



## ECC Continuing Services Agreement

<b>Seller/Subcontractor:</b> <b>POC Name:</b> <b>Address:</b> <b>Phone:</b> <b>e-mail address:</b>	<b>Environmental Chemical Corporation (ECC)</b> <b>1240 Bayshore Highway</b> <b>Burlingame, CA 94010</b>	<b>Agreement #:</b> <b>Subname.'CSA'.IDIQNAME..Job#</b>
<b>Seller's U.S Taxpayer ID (FEIN) #:</b>  <b>or Foreign Business License #:</b>	<b>DPAS Rated #:</b> _____ <b>(See Part B - U.S. Government Terms and Conditions, Section 2 for details).</b>  <b>Prime Contract # (the Project):</b>	<b>Date:</b>

Type of Business: \_\_\_\_ International \_\_\_\_ U.S Firm

U.S Firm Subcategories: \_\_\_\_ LB \_\_\_\_ SB \_\_\_\_ SDB \_\_\_\_ WOSB \_\_\_\_ HUBZone \_\_\_\_ VOSB \_\_\_\_ SDVOSB  
\_\_\_\_ Non-SDB Alaska Native Corporations (ANCs) / Indian Tribes

In Witness Whereof, the duly authorized representatives of ECC and the Subcontractor have executed this Continuing Services Agreement on the Dates shown.

**ECC**

**SUBCONTRACTOR**

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### List of Attachments

Attach 1 - Work Authorizations (Statements of Work / Schedules / Pricing)  
Attach 2 – Standard Form 1413  
Attach 3 – Wage Determination  
Attach 4 – Representations and Certifications

Attach 5 – Lien Waivers  
Attach 6 – Subcontractor Certificate of Insurance  
Attach 7 – ESQ Policies and Safety History Form  
Attach 8 –Bonds & Letters of Credit

PART A. GENERAL TERMS AND CONDITIONS

1 DEFINITIONS

1.1 The Contract Documents. The Contract Documents consist of this CSA Agreement, the CSA Agreement Summary Page, all Parts and Terms and Conditions included in this Agreement or incorporated by reference, all Attachments to this Agreement, including the WAs and the documents included with the WAs or incorporated by referenced therein.

1.2 Subcontractor Scope of Work. Subcontractor agrees to provide all necessary resources to timely and accurately perform all its obligations, described within the WAs, including those requirements explicitly described by the Request for Proposal (RFP) or Request for Quote (RFQ), and all requirements reasonably inferable from those documents. Subcontractor is responsible for taking field dimensions, providing tests, obtaining required permits, ordering of materials and all other actions as required to meet its obligations. Collectively, these Subcontractor obligations may henceforth be referred to as “the Work”.

1.3 Errors & Inconsistencies. Subcontractor shall promptly report to ECC any errors, inconsistencies, omissions, or violations of legal requirements Subcontractor discovers within the RFP documents provided by ECC. Subcontractor shall be liable to ECC for any damages resulting from any such errors, inconsistencies, omissions, or violations of legal requirements which Subcontractor discovers, or should have reasonably discovered, but fails to report to ECC.

1.4 Term. The date this agreement is signed by ECC’s representative, as shown on Page 1, is the start date of this Agreement. The date that Subcontractor completes all its obligations as modified, including any corrective work and warranty obligations, is the end date of this Agreement.

2 SUBCONTRACTOR’S RESPONSIBILITIES

2.1 Prohibited Sources: Subcontractors are strictly forbidden from engaging in any business transactions, in the course of executing its obligations under this Agreement, with the Government (Govt.) or any business entity from the Countries of Cuba, Iran, Sudan, Peoples Republic of North Korea, and Burma. See Part B, Term 5 of this Agreement. In addition, lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>

2.2 Excluded Sources: It is the Subcontractor’s responsibility to ensure none of its suppliers or subcontractors are prohibited or restricted from working for the U.S Federal Gov. Subcontractor must confirm each supplier / subcontractor is in good standing in the System for Award Management. See <https://sam.gov/portal/SAM/#1>

2.3 Independent Contractor. Subcontractor shall be an independent contractor in the performance of the Work hereunder, and Subcontractor shall maintain complete control of its employees and operations. Neither Subcontractor nor anyone employed by Subcontractor shall be deemed the agent, representative, or employee of ECC in the performance of work hereunder. Nothing in the Contract Documents shall be construed to create a contractual relationship between subcontractor and Client, or between any other persons or entities besides ECC and the Subcontractor.

2.4 Subcontractor’s Representative. If Subcontractor wishes to designate specific representatives for Technical and Contractual matters, it must identify them here:

Technical Representative: \_\_\_\_\_  
Name Email Phone #

Contractual Representative: \_\_\_\_\_  
Name Email Phone #

Notices: Unless otherwise agreed to in advance and in writing between the Parties, all notices, requests, demands, changes, deficiencies, delays, claims, disputes or other communications which are required or may be given pursuant to the terms of the Contract Documents will be in writing and will be deemed to have been duly provided if delivered by email, hand, or mailed by certified or registered mail to the address and Designated Representative listed above.

2.5 Site Examination. For each project awarded under this CSA and prior to commencing the Work, Subcontractor shall examine the Site and familiarize itself with the Work, the laws, rules, and regulations relating to the Project; the participants in the Project; and the contractual and regulatory provisions of Govt. agencies, the Govt. Client, and ECC affecting the participants in the Project and the Work. No allowance will be made to Subcontractor for not having made such examination and review, or for requirements which a reasonable examination, inquiry, or review would have disclosed.

2.6 Self-performance of Work. For each project awarded under this CSA, Subcontractor must self-perform at least 50% of the dollar amount of the Work, unless ECC agrees to other terms in writing. ECC reserves the right to request proof of self-performance, including but not limited to documented evidence of work performed such as QC logs, payroll records, equipment ownership records, plans and schedules or other proof of self-performance. If ECC determines that subcontractor is not self-performing but is merely passing through a portion of the work greater than 50%, ECC shall have the right to terminate the contract for default, withhold payment, and/or enter into negotiations with Subcontractor for a deductive modification to this Agreement. Furthermore, Subcontractor is prohibited from awarding work to any lower tier subcontractors who do not self-perform their scope of work. If ECC learns that there are 3rd or 4th tier subcontractors operating on the Project, ECC retains the right to stop work of these lower tier subcontractors, and terminate subcontractor's agreement in whole or in part, and re-assign that scope of work of other entities at Subcontractor's cost.

2.7 Health and Safety.

- a. Subcontractor agrees to abide by both its own internal Health and Safety and Quality Control Plans as well as by ECC's Health and Safety and Quality Control Plans. All Subcontractor employees, to include initial, added, and replacement personnel, must participate in a site orientation session led by ECC's safety representative and complete all site-specific safety training required, including any online training required, prior to commencing with any work duties. The subcontractor further agrees to ensure that all subcontractor personnel and lower tier subcontractors under their control understand the pertinent requirements of the Health and Safety and Quality Control Plans.
- b. Subcontractor shall promptly report to ECC any accident which results in property damage exceeding \$500, which has caused any personal injury, or that could have resulted in serious bodily injury, whether or not such injury actually did occur. Subcontractor shall also report such incidents to OSHA and all other governing entities and shall make the report on proper OSHA and state/local forms, if any.
- c. Subcontractor understands and agrees that all Subcontractor injuries, OSHA violations, or other Health and Safety Environmental, Safety, and Quality (ESQ) incidents or accidents shall be documented into the Subcontractor's record, and not to ECC's. The recording of workers compensation issues for the Subcontractor's employees shall also accrue to the Subcontractor's record and not to ECC's.
- d. For each project awarded under this CSA, A copy of ECC's site-specific Health and Safety and Quality Control Plans will be available to Subcontractor and verbally discussed prior to initiation of field activities at the Project site. Subcontractor shall comply with the provisions of ECC's Health and Safety Work and ESQ Plans. This provision is not intended to create any rights in parties other than ECC and Subcontractor, and this provision shall not create any duty or obligation of ECC to employees, agent, or consultants and subcontractors of the Subcontractor.
- e. ECC may provide health and safety monitoring at any of the Project Sites. The Subcontractor shall provide its own Personal Protective Equipment (PPE). If inadvertently or at any time hereunder Subcontractor relies on any PPE supplied by ECC, Subcontractor agrees, for itself and on behalf of its employees, that ECC's duty of care shall be limited to providing equipment that conforms to regulatory standards at the time the PPE is used by Subcontractor or its employees. ECC does not endorse, warrant, or assume any responsibility whatsoever for the adequacy of those standards in protecting users from adverse health effects arising from exposure to hazardous wastes and/or toxic substances while performing any activities pursuant to the Contract Documents. Except as expressly provided herein, ECC does not assume any responsibility whatsoever for the safety of Subcontractor's personnel or operations.
- f. Subcontractor agrees to bind all of its lower-tier subcontractors to all applicable Health and Safety terms and provisions of the Contract Documents. Subcontractor further agrees that all notifications and other communications required by the Health and Safety clauses shall be made through ECC.
- g. Repeat, willful or significant safety violations of ECC's, Subcontractor's, or Client's Safety terms will be considered a material breach of this Agreement.
- h. Subcontractor shall provide equipment, material and personnel fully capable of performing immediate first line emergency, accident and spill response activities, when the performance of its Work has the potential for such events.

2.8 Warranty.

- a. Subcontractor represents and warrants: (i) that all goods and services delivered pursuant to this Agreement, by Subcontractor or any Subcontractor or supplier at any tier, will be new, unless otherwise specified, and free from defects in material and workmanship; (ii) that all said goods and services will conform to the requirements of the Contract Documents, including all applicable specifications, drawings, and standards of quality and performance, will be suitable for their intended purpose; (iii) that the goods covered by this order are fit and safe for consumer use, if so intended.

- b. Warranty Period: For each project awarded under this CSA, Subcontractor shall warrant and guarantee its work for a period of at least one (1) year from the date of acceptance of the Project by Client, unless the Contract Documents provide for a longer period. If during the period covered by the warranty any such defect is alleged by Client or its agent, Subcontractor shall cure said defect at no cost to ECC or Client.
- c. This Warranty Period applies only to Subcontractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies ECC may have regarding Subcontractor's obligations under the Contract Documents.
- d. Prior to final payment on each WA, Subcontractor shall execute a written "Warranty" that meets the requirements of the Contract Documents.
- e. All representations and warranties of Subcontractor together with its service warranties and guarantees, if any, shall run to ECC and ECC's clients. The foregoing warranties shall survive any delivery, inspection, acceptance, or payment by ECC.

