUCTION FIRM NAME: Diggum Excavating, Inc.

LICENSED IN ARIZONA SINCE: 05/29/2005

LICENSE # 206971

COMPANY IN GOOD STANDING: (circle) YES NO

OTHER SUBCONTRACTORS/LICENSEES:

NAME OF COMPANY:	LICENSE #	DATE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

VERIFIED BY: Denise M. Fair
Denise M. Fair, CPM PIMA COUNTY DEPARTMENT OF TRANSPORTATION

DATE: Nov. 6, 2014

**DISCLAIMER**

The data supplied below is based on your specific request(s) and is correct to the best of our knowledge as of the date and time it was extracted from our data files. The information is provided without personal research or analysis. The data is subject to change on a daily basis. You may obtain additional public records related to any licensee, including dismissed complaints and nondisciplinary actions and orders, by contacting the ROC directly. If this information is required for legal purposes, you may request an affidavit or certified copies for a fee as specified in A.R.S. 32-1104A3. Please read our Standard Disclaimer at www.azroc.gov/Legal/Disclaimer.html

Please note: The company or individuals listed on this license may hold other Arizona contracting licenses. To view information, status and complaint history for the past two years on other licenses held, go to the License Inquiry page and do a "Company Name and Personnel" search by entering the name of the company or individuals listed on the license.

Details for License Number 206971 (Thursday, November 6, 2014 11:05:48 AM)

Contractor		License	
Name/ Address/ Phone	Status/ Action	Class Type Entity	Issued/Renewal
Diggum Excavating Inc 3220 W Appaloosa Rd Tucson, AZ 85742-9056 Phone:	CURRENT	KA DUAL CORPORATION	First Issued: 05/29/2006 Renewed Thru: 05/31/2015

License Class & Description **KA DUAL ENGINEERING****Comments**

●[SUSPENDED NON-RENEWAL 06/01/2013 - 07/19/2013]

Qualifying Party and Personnel

The Qualifying Party listed below is associated with this license. All other persons named, if any, are associated with the company. They are not all necessarily associated with this license.

Name Gilbert Ralph Egurola
Position QP/OFFICER Qual. Date 05/29/2005

Complaint Information

Complaints against this contractor are listed below. Complaints that were cancelled, resolved or settled without a corrective work order or dismissed are not included. Contact the Registrar of Contractors at 602-542-1525 or toll-free statewide at 1-877-MY AZROC (1-877-692-9762) to identify the ROC office location you need to visit to view complete complaint documentation.

Open:	0	This is the number of complaints against this contractor that are currently open except those in which an agency inspection has not occurred or a violation was not found. Upon adjudication some complaints are found to be without merit and are dismissed.
Closed Cases		
Disciplined:	0	This is the number of complaints that resulted in discipline against this contractor.
Resolved/Settled/ Withdrawn:	0	This is the number of complaints closed against this contractor that were resolved or settled by the contractor or withdrawn by the complainant after issuance of a corrective work order or formal citation.
Denied Access:	0	This is the number of complaints against this contractor that were closed without corrective work being performed because the contractor was denied access by the complainant.
Bankruptcy:	0	This is the number of complaints against this contractor that were closed because the contractor is in bankruptcy.

Bond [1] Information

Number	Effective	Amount	Paid	Available	Company	Notes
AZ375085	05/29/2012	\$30,000.00	\$0.00	\$30,000.00	MERCHANTS BONDING CO (MUTUAL)	



October 24, 2014

Terri Spencer, C.P.M.
Pima County Procurement Department
150 West Congress Street, 5th Floor | Mail Stop DT-AB3-126
Tucson, AZ 85701

Reference: Magee Road Improvements: La Canada Drive to Oracle Road
Subject: - DBE Substitution Request

Ms. Spencer:

Pima County's October 2, 2014 and October 15, 2014 responses to ADOT's letters dated September 16, 2014 and October 2, 2014, have not provided sufficient documentation to determine that proactive steps were taken by Pima County to determine whether Select Development was in compliance with 49 CFR part 26.53(f,g). The responses did not provide adequate evidence that Pima County displayed sufficient oversight in determining whether Select Development engaged in bad faith or discriminatory action in regard to payment of the DBE subcontractor, Blue Diamond.

Based on the information provided, Pima County was aware that the DBE Blue Diamond was not performing work on the project on June 12, 2014. Pima County was also aware on June 12, 2014 of the reason Blue Diamond was not on the job; due to alleged nonpayment. There was very little documentation provided that Pima County conducted an inquiry to determine the facts related to the dispute between Select Development and Blue Diamond and whether Select Development made good faith efforts in accordance with federal DBE regulations to promptly pay Blue Diamond and help Blue Diamond to complete its obligations related to the contract.

Pima County has asserted in its response dated October 15, 2014 that "there was neither evidence nor allegation of bad faith or discriminatory action sufficient to require an inquiry" related to the termination of Blue Diamond. This is directly contradictory to Blue Diamond's claim to Pima County that Select Development violated the terms of the contract and acted in bad faith by causing them financial hardships by not paying them for work performed over extended periods of time. Claims were also made by numerous other subcontractors from April 2014 to the present. The information provided by Pima County lacks sufficient evidence that Pima County provided proper oversight or made sufficient attempts to investigate the dispute or to determine whether Select Development acted in good faith in their dealings with Blue Diamond in a manner that could have avoided the subsequent need to replace the DBE subcontractor on the job.

One thing is clear, Select Development did not comply with the contract specifications and the federal DBE regulation regarding replacement/substitution of a DBE (49 CFR part 26.53). Select Development did not immediately notify Pima County of the fact that Blue diamond was refusing to work and what

course of action Select Development was taking to act in good faith to resolve the payment dispute. Based on information submitted by Pima County, the DBE, Blue Diamond was last on the job on June 12, 2014 but Select Development did not notify Pima County of the situation until July 22, 2014. Additionally, Select Development did not request and obtain prior approval from Pima County and ADOT to obtain the services of another DBE to replace Blue Diamond until October 10, 2014. Furthermore, Select Development completed some of the work contracted to the DBE, in direct violation of the contract and DBE regulations.

ADOT is approving the use of the DBE requested by Pima County in order that the DBE commitment amount can be met on the contract. However, this does not minimize or negate Select Development's noncompliance with DBE regulations and Pima County's failure to properly provide oversight.

In light of the deficiencies described above, ADOT expects that Pima County will impose appropriate sanctions (such as reduced compensation) as outlined in the contract for Select Development's noncompliance related to these matters. In that light, ADOT notes that the County's contract with Select Development provides that failure to pay subcontractors is a material breach of the contract and failure to meet DBE provisions is also a material breach of contract.

Non-compliance with Pima County's duty to oversee this federally funded project may be grounds to de-obligate federal funding from the project. In such a case, not only would the county be ineligible to receive additional funding on the project, the county would also be required to repay all federal project funding that has already been received. ADOT needs immediate action and assurances from Pima County that it will work to resolve these issues.

Sincerely,



Vivien Lattibeaudiere, Ph.D.
Business Engagement & Compliance Office
Manager

Electronic cc:	Jennifer Toth, ADOT	Priscilla Cornelio, P.E., PCDOT
	Dallas Hammit, ADOT	Rick Ellis, P.E., PCDOT
	Roderick Lane, ADOT	Barham Dariush, ADOT
	Thomas Kilargis, PCDOT	Trent Kelso, ADOT
	Susan E. Anderson, ADOT	Jodi Rooney, ADOT
	Natalie Clark, ADOT	Patrick Stone, ADOT
	Beverly Krumm, ADOT	Paul O'Brien, ADOT
	Ana Olivares, PCDOT	Sharon Gordon, FHWA
	Lisa Neie, FHWA	



Pima County DOT

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SUBSTITUTION or TERMINATION REQUEST
CONSTRUCTION POST-AWARD**

In accordance with the DBE Special Provisions, the contractor will not terminate a committed DBE subcontractor for convenience to perform the work with its own forces or those of an affiliate without ADOT Business Engagement and Compliance Office's (BECO) prior written approval. The contractor must demonstrate good faith efforts to replace a committed DBE firm, which does not perform as intended, with another committed DBE firm. Reasonable methods to resolve performance disputes must be applied. Replacement of DBEs without BECO's prior written approval is a material breach of the contract.

Contract Number (TRACS): SS69301C Prime Contractor Name: Select Development

Requester Name: Jim Olson Phone Number: 520-444-0320 Email: jimolson@selectdev.net

Type of request: ☐ Reduction of DBE scope ☒ DBE Substitution ☐ DBE Termination

Is this request due to an Pima County DOT Change Order?

☐ Yes, explain below the Change Order impact on DBE participation

☒ No, explain in detail below the reason(s) for the request

Blue Diamond abandoned the project and the concrete scope of work they were subcontracted to perform. As Select could not locate another concrete structures DBE that could perform the work per the schedule and bid. Select desires to utilize the landscape scope to fulfill the DBE requirements and has subcontracted Diggum Excavating to this end.

*Attach documentation to substantiate statement above

Name of DBE firm to be ☒ replaced ☐ removed: Blue Diamond

DBE listed on the DBE Affidavits (condition of award): ☒ Yes ☐ No

Subcontract Amount: \$ \$275,000.00 Amount of Subcontract Remaining: \$ \$275,000.00

DBE Work categories line items: Concrete Structures

NOTE: If a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the prime contractor will make good faith efforts to find another DBE subcontractor to replace the original DBE. The good faith efforts will be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated or replaced, to the extent needed to meet the contract goal established for the project.

Proposed DBE Subcontractor Name: Diggum Excavating *If applicable

Is the proposed replacement an AZ UTRACS certified DBE subcontractor?

☒ Yes

☐ No, provide Good Faith Effort (GFE) documentation

Original DBE Subcontractor Signature _____ Date: _____

Prime Contractor Signature _____ Date: 10/10/14

PM/Resident Engineer Signature _____ Date: _____

FOR BECO USE ONLY

Request is: Approved ☐ Not Approved ☐

BECO Representative: _____

Signature: _____

Date: _____

Select Development & Construction, Inc.
SUBCONTRACT AGREEMENT
No. 1308-03

THIS SUBCONTRACT AGREEMENT ("Agreement") is entered into effect October 7, 2014, by and between "Select Development & Construction, Inc. 5401 S. Arcadia Tucson, Arizona 85706" ("General Contractor" or "Contractor") and Diggum Excavating, Inc., 3220 W. Appaloosa, Tucson, Az 85742, ("Subcontractor"). This agreement includes the Subcontract Standard Terms and Conditions ("Standard Terms and Conditions"), the General Condition ("General Conditions"), and all attached hereto Attachments ("Attachments"), and the following Exhibits ("Exhibits"):

- Exhibit A - Scope of Work
- Exhibit B - Subcontract Price
- Exhibit C - Schedule
- Exhibit D - Wage Determination
- Exhibit E - FHWA 1273

In consideration of their mutual promises herein, Subcontractor and General Contractor agree as follows:

PROJECT. Select Development & Construction, Inc. has entered into a Contract with Pima County to perform labor and furnish material for the construction of *Magee Rd, La Canada Dr to Oracle Rd (SR 77) (4MRLCO)* located at Magee Rd, La Canada Dr to Oracle Rd, Tucson, Arizona ("Project"), pursuant to Drawings, Specifications, and Addenda prepared and distributed by Pima County ("Owner"). The Contract Documents ("Contract Documents") will include this Agreement, the Contract Agreement between General Contractor and Pima County

IN WITNESS WHEREOF, Subcontractor and Select Development and Construction Inc. herein execute this Agreement as set forth above.

SUBCONTRACTOR:

Diggum Excavating, Inc

Gil Egurrola
 BY: *Gil Egurrola*
 ITS: *Pres*

Select Development and Construction Inc.

Jim Olson
 BY: Jim Olson
 ITS: Project Manager

Subcontractor License No. 206971 KA

Subcontractor State Tax ID Number 10-117799 H for AZ
 (State of Project)

Subcontractor Taxpayer Identification Number (TIN) 86-0571813

INITIALS *GE*

**SUBCONTRACT AGREEMENT
GENERAL CONDITIONS**

Subcontract 1308-03

1. **Submittals-** All submittal data, samples, shop drawings, etc. are to be furnished within fifteen (15) days of receipt of this Subcontract Agreement, unless this time requirement is modified. Submittals must comply with the contract documents. Submit the required Number of copies per the specification section. Even if submitted electronically, drawings larger than 11" x17" must also be submitted as hard copies - at least seven (7) copies are required. All other Submittals must be transmitted in electronic format. Adobe *PDF files created directly from native electronic format is the preferred method of transmission. Scanned documents are not acceptable. Clearly identify any substitution requests. Hard copies of some submittals may be acceptable with advance approval of the Contracting Officer.
2. **Quality Control** - Subcontractor recognizes Quality Requirements and agrees to fully and actively participate in the project's Quality Control Program in conjunction with the performance of the Work. All reporting Requirements of the Quality Control Program are included in the Subcontractor's scope of work.
3. **Existing Conditions** - Subcontractor is responsible for inspecting all surfaces prior to install of their material. Any problems, defects, Or conditions that will prevent a neat, clean installation must be brought to the attention of the project superintendent. Subcontractor agrees that if he covers a surface, he has accepted that surface.
4. **Meetings** - All Subcontractors are required to attend weekly subcontractor coordination meetings during work and two weeks prior to their start of work. Coordination with all other trades is part of this Subcontract Agreement. In addition to coordination meetings, all preparatory, initial, and follow up meetings on quality control (for each definable feature of work) are mandatory.
5. **Safety** - Subcontractor must submit a Site Specific Safety Plan prior to working on site. Refer to Exhibit E of the Subcontract Agreement for additional safety requirements. All subcontractors are subject to the Safety and Health requirements set forth by OSHA and any other regulatory agencies as may hold jurisdiction. Subcontractor shall submit all Material Safety Data Sheets (MSDS) pertaining to its trade per OSHA regulations prior to their start of work.
6. **Inspections** - Subcontractor is required to give Select Development project superintendent adequate advance notice (at least 48 hrs) for the scheduling of all Activity Hazard Analysis reviews (AHA) and 3rd party special inspections of work. Additional advance notice may be required for some inspections. If adequate notice is not received by Select Development, subcontractor will take any and all necessary action to make up lost time due to missed inspections. In addition, subcontractor is responsible for all inspection cost and lab fees which are incurred as a result of defective or nonconforming work.
7. **Storm Water Pollution Prevention Plan (SWPPP)** - Subcontractor shall abide by all storm water pollution prevention business practices as defined by the local Authority Having Jurisdiction, EPA, and USACE environmental requirements. If subcontractor should remove and or damaged the SWPPP measures then they shall be responsible to repair or replace them.
8. **Dust Control** - Subcontractor shall abide by all required dust control measures while performing work on project site. Subcontractor must provide necessary equipment needed to control dust during operations. Subcontractor is responsible for clean up of any track out that is caused by its operations. Subcontractor is responsible for any fines resulting from improper dust control.
9. **Billing for Stored Materials** - In order to be paid for materials stored on site, Subcontractor must submit its invoice along with legible supplier invoices and adherence, as applicable, to the following criteria.
 - Subcontractor must provide a storage facility with appropriate temperature control.
 - Acceptance and stocking of materials deliveries.
 - Inventorying material as required for payment.
 - Additional Insurance as required for payment.
 - Replacement or repair of materials that are lost or deemed unacceptable by Select Development due to damage caused by storage

No stored material payments will be made without proper back-up, compliance to site storage requirements and Owner approval.

10. **Layout for your work** is part of this Subcontract Agreement.
11. **Firesafing Requirements** - Subcontractor shall provide all required firesafing and/or fire/smoke stopping work in conjunction with the execution of its scope of work.
12. **Contract Documents** - One disk containing the Contract Documents will be provided to the Subcontractor. Subcontractor is responsible to procure their own hard copy of the Contract Documents and ensure that their on-site representative has a current set

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Attachment A

of Contract Documents. The documents provided to the subcontractor contain all the Amendments issued by the Owner. It is the responsibility of the subcontractor to verify the accuracy and completeness of the incorporation of the amendments into the Contract Documents.

13. **Specifications** – the Subcontractor is required to review the Specifications, as a whole and not as individual sections, to determine the work required. Taking the individual sections together provides details for all work to be performed. Individual sections, by themselves, many not contain sufficient details to complete the work described in that section. Reference to additional sections may be necessary to determine the total work required to complete the work specified in any individual section.
14. **Accuracy of the Contract Documents** – It is the responsibility of the Subcontractor to ensure that all amendments, changes and RFI clarifications have been incorporated correctly into their construction documents. Select Development shall be notified in writing of any discrepancies prior to commencing work.
15. **Supervision** – Subcontractor must have a qualified English speaking foreman on-site during all of their operations. Said foreman must have a current set of Contract Documents for this scope of work. If they don't, a set will be immediately procured for them and charged to the Subcontractor. Charges will be the costs of the prints, plus Select Development's labor, plus rush delivery but not less than \$500.00.
16. **Sub Personnel**- Select Development shall maintain the right to interview and approve all supervisory personnel prior to the start of work. Select Development has the authority to require the removal from the jobsite of any employee of the Subcontractor or sub-subcontractor without cause.
17. **General Project Site Rules**- Normal project hours will be between 7:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal Holidays. Certain work may require performance on an off-hours basis. Such work shall be performed without an increase in Subcontract Price., unless specifically directed in writing by Select Development. If Subcontractor desires to work outside the normal established working hours, subcontractor shall notify Select Development at least 48 hours in advance and must obtain Select Development's approval prior to starting work. Subcontractor acknowledges that additional requirements may be necessary for making a delivery to an Owner facility. Any cost incurred from delays, searches, crane inspections, or vehicle rejections by the Owner of Contractor shall be borne by the Subcontractor. Subcontractor shall be responsible for compliance with all Project access procedures, specified in the Contract documents, and as may be amended from time to time by the Owner. All vehicle and construction equipment used on site must be properly marked with flags, strobes, alarms & audible warning devices as applicable.
18. **Site Access**- All employees working on the site must be enrolled in the Employment Verification System (e-verify) process. Website. Information on registration for and use of the E-verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-verify>
19. **Site Deliveries**- The subcontractor understands that deliveries may be required to be received outside of normal working hours. All costs associated with delivery, including any required overtime, are included in the Subcontract Price. All delivery personnel shall abide by Select Development project safety requirements including but not limited to the wearing of hardhats, safety glasses and high-visibility vest when outside of the delivery vehicle. All deliveries require a minimum 48 hour notification to Select Development. Any unauthorized or unscheduled vehicles are subject to being turned away, without notice, at the vehicle owner's expense. The Subcontractor is cautioned to advise their suppliers, equipment haulers, etc. who will drive to the project site that the posted speed limit and traffic routes must be obeyed. Subcontractor will be responsible to meet all deliveries at the jobsite gate and to escort delivery to its destination. Subcontractor shall be responsible for verifying the structural capacity of the building during all phases of construction to coordinate its material stockpiling and installation operations with said capacities. Costs of temporary supports to meet this requirement shall be included in the Subcontract Price. Any costs associated with material and/or equipment deliveries made after Project is substantially complete, which requires the Project to be delayed, installed out-of-sequence or removed and replaced, will be the responsibility of Subcontractor. Temporary enclosures necessary to facilitate access for deliveries into the Project will be provided, maintained, and removed by the Subcontractor (s) requiring such access. Subcontractor shall provide all provisions for traffic control necessary to perform the Work. This includes required signage and flagpersons, if necessary, as well as any and all coordination required with any base, state, or local agencies.
20. **Parking**- Subcontractor's employees shall park only in areas designated by Select Development. All onsite trades persons are responsible to maintain a clean and accessible parking area. Only marked company vehicles will be allowed in areas beyond the employee parking lot.
21. **Damage to Existing Facility**- Any damage to existing facilities (asphalt, utilities, etc.) caused by Subcontractor shall be repaired at Subcontractors expense.
22. **Dewatering / Water Control**- Subcontractor is responsible for all pumping, bailing. Or well point equipment necessary to keep their excavations and trenches free from the accumulation of water during the entire progress of their work.. Subcontractor shall dispose of water in such a manner as will not endanger public health or cause damage or expense to public or private property. Subcontractor shall abide by the requirements of any public agencies having jurisdiction. Subcontractors performing work under exposed conditions shall remove water for the protection and execution of their work.
23. **Temporary Field Office and Facilities**- Select Development shall designate an area for construction trailers and/or site offices, and directly coordinate their placement with each Subcontractor. Each Subcontractor shall make its own arrangement for connection, and pay usage costs for telephones, electrical, and any other service to its site office and storage facilities. Temporary field offices and sheds may not be used for living quarters. Offices and shed shall be of suitable design, maintenance and appearance, and in

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Attachment A

accordance with the requirements of the local Fire Marshall and authorities having jurisdiction. All temporary offices and sheds must be removed within ten (10) days of written notice from Select Development. Structures not removed in a timely manner will be removed by Select Development at the Subcontractor's expense.