## 2.9 Standard of Care.

- a. Subcontractor agrees and warrants that all of its Work will be performed in a good, skillful, and workmanlike manner; will be performed by the proper number of competent, experienced, skilled, and licensed personnel, qualified by education and/or experience to perform their assigned tasks; and to the extent professional services are rendered, will conform to the standard of care, skill, and diligence exercised by other similar professionals performing the same or similar services.
- b. Subcontractor shall, when requested by ECC, promptly remove any person considered by ECC to be incompetent, unsatisfactory, or undesirable. No personnel that are removed shall return to the jobsite at any time during the life of the project without the express written consent of ECC. Any continued engagement or attempted engagement by said personnel with the project will be considered a material breach of this Agreement.
- c. If Subcontractor's scope includes Architect or Engineering deliverables, and such is required by the Contract Documents, Subcontractor shall be responsible for certification of those deliverables by the appropriately certified and/or licensed professional.

## 2.10 Correction of Defective Work.

- a. Throughout the duration of performance of each WA and throughout the complete duration of the Warranty Period of each project, Subcontractor agrees to correct any Work that is found not to be in conformance with the requirements of the Contract Documents.
- b. Subcontractor shall, within 3 calendar days of receipt of written notice from ECC that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work or the Project affected by the nonconforming Work. If Subcontractor fails to commence the necessary steps within said period, ECC, in addition to any other remedies provided within this Agreement, may commence correction of such nonconforming Work with its own forces. If ECC does perform such corrective Work, Subcontractor shall be responsible for all reasonable costs incurred by ECC in performing such correction. If, in ECC's judgement, the nonconforming Work creates an emergency requiring an immediate response, the 3-day period identified herein shall be deemed inapplicable.
- c. The Subcontractor is responsible for damage to property caused by defective workmanship. The Subcontractor shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in Agreement performance, and promptly replace them with satisfactory items.

## 2.11 Compliance with Laws. Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances, codes, and regulations (Laws) applicable to the Work.

## 2.12 Confidentiality of the Project. Subcontractor agrees that its personnel, suppliers and subcontractors will maintain the confidentiality of each WA and Project. Subcontractor's personnel shall not publicly disclose any data or information to any party other than ECC personnel concerning the Project Site or the Project, including, without limitation, the nature or results of the Work performed by Subcontractor hereunder. Unless otherwise provided and except in the case of emergencies, Subcontractor shall direct all communications and all third-party inquiries regarding the project to an ECC representative. Subcontractor agrees that it shall not communicate directly with ECC's Client regarding any ECC-Subcontractor matters and agrees that doing so shall be deemed a material breach of this Agreement. Subcontractor shall bind its lower tier subcontractors to these Disclosure restrictions and requirements.

## 2.13 Protection of Owner's Property. Subcontractor understands and agrees that it is to safeguard and not harm, damage, or destroy in any way the property and other facilities and structures of ECC or its Client

2.14 Ownership of Subcontractors Work Product. Unless otherwise stipulated by the Prime Contract Documents, all maps, photographs, drawings, reports, test results, specifications, and other documents, materials, and electronic data prepared or furnished by Subcontractor to ECC under this CSA (“Work Product”) are deemed to be the property of ECC, and ECC shall retain the ownership and property interests therein, including the copyrights thereto. ECC shall have the right to obtain and use all Work Product.

2.15 Removal of Liens: Subcontractor shall neither file nor cause to be filed any lien with respect to the Work performed hereby and waives any right to file or cause such a lien to be filed. In the event any such claim has been asserted against Subcontractor, ECC, or its client, or any lien has been filed with respect to the work performed, further payment shall not become due until all such claims or liens have been released and/or discharged without cost or expense to ECC. If Subcontractor fails to cause any such lien to be expunged with ten (10) calendar days after written demand by ECC to remove such lien or notice of suit or other proceeding from any property, ECC shall be entitled to use whatever means in its discretion it may deem appropriate to cause such removal or dismissal, together with all reasonable attorney’s fees that shall be immediately due and payment to ECC by the Subcontractor and may be set off against any payments due to Subcontractor.

### 3 ECC’s AUTHORIZED REPRESENTATIVE

The following authorized representatives are hereby designated as ECC’s Authorized Representatives for this CSA and all associated Work Authorizations, unless otherwise noted by the Work Authorizations.

ECC Program Manager	
ECC Contractual	Christian G. Canon – Director, Contracts & Procurement <a href="mailto:ccanon@ecc.net">ccanon@ecc.net</a> 303-809-4067 1746 Cole Blvd, Bld 21, Suite 350, Lakewood, CO 80401

No Changes to this Agreement, or any WA, shall be binding upon either party unless incorporated by written Modification and signed by ECC’s Contractual Representative identified above or by his designee. Furthermore, any and all notices, requests, demands, changes, deficiencies, delays, claims, disputes or other communications which are required or may be given pursuant to the terms of the this Agreement will be in writing and will be deemed to have been duly provided if delivered by electronic mail (email), hand delivered, or mailed by certified or registered mail to ECC’s Contractual Representative designated above.

### 4 SCHEDULE

4.1 Final Completion Date. Subcontractor is required to complete all of its Work within the time milestone requirements, if any, and prior to the Final Completion Date provided in each WA, time being of the essence.

4.2 Progress Schedule. The Subcontractor shall timely provide ECC with all scheduling information related to its Work under each WA issued, in a form acceptable to ECC. ECC shall prepare the Progress Schedule for each WA and project which shall include Subcontractor’s Work. ECC shall revise and update such schedule, as necessary, as each project progresses. Subcontractor shall be bound by each applicable Progress Schedule. ECC shall have the right to determine and, if necessary, change the time, order, and priority in which the various portions of the Work shall be performed and all other matters relative to the Work.

### 5 AGREEMENT AMOUNT

5.1 Agreement Amount. The Agreement Amount, as set forth within each WA, includes all taxes, permits, fees, costs of insurance, and bonding, and other charges incident to the Work unless specifically agreed to otherwise herein.

5.2 Tax Exemption. Tax exemptions and/or exemptions from import duties applicable to the Subcontractor's work (if any) are stipulated in the ECC RFP, which is included with each WA. If there is no exemption or the exemption application is rejected by the State or Host Nation, Subcontractor shall pay any and all such taxes. If a tax rebate is made directly to Subcontractor for which Subcontractor has already received a payment by ECC, Subcontractor shall credit ECC either on the next invoice or promptly submit payment to ECC within five (5) business days.

### 6 CHANGES IN THE WORK

6.1 Changes Between the Parties: The Prime Contract identifies the Complete Scope of each project. Each WA issued hereunder identifies the portion or 'share' of the 'Complete Scope' which Subcontractor will perform (the Work) for the agreed WA Price. If both Parties agree to change (increase or decrease) the Subcontractor's share of the Complete Scope, within any WA, the WA will be modified in writing. Following negotiations, ECC will issue a WA Modification form to be signed by both parties.

6.2 Prime Contract Changes: If, however, ECC directs Subcontractor in writing to perform additional / change work which is the result of a Govt. Change order or Constructive Change order in accordance with the Changes provision of the Prime Contract (e.g. FAR 52.243-4 Changes), a Differing Site Condition in accordance with FAR 52.236-2, or the result of Govt. Delay or Suspension of Work in accordance with, for example, FAR 52.242-14 Suspension of Work, Subcontractor agrees that it will diligently proceed with all its work and with the Change work. The Parties further agree that no Modification to the applicable WA will be made until the time the Govt. issues a Modification(s) to the Prime Contract for said Change work. For additional information see Part A, Section 9.

With respect to all Change Orders, Subcontractor shall keep and present, in such form as ECC may require and request, an itemized accounting together with all appropriate supporting data. ECC shall have the right to audit Subcontractor's costs for any Change Order or proposed Change Order upon reasonable notice and within normal business hours.

6.3 Subcontract Modification Forms. All changes to this Agreement will be finalized on standard ECC-prepared and issued forms.

6.4 Subcontractor Indirect Markups: For all Change Order proposals, whether provided by Subcontractor in accordance with Term 6 or in accordance with Term 9 of this Agreement, Subcontractors must either use their DCAA approved forward-pricing rate or rates obtained via formal audit process by a third-party accounting firm, along with a fee justified by using weighted guidelines. If Subcontractor is not able to produce such documentation, the Subcontractor's total markup including the subcontractor's fee shall not exceed 15% markup on costs for all changes and claims.

6.5 Accord and Satisfaction. Agreement to this CSA, any executed WAs, and any executed WA Modifications shall constitute a final settlement and an accord and satisfaction of all costs and changes to the Work or the applicable schedule date(s) relating to or arising out of the change in the Work that are the subject of the Modification, including but not limited to all claims for direct and indirect costs, impacts, overtime, accelerations, inefficiencies, congestion, trade stacking, delays, interference, lost productivity, additional work, and the effect or accumulation of the changed work or services on any other work, services, or activities.

6.6 Option for Increased Quantity. If so required under the Prime Contract and in accordance with FAR 52.211-18 Variation in Estimated Quantity, Subcontractor agrees that the unit rates specified within any WA will continue and apply to those increased units or until changes to the unit prices are approved by the Govt. and incorporated into ECC's Prime Contract.

## **7 INVOICING / PAYMENT**

7.1 Prime Contract Payment Provisions: The payment terms of this Agreement are predicated on the Prime Contract provisions. The following provisions are most often applicable:

- a. 52.232-1 Payments (<https://www.law.cornell.edu/cfr/text/48/52.232-1>)
- b. 52.232-5 Payments under Fixed-Price Construction Contracts (<https://www.law.cornell.edu/cfr/text/48/52.232-5>)
- c. 52.232-27 Prompt Payment for Construction Contracts (<https://www.law.cornell.edu/cfr/text/48/52.232-27>)

7.2 Subcontractor Invoices: For each WA and project, Subcontractor shall invoice ECC directly on a monthly basis (unless otherwise directed in writing) for compliant work completed in the prior period.

- a. **Delivery.** Subcontractor must deliver its invoices by email to both the ECC Project Manager and the ECC Project Accountant identified on the cover page of each WA, for review and further processing.
- b. **Time of Submission.** Subcontractor's invoices must be submitted to ECC by the \_\_\_\_ day of each month (the 5th day if blank) in order to be submitted to the Client with ECC's invoice. Failure to submit invoice by that date will result in payment being delayed.
- c. **Format.** All invoices must contain the following information: Job number, Purchase Order (P.O.) number; and Project name and location. Lastly, please provide Bank Wire instructions on each invoice. Account must be in the same name of this CSA. Failure to include this information on the face of the invoice may result in payment being delayed.

- d. **Lien Waivers and Releases.** With each interim invoice or progress payment application, Subcontractor will sign and attach an Interim Waiver of Lien and Release (Attachment 5). With its final invoice for each WA, Subcontractor will sign and attach an Interim Waiver of Lien and Release (Attachment 5). Submission of these signed Interim and Final Waivers of Lien and Releases are absolute conditions precedent to any payment otherwise due Subcontractor.

7.3 **Subcontractor Payment:** Upon receipt of Subcontractor's invoice by ECC, the ECC Project Manager or Project Accountant will review. If invoice is compliant with the above requirements and for the correct amount, ECC will include Subcontractors invoice with its next invoice to the Client. In accordance with the applicable Prime contract payment provisions, the client will make payment to ECC in either 14 calendar days or 30 calendar days. In accordance with the Prompt payment provision of the Prime contract, ECC will thereafter, within 7 calendar days, make payment to Subcontractor.

7.4 **Payment from Client is Condition Precedent to Payment to Subcontractor:** To the extent permissible by the Governing law of this Agreement, ECC's receipt of Client payment is an absolute condition precedent to any payment otherwise being due or owed to Subcontractor by ECC.

7.5 **Client Denial.** A denial of all or a portion of any Subcontractor's invoice by Client, for reasons of non-conformance of its Work, shall preclude Subcontractor from having any claim against ECC for the denied portion of the invoice, until said work is corrected and reissued according to the procedures herein.

7.6 **No Advance Payments.** Under no circumstances are advance payments to the Subcontractor permitted.

7.7 **Offsets.** Subcontractor agrees and understands that ECC may deduct from any payments otherwise due to the Subcontractor the amount of any liquidated or unliquidated claim or amounts due to ECC or Client from Subcontractor, whether arising under this CSA Agreement or other unrelated agreements.

7.8 **Right to Withhold.** ECC may withhold from current and future payments due to Subcontractor amounts necessary to protect ECC from loss if in the good faith opinion of ECC, the following events have occurred or are likely to occur:

- a. Claims filed by any lower tier subcontractor or supplier of Subcontractor.
- b. Claims filed by an employee or trust fund of Subcontractor or lower tier subcontractors.
- c. Damage by Subcontractor to the Work of another subcontractor or a third party.
- d. Reasonable doubt that Subcontractor can complete its Work under any WA for the unpaid WA Amount.
- e. Subcontractor is in default of any term or provision of the Contract Documents.
- f. Notice by the Govt. of any wage and/or law violations.

7.9 **Retention.** As security for the proper completion of the Work, ECC may retain ten percent 10% of each progress payment until final completion and acceptance of all Subcontractor's Work by Client and ECC. Retention shall be released after expiration of the contract warranty period (typically 12 months) and upon Subcontractor's satisfaction of (a) all submittals and/or reports required by the Contract Documents; (b) satisfactory completion, replacement, or repair of all punchlist and defective, deficient or incomplete work, (c) proof of payment to lower tier subcontractors and laborers; (d) submission of proper certified payrolls. ECC may make early releases of retention in whole or in part at its sole discretion.

7.10 **Payment is Not Acceptance.** Payment by ECC to Subcontractor shall not be deemed to be acceptance by ECC, or Client, of Subcontractor's Work.

7.11 **Certified Payrolls.** Subcontractor will furnish to ECC, if applicable, certified payroll lists for all construction labor provided on-site which falls under the provision of the Davis-Bacon Act. Certified Payroll shall be submitted weekly to ECC's Authorized Representative / ECC Contract Administrator or designee specified within seven (7) calendar days following the close of the relevant pay period. Submission of proper certified payrolls shall be considered a Condition Precedent to payment for any work performed during the relevant pay period. Subcontractor is responsible for verifying their tiered subcontractors correctly fill out and forward certified payroll forms to ECC. Progress payments may not be allowed if Certified Payrolls are not current.

7.12 **Audit.** At any time prior to final payment, ECC or the Govt. may request an audit of any Subcontractor invoice and the substantiating documents. If any such audit reveals that prior amounts paid to Subcontractor were not in fact properly payable, Subcontractor shall refund the improperly paid amounts to ECC or the Govt. within 30 days. Alternatively, ECC may reduce Subcontractor's final payment amount accordingly.

7.13 **Final Invoice:** The final invoice or payment application for each WA, along with all necessary supporting documentation, shall be submitted by the Subcontractor as soon as practicable following completion of the Work, but in no event, later than ninety (90) calendar days from the date of completion, unless longer period is first approved in writing by ECC.

7.14 Acceptance of Final Payment. Acceptance of final payment under any WA by Subcontractor shall constitute a waiver of all Claims by Subcontractor on the associated WA through the date of final payment except those previously made in writing and identified by Subcontractor as being unsettled on the Final WA Waiver of Lien and Release.

## **8 INDEMNIFICATION, INSURANCE, WAIVER OF SUBROGATION AND BONDS**

### **8.1 Indemnification.**

- a. Subcontractor agrees to indemnify, save harmless, and defend ECC, its officers, directors, agents, and employees (Indemnified Parties) from and against any and all liabilities, claims, damages, penalties, fines, forfeitures, suits, and the costs incident thereto (including without limitation costs of defense, settlement, and attorney's fees) which any of the Indemnified Parties may hereafter incur, become responsible for, or pay out as a result of (a) death or bodily or personal injury to any person or destruction or damage to any property (including loss of use), (b) contamination of, or adverse effects on the environment, or (c) any actual or alleged violation of any law, statute, ordinance, rule, regulation or order, caused by Subcontractor's, or its officer's, director's, agent's or employee's, negligent or willful acts or omissions in the performance of work or by the breach of any term or provision set forth in the Contract Documents.
- b. Intellectual Property Rights. Subcontractor shall indemnify ECC and its officers, directors, agents and employees against any liability, including costs and attorney fees, for infringement of any U.S. patent, copyright, trademark or other proprietary right arising out of the manufacture or delivery of supplies, the performance of services, or the construction, modification, alteration, or repair of real property under this Agreement. Subcontractor shall provide written notice within ten (10) calendar days of becoming aware of any claim or notice of patent, copyright, trademark, trade secret, or other proprietary infringement. Patent indemnification shall include all goods and services used by Subcontractor under this Agreement.
- c. In all such cases where the indemnity provisions of the Contract Documents apply, Subcontractor and/or its insurer shall, upon demand by ECC, provide a competent defense of all indemnified claims and shall remain responsible for all of the costs of defense of the claim, and any damages awarded to the claimant by settlement, mediation, arbitration, litigation, or otherwise.

### **8.2 Insurance Requirements.**

- 8.2.1 Types of Insurance. Without prejudice to Subcontractor's liability to indemnify ECC as stated in any indemnification provision contained in the Contract Documents, Subcontractor shall procure at its expense and maintain for the duration of each WA issued under this CSA Agreement, and ensure that any of its subcontractors used in connection with the WA procure and maintain, the insurance policies required below with financially responsible insurance companies, licensed in the State of the Project, and with policy limits not less than those indicated below:
- a. Workers' Compensation: As required by Federal and State Workers' Compensation and Occupational Disease Laws including where applicable including where applicable, coverage under the United States Longshoremen's and Harbor Workers' Act (USL&H), the Jones Act, and the Defense Base Act (DBA).
  - b. Employer's Liability: \$2,000,000 minimum per occurrence.
  - c. Commercial General Liability: \$2,000,000 per occurrence.
  - d. Automobile Liability: \$500,000 per person; \$1,000,000 per occurrence; \$50,000 per occurrence for property damage.
  - e. Professional Liability: If Subcontractor is performing professional services, coverage for damages caused by any acts, errors, and omissions: \$1,000,000 per occurrence. For errors and omission relative to design services, the coverage requirements specified in Part E take precedence.
  - f. Builder's Risk as required: Equal to cumulative value of the Agreement Amount.
  - g. Pollution Liability: If Subcontractor is performing drilling, excavating or other intrusive work, \$1,000,000 minimum per occurrence.
  - h. All others as required by Federal, State, or International Law.
- 8.2.2 Coverage.
- a. Worker's Compensation and Employer's Liability Policy must include the Broad Form All States Endorsement.
  - b. General Liability: (1) Must be written on a Commercial Form; (2) Must include Premises/Operations, Independent Contractors, and Products/Completed Operations coverage; (3) Must include a Broad Contractual Liability Endorsement; and (4) The Subcontractor is responsible for determining the need for and, where needed, provide coverage for Railroad Protective Liability (wherever applicable).