24. **Sanitary Facilities-** Select Development will provide site toilet facilities. The Subcontractor shall provide all required wash station facilities for its employees.
25. **Drinking Water-** Subcontractors shall provide drinking water for its own work forces.
26. **Construction Water-** Subcontractor shall supply all materials (i.e. hoses, racks, pumps, etc.) necessary to load/dispense. Construction water will be provided to the subcontractor. Subcontractor shall conserve water at all times. Disposal of construction and testing water shall be in accordance with the Contract Documents and approved site Storm Water Pollution Prevention Plan (SWPPP).
27. **Electrical Power and Lighting-** Subcontractor acknowledges that there will be limited 1200-volt power available in selected locations determined by Select Development. General lighting only will be provided to minimum OSHA requirements. Task lighting, extension cords, light bulbs, and other means for power distribution and lighting required to perform the Work is the responsibility of Subcontractor. Subcontractor to provide GFI protection devices for its use, where required. Subcontractor's execution of the Work that requires high voltage power (equipment startup, use of permanent equipment, etc.) shall be full coordinated and scheduled in a timely manner.
28. **Temporary Heating Systems-** Heating and/or dehumidification of the building will be provided as reflected in the schedule information provided to the Subcontractor. Temporary heating and/or dehumidification of spaces necessary to execute the Work prior to the operation of such systems shall be provided by the Subcontractor, the costs of which to be included in the Subcontractor Price.
29. **As-built drawings** must be kept current and verified on a daily basis. These drawings are made available for Subcontractor's use in the jobsite trailer. If Subcontractor's as-built drawings are not kept current, any damage to any Subcontractors work or work in progress shall be Subcontractors responsibility.
30. **Punch List Work-** Subcontractor will provide a crew to complete and fix all items on punch list as generated by Select Development staff. This crew will be dedicated to the punch list to expedite its completion.
31. **Operations and Maintenance Manuals-** Subcontractor shall fully comply with all requirements of the Contract Documents regarding the submission of Operations and Maintenance Manuals, including any associated payment provisions. Provide manuals in electronic format.
32. **Attic Stock / Spare Parts-** Subcontractor is responsible to provide all specified attic stock materials and spare parts as required by their noted scope of work. Exhibit 2, and to deliver them to a location determined by Select Development, using a material transfer form acceptable to Select Development.
33. **Testing, Start-Up and Commissioning-** Subcontractor shall provide for the filling, flushing, disinfecting, lab testing and removal of test water from all piping systems in full accordance with the contract Documents and local jurisdictions. Start-up and functional testing of all equipment installed by the Subcontractor (whether furnished by Subcontractor or by others) is included. Subcontractor shall also furnish and install all necessary instruments, lubricants, chemicals, supplies, and service representative's time as required for complete system commissioning and testing.
34. **All close -out documents,** including warranty letters, operations and maintenance manuals, extra materials and as-built drawings must be submitted per specification sections (as well as other applicable sections specific to your scope of work) prior to submitting final and retention billings. Provide this information in electronic format.
35. **Traffic Control-** Subcontractor is responsible for maintaining traffic control within its area of work including but not limited to maintaining proper setup and continuity.
36. **Davis Bacon/ Prevailing wage-** Wage Determination number AZ130008 6/14/13 AZ8 is appended hereto as Attachment 2 to the Special Conditions. CONTRACTOR shall pay mechanics and laborers used on this project the prevailing wages described therein in accordance with Article IV of the FHWA-1273 and report thereon in accordance with Article V of the FHWA-1273 and Article SC-4(1) of the Special Conditions. SUBCONTRACTOR shall include this requirement in all second tier subcontracts and shall require that all second tier subcontractors likewise include this requirement in all lower tier agreements or contracts.

Diggum Excavating, Inc.

By

Title

Date

INITIAL

**SUBCONTRACT AGREEMENT
TERMS AND CONDITIONS
Subcontract 1308-03**

1. **CONTRACT DOCUMENTS.** As used herein, the term "Contract Documents" shall refer to and include this Subcontract and its exhibits, the terms, provisions, and conditions of the contract between the General Contractor and the Owner (the "Prime Contract") along with the drawings, standard specifications, general conditions, supplementary and special provisions. General Contractor's Project schedule, and all addenda, amendments or modifications thereto, the invitation and instruction to bidders, if any, and all other exhibits or documents that form or are made a part of the Prime Contract. The parties agree that the Contract Documents are incorporated herein by reference. Subcontractor represents and warrants that it (1) has carefully examined and understands the Contract Documents, (2) is familiar with the job site and conditions and circumstances under which work will be performed, and (3) is in no way relying upon any opinion or representation of General Contractor in submitting a bid for the Project or entering into this Subcontract. Subcontractor binds itself to Contractor and Owner and is obligated to Contractor and Owner in the same manner and to the same extent that Contractor is bound and obligated to Owner under the Prime Contract. All rights which Owner may exercise and enforce against Contractor may be exercised and enforced by Contractor/Owner against Subcontractor. In case of conflicts or inconsistencies between this Subcontract and the other Contract Documents, the Subcontract shall control. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with the Contract Documents. General Contractor shall have the same rights and privileges as against Subcontractor as the Owner in the Prime Contract has against General Contractor.

A. Subcontractor shall be responsible to obtain and pay for their own Contract Drawings, Addenda, and Specifications. Contract Documents may be purchased from the General Contractor's designated reprographic company or an electronic (CD) copy will be provided at no cost, upon request.

B. If Subcontractor requires design clarification on information relative to the Contract Documents, Subcontractor shall submit a Request For Information (RFI) on a form acceptable to the General Contractor. Subcontractor shall include the following items of detail on each RFI submitted: (a) References to the specific parts of the Contract Documents being clarified, and (b) a tracking number unique to the Subcontractor.

2. **SCOPE OF WORK.** Subcontractor agrees to furnish and pay for all labor, materials, supplies, tools, equipment, supervision, services, field measurements, shop drawings, engineering and incidental items necessary to complete all of the work reasonably required by or inferred from the above described work, hereinafter referred to as the "Work".

A. All materials furnished but not installed by Subcontractor shall be delivered F.O.B. jobsite unless otherwise provided herein. All risks associated with said materials shall remain with Subcontractor until such risk passes to the Owner under the Contract Documents.

B. The Work shall be performed by Subcontractor (1) as an independent contractor, (2) in strict conformance with the Contract Documents, (3) in a good and workmanlike manner, and (4) to the satisfaction of the General Contractor and the Owner.

C. Subcontractor shall comply with all federal, state, county, and municipal laws, ordinances, rules and regulations relating to the Work, and pay all fees, give all notices and obtain, at its own cost and expense, all required licenses, permits, inspections and registrations necessary for the performance of the Work. If the Work requires consultation with public utility companies, it shall be the responsibility of the Subcontractor to communicate with all utilities and to conduct the Work so that the property of the utilities is not damaged.

3. **PAYMENT.** Subject to the following conditions, and so long as Subcontractor is performing in a timely and acceptable manner, and is not otherwise in default of its obligations hereunder, Subcontractor shall be paid the total sum as described in Work Description. Unless otherwise noted in the Contract Documents, funding will be monthly based on an invoice and supporting documentation submitted by the Subcontractor for Work actually performed and approved by General Contractor. The amount due to Subcontractor shall be based upon the quantities and measurements determined and accepted by General Contractor and the Owner, or its representatives, less retention. All payments made to Subcontractor shall first be used to pay any person or entity providing labor, materials, or equipment in connection with the Work or to otherwise satisfy any obligation that could lead to lien or a claim against any bond provided by General Contractor. Subcontractors shall include a similar provision in its sub-subcontracts and purchase orders. All payments to Subcontractor shall be subject to the following:

A. In addition to the above, no payment shall be due or made to Subcontractor until receipt by General Contractor of (a) fully executed agreement; (b) evidence of insurance in conformance with Article 4E, hereof; (c) Bonds required under Article 8 hereof; (d) Sworn Statement of Suppliers; (e) Schedule activities and associated Schedule of Values as described in Paragraph 3A and as approved by Owner and General Contractor; (f) Site specific safety plan, acceptable to General Contractor, and (g) Statement of Acknowledgement Form (SF1413).