- 8.2.3 Additional Insured. ECC shall be named as an additional insured on all Builder's Risk, Comprehensive General Liability, and Automobile Liability policies, and Subcontractor shall provide proof that ECC has been named as an additional insured upon request of ECC.
- 8.2.4 Waiver of Subrogation. All policies shall be endorsed to provide that underwriters and insurance companies of Subcontractor shall not have any right of subrogation against ECC or Client or any of its parents, subsidiaries, agents, employees, invitees, subcontractors, insurers, underwriters, and such other parties as they may designate.
- 8.2.5 Before commencing work under the Agreement, the Subcontractor shall notify ECC in writing that the required insurance has been obtained, and Subcontractor shall provide current Certificates of Insurance to ECC prior to initiation of any work hereunder. Such Certificates of Insurance shall reflect all of the required coverages and endorsements described herein, including those in 8.2.3 and 8.2.4. In rare cases, ECC may require complete / full versions of Subcontractor's insurance policies and Subcontractor shall promptly provide them upon ECC's request.
- 8.2.6 The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting ECC's interest shall not be effective: (1) for such period as the laws of the State in which this Agreement is to be performed prescribe; or (2) until thirty (30) calendar days after the insurer or Subcontractor gives written notice to ECC, whichever period is longer.
- 8.2.7 The Subcontractor shall bind all its subcontractors performing any of the Work on the Project to the insurance provisions of the Contract Documents, including the provisions contained in this Article 8.2, and shall require all lower tier subcontractors to provide and maintain the insurance required herein. The Subcontractor shall maintain a copy of all lower tier subcontractors' proofs of required insurance and shall make copies available to ECC upon request.
- 8.2.8 Workers' Compensation Insurance (Defense Base Act) is applicable if the Defense Base Act applies and the Work is performed under a public work contract outside the United States, or the Agreement or Project will be approved or financed under the Foreign Assistance Act. In such instance, the Subcontractor shall: (a) provide, before commencing performance under this Agreement, such workers' compensation insurance or security as the Defense Base Act (42 U.S.C. 1651 et seq.) requires; and (b) continue to maintain it until performance is completed. The Subcontractor shall insert, in all lower tier subcontracts under this Agreement to which the Defense Base Act applies, a clause similar to this clause (including this sentence) imposing upon those lower tier subcontractors this requirement to comply with the Defense Base Act.
- 8.2.9 Insurance carried by ECC, its officers, agents, and employees shall be deemed to be excess insurance and Subcontractor's insurance shall be deemed primary for all purposes despite any conflicting provision in Subcontractor's policies to the contrary. If Subcontractor fails to provide or maintain the specified insurance, the Subcontractor will defend, indemnify and hold harmless ECC, its officers, directors, agents and employees to the extent necessary to afford the same protection as would have been provided by the specified insurance.
- 8.2.10 For each WA issued hereunder, Subcontractor's failure to maintain the insurance coverage as required by this Section 8 shall be deemed to be a material breach of this Agreement. NOTE: ECC does not represent or warrant that the types or limits of insurance adequately protect Subcontractor's interest or sufficiently cover Subcontractor's liability.
- 8.3 Payment and Performance Bonds and Irrevocable Standby Letters of Credit - A Subcontractor performance bond or letter of credit is mandatory for all construction WA awards exceeding \$500,000 and for lesser amounts if so stated by ECC's WA RFP. Part C, Article 13 provides additional surety information and requirements.
- 8.3.1 Bonds - If subcontractor opts to provide bonds, Subcontractor must provide both payment and performance bonds, in the penal sum of at least the total amount of each WA award amount and it must meet all applicable statutory requirements of the State of the Project location, the bonds must be provided on the forms included herein as Attachment 8 and issued by a Surety that is on the United States Department of the Treasury's list of approved sureties, has a rating of "A" or better, is licensed in the State of the Project, and is otherwise accepted by ECC. Subcontractor shall provide the required bonds to ECC prior to commencement of the Work and as a condition precedent to any payment otherwise due Subcontractor under the Contract Documents. The cost incurred by Subcontractor to secure the bonds is included in the WA Amount. If the WA award amount increases by WA Modification, an additional bond amount equal to one hundred percent (100%) of the increase will be provided either through an increase in the penal amount or the furnishing of additional bonds.

8.3.2 Standby Irrevocable Letters of Credit (LOC) – For work taking place outside of the United States or as determined by ECC, a LOC meeting all of the requirements and format provided in Attachment 8 of this Agreement, may be provided by Subcontractor instead of Bonds. The LOC original / signed documents must be sent to ECC's Designated Contractual Representative by an express mail service. For each WA issued hereunder, the LOC must be in the possession of ECC's Contractual Representative prior to Subcontractor mobilizing to the project site. It is the Subcontractor's responsibility to ensure its LOCs remain valid, with no interruptions, until the time the Subcontractor completes all its obligations under the applicable WA Agreement, including all warranty obligations. If Subcontractor is required to renew or extend any LOC period, it must provide ECC with the original signed renewal documents in the same manner as described above. If Subcontractor fails to comply with any of these requirements ECC may immediately terminate Subcontractor for default or increase payment Retention rate until the total amount retained by ECC equates to 25% of the value of the applicable WA amount. NOTE: If Subcontractor fails to provide ECC with LOC renewal documents, as necessary, ECC will make a claim on the original WA LOC, prior to its expiration.

## 9 CLAIMS / DELAY

9.1 Notice and Performance. If any dispute arises between ECC and Subcontractor involving performance of the Work, any alleged change in the Work or arising out of differing interpretation of the Contract Documents or the Project, Subcontractor shall timely perform the disputed work. If Subcontractor believes it is entitled to an equitable adjustment for any disputed work, it must promptly notify ECC's Designated Contractual Representative in writing.

9.2 Differing Site Conditions (DSCs), Client Changes, Client Delays. With regard to Subcontractor claims arising from differing site conditions, changes directed by the Client or others, or which otherwise are not solely the fault of ECC, or delays to Subcontractors work cause by Client, Subcontractor agrees that it will diligently proceed with its Work and all resulting change work. If Subcontractor believes it is entitled to an equitable adjustment for the Differing Site Conditions, Client Changes, or Client Delays, it must promptly notify ECC's Designated Contractual Representative in writing.

9.2.1 Prime Contract Requests for Equitable Adjustment (REA): ECC and Subcontractor may thereafter cooperate toward the assembly of an REA package to be submitted to the Govt. for evaluation, in accordance with the Prime Contract clause through which the Parties' have entitlement. Subcontractor shall pay a pro rata share of the REA costs and expenses. Subcontractor understands and agrees that ECC will not prosecute any REA that it deems, in its sole discretion, to be frivolous, unsupported, or a "False Claim". If the Govt. thereafter accepts the Parties' entitlement and REA and subsequently awards an REA settlement Modification to the Prime Contract, Subcontractor shall be entitled to such portion of the additional compensation received, as is equitable under all of the circumstances. Subcontractor agrees to be bound by Client's determination. Subcontractor agrees that it will have no further rights against Govt. or ECC in relation to the DSCs, Client Changes, or Client Delays which gave rise to the settled REA(s), regardless of whether Subcontractor was party to those proceedings with the Govt. which resulted in the REA Settlement Modification. If Subcontractor's failure to give written notice prejudices ECC's ability to recover the funds from the Govt., Subcontractor agrees that it will receive no extra compensation for the disputed work.

9.2.2 Prime Contract Claims: In the event the Govt. rejects any REA submitted by the Parties, ECC and/or Subcontractor may decide to continue to pursue their rights in accordance with the Disputes Clause under the Contract. See FAR 52.233-1, Disputes. In such cases, the Parties will be required to submit a full presentation of current cost or pricing data and provide a certification of Current Cost and Pricing Data. The REA, as amended, must then be Certified in accordance with the Disputes clause and request that the Contracting Officer provide a Contracting Officer Final Decision (COFD). Once Certified and a request for COFD has been filed, the Parties have a Claim. If the Contracting Officer's COFD reaffirms the Govt.'s denial of the Parties' rights, the Parties may decide to enter an Appeal an Appeals Court of proper jurisdiction. The two most common options are the Armed Services Board of Contract Appeals or the U.S Court of Federal Claims. The Parties may both bring the Appeal together, and reasonably share in the cost of pursuing the Appeal, or one Party may choose to pursue the Appeal on its own, and, in doing so, bear all costs, risk, and reward of said Appeal. Subcontractor understands and agrees that ECC will not Certify any claim that it deems to be frivolous, unsupported, or a "False Claim".

9.3 Markup. ECC shall be entitled to a markup on any Subcontractor REA or claim. The markup shall include but is not limited to ECC's DCAA General and Administrative (G&A) rate and profit. Subcontractor agrees that Client's settlement offers always includes ECC's G&A markup, at minimum.

9.4 Subcontractor Delays: If ECC suffers any costs, including those under the Prime Contract for liquidated damages, and / or other damages for delays, ECC may recover such costs and damages from Subcontractor in proportion to Subcontractor's responsibility for such delay and damages. Any damages for delay caused by Subcontractor shall be deducted by ECC from the agreed price for said work, subject however, to the options of ECC to terminate the WA or this CSA for default or convenience as herein elsewhere provided.

9.5 ECC Delays. Should any of Subcontractor's Work be delayed solely by ECC, Subcontractor may request an equitable adjustment, if such delay (i) is not also due to the fault, error, omission, or negligence of Subcontractor, its lower tier subcontractors or subconsultants, or those for whom Subcontractor is responsible; (ii) directly affects the performance of the Work, (iii) was not reasonably foreseeable and mitigatable, (iv) causes Subcontractor to achieve completion of the Work beyond the WA Final Completion Date, which must be supported by critical path schedule analysis, and (v) cannot otherwise be reduced or eliminated by a work around plan. Subcontractor must provide ECC written notification of the delay so that ECC's ability to mitigate the delay is not prejudiced. Subcontractor acknowledges its obligation to take all reasonable actions to mitigate damages resulting from such delays. Under no circumstances will ECC be liable for damages resulting from delays to any of Subcontractors work caused by the Govt., or delays caused by 3rd parties with which ECC has no privity of contract.

9.6 Subcontractor Remedy. To the greatest extent permitted by law, the remedies set forth within this Section 9 shall constitute Subcontractor's exclusive remedies for Changes, Differing Site Conditions, delays, disruption, acceleration, or similar issues relating to schedule or timely performance (Delay Claims), regardless of cause. Furthermore, unless allowed under the Prime Contract between ECC and Client, and accepted and paid for by Client, in no instance shall ECC be liable to Subcontractor for: (1) profit on any delay, acceleration, or impact costs, (2) loss of anticipated profit, (3) indirect expenses, (4) home office overhead whether calculated pursuant to the Eichleay formula or other method, (5) consequential damages, including without limitation, lost work, lost opportunities, or insolvency, (6) claims preparation expenses or expert fees, and (7) costs calculated on a quantum meruit or "total cost" basis.

## **10 TERMINATION FOR CONVENIENCE**

10.1 If so ordered by the Govt. in accordance with the Prime Contract Termination for Convenience Clause, e.g FAR 52.249-2, ECC may terminate for convenience the Subcontractor's Work in whole or, from time to time, in part, at any time by written notice to Subcontractor. Such notice shall specify the extent to which the performance of Work is terminated and the effective date of such termination. The notice shall provide Subcontractor with instructions for assembling its Termination for Convenience Settlement proposal, which will be incorporated into ECC's Settlement Proposal to be provided to the Gov. Contracting Officer. If Subcontractor fails to deliver a complete and compliant T4C settlement proposal according to those ECC instructions, Subcontractor forfeits its rights to any further payments on the contract.

10.2 Upon receipt of such notice Subcontractor shall: (a) immediately discontinue the affected Work on the date and to the extent specified in the notice and place no further orders or sub-subcontracts for materials, service, or facilities, other than as may be required for completion of such portion of the Work that is not terminated; (b) promptly obtain cancellation upon terms satisfactory to ECC on all purchase orders, sub-subcontracts, rentals, or any other agreements existing for the performance of the terminated work or assign those agreements to ECC as directed; (c) assist ECC in the maintenance, protection, and disposition of Work in progress, plant, tools, equipment, property, and materials acquired by Subcontractor or furnished by Subcontractor under this Agreement; and (d) complete performance of the Work which is not terminated.

10.3 Settlement with Govt. When ECC's Prime contract is terminated for the convenience of the Govt., in accordance with the applicable FAR clause, e.g FAR 52.249-2, the Subcontractor's settlement proposal must comply with said FAR clause, with all of ECC's instructions, and be fully supported by cost and pricing data in sufficiency to pass audit by the Defense Contract Audit Agency (DCAA). Subcontractor must, furthermore, respond promptly to all audit requests regarding its settlement proposal and provide all additional data required by the auditing agencies. Notwithstanding any other provision within this Agreement, in no event will Subcontractor be entitled to any portion of its proposed settlement amount until the time the Govt. has made payment of subcontractor's settlement amount to ECC. Furthermore, and notwithstanding any other provisions within this Agreement, Subcontractor will be entitled to only the settlement amounts approved by the Govt. and then paid to ECC. If portions of Subcontractor's settlement request were denied by the Gov, subcontractor shall have no further rights of recovery against ECC of the denied or unsupported amounts. Once ECC is in receipt of the Subcontractor's settlement payment from the Gov, ECC will make payment of those amounts to the Subcontractor, in accordance with the payment terms of this Agreement. If the Gov., however, determines through its settlement proposal audit that the Subcontractor was overpaid and that, as a result, the Gov demands a credit from the Subcontractor, Subcontractor must remit the demanded amount to ECC within 30 days for return of said funds to the Gov.

## **11 TERMINATION FOR DEFAULT**

11.1 If Subcontractor is in material default under any provisions of the Contract Documents, including, but not limited to, failure, refusal, or neglect to provide all submittals as set forth in the WA documents, supply materials/equipment by due dates as set forth in the WA Documents, required skilled personnel and labor to complete the Work within the schedule set forth within the WA Documents, or to promptly correct, replace or repair defective items, material or workmanship, ECC may give Subcontractor written notice describing the default and immediately terminate all or part of the WA if ECC deems it appropriate, or ECC may provide a cure period to remedy the default.

11.2 If a cure period is granted and Subcontractor does not remedy the default within the period prescribed in the notice, ECC may terminate all or any part of the Work under the associated WA and may then complete or have others complete all such terminated work. In addition to partial or complete termination of noted elements of the Subcontractor's scope of work, ECC may, as an alternative and at its discretion, following the same notification requirements for Termination stated above, provide the Subcontractor with "Scope Execution Assistance" relative to an element or elements of the Subcontractor's scope of work. This includes, but is not limited to the following:

- a. Procurement of materials and equipment when Subcontract's failure to do so is impacting or will impact the project schedule critical path.
- b. Providing of labor resources or other subcontractors to augment the Subcontractor's labor force and progress on the project. This may be initiated for reasons such as to aid with Subcontractor's schedule recovery or ensure sufficiently trained and qualified persons are assigned to the work when Subcontractor has failed to do so. Interference by the subcontractor with the work or access of the additional labor resources or other subcontractors will be grounds for immediate termination; whereby ECC will immediately proceed with drawing the letter of credit/bank guarantee furnished by the subcontractor.
- c. Providing of design assistance on Design or Design / Build Subcontracts when the Subcontractor has failed in those contract deliverables relative to quality, acceptance by Client, or failure to meet the design submittal schedule.
- d. Paying a deposit for equipment and/or materials that are required for the execution of the project, but where the subcontractor has been unable to pay such deposit to their vendor or lower-tiered subcontractor to get the items ordered. Any such deposit paid by ECC will be deducted from the WA balance to be paid to subcontractor for their work. In the event that the specified equipment and/or material fail to meet the WA specifications and requirements; ECC may deduct from the subcontractor's progress payments, retention, balance of contract, and/or letter of credit/bank guarantee; the amount of such deposit paid by ECC.

In case of such termination or scope execution assistance, Subcontractor shall not be entitled to receive further payment until the terminated work is completed and accepted by ECC and Client. If the costs incurred by ECC, including costs incurred by ECC in performing additional services to complete the Work, exceed the unpaid balance of the WA Amount, Subcontractor shall reimburse ECC the excess within ten (10) calendar days after receipt of an invoice therefore. Subcontractor can expect the back-charge relative to terminated scope or scope execution assistance will equate to all direct costs incurred by ECC from third party entities (subcontractors, vendors, consultants, etc) along with ECC indirect costs incurred as a result of managing the termination or scope execution assistance actions. This ECC indirect cost amount will equate to approximately 15% of the total direct costs incurred.

To the extent Subcontractor in good faith disputes any portion of such invoice, ECC shall pay the undisputed portion and the disputed portion shall be resolved pursuant to the Disputes provisions of the Contract Documents. If the unpaid amount due Subcontractor for the Work completed prior to termination exceeds the costs and charges to complete, ECC will pay such excess to Subcontractor. The rights and remedies provided in this clause are in addition to the rights and remedies provided by law, equity, or under any other provisions of the Contract Documents.

11.3 Tools, Equipment, Facilities. In the event the Subcontractor is terminated for default, ECC may use all or part of Subcontractor's construction tools, and facilities at the site, and any materials, permanent equipment, and supplies in the performance of the Work, without payment to Subcontractor otherwise than by the extent such use of Subcontractor's items causes a reduction of cost of completing the Work.

11.4 Remaining Materials, Equipment. If ECC performs work under this Section 11, or subcontracts such work to be performed, immediately upon completion of the Work any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

11.5 Bankruptcy or Insolvency. This CSA Agreement may be terminated upon 3 calendar days written notice by ECC if Subcontractor (i) becomes insolvent or involved in a liquidation or termination of its business, (ii) is generally not paying its debts as they become due, (iii) commences any proceedings relating to such party under any federal or state law relating to bankruptcy, insolvency, reorganization or similar laws, (iv) applies for the appointment of a trustee, liquidator, or receiver of any part of its assets, (v) has a proceeding commenced against it relating to the appointment of a trustee, liquidator or receiver or pursuant to any proceedings under any federal or state law relating to bankruptcy, insolvency, reorganization, or similar laws (if not dismissed within 30 calendar days of filing), (vi) becomes involved in an assignment for benefit of its creditors, (vii) becomes adjudicated bankrupt, or (viii) defaults on payment obligations owed to other business or teaming partners of ECC.

11.6 Converted to Termination for Convenience. If after termination, it is determined that the Subcontractor was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for convenience.

11.7 Cumulative Rights and Remedies. The rights and remedies of ECC in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

11.8 Definition of Default. Default shall be considered any material breach by Subcontractor of any duty under the Agreement, including, but not limited to the following:

- a. Failure to commence work when required.
- b. Failure to properly man the Project(s).
- c. Failure to diligently and properly prosecute the work in accordance with the Progress Schedule.
- d. Failure to provide quality work.
- e. Failure to perform change order work as directed by the Client.
- f. Failure to pay lower tier subcontractors in a timely manner.
- g. Failure to provide and maintain insurance and bonds as required by the Contract Documents.
- h. Failure to provide product warranties and guarantees as required by the Contract Documents.
- i. Repeat, willful or significant safety violations
- j. Repeat, willful or significant Ethics violations, including but not limited to Fraud, Misrepresentation, or Theft.

## **12 DISPUTE RESOLUTION**

12.1 Negotiation – ECC and Subcontractor agree to, first, enter into good-faith negotiations to attempt to resolve any dispute arising from this CSA.

12.2 Mediation. Unless ECC and Subcontractor agree otherwise, mediation shall be a condition precedent prior to the initiation of any arbitration proceeding. Mediation shall be conducted by a neutral party mutually accepted by both parties. The mediation shall be held in San Mateo County or San Francisco, California and conducted pursuant to the American Arbitration Association (“AAA”) mediation rules unless the parties agree to utilize another mediation venue. The Parties shall share all mediation fees equally, but this requirement does not include legal representation. If the Parties cannot agree on a neutral mediator, the selection shall be made by AAA.

12.3 Arbitration if Negotiation / Mediation Not Successful. If negotiations and mediation efforts are unsuccessful in resolving a dispute between the Parties, then the matter shall be submitted to binding arbitration pursuant to the Federal Arbitration Act (Pub. L. 68-401, 43 Stat. 883, codified at 9 U.S.C. Chpt. 1) (“FAA”).

12.4 Arbitration Provisions - Any dispute, claim or controversy arising out of or relating to this CSA or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration, in San Mateo County or San Francisco, California, before a single Arbitrator for claims \$5,000,000 or below and three Arbitrators for claims that exceed \$5,000,000, unless the parties mutually agree otherwise, in writing. Each Party agrees that this arbitration provision is governed by the FAA and hereby accepts jurisdiction of the AAA for purposes of the arbitration proceeding(s). The decision of the Arbitrator shall be final and binding upon both parties, who hereby agree to comply herewith. The arbitration shall be administered by AAA pursuant to its Construction Industry Arbitration Rules. The Parties shall bear their own litigation costs and fees, including attorney’s fees, arbitrator fees and arbitration filing fees and administration expenses incurred or necessitated by the arbitration proceedings. This clause shall not preclude parties from seeking provisional remedies.

12.5 Notice of Demand - Notice of the demand for arbitration shall be filed in writing with the other Party to this Agreement and with the AAA. The demand for arbitration shall be made within a reasonable time after written notice of the claim or dispute has been given, and in no event shall it be made after such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

12.6 Award. The award rendered by the Arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

12.7 Interest on Award. Any damages awarded to either party shall accrue pre-judgment interest at the rate of 1% per annum. There shall be no post judgment interest on awards.

12.8 Work Continuation and Payment. Pending final resolution of any disputed payment or Change Order requested by Subcontractor, any claim, or any negotiation, arbitration, mediation, or litigation (if applicable), and unless otherwise agreed in writing, Subcontractor shall proceed diligently with the timely performance of its Work and all obligations under the WA Documents, and subject to the provisions contained herein, ECC shall continue to make payment to Subcontractor of any non-disputed amounts in accordance with the WA Documents.