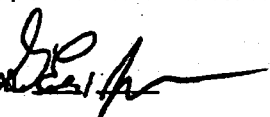
B. Prior to submitting its first application for payment, Subcontractor shall submit a Schedule of Value allocating the Subcontract Price to the full Scope of Work, prepared in such form and supported by such data to substantiate its accuracy as General Contractor may require, which schedule shall be used as a basis for reviewing Subcontractor's Application for Payment. The Schedule of Values will be used for payment purposes only and shall not relieve Subcontractor from its obligation to perform all of the Work and provide all of the labor and material required by the Agreement. When approved by General Contractor, the Schedule of Values may be modified by Subcontractor to incorporate executed Change Orders.

C. General Contractor will pay Subcontractor the approved portion of the Subcontractor's monthly progress or other pay request within seven working days after General Contractor receives payment for such Work from the Owner. The parties agree that General Contractor's actual receipt of any progress, change order, claim, retention or final payment from Owner shall be an express condition precedent to General Contractor's or its surety's obligation to make any such payment to Subcontractor for the Work. Subcontractor agrees that all payments to Subcontractor shall only be made from, and its right to recover for the Work is exclusively limited to, the funds actually received by the General Contractor from the Owner and from no other source. Subcontractor acknowledges that it is sharing, to the extent of payments to be made to the Subcontractor, in the risk that the Owner may fail to make one or more payments to the General Contractor for all or a portion of the Work or any changes hereto.

D. General Contractor's obligation to pay Subcontractor is further conditioned upon Subcontractor's timely and prior submittal of statutory lien waivers and bond releases, in a form acceptable to General Contractor, for Subcontractor and its lower tier subcontractors or suppliers that performed work for or supplied materials or equipment to Subcontractor and the jobsite during the current payment month. Each waiver must show that there are no outstanding amounts due. General Contractor shall have the right to joint check or withhold an amount equal to the total amounts shown on conditional lien releases as being outstanding.

E. In addition to the foregoing, final payment shall be made to Subcontractor in exchange for unconditional final lien releases provided to the General Contractor from Subcontractor and all parties that either filed a preliminary lien notice or provided labor and/or material in

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connection with the Project. Acceptance of final payment shall constitute a waiver of all claims by Subcontractor relating to the Work. Final payment shall not relieve Subcontractor from liability for warranty, guaranty, or indemnity obligations, for faulty or defective work, or any other obligation imposed by this agreement.

F. General Contractor shall hold the same retention as that which is withheld by the county of the Subcontract amount until all close out documents have been received and accepted by the General Contractor and the Owner. Close out documents include but are not limited to as built, operating manuals, warranty letters, and final lien waivers.

G. When requested by General Contractor, Subcontractor shall provide a sworn statement identifying the names and addresses of all entities that have furnished or may furnish labor, materials, and/or equipment for the Work, together with the amount due or to become due for such work. General Contractor shall have the right to contact these subcontractors and suppliers at any time to verify payment or amounts due. General Contractor retains the right to take whatever steps it deems necessary to ensure that progress and final payments will be utilized to pay potential lien or bond claimants, including, but not limited to, the issuance of joint checks or making payment directly to any claimant after notice to Subcontractor. All such payments will reduce the amounts otherwise due to Subcontractor under this agreement. If such payments exceed the balance due, or to become due, under this agreement, then Subcontractor shall be liable for the difference. Subcontractor shall defend and indemnify General Contractor, its surety and the Owner from any and all claims of Subcontractor's employees, and lower tier subcontractors, laborers, employees, or suppliers.

H. Material delivered to the Project by or on behalf of Subcontractor shall not constitute material furnished in the performance of the Work until such material has been incorporated into the improvements constituting the Project. Payment shall not constitute evidence of acceptance of any Work performed or materials delivered.

I. If General Contractor is notified or informed of a deficiency in the Work, any actual or potential third party claim against Subcontractor, General Contractor, or the Owner, as a result of the Work, or it appears that General Contractor could sustain any loss or damage as a result of labor or materials furnished to the Project or any action or omission by Subcontractor in the performance of the Work General Contractor may, without penalty, withhold from any payment due Subcontractor an amount that General Contractor reasonably determines is required to cover said claims or damages. The exercise of this right shall not bar or waive any other rights or remedies that General Contractor may have.

4. DUTIES OF SUBCONTRACTOR. Subcontractor agrees to do the following:

A. **TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.** Subcontractor agrees to commence the Work within twenty-four (24) hours after receiving written notification to proceed from General Contractor and to proceed at such times, in such order and in such places as General Contractor may designate. Subcontractor shall diligently perform the Work in accordance with the General Contractor's project schedule, as it may be revised from time to time, and in a manner that will cause no delay in the progress of General Contractor's or other subcontractors' work on the Project. In addition, Subcontractor shall be required to provide General Contractor with monthly schedule update information by the 25th of each month and three-week look ahead schedule information submitted 48 hours in advance of each weekly coordination meeting. Subcontractor shall participate in all meetings required to obtain approval of initial baseline schedule and all updated schedules.

Upon request, Subcontractor shall promptly provide General Contractor with any information relating to the order or nature of the Work. Subcontractor shall notify the General Contractor of any unforeseen delays and assist in implementing a recovery plan to meet the schedule requirements established by the General Contractor. Subcontractor acknowledges that General Contractor's project schedule may be revised by General Contractor as work progresses. Subcontractor agrees to take the steps required to stay informed of and comply with General Contractor's schedule and progress. General Contractor may require Subcontractor to prosecute segments of the Work in phases. Subcontractor shall comply with instructions given by General Contractor, including any instructions to suspend, delay or accelerate the Work. Subcontractor shall not be entitled to any extra compensation from General Contractor for any suspension, delay, or acceleration, regardless of who is responsible for same, unless specifically agreed to in writing by the General Contractor and the General Contractor actually receives payment from the Owner or other responsible subcontractor(s) for any additional cost incurred by Subcontractor. The Owner's payment to General Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from General Contractor. Otherwise, Subcontractor warrants that the prices set forth herein include all costs necessary for Subcontractor to adhere to the General Contractor's schedule, as it may be revised throughout the Project. In addition, incidental overtime will at times be required by the Subcontractor to support project activities. The cost of this incidental overtime shall be included in the Subcontracted price.

Unless a shorter period is otherwise required by the Contract Documents, Subcontractor shall provide written notice to General Contractor within forty-eight (48) hours after the discovery of any act, event, condition, or occurrence that would entitle the General Contractor to an extension of time or additional compensation from Owner under the terms of the Contract Documents. Unless payment is actually received from the Owner to cover any damages sustained or additional costs incurred by Subcontractor as a result of any such act, event, condition, or occurrence, Subcontractor shall only be allowed a time extension to complete the Subcontract Work if additional time is granted to General Contractor by the Owner. Subcontractor shall not be entitled to any additional compensation. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time extension will be granted Subcontractor that will render General Contractor liable for liquidated damages or other loss under the Prime Contract. Subcontractor shall be liable for any and all damages caused by its failure to perform in accordance with General Contractor's schedule, as it may be revised throughout the Project, including but not limited to, any liquidated or other damages assessed against General Contractor under the Prime Contract, as well as any additional costs incurred or damages sustained by General Contractor.

Subcontractor agrees to cooperate fully with General Contractor and with other subcontractors performing work on the Project and to not interfere with the performance of work by others. In the event Subcontractor and any other subcontractor cannot agree on the extent of cooperation or the work to be done by any of them, such disagreement shall be resolved by the General Contractor so as to ensure the orderly and timely completion of the Project.

If the General Contractor delays or suspends Subcontractor's progress for any reason then Subcontractor's sole remedy will be an extension of the time allowed to complete the Subcontract Work. General Contractor will not be responsible for any damages sustained or costs incurred by Subcontractor as a result of any such delay.

Any claim for extension of time shall include a schedule impact analysis. This analysis shall include start and finish date changes, relationship changes as well as any duration changes associated with the impact. Failure to supply this information will result in the Subcontractor's acknowledgement that the proposed changed work has no schedule effect, and will not be considered to have any cumulative effect with any other changes on the project.

B. **Site Facilities.** Except as otherwise specified herein, Subcontractor shall furnish temporary site facilities necessary for the performance of its obligations under this Agreement, including, but not limited to, storage, sheds, water, drinking water, heat, light, scaffolding, shoring, weather protection, excavating, trenching, fill, backfill, compaction, grading and adequate security for materials placed upon the jobsite.

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C. **Drawings.** Subcontractor shall be responsible for the preparation, submittal and accuracy of all shop drawings or other technical information or approvals that relate to the Work that must be prepared and submitted to Owner or its representatives pursuant to the Contract Documents. All such documents, samples, or information shall be submitted in a form and manner required by General Contractor and in sufficient time to allow General Contractor to review and send it to Owner in timely manner. In no event shall such documentation, sample, or information be submitted later than five (5) days following General Contractor's request. General Contractor's review or approval of shop drawings or technical submittals shall not be deemed to authorize deviations from the requirements of the Contract Documents.

D. **Indemnification.** To the fullest extent permitted by law, Subcontractor shall indemnify, defend and save harmless General Contractor, its surety, Owner, Pima County, RTA, State of Arizona and any other person or entity that General Contractor, and their agents, employees or representatives from and against any and all claims, debts, demands, damages (including direct, consequential, incidental, or other damages), judgments, awards, losses, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature at any time arising out of any failure of Subcontractor to perform any of the terms and conditions of this subcontract or which are in any manner directly or indirectly caused or occasioned by or contributed to, or claimed to be caused or occasioned by, or contributed to, by any act, omission, fault or negligence, whether active or passive, of Subcontractor or anyone acting under its direction or control, or on its behalf in connection with or incident to the work, even though the same may have resulted from the joint, concurring or contributory act, omission or negligence whether active or passive, of General Contractor, Owner or any other person, unless the same be caused by the sole negligence or willful misconduct of General Contractor, or its agents, servants or other independent contractors. Without limiting the generality of the foregoing, the same shall include damages relating to injury or death to any person or persons, including agents and employees of Owner, General Contractor and Subcontractor, and damage to any property, regardless of location, including property of Owner, General Contractor and Subcontractor and shall be extend to any similar obligations of General Contractor undertaken by it under the Prime Contract with respect to the work hereunder. Without limiting the generality of the foregoing, Subcontractor will on request and at its expense defend any action, suit or proceedings arising hereunder and shall reimburse and pay General Contractor for any loss, cost, damage or expense (including legal fees) suffered by it hereunder. Subcontractor agrees that Counsel, Consultants and experts retained by Subcontractor to defend General Contractor shall be subject to General Contractor's approval. Subcontractor's defense and indemnification obligations will survive the expiration or termination of this agreement. The insurance maintained by Subcontractor in accordance with the agreement shall insure but not limit the performance of Subcontractor's indemnification obligations set forth herein.