### 13 MISCELLANEOUS

13.1 Requirements for Immediate Notice. The Subcontractor shall give ECC immediate notice in writing regarding the following: (a) Any action, including any proceedings before a federal, state or local governmental or civilian agency, filed against the Subcontractor arising out of the performance of this Agreement; (b) Any claim by a third party against the Subcontractor, the cost and expense of which is, or may be allowable under this Agreement; (c) Any hazardous waste spill or release. In the event of the occurrence of any of the above, the Subcontractor shall immediately furnish to ECC copies of all pertinent papers and documents received by the Subcontractor with respect to such action or claim.

13.2 Assignments and Subcontracts. This Agreement shall inure to the benefit of and be binding upon each of the Parties hereto and their respective successors and assigns. It may not be assigned in whole or in part by either Party without the prior written consent of the other Party, except upon the merger, consolidation, sale or other transfer of all or substantially all of the assets of either Party.

13.3 Consequential Damages Waiver. Except for those which may arise with 3rd Party claims that are covered by Subcontractor's indemnity obligations provided in Section 8 above, in no event shall either Party be responsible or liable to the other Party for indirect, special, punitive, incidental or consequential damages, or lost profits.

13.4 Hotline. Subcontractor shall contact the ECC Hotline in the event of any suspected irregularity or impropriety under this Agreement. The Hotline telephone contact number is (650) 347-1555, extension 20111; and the email address is: [Hotline@ecc.net](mailto:Hotline@ecc.net).

13.5 Applicable Law And Compliance. This subcontract shall be governed by and construed in accordance with the law of U.S. Govt. contracts as set forth by statute and applicable regulations, and decisions by the appropriate courts and Board of Contract Appeals. To the extent that the law referred to in the foregoing sentence is not determinative of an issue arising out of the clauses of this subcontract recourse shall be to the law of the State of California

13.6 Severability And Waiver. The partial or complete invalidity of any one or more provisions of the Contract Documents shall not affect the validity or continuing force and effect of any other provisions. The failure of ECC to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Contract Documents or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance, under any federal, state, or local law.

13.7 Force Majeure. The obligation of each Party to perform under this Agreement shall be excused during each period of delay arising from causes beyond the control and without the fault or negligence of the Party. Examples of such causes include: (1) acts of God or of the public enemy, (2) acts of the Govt. in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. Notice of Force Majeure must be provided as soon as practicable of the event, and parties must resume performance within three (3) business days of conclusion of said event.

13.8 Inconsistencies And Omissions. Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of the Subcontractor to notify ECC in writing within three (3) calendar days of the Subcontractor's discovery thereof. Upon receipt of said notice, ECC shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with ECC's instructions. Each party has reviewed the Contract Documents and any question of interpretation shall not be resolved by any rule of interpretation providing for interpretation against the drafting party. This Agreement shall be construed as though drafted by both Parties.

13.9 Statutory Costs. In the event suit, action or arbitration is instituted to enforce any right granted herein, and on appeal, if any, each party shall bear its own fees and costs.

13.10 Order of Precedence. The Contract Documents are meant to be complementary. In the event, however, of any inconsistency, conflict, or ambiguity between or among the Contract Documents, or between the Contract Documents and applicable laws, codes, rules, ordinances, and lawful orders, Subcontractor shall be required to follow:

1. Attachment 1 - The Work Authorizations
2. Part A: General Terms and Conditions
3. Part B: All Federal Acquisition Regulations and Agency clauses
4. Parts C & D
5. Subcontractor's Proposals

13.11 Entire Agreement. The Parties hereby agree that this Agreement, including all of the Contract Documents, shall constitute the entire agreement and understanding between the Parties hereto and shall supersede and replace any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof.

## **PART B - U.S. GOVERNMENT TERMS AND CONDITIONS**

These terms and conditions are applicable to all U.S. Govt. subcontracts; in the event the Agreement is not a U.S. Govt. Subcontract, these Part B terms and conditions are not applicable to the Agreement or the Work of Subcontractor, and all other requirements of the Contract Documents shall control.

### **PART I - FAR CLAUSES**

#### **1. DEFINITIONS**

As used throughout this Agreement, the following terms shall have the meanings set forth below:

- a. The terms "Subcontractor" or "Subcontractor" mean the party executing this Agreement with ECC;
- b. The terms "Contractor", "Purchaser" or "ECC" means Environmental Chemical Corporation;
- c. The terms "Government" or "Client" mean the United States of America;
- d. The terms "Sub-subcontractor" or "Lower-tier Subcontractor" mean any person or company contracting with the Subcontractor to perform a portion of the Work called for by this Agreement;
- e. The terms "Subcontract" or "Agreement" means this Agreement, including all exhibits and attachments, whether physically attached or incorporated by reference;
- f. The term "Prime Contract" means the Govt. Contract under which this Order is issued.
- g. The term "Contracting Officer" means that person executing the Prime Contract on behalf of the Govt. and any other officer or civilian employee of the Govt. who is a properly designated as a Contracting Officer for purpose of administering or terminating the Prime Contract;
- h. The term "FAR" means the Federal Acquisition Regulation, the term "DFARS" means the Department of Defense FAR Supplement, and "FAR AGENCY SUPPLEMENT" means the FAR supplements of other Federal agencies, including the various military departments and subsidiary commands thereof. All such documents are obtainable from the Superintendent of Documents, U.S. Govt. Printing Office, Washington, D.C. and/or from the particular agency responsible from promulgation of the regulation at issue.
- i. "Subcontract Data Requirements List" or "SDRL" are the data requirements established by the CDRL requirements of the Prime Contract; to the extent such Prime Contract CDRL requirements are within the scope of Work performed by Subcontractor under a Task Order.
- j. "Subcontract Line Item Number" or "SLIN" identify the specific supplies and services and prices and costs for each, mirroring the Contract Line Item Numbers of the Prime Contract at Part I, § B thereof.

**2. DPAS.** If this is a rated order certified for national defense use, the Subcontractor is required to follow all the provisions of the Defense Priorities and Allocation System (DPAS) regulations (15 CFR 700). The DPAS rating for this Agreement will be on the cover page of this agreement.

#### **3. FAR REQUIREMENTS.**

a. Subcontractor shall comply fully with all applicable Federal Acquisition Regulation requirements. In particular, Subcontractor shall, when required, execute and deliver to ECC all representations and certifications ("reps and certs") and other documents, and take all such other actions, which may be required by FAR provisions. All such "Reps and Certs" shall be updated upon ECC's request. If applicable, Subcontractor shall comply with the Davis-Bacon Act, or, if applicable, the Service Contract Act, by paying all covered workers in accordance with the wage determination(s). FAR contract provisions, which are required to be "flowed down" to Subcontractor in the case of Federal projects, shall be deemed to be incorporated herein by reference and apply to any work performed under this Agreement. Certain portions of the clauses or certain clauses themselves may be self-deleting due to the nature of the Work to be performed. Where there are any compliance time requirements in the clause these time frames are reduced by fifty percent (i.e. 1 year becomes 6 months, 90 days becomes 45 days, etc.) for this Agreement. In all cases citations should be construed to apply to the Subcontractor as they apply to ECC as prime contractor. The sum and substance of each regulation shall also be applied to all additional lower-tiered subcontractors, vendors or entities utilized to perform any work under this Agreement, and Subcontractor shall include this provision in all other contracts. The terms "Contractor" and "Contracting Officer" as used in the clauses incorporated by this reference shall be deemed to refer to the "Subcontractor," "Government," and "Contracting Officer" as used in the clauses incorporated by this reference shall be deemed to refer to the "Subcontractor," "ECC," and "ECC's Contract Administrator" respectively.

b. The Subcontractor has no right of direct appeal to the Govt. Contracting Officer or the Govt.. Therefore, when "dispute" or "Dispute Clause" is referenced in any clause, it shall be deemed to be a dispute between the Subcontractor

and ECC. The Prime Contract between ECC and Govt. agency is incorporated by reference and is available upon request by Subcontractor.

#### **4. TERMINATION FOR CONVENIENCE.**

Subcontractor may be terminated at any time, upon reasonable notice, with or without cause. In the event of a termination for convenience, the rights and remedies of the Parties shall be governed by applicable Termination for Convenience principles in accordance with FAR 49.2 through 49.6, as applicable.

#### **5. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

Subcontractors are strictly forbidden from engaging in any business transactions, in the course of executing its obligations under this Agreement, with the Govt. or any business entity from the Countries of Cuba, Iran, Sudan, North Korea, and Burma. Forbidden transactions include any purchase of materials, supplies, equipment, services etc. The shipment of goods through these countries is also strictly forbidden. Subcontractors are strictly forbidden from bringing any materials or equipment from these countries to the ECC / Govt. project sites associated with this agreement. These restrictions must be passed down by the Subcontractor to all of its lower tier suppliers and vendors. The regulation which specifies these restrictions is FAR 52.225-13. For information about enforcement of these restrictions and penalties associated with violations of said restrictions, please visit the Office of Foreign Assets Control Website at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> or contact ECC's Contracts Manager, Chris Canon, at [ccanon@ecc.net](mailto:ccanon@ecc.net)

#### **6. Purchases. AGREEMENT CLAUSES – FAR**

a. The following clauses of the FAR, DFARS and FAR AGENCY SUPPLEMENTS set forth below are hereby incorporated by reference in this Agreement. The obligations of ECC to the Government as provided in said clauses shall be deemed to be the obligations of Subcontractor to ECC. Clauses referenced below shall be those in effect on the effective date of this Agreement. If there is a conflict or addition in a clause in effect on the effective date of this Agreement and a clause of the Prime Contract, the Prime Contract clause shall govern.

b. Wherever necessary to make the context of the clauses set forth in this Part C, applicable and consistent to this Agreement, the term "Contractor" shall mean Subcontractor; the term "Subcontractor" shall mean Lower-tier Subcontractor; the term "Contract" shall mean this Agreement; and the terms "Government," "Contracting Officer," and equivalent phrases shall mean ECC. However, the terms "Government" and "Contracting Officer" do not change (1) in the phrases "Government Property," "Government-Owned Property," "Government Equipment," "Government-Furnished Property," and "Government-Owned Equipment;" (2) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or his duly authorized representative; (3) when access to proprietary financial information or other proprietary data is required; (4) when title to property is to be transferred directly to the Government; (5) where specifically modified as noted below; and (6) in FAR's 52.215-2, 52.227-1, and 52.227-2.

c. Clauses Applicable to All Orders or Agreement may be seen at <http://farsite.Hil.af.mil/VFFARa.htm>.

**FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES APPLICABLE TO THIS AGREEMENT  
BEGIN ON THE FOLLOWING PAGE**





## PART C – CONSTRUCTION AND DEMOLITION SERVICES

### ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions shall apply when construction or demolition services are included within Subcontractor's Work.

1. **Meetings.** At the request of ECC, Subcontractor shall attend meetings with ECC, Client, and/or separate design professionals or contractors of ECC or Client to discuss design and/or construction issues which may arise during the Project.
2. **Supervision.** At all times during the performance of the Work, Subcontractor shall provide a competent resident Project Manager, who is an employee of Subcontractor, and any necessary assistants, all satisfactory to ECC. ECC has the right to review the qualifications of the proposed Project Manager, and to approve or disapprove the assignment, such approval not to be unreasonably withheld. If all of Subcontractor's workers are not fluent in English, Subcontractor shall provide a Project Manager who is fluent in English and in the language spoken by those workers. If the Project Manager is replaced by the Subcontractor, ECC shall have right of approval for such replacement, such approval not to be unreasonably withheld by ECC. Subcontractor's Project Manager shall represent Subcontractor, and (1) all directions given to the Project Manager shall be as binding as if given to Subcontractor, and (2) all decisions made by the Project Manager shall be as binding as if made by Subcontractor.
3. **Substitutions.** Subcontractor shall not make any substitutions in the Work or procedures or methods specified by Client, ECC or the Contract Documents for performing the Work unless it first receives written approval for such substitution from ECC.
4. **Sub-subcontractors.** Subcontractor shall employ only Sub-Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Subcontractor agrees that each Sub-Subcontractor shall be fully bound to Subcontractor in the same manner as Subcontractor is bound to ECC for all the requirements of the Contract Documents to the extent applicable to the Sub-Subcontractor's scope of work.
5. **Sub-subcontractor work.** Subcontractor assumes responsibility to ECC for the proper performance of the Work of Sub-Subcontractors and any acts and omissions in connection with such performance. Subcontractor shall coordinate the activities of all Sub-Subcontractors. Nothing in this Agreement is intended or deemed to relieve Subcontractor from responsibility for the Work performed by its Sub-Subcontractors, or create any legal or contractual relationship between Client or ECC and any Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
6. **Startup, Testing, Commissioning.** If required as part of Subcontractor's Work, Subcontractor shall be responsible for the start-up, testing, and commissioning of the Work, and shall train Client's personnel with respect to the operation and maintenance of the Work.
7. **Tests and Inspections.**
  - a. All materials furnished and services performed pursuant hereto shall be subject to inspection and test by ECC and its agents and by its clients at all times and places, during the period of performance, and in any event before acceptance.
  - b. All data furnished to Subcontractor for the purposes of developing a proposal are for informational purposes only. Subcontractor warrants it has had ample opportunity to review the specifications, visit the site(s) and perform tests as required. All dimensions shown of existing or designed work and all dimensions for work now in place shall be verified by the Subcontractor by actual measurement of existing and proposed work. If the Subcontractor fails to inspect the specifications and site in accordance with the above, and ECC is later held liable by the Client or others because of the Subcontractor's failure, then subcontractor shall reimburse ECC for the resulting costs and damages.
8. **Submittals.**
  - a. The Subcontractor promptly shall submit for approval to ECC all Shop Drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. The Subcontractor shall be responsible to ECC for the accuracy and conformity of its submittals to the Agreement Documents. The Subcontractor shall prepare and deliver its submittals to ECC in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay ECC or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Contract Documents unless express written approval is obtained from ECC and Client authorizing such deviation, substitution or change. In the event that the Contract Documents do not contain submittal requirements pertaining to the Work, the Subcontractor agrees upon request to submit in a timely fashion to ECC for approval all shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by ECC.
  - b. ECC and the Client are entitled to rely on the adequacy, accuracy and completeness of all professional certifications required by the Contract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and all governing performance requirements.

## 9. Cleanup

a. The Subcontractor shall at all times during its performance of the Work keep the Worksite clean and free from debris resulting from the Work. Prior to discontinuing the Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste and surplus materials. Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.

b. If the Subcontractor fails to commence compliance with cleanup duties within forty-eight (48) hours after written notification from ECC of non-compliance, ECC may implement appropriate cleanup measures without further notice and the cost thereof shall be deducted from any amounts due or to become due the Subcontractor.

10. **Permits and Standards.** Subcontractor shall obtain all permits, licenses, and provide notification and pay fees required by local, county, state, federal or foreign country agencies for the Scope of Work.

12. **Standard of Performance.** If the Subcontractor fails to proceed at once in a workmanlike manner with performance of the Work or with the correction of defective workmanship, ECC may: (a) replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Subcontractor; and (b) terminate the Subcontractor for default. The Subcontractor and any surety shall be liable, for any damage or cost of repair or replacement.

13. **Payment and Performance Bonds and Standby Letters of Credit.** A Subcontractor performance bond or letter of credit is mandatory for all subcontract awards exceeding \$500,000 and for lesser amounts if so stated by ECC's RFP (Attachment 1).

a. Bonds shall be in the amount of one hundred percent (100%) performance bond and a one hundred percent (100%) payment bond. The cost (premiums and otherwise) of these bonds shall be included in Subcontractor's pricing for the Work. The bonding company must be admitted to transact business by the Department of Insurance in the state where the job is located and must have a rating of "A" or better. If the contract price increases, an additional amount equal to one hundred percent (100%) of the increase will be provided either through an increase in the penal amount or the furnishing of additional bonds. ECC will reimburse the actual cost of bonds, not exceeding the premium amount agreed to per Attachment 1. If the Bond Premium is a separate pay item on the Subcontractor's price schedule, once ECC has received and accepted Subcontractor's bonds, Subcontractor can request reimbursement of premiums by sending the actual invoice documents it received from the underwriter along with evidence that Subcontractor has paid the underwriter's invoices.

b. Irrevocable Standby Letters of Credit. All LOCs must meet the requirements and format provided for in Attachment 8 to this Agreement. Any and all fees and premiums due associated with LOC will be paid directly by Subcontractor and those amounts are part of the total Subcontract award amount identified on the cover page of this Agreement, as modified. If the LOC Premium is a separate pay item on the Subcontractor's price schedule, once ECC has received and accepted Subcontractor's LOC, Subcontractor can request reimbursement of LOC premium by sending the actual invoice documents it received from the Bank along with evidence that Subcontractor has paid said invoices from Bank.

**PART D**  
**TRANSPORTATION AND DISPOSAL OF HAZARDOUS SUBSTANCES**  
**ADDITIONAL TERMS AND CONDITIONS**

The following additional terms and conditions shall apply when transportation and disposal of hazardous substances are included within Subcontractor's Work.

1. **DEFINITIONS**

- (a) "Hazardous Substance" shall mean any substance or material whether solid, semi-solid, sludge, liquid or gaseous which because of its potential effect on public health or safety or on the environment or natural resources is regulated by any federal, state or local law, rule or regulation including without limitation "Hazardous Materials" as defined in the Hazardous Material Transportation Act (HMTA) 49 USC §1801 and following; "Hazardous Waste" as defined by EPA pursuant to the Resource Conservation and Recovery Act (RCRA) 42 USC §9601 and following; "Hazardous Substance" as defined pursuant to the Comprehensive Environmental Response and Liability Act (CERCLA) 42 USC §9601 and following; any substance otherwise regulated under the Clean Water Act or the Toxic Substances Control Act.
- (b) "Hazardous Substance Regulation" shall mean any federal, state, or local law, rule or regulation governing the transportation, packaging, handling, labeling, movement, control or any other aspect of the disposition of Hazardous Substances including, without limitation:
  - i. U.S. Department of Transportation (USDOT) hazardous material regulation 49 CFR §100-199.
  - ii. US EPA regulations issued pursuant to RCRA 40 CFR §260-272.
  - iii. Any other regulation issued by the Federal Railroad Administration, the US Coast Guard or any other governing water or marine transportation, the Federal Aviation Administration, the Federal Highway Administration and the Research & Special Programs Administration.
  - iv. The Occupational Safety and Health Administration (OSHA) and any other federal, state or local regulation governing safety and health of workers dealing with Hazardous Substances.

2. **WARRANTY.** Subcontractor warrants that:

- (a) Subcontractor and its employees shall, in performing Work hereunder, exercise the degree of skill, care and diligence consistent with the highest industry standards and perform Work in accordance with any and all drawings, specifications or requirements provided by ECC, and that such Work will be suitable for the purpose intended.
- (b) It is fully licensed and possesses all required permits, insurance, bonds and any other prerequisites or conditions imposed by any law, rule or regulation including Hazardous Substance Regulations bearing on, or required to perform, the services hereunder;
- (c) Subcontractor personnel are fully trained in accordance with but not limited to 49 CFR §172 Subpart H and 49 CFR §1910.120(g), and qualified as required by, and as may be necessary to perform in accordance with, applicable Hazardous Substance Regulations and safety, health and emergency procedures.
- (d) Subcontractor's vehicles, vessels, aircraft and other handling devices, equipment and materials to be utilized in the hazardous substances transportation services shall be used in the manner intended by the manufacturer, are maintained in good and safe working order, and are subject to the state of the art maintenance and inspection programs. In the event of shipment by air or water, packaging containment and shipment methods shall be adopted which are most likely to minimize the consequences of incidents in connection with such transportation.
- (e) Subcontractor safety and safety-related equipment shall be regularly and systematically tested under full field simulated conditions to assure its readiness.

3. **COMPLIANCE.** Subcontractor shall take every possible precaution in the performance of the Work under the Contract Documents to protect human safety and health and the environment. Subcontractor shall fully comply with all federal, state and local laws, ordinances, statutes, rules, regulations, license and permit conditions or requirements (hereinafter "Laws"), including but not limited to all Laws pertaining to the environment, natural resources and other Laws concerning hazardous or regulated material or substance handling transportation, remediation, all Laws pertaining to employment, all Laws pertaining to health and safety, and any and all other Laws affecting Subcontractor's performance of Work hereunder. In addition to the foregoing, Subcontractor shall comply with all ECC mandated requirements (including report requirements), provided such requirements have been made available to Subcontractor. Subcontractor shall, if requested, furnish proof of any license or permit required in connection with the performance of Work. All fees and changes in connection with Subcontractor's compliance with applicable Laws shall be borne by Subcontractor. In

the event of violation by Subcontractor of any applicable laws, or the failure of Subcontractor to comply with same, Subcontractor shall pay all fines, penalties and other expenses, including attorney's fees, imposed upon or incurred by Subcontractor or ECC in connection therewith.