E. **Insurance.** Subcontractor agrees to procure and maintain at its sole expense, the minimum insurance coverages on all operations hereunder, with insurance companies approved by General Contractor, for the amounts, times, and durations as set forth in the Contract Documents or as otherwise designated by General Contractor in writing, but in no event less than the following:

1. **Workers' Compensation and Employer's Liability Insurance** which shall extend to workers' compensation laws of any state, district or territory of the United States in which work is situated. Worker's Compensation Insurance must meet the statutory limits and Employer's Liability Insurance limits shall not be less than the statutory limits of \$1,000,000. Subcontractor waives all rights against Contractor, the Owner, separate contractors and all other subcontractors for loss or damage to the extent covered by Worker's Compensation on any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance.

Before commencing any work hereunder, Subcontractor shall furnish General Contractor certificates and endorsements from approved insurance companies evidencing that all the foregoing insurance is in force and will not be canceled without thirty (30) days prior written notice to General Contractor.

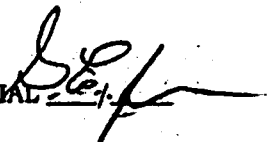
2. **Commercial General Liability Insurance** on a per project basis with policy limits of not less than \$2,000,000 as to each occurrence for Bodily Injury, Personal Injury, Products Completed Operations and Property Damage coverage and a General Aggregate of \$2,000,000, which said limits, may be a combination of primary and excess insurance coverage. Such policy or policies shall be on a per occurrence basis and shall specify as additional insured the General Contractor, the Owner, their directing officers and employees, and any other person, entity or agency that the General Contractor is required to name as an additional insured under the Prime Contract, and shall include coverage for the following:

- (a) Premises and Operations Liability;
- (b) Contractual Liability insuring the obligations assumed by Subcontractor in this subcontract;
- (c) Completed Operations and Products Liability with additional insured endorsements CG 2037 and 2010, or acceptable equivalents;
- (d) Broad Form Property Damage Liability;
- (e) Liability which Subcontractor may incur as a result of the operations, acts or omissions of its subcontractors, suppliers or materialmen, and their agents or employees;
- (f) Explosion, Collapse and Underground Hazards; and
- (g) Such policy or policies shall be endorsed to stipulate that the insurance afforded for Subcontractor shall be primary insurance and that any insurance carried by General Contractor, Owner and officers or employees shall be excess and non-contributory insurance.

3. **Automobile liability**, including owned, non-owned, and hired automobiles with limits of no less than \$1,000,000.

4. If the General Contractor specifies any additional insurance of higher limits than herein specified, Subcontractor shall at its expense procure insurance coverage to comply therewith. Before commencing any work hereunder, Subcontractor shall furnish General Contractor certificates and endorsements from approved insurance companies with AM Best rating A or higher and evidencing that all foregoing insurance is in force and will not be canceled without thirty (30) days prior written notice to General Contractor. General Contractor may withhold payments otherwise due to Subcontractor until such certificates have been furnished to General Contractor, or after receipt of notice of intent to cancel any policy, until withdrawal of said notice, or the reinstatement of any canceled policy. In the event the coverage evidenced by any such Certificate of Insurance is canceled or refused, Subcontractor shall procure replacement coverage and furnish to General Contractor at least five (5) days before the effective date of such cancellation, a new Certificate if Insurance conforming to the above requirements.

In the event Subcontractor shall fail to provide such new Certificate of Insurance with the time specified, General Contractor shall have the right, but not the obligation, to procure coverage and immediately deduct the cost thereof from any amounts due Subcontractor. The failure to provide evidence of, and maintain the insurance required herein, shall be deemed a material breach of the Subcontract, and shall entitle General Contractor to the right to withhold any payment due to Subcontractor under this Subcontract Agreement until proof of the required insurance coverage has been provided to General Contractor or to terminate this agreement for default. The requirement for carrying insurance hereunder shall not be in derogation of other provisions of this Subcontract. Subcontractor waives all rights against Contractor, the Owner, separate contractors and all other subcontractors for loss or damage to the

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extent covered by the Subcontractor's Commercial General Liability and Workers' Compensation Insurance policy, except such rights as they may have to the proceeds of such Insurance.

5. It is agreed that any insurance carried by General Contractor which may cover any liability insured against by Subcontractor hereunder shall be deemed excess insurance over and above the applicable amounts of insurance carried by Subcontractor.

6. All policy forms shall contain a) an endorsement naming as additional insureds General Contractor, Owner, and any other person or entity that General Contractor is required to insure, defend or indemnify under the Contract Documents; b) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be noncontributing with the coverage provided under this policy."

7. General Contractor and Subcontractor shall waive all rights against each other, the Owner, separate contractors and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance, except such rights as they may have to the proceeds of such Insurance.

F. **Clean Up.** At the end of each day, remove all trash, debris and excess dirt caused by Subcontractor and broom clean each room in which Work has been performed by Subcontractor in accordance with all applicable laws. All trash and debris and surplus materials resulting from Subcontractor's operations shall be removed to a site or sites to be designated by General Contractor. In the event Subcontractor fails to do so, General Contractor may deduct cleaning costs from the Subcontract price. Subcontractor shall provide one person for every ten Subcontractor's personnel on site (minimum of 1, if less than 10 Subcontractor personnel present) for a site composite crew clean up operation organized by the General Contractor. This clean up shall occur at least one day per week or more as determined by General Contractor. Upon completion of its work in an area, the Subcontractor shall leave the area debris-free and broom clean. Subcontractor shall be responsible to provide clean up to streets and adjacent properties, if debris is a result of their operation.

Subcontractor shall manage solid waste generated by their Work; to divert waste from landfills (particularly from class III landfills), and to maximize source reduction, re-use, and recycling of construction and debris. Subcontractor shall separate all recyclable materials and deposit in accordance with the project's waste management plan. This may include, but not limited to metals, paper / cardboard, inert, wood, drywall, and similar items.

Subcontractor shall properly break down, compact, and deposit in dumpsters all debris generated by its operations. Subcontractor is responsible to properly remove offsite the following:

- Hazardous or potentially hazardous materials, including but not limited to petroleum products, paint, solvents, and other chemicals.
- Unusually heavy or large items, including but not limited to waste concrete or mortar, demolition debris, CMU and brick, excess soils, grading material, and similar items.
- Scrap steel shapes or rebar materials resulting from the Work (requiring a separate scrap metal dumpster - provided by Subcontractor).

G. **Assignment.** Subcontractor shall not assign the Subcontract or any payments due hereunder or sublet any part of the Work without prior written consent of General Contractor. The only exception will be if an assignment is intended to create a new security interest within the scope of Article 9 of the UCC. If so, the instrument if assignment shall expressly confirm that the assignee's rights shall be subject to the rights granted to General Contractor hereunder and the rights and claims of all persons or entities providing labor, services, materials, or equipment in connection with the Work.

H. **Lien/Waivers.** Prevention of Liens, Subcontractor agrees to pay when due all claims for labor, equipment or materials and to prevent the filing of any lien, attachment, garnishment, lis pendens, suit or any other action involving the General Contractor, the Owner, any payment bond provided by the General Contractor, or the property upon which the improvements are effected. Subcontractor agrees to satisfactorily resolve any such dispute within ten (10) days after written demand by General Contractor, failing which, the General Contractor shall be authorized to use whatever means it may deem best to cause the lien, attachment or suit to be removed, discharged, comprised, or dismissed and the costs thereof together with interest and reasonable attorney's fees shall immediately become due and payable to General Contractor by Subcontractor. Any payment and satisfaction of any such matter shall be prima facie evidence of the necessary therefore and reasonableness of said payment.

I. **Suppliers and Subcontractor.** All suppliers and subcontractors shall be subject to the approval of General Contractor. All subcontracts and material supply agreements awarded by Subcontractor on the Project shall incorporate and be subject to the terms and conditions of the Contract Documents and this Subcontract.

J. **Taxes.** Subcontractor agrees to pay all taxes, license fees, contributions, interest and/or penalties due under any federal, state, or municipal statute or regulation arising from or relating to Subcontractor's Work or the amounts earned under this agreement excluding sales tax on the installed, accepted product. Subcontractor warrants that the prices set forth herein include an allowance to cover all such obligations. Subcontractor shall indemnify, defend, and save General Contractor and the Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy any such obligation. Subcontractor shall provide proof that all taxes and other charges are being properly paid upon receiving a written request from General Contractor. If General Contractor directly pays, or is assessed or charged for any taxes, contributions, interest or penalties concerning the Subcontract Work or Subcontractor, General Contractor shall have the right to withhold such amount, plus a markup of 15% for General Contractor's general conditions, from funds due or to become due to Subcontractor.

K. **As Built Drawings; Operations and Maintenance Manuals, Warranties and Guarantees.** Furnish to General Contractor, if so requested, prior to final payment, warranties and guarantees, as built drawings, and all Operations and Maintenance Manuals that relate to the Work that General Contractor is required to provide to the Owner under the Contract Documents or that is otherwise requested by General Contractor. Subcontractor will maintain as-built drawings in good order and marked currently to record all changes made during construction relating to its Work so that they are acceptable to General Contractor. When as-built records and drawing are required by the Contract Documents, Subcontractor shall provide such records in full accordance with the Contract Documents. Any payment provisions in the Contract Documents associated with record documents shall apply to the Subcontractor.

L. **Meetings.** Attend all meetings scheduled by General Contractor.

M. **Warranty and Guarantee.** In addition to all requirements and obligations contained in the Contract Documents, Subcontractor unconditionally warrants and guarantees that (1) all materials and equipment shall be new, unless otherwise specified or allowed in the Contract Documents, and that the completed Work and related materials shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. As specified in the contract documents, but for a period of not less than one year from the date of substantial completion, subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to the Owner or General Contractor, any defects due to faulty workmanship and/or materials which shall appear or be defective. Any equipment and materials having warranties longer than the specified time

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shall be warranted for such additional period. Copies of all manufacturer and subcontractor warranties or guarantees shall be submitted and approved prior to submittal for final payment. The project shall be deemed completed upon final acceptance by the Owner or as otherwise specified in the Prime Contract. This warranty shall be in addition to all other warranties and obligations imposed by law and shall not be in lieu of any other claim or right that General Contractor may have available. Subcontractor's obligation to repair and replace shall not absolve it of any liability to General Contractor for damages caused by any defective or unacceptable work or materials.

Within 48-hours following receipt by Subcontractor of notice from General Contractor at any time during any applicable warranty period, Subcontractor shall proceed at its own expense with reasonable diligence to repair and replace any Work, materials or equipment which may be defective. In the event that Subcontractor fails to commence such corrective work within said 48-hours day period, or fails to diligently pursue to completion such corrective work then, at its option, General Contractor may perform said corrective work or have the same performed at the expense of the Subcontractor, with payment due to General Contractor by Subcontractor upon receipt by Subcontractor of a statement for said expense. Such costs shall include the direct costs to complete and a markup of 20% for General Contractor's general conditions.

N. **Damaged Work.** Subcontractor shall be responsible to General Contractor for any destruction of or damage to the Work, materials, supplies, equipment or property of the Owner, General Contractor, or others on the Project that is caused by the negligence, act or omission of the subcontractor. In addition to any requirement or obligation imposed under the Contract Documents, all loss or damage to the Work or any of Subcontractor's materials, supplies, equipment or property resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until the time period specified in the Contract Documents has expired or General Contractor no longer assumes such risk to the Owner. Subcontractor shall at times and at its sole expense fully secure and protect against any damage, injury, destruction, theft or loss to all work, labor, materials, supplies, tools and equipment furnished by Subcontractor or its sub-subcontractors, laborers and materialmen.

O. **Satisfactory Employees; Disruptive Employees.** Furnish during the progress of the Work skilled employees, adequate and suitable materials and a qualified superintendent or foreman to act as representative of Subcontractor. Said representative shall have the right and power to obligate Subcontractor and shall at all times be satisfactory to General Contractor. Subcontractor shall provide one competent, technically qualified QC inspector to assist with all inspections and testing according to the General Contractor's QC plan and as set forth in the Contract Documents. Subcontractor's QC inspector shall be on site full time during progress of the Subcontractor's scope of work and shall have the authority to act on the Subcontractor's behalf. In the event General Contractor should determine that any employee of Subcontractor is in any way impairing the progress of construction of the Project or disrupting or offending any other persons working on the Project, Subcontractor shall remove such employee from the Project upon request. Subcontractor shall not allow any of its employees to possess or consume alcoholic beverages on the Project jobsite.

P. **Discrepancies.** Subcontractor shall notify General Contractor in writing of any discrepancies, errors or omissions discovered by Subcontractor in the plans and specifications, or the physical conditions uncovered or revealed at the worksite differing materially from that indicated, reflected or reasonably inferred from the Contract Documents, and continuation of the Work subsequent to such discovery shall be at Subcontractor's risk. Minor items of Work or material omitted from the plans and specification, but clearly inferable from the information presented or which are called for by accepted trade practice shall be provided and performed by Subcontractor at no additional charge over the original Subcontract price.

5. **Extras and Extension of Time.** Subcontractor shall perform additional work or omit items of work which the General Contractor shall have the right to order in writing without invalidating this agreement. No claim for extra time and/or compensation on account of changed, added or deleted work may be made by Subcontractor unless acknowledged by General Contractor in writing and General Contractor is entitled to and actually receives additional time and/or compensation on behalf of Subcontractor under the Contract Documents from the Owner. General Contractor shall not be liable to Subcontractor for any greater sum than General Contractor receives from the Owner on behalf of Subcontractor, less reasonable overhead and profit due to General Contractor, and any professional or attorney's fees, costs, or other expenses incurred by General Contractor in obtaining said time and/or compensation.

Subcontractor shall give General Contractor written notice of any act, event, condition, or occurrence that would entitle the General Contractor to additional compensation or an extension of time under the Contract Documents promptly and in sufficient time for General Contractor to notify Owner in accordance with Contract Documents. In no event shall Subcontractor give written notice to General Contractor more than (48) hours after discovery. If Subcontractor fails to notify General Contractor within said 48 hours, Subcontractor shall be deemed to have agreed to perform the additional work at no additional cost and with no revision to the completion schedule.

Upon receipt of any oral directive that Subcontractor believes involves work beyond its original scope of work or that would otherwise constitute a constructive change to this agreement, Subcontractor agrees to provide General Contractor with written notice that it considers the directive a change prior to performing any such work. Failure to so notify General Contractor will constitute a waiver of all such claims. Subcontractor shall be entitled to additional compensation and/or time only if the asserted change is actually recognized by the Owner and additional time and/or compensation is actually received by General Contractor on Subcontractor's behalf.

General Contractor's Superintendent signature on any Subcontractor work ticket attests to material and labor quantities only, and does not approve Subcontractor's work as being outside the scope of the Subcontract Agreement. Subcontractor's work must be compared to the subcontract requirements to determine if subcontract changes are required. Affixing of a signature to the face of a work ticket voids any wording that may be contained on the backside of the ticket.

Subcontractor agrees to be bound to General Contractor to the same extent that General Contractor is bound to Owner both by the terms and procedures of the Contract Documents, and by any and all decisions or determinations made thereunder by the party, board, court, or body authorized to hear or resolve claims or disputes in the Contract Documents. All claims or disputes asserted by Subcontractor concerning the acts or omissions of Owner or its representatives, changes initiated by the Owner, indemnity claims between the General Contractor and Owner, the quality or acceptability of Subcontractor's work, if rejected by Owner, or its representatives, the sufficiency or adequacy of or representations contained in the Contract Documents, or any other basis or event that in General Contractor's sole discretion could entitle General Contractor to additional time and/or compensation under the Contract Documents shall be subject to the procedures set forth in the Contract Documents. General Contractor agrees to present the Owner, in General Contractor's name, Subcontractor's claims for such additional time and/or money and to invoke, on behalf of Subcontractor, those provisions in the Contract Documents for resolving disputes or claims. No invocation of these procedures nor any action or position taken in such proceeding by General Contractor shall be deemed to constitute an admission of any obligation or liability to Subcontractor. Subcontractor agrees that it will not take any other action against General Contractor with respect to any such claims and will not pursue independent litigation or arbitration with respect thereto against General Contractor or its surety, pending a final determination under the procedures set forth in the Contract Documents. Subcontractor agrees to be bound by all decisions entered and determinations made through said procedures. The presentation or prosecution of any claim for or on behalf of Subcontractor shall not affect Subcontractor's obligation to proceed diligently with

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the Subcontract Work. In no event will Subcontractor be entitled to receive any greater amount from General Contractor or its surety than General Contractor is entitled to and actually does receive from the Owner or other responsible subcontractor(s) on account of Subcontractor's work or claims, less any markups due to General Contractor for cost of professional fees incurred by General Contractor in obtaining such recovery. Said payment to General Contractor is an express condition precedent to any payment obligation on the part of General Contractor or its surety. Subcontractor agrees that it will accept such amount, if any, received by General Contractor from the Owner or other responsible subcontractor(s) as full satisfaction of all claims. Subcontractor's only claim against General Contractor or its surety will be for payment of any amounts awarded to and actually received by General Contractor from the Owner or other responsible subcontractor(s), on Subcontractor's behalf.

At its option, General Contractor may give Subcontractor the authority to pursue any of its claims against Owner or other subcontractor(s), in the name of General Contractor, if suitable arrangements are made in writing with General Contractor. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear all expenses thereof, including attorney's fees and costs.

Should a dispute arise between General Contractor, its surety and Subcontractor as to this Subcontract or Subcontractor's Work that concerns only the parties hereto or other subcontractors on the Project, Subcontractor shall give General Contractor written notice within three days after the occurrence of the event giving rise to said claims. Otherwise, such claims will be deemed waived. Only if such claim, demand or issue is not required to be resolved under the procedures of the Prime Contract in accordance with the preceding paragraph, said dispute will be resolved through binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association, which are incorporated herein by this reference. All proceedings, including the selection of the arbitrator(s), shall be in accordance with said rules. The General Contractor shall have the option of joining any other party with whom it has contracted who in General Contractor's judgment may be liable for any damages claimed by Subcontractor. Nothing contained herein shall preclude Subcontractor from perfecting any lien or bond rights, but the merits of the underlying claims shall be resolved as provided herein.

In any arbitration, action, or proceeding regarding this agreement, the prevailing party shall be entitled to recover its attorney's and expert fees and costs and to have final judgment entered in any court having jurisdiction over the parties based upon the final award. The parties shall be entitled to conduct discovery in the arbitration proceedings. Before either party may demand arbitration, the parties must jointly participate in an AAA mediation. The parties shall split the cost of the mediation. If the parties are unable to resolve the issues after mediation, they may proceed to arbitration as set forth above.

6. **LABOR AGREEMENTS.** No strike, picketing or labor dispute of any kind involving the General Contractor, Subcontractor or its sub-subcontractors or suppliers shall excuse the non-performance of any duty of Subcontractor set forth herein. In the event of a strike, picketing or labor dispute of any kind which, in General Contractor's judgment, has resulted from Subcontractor's presence on the Project, said actions shall constitute a default if not cured within the period after Notice of Default set forth herein and General Contractor shall thereafter have all of the rights and remedies set forth in this Agreement.

7. **SAFETY REQUIREMENTS.** Subcontractor shall be responsible, in the course of Work, for initiating, maintaining and supervising all safety precautions and programs against injury to persons and property, including without limitation, conforming its work activities to the basic safety policies of the General Contractor, and for ensuring that at all times its work is done in full compliance with all applicable environmental requirements that in any way relate or impact Subcontractor's work. Subcontractor shall also comply fully with all laws, including, without limitation, all orders, citations, rules, regulations, standard guidelines, codes, procedures and statute with respect to Army Corps of Engineers field manual EM385-1-1 and occupational safety and health, accident prevention, safety equipment and practices, and environmental requirements. Subcontractor shall also conduct inspections to determine that safe working conditions and equipment exist. Subcontractor assumes sole responsibility for providing a safe place to work for its employees and for employees of all other employers and suppliers exposed to hazards created or controlled by Subcontractor and for ensuring that it has fully complied with the environmental laws or requirements that may impact the work. Subcontractor also assumes sole responsibility for the adequacy of and required use of all safety equipment and for full compliance with all of the aforesaid laws, orders, citations, rules, regulations, standard guidelines, codes, procedures and statutes. Subcontractor shall satisfy and comply with the foregoing as part of this agreement without any additional compensation.

If requested, subcontractor shall submit a safety or environmental compliance plan for review by General Contractor. General Contractor's review and/or acceptance of any such plan shall not be deemed to release Subcontractor or in any way diminish its indemnity or other liability as assumed under this agreement, nor shall it constitute an assumption of risk or liability by General Contractor.

Subcontractor shall fully indemnify under the Contract Documents, their members, offices, agents, and employees, for, from and against any claim, citation, suit, payment, penalty, fine, violation, willful violation, repeat violation, damage, liability, lost, cost and expense, including without limitation any attorney's fees, post accident drug testing fees, fines, citations, payment, penalties, losses, violations, willful violation or repeat violations of General Contractor, arising out of, related to, or resulting from any failure or alleged failure of Subcontractor (or any of its subcontractors or sub-subcontractors or any of their agents, employees, members or officers) to comply with any safety or environmental requirements of General Contractor or Owner or any law, order, citation, rule, regulation, standard guidelines, codes, procedures or statute in any way relating to the environmental requirements applicable to Subcontractor's Work or to the occupational health or safety of employees, including but not limited to violations or alleged violations of the Occupational Safety and Health Act of 1970, as amended, or the regulations promulgated thereunder by O.S.H. Administration, or to violations or alleged violations of A.R.S. 23-401, et seq., the Arizona Division of Occupational Safety and Health Act, or to the use of equipment, hoists, elevator or scaffolds of General Contractor or others, regardless of whether or not caused in any part by the failure or alleged failure of General Contractor, or General Contractor's agents, to so comply and regardless of whether or not caused in part by General Contractor's negligent failure to discover or remedy a dangerous condition, and regardless of whether or not caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 7.

In furtherance thereof, Subcontractor shall obtain whatever environmental permits or licenses are necessary for it to satisfactorily complete its work and to post all necessary danger signs, barricades and other warning devices against hazardous conditions existing, or which might exist, on the jobsite. Subcontractor shall also require all its employees and subcontractors to wear all appropriate and necessary personal protective equipment, including hard hats, shoes and other clothing. Subcontractor shall further institute an ongoing safety program to promote safety at the worksite including supplying, training and using personal safety equipment and taking reasonable precautions to avoid dangerous situations to other parties or to work performed or to be performed by others or property of others in connection herewith. If General Contractor determines that Subcontractor has failed to cure the conditions specified in this paragraph, then General Contractor shall be entitled, in addition to all other available remedies, to assess a daily charge of \$600.00 per day that the condition or practice exists. The amounts that become due under this section will be deducted from the amounts otherwise due or that may become due to Subcontractor.

Regardless of whether any governmental agency or entity has issued any citation or assessed any fines against either of the parties,

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General Contractor shall have the right, but not the obligation, to provide written notice of any condition or practice that it deems to violate any law, order, rule, regulation, standard, guideline, code, procedure or statute relating to environmental requirements or occupational health or safety. Subcontractor shall take immediate action to remedy the situation.

Subcontractor requiring crane access to the Work shall review the construction and condition of the existing areas adjacent to the Work to verify suitability for crane loads. Any requirement to revise or upgrade the existing facilities to facilitate Subcontractor's crane access shall be the responsibility of the Subcontractor requiring such access. Subcontractor shall notify General Contractor a minimum of 48 hours prior to arrival of the required crane. Subcontractor shall make provisions as not to allow for delays for any inspections, access, or requirements needed prior to access to the site. Subcontractor shall ensure that all cranes and equipment required on the site are fitted with but not limited to, backup alarms, amber strobes or beacons, and 3' x 3' flags of designated markings as required by the Contract Documents.

When so ordered, Subcontractor shall stop at any part of the work, which General Contractor deems unsafe until corrective safety measures satisfactory to General Contractor have been taken. In addition to any right to terminate this agreement for default, should Subcontractor neglect to adopt such corrective measures, General Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to General Contractor.

8. PERFORMANCE BONDS AND SUBGUARD. At the option of General Contractor, Subcontractor shall furnish to General Contractor a payment bond and/or a labor and material bond and/or faithful performance bond, or a combination of the same in form satisfactory to General Contractor. Said bond or bonds shall be issued by an insurance company or companies approved by General Contractor. The bond premiums shall be paid by Subcontractor and are included in the Subcontract Price. General Contractor may request such bond or bonds either before or after the commencement of work by Subcontractor pursuant to this Agreement, but, if requested prior to commencement of work, said bond or bonds shall be delivered to General Contractor to be approved and accepted prior to commencement of work by Subcontractor. In the event that Subcontractor shall fail to deliver such bond or bonds to the General Contractor within five (5) days after the request for same is given to Subcontractor by General Contractor, General Contractor may send a written Notice of Default to Subcontractor, as set forth in Paragraph 10 hereof. Subcontractor has agreed to

Subguard Insurance Program. Unless Contractor elects to bond Subcontractor, as set forth above, the Subcontractor agrees to participate in the Contractor's Subguard Insurance program. Subguard Insurance shall be for the exclusive benefit of Contractor and shall in no manner inure to the benefit of Subcontractor. Subcontractor agrees to provide such financial and other qualification information as may be requested by Contractor to determine Subcontractor's eligibility to participate in the program. There is no cost to the Subcontractor for participation in the Contractor's Subguard Insurance program.

9. DEFAULT AND TERMINATION. Subcontractor shall be in default on its obligations imposed by this agreement if, in the opinion of General Contractor, Subcontractor (1) fails at any time to supply a sufficient number of properly skilled workmen or materials satisfactory to complete the Subcontract Work; (2) fails to adequately or timely perform the Subcontract Work to the satisfaction of General Contractor or the Owner or in accordance with General Contractor's schedule; (3) becomes insolvent or makes any filing under the Acts of Congress relating to bankruptcy; (4) fails, neglects and/or refuses to comply with the Contract Documents; (5) fails to perform the Subcontract Work in a good and workmanlike manner; (6) causes any stoppage of the work of the General Contractor or the other trades on the Project; (7) fails to correct defective work; (8) fails to maintain the insurance requirement by this agreement; (9) fails to pay its employees, suppliers, or subcontractors; (10) disregards laws, rules, regulations, or orders of any public authority having jurisdiction; (11) fails to comply in any other respect with the terms, conditions and obligations of this agreement; (12) fails to adequately and/or timely complete the punch list work to the satisfaction of General Contractor or the Owner; or (13) fails to provide close-out materials per specifications upon request of the General Contractor.

General Contractor shall provide written notice of default to Subcontractor by regular mail, facsimile, or by any means that will provide notice to Subcontractor at the address identified above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail or upon actual receipt by Subcontractor, whichever occurs first.

Subcontractor shall cure or otherwise correct the default within forty-eight (48) hours after written notice by the General Contractor. If after forty-eight (48) hours Subcontractor has failed to cure and correct the default in the opinion of General Contractor, General Contractor, may, at its sole discretion, provide or contract for any labor, materials, or equipment as may be necessary to complete that portion of the Subcontract Work at issue and deduct the cost thereof from any money then due or to become due to the Subcontractor. The cost of said work shall include General Contractor's direct cost to complete or remedy the default, plus a 20% mark-up for General Contractor's general conditions. In addition, General Contractor may terminate this agreement for default. The termination shall become effective upon mailing or actual receipt of a second written notice to Subcontractor confirming the failure to cure and General Contractor's decision to terminate this agreement.

Upon termination of this agreement by General Contractor, General Contractor or its replacement subcontractor(s) may enter upon the premises to take control of all materials, tools, equipment, and appliances of Subcontractor, and may employ any other person or entity to finish the Subcontract Work. Subcontractor hereby assigns and transfers to General Contractor all sub-subcontracts, material contracts, or orders, bills of lading for material en route, and any other necessary rights, data or information that may be necessary for the completion of the Subcontract Work. Subcontractor agrees to take whatever steps General Contractor deems necessary to transfer or deliver any information or documentation requested by General Contractor. Following completion of the Subcontract Work, General Contractor shall return to Subcontractor or lawful owner all unused materials, tools, equipment and/or appliances. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor's equipment or materials, nor shall General Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by General Contractor.

In the event Subcontractor has provided a payment or performance bond in connection with this agreement, General Contractor shall send Subcontractor's surety a copy of the forty-eight (48) hour cure notice and General Contractor's notice of termination. If the surety does not provide General Contractor with written assurance within five days after receipt of the termination notice that it will make the arrangements necessary to complete the Subcontract Work in accordance with General Contractor's schedule, then the surety will be deemed to have waived its rights to complete the work.

If this agreement is terminated for default, Subcontractor shall not be entitled to receive any further payment until General Contractor has received final payment from the Owner. At that time, if the amounts owed for work actually completed by Subcontractor exceed the expenses incurred by General Contractor in finishing Subcontractor's Work and all other damages sustained by General Contractor as a result of the default, such excess shall be paid by General Contractor to Subcontractor with the consent of Subcontractor's surety, if any. If the costs incurred or damages sustained by General Contractor exceed any amounts due to Subcontractor, then Subcontractor and/or its surety shall promptly pay the difference to General Contractor. Until any deficiency is satisfied, General Contractor may hold, sell or otherwise realize upon any of

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Subcontractor's materials or equipment, or take any other step to collect the deficiency, including making a claim against Subcontractor's surety.

In determining the costs incurred by General Contractor to complete the Subcontract Work, General Contractor shall be entitled to recover all direct and indirect costs incurred by General Contractor, all subcontractor costs, an allowance for the General Contractor's owned equipment at the force account rates specified in the Contract Documents, plus a markup of 20% on all costs to cover General Contractor's general conditions. General Contractor also shall be entitled to recover any expenses, attorney fees, and costs incurred and any and all other damages sustained by General Contractor by reason of Subcontractor's default.

10. TERMINATION FOR CONVENIENCE. In addition to any rights the Owner may have under the Contract Documents and General Contractor's right to terminate this Subcontract for default, General Contractor reserves the right to terminate this agreement for its convenience upon giving Subcontractor fifteen (15) days written notice of its intention to do so. Such notice shall specify the effective date of the termination. Subcontractor's sole recovery shall be the payment for work completed prior to the date of termination at the unit prices specified herein. If there are not unit prices set forth in the Subcontract, payment for partially completed work shall be based upon the direct project costs incurred by Subcontractor in partially performing said items of work, plus a mark-up of 15% for overhead and profit. Subcontractor shall not be entitled to recover any anticipated profits or unallocated overhead on unperformed work or additional compensation or damages in the event of such termination. The termination of this agreement shall not relieve Subcontractor from any responsibilities for the work that it completed prior to the date of termination or waive any claims that General Contractor may have against Subcontractor under any other provision of this subcontract.

If a court arbitrator determines that any termination of this agreement for default was wrongful or that Subcontractor was not in default, the prior termination of this agreement will be deemed to be a termination for General Contractor's convenience under this section and Subcontractor's remedies and recovery shall be as specified in this section.

In the event the Prime Contract is terminated by the Owner prior to commencement or completion, then this agreement will be terminated as well. The termination settlement under this agreement shall be as provided in the Contract Documents. Subcontractor shall not be entitled to receive any greater amount than General Contractor actually receives from the Owner on Subcontractor's behalf for such termination.

11. APPLICABLE LAW. This Subcontract is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principals) shall govern its interpretation and enforcement.

12. INTEREST ON SUMS DUE. All sums due and payable to General Contractor by Subcontractor for any reason, as set forth in this Agreement shall bear interest at the rate of eighteen percent (18%) per annum, commencing as of the date any such obligation becomes due.

13. ENTIRE AGREEMENT. This Agreement contains the entire agreement between General Contractor and Subcontractor and supersedes all prior proposals, conversations and negotiations between the parties on the subject matter of this Agreement. General Contractor and Subcontractor agree that, except as specifically provided herein, neither party has made any representations, warranties or agreements as to any matters concerning the subject matter of this Agreement.

14. AUTHORITY: Each person signing this or other contract documents in a representative capacity represents that he has full authority to act in such capacity. Each of the persons named in the attached Job Schedule as authorized agents shall have full authority during the term of this Agreement to act on behalf of Subcontractor and to sign any lien waivers presented by or requested by General Contractor unless and until Subcontractor has given General Contractor written notice substituting a new authorized agent. General Contractor is executing this Agreement as a Prime General Contractor.

15. NOTICES. Subcontractor shall at all times during normal business hours make available an authorized employee to answer the phone at the number listed in this Agreement. Except as specifically provided herein to the contrary, General Contractor may give notice to Subcontractor by contacting such employee by telephone or by giving verbal notice to any onsite foreman of Subcontractor at the Project or to one of the authorized agents listed in the Job Schedule or by mailing or delivering a notice at the address of Subcontractor set forth above. All notices to General Contractor shall be in writing (emails accepted as written notice) and delivered at the address of General Contractor as set forth above. Written notices required hereunder shall be deemed given as of the time of receipt of the notice, however sent. In the event that either General Contractor or Subcontractor shall change addresses during the period that this Agreement is in effect, such change of address shall be sent to the other party pursuant to the foregoing provisions.

16. INSPECTION AND APPROVALS.

A. At all times, General Contractor and/or the Owner shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the Project site, or any intermediate point.

B. Any Subcontract Work or material furnished that fails to meet the requirements or specifications of the Contract Documents or the Subcontract shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of General Contractor or the Owner, it would not be economical or expedient to correct or remedy all or any part of the rejected Subcontract Work or materials, then General Contractor at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in General Contractor's sole judgment represents the difference between the fair value of the rejected Subcontract Work and materials and its value had it been performed in full compliance with the Contract Documents; or (b) such reductions in price as are provided for or determined for this purpose under the Contract Documents by the Owner.

17. MISCELLANEOUS.

A. All sub-subcontracts, purchase orders, payrolls and other commitments necessary for the performance of the Work shall be done in the name of Subcontractor and remain its sole responsibility.

B. This Subcontract Agreement has been drafted by counsel for General Contractor as a matter of convenience only and shall not be construed for or against any party as a result of this fact.

C. Time is of the essence of this Agreement. The term "day" as used herein and in any instructions to Subcontractor shall mean "work day". In the event a time for performance, notice, approval or any other matter occurs on a Sunday or legal holiday, the time therefore shall be extended to the next day not a Sunday or a legal holiday.

D. For all purposes of this Agreement, Subcontractor is an independent contractor and is not an agent, employee of or otherwise

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associated with General Contractor.

E. In the event that any provision hereof is found to be void or unenforceable, all of the remaining provisions of this Agreement shall be fully effective and shall not be affected by the void or unenforceable provision or provisions.

F. Subject to the clause prohibiting assignment, this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of each of the parties hereto.

G. Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims made for infringement of any patent rights involved in the Subcontract Work.

H. In the event that Subcontractor is a sole proprietorship, or a partnership, and in the further event of the death of Subcontractor or of one of the partners thereof during the performance of this Agreement, such death, at the sole option of General Contractor, may terminate this Agreement except as to any rights or privileges that shall have accrued prior to said death.

I. Whenever the context of this Agreement shall require, the masculine shall include the neuter and feminine, the neuter the masculine and feminine, the singular the plural, and the plural the singular.

J. This Agreement shall be construed as a whole in accordance with its fair meaning, the captions being for the convenience of the parties only. The captions are not intended to fully describe or define the provisions of this Agreement to which they pertain.

K. In the event that General Contractor shall at any time provide equipment to be used by Subcontractor in the performance of this Agreement, Subcontractor's use thereof shall be at Subcontractor's own risk and Subcontractor shall hold General Contractor harmless from any claims and/or expenses, including but not limited to Attorney's fees and court costs, resulting from the use of such tools and equipment by Subcontractor. In the event Subcontractor rents, borrows, or otherwise uses any of General Contractor's equipment, scaffolding, or other appliances, Subcontractor agrees to accept such items "as is". Any such use shall be at the sole risk of Subcontractor, who hereby agrees to defend, hold harmless and indemnify General Contractor again any and all claims, losses, or damages arising from such use.

L. At no time prior to the expiration of any warranty period required by the Contract Documents shall Subcontractor perform any work directly for or deal directly with the Owner or its representatives concerning the Project unless otherwise directed in writing by General Contractor.

M. Subcontractor acknowledges its responsibilities under FAR 52.222-23 - Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity for Construction. Subcontractor is aware of the minority and female employment goals for this project as enumerated in Exhibit H, and will endeavor to meet or exceed these goals for the craft persons it employs on this project.

N. General Contractor's waiver of any of the provisions of the Subcontract, or General Contractor's failure to exercise any options or legal remedies provided herein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.

O. To be effective, all modifications or amendments to the Subcontract must be in writing.

P. This agreement is not effective until signed by General Contractor and delivered or mailed to Subcontractor.

18. **LEGAL ARIZONA WORKERS ACT COMPLIANT**

Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractors employees, and with the requirements of A.R.S. 23-214 (A). Subcontractor further agrees that Owner may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract.

19. **CONTRACTOR PROVIDED MATERIAL AND OR SERVICES**

At its discretion Contractor may provide any materials or services that the Subcontractor is procuring from a vendor or second tier subcontractor. Contractor reserves first right of refusal to provide materials or services to Subcontractor under the condition that said materials or services can be provided to the Subcontractor at or below the procurement cost from a 3rd party vendor or service provider. Written quotes shall be provided to Contractor for materials and services to determine if materials or services can be provided by Contractor.

18. **MODIFICATION.** This agreement may only be modified upon the written agreement of the General Contractor and the Subcontractor.

SUBCONTRACTOR: Diggum Excavating, Inc

Select Development and Construction Inc.

Gil Egurola

[Signature]

BY: Gil Egurola

BY: Jim Olson

ITS: PROS

ITS: Project Manager

DATED: 10/10/14

DATED: _____

☒ Corporation ☐ Partnership ☐ Individual/Sole Proprietorship

FEDERAL TAX IDENTIFICATION #: 86-0571813

The above number is our:

☐ Social Security Number ☒ Employer Identification Number

I hereby certify that the above information is correct to the best of my knowledge.

[Signature]
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