Subcontractor shall prepare, maintain, file and/or submit to all appropriate or cognizant authorities any and all documents, records and reports (including manifests) required by any Hazardous Substance Regulation or by the Contract Documents, including without limitation any required Material Safety Data sheets (Department of Labor Form OSHA-20). Subcontractor assumes full responsibility in connection with, and for liability for breach of, any Hazardous Substance Regulation including without limitation any fine, penalty or expense resulting from any noncompliance.

Subcontractor shall comply with the written security plan requirement for Hazmat operations and transportation as required by 49 CFR 172 (subpart I).

4. SPECIFICATIONS. Subcontractor shall comply fully with ECC's directives, specifications, and requirements concerning the conditions under which, and the methods by which, shipment weights and other parameters (including without limitation weighing methods, location, moisture content) are determined.
5. ECC'S RIGHT TO RELY. ECC shall be entitled to rely without independent verification on the accuracy, currency and completeness of information supplied by Subcontractor or its approved subcontractors.
6. JOBSITE CONDITIONS. Subcontractor warrants that Subcontractor and its employees are familiar with the Work, the Jobsite and its environs, the availability of and access to medical and emergency services, and physical and other conditions, including hazardous substances, materials, agent or vapors, both surface and subsurface, which may exist at the Jobsite, the previous use of Jobsite and all other matters in connection with or relevant to the safe, proper and efficient conduct of the Work to be performed under the Contract Documents and that Subcontractor had made allowance for any and all such conditions and contingencies in its pricing.
7. JOBSITE REGULATIONS. Subcontractor shall comply fully with all Jobsite rules and regulations, including ECC's Health and Safety Plan, forming a part of the Contract Documents, and other required plans and directions and all changes and additions thereto, provided that such rules, regulations and direction are provided with Subcontractor. Subcontractor's vehicles, which enter any Exclusion Zone or are otherwise exposed to Hazardous Substances, shall be decontaminated at the discretion and to the satisfaction of ECC. Subcontractor shall inspect the vehicle(s) during or immediately after the decontamination process or before exiting the Jobsite if not subject to decontamination, and assure itself of the cleanliness of the equipment. Once the equipment is released from the Jobsite by ECC, and upon egress from the Jobsite, Subcontractor assumes all liability and responsibility arising or in connection with such decontamination or cleanliness. Subcontractor shall not permit or suffer the introduction or use of intoxicants, narcotics or any illegal activity on the Jobsite, or on any of the grounds occupied or controlled by Subcontractor.
8. INSPECTION. ECC shall have the right to inspect any Work furnished by Subcontractor and may reject and/or require performance of any Work not performed in accordance with the requirements set forth herein. If any Work or portion thereof is determined to be unsuitable, defective or in violation of any law, rule or regulation, including any legal requirement relating to the environment or the handling of hazardous materials, Subcontractor shall bear and pay all expenses incidental to the correction of unsuitability and/or correction of such Work, including without limitation any fines or penalties.

Subcontractor shall allow ECC or an appropriately designated auditing or regulatory organization reasonable access to all maintenance, accident, spill, regulatory, compliance and other information bearing on health, safety and/or Subcontractor ability and readiness to perform the Work required by the Contract Documents.

ECC's Technical Representative will determine if analytical data provided by Subcontractor meets the criteria stated in the Contract Documents, including any specifications and/or analytical protocols provided by ECC. If Subcontractor finds there to be a question of the integrity of any analytical data based on the relevant specifications and/or analytical protocol, Subcontractor shall advise ECC immediately. A determination will be made by ECC regarding the acceptability of the analytical data in question. If Subcontractor's analytical data fails to meet the specified requirements, analytical protocol, or other criteria established in the Contract Documents, ECC may determine the need for re-sampling services to be performed.

Subcontractor recognizes and acknowledges that ECC will rely on the accuracy and timeliness of Subcontractor's Work in conducting its field activities, such as remediation, and in arranging for disposal of hazardous or regulated substances, and that inaccurate or untimely data can result in substantial field rework and re-disposal costs. In addition to the foregoing, Subcontractor is also specifically but without limitation liable for all related costs of re-sampling services to achieve acceptable data, which meets the specified requirements and analytical protocol. If the integrity of the data fails to meet the specified requirements, analytical protocol, or other criteria established in the Contract Documents, Subcontractor shall be considered to be in default under this Agreement, the balance of work remaining under the Contract Documents can be terminated by ECC, and Subcontractor shall be responsible for re-procurement costs incurred by ECC. Any re-sampling, analytical, and re-procurement costs incurred as a result of Subcontractor's unacceptable analytical data is the responsibility of the Subcontractor. These costs can include, but are not limited to,

validation of data, program management time, sample crew time and expenses, insurance, disposal costs, samples, purge water, drums, personal protection equipment, decontaminated water, any other equipment and costs, including proportional share of indirect and overhead costs related to re-sampling, analysis, and procurement of analytical services. The foregoing rights are in addition to any other rights available to ECC in law or equity or elsewhere in the Contract Documents.

9. WORK PERFORMED AT SUBCONTRACTOR'S RISK. Subcontractor shall perform all Work at its risk and if the Work or any portion thereof shall be damaged in any way before the final completion and acceptance of the Work, Subcontractor shall promptly repair or replace such damaged Work without expense to Client or ECC. Subcontractor shall be responsible for any loss or damage to equipment or other articles used or held for use in connection with the Work.
10. DELIVERY, STORAGE AND SECURITY. Subcontractor shall have full responsibility for receiving, unloading, inspecting and storing its materials and supplies to be used at the Jobsite. Storage space will be provided by ECC if available. Access into all secured areas and establishment of Subcontractor's staging and designated work areas shall be coordinated through ECC. However, Subcontractor shall, at its expense, be solely responsible for protecting and maintaining security of its equipment, materials, property, employees and work at all times. Neither ECC nor Client shall assume responsibility or liability for any security measures taken by Subcontractor.
11. ENVIRONMENTAL PROTECTION. Unless otherwise provided for in the Contract Documents, Subcontractor shall, at no additional cost to ECC, furnish all necessary or advisable facilities, means, methods and safeguards to prevent any threat of or the actual exposure of any person or organism or the contamination of the environment.

Subcontractor shall not (a) discharge or permit the escape of any substance or material to the soil or groundwater or any other body of water which may pollute the water or in any way become harmful to fish or wildlife or the public; (b) emit or permit the escape of air contaminants, including dust or smoke, from any source whatsoever; (c) cause or allow any other contamination of the air, water, soil or any other environmental vehicle.

12. COMPOSITION OF WASTE. ECC shall provide Subcontractor with a description of the waste, including personal protective equipment waste and lab waste, to be serviced ("waste description"). The waste description shall be set forth in a waste profile sheet, and may include relevant supporting documents, and shall include a description of the waste stream's chemical components and the percentage composition of each such component, or the relative mix thereof. The percentage composition may be stated in ranges (i.e., 10% to 20%). It is understood and agreed that Subcontractor shall base its testing, evaluation and service procedure on the waste description.
13. NONCONFORMING WASTE. Waste described shall be considered nonconforming if it fails to meet the waste description, as defined in Article 12 "Composition Waste," above applicable thereto in any material respect.

In the event the waste is discovered to be nonconforming, Subcontractor may revoke its acceptance of the waste. The revocation of acceptance shall be effective immediately upon receipt of notice, verbal or written, to ECC or its agent. ECC shall have seven (7) calendar days to direct an alternative lawful manner of disposition of the waste, unless it is necessary by reason of law or Subcontractor facility permit or operating procedure to move the nonconforming waste in less than seven (7) calendar days or, if required, within a shorter period, Subcontractor shall return the waste to ECC. ECC shall pay Subcontractor its reasonable expenses and charges for handling, loading, preparing, transporting, storing, and caring for nonconforming waste, plus those charges which may be assessed pursuant to the Contract Documents.

If the waste is discovered to be nonconforming, Subcontractor shall be responsible only for its employees', agents', subcontractors', or invitees' negligence with respect to such waste.

14. TRANSPORTATION/EMERGENCY RESPONSE. In the process of transportation of Hazardous Substances under this Agreement:
  - (a) Subcontractor shall use the Safest Possible Route from the site to the ultimate destination. The "Safest Possible Route" shall mean a route selected as the least likely to present exposure to accident, which in the event of an accident/spill, is least likely to result in harm to the public or local environs, and which is the route most likely to facilitate safe fast effective emergency response. Subcontractor shall keep ECC fully and completely apprised concerning the status of the shipment, shall report immediately to ECC and cognizant federal, state or local officials any incident potentially affecting public or worker safety or which is a violation of or is reportable to any Hazardous Substance Regulation and shall provide to ECC, at the time of filing, copies of any reports filed regarding spills and releases. Subcontractor shall report to ECC's Hotline and ECC's on-site representative within four (4) hours of any spill.
  - (c) So as to minimize the chances of exposure, travel to the ultimate site shall be as continuous, direct, and short in duration as possible. In the event that the distance, duration or other aspects of the shipment, including delays due to the disposal facility, may result in the need for interim storage, such storage shall be i) arranged in advance, and ii) at facilities which conform fully with all Hazardous Substance Regulations.

- (d) Subcontractor shall assure that fully adequate Emergency Response capability is immediately available at all points along the planned Safest Possible Route and at least one alternate route of travel. Subcontractor will coordinate appropriately with the emergency response firm including at a minimum advance notice of the nature of the potential contamination and the approximate time of travel to ensure that adequate response is available whenever necessary.
15. DECONTAMINATION OF PROPERTY. With respect to any Client-furnished property, ECC-furnished property, or Subcontractor-acquired property, Subcontractor shall certify in writing that such property is returned to ECC free from contamination by any hazardous or toxic substances.
16. PROTECTION OF PROPERTY. Subcontractor shall not close or obstruct any utility installation, highway, road or other property. If facilities are closed, obstructed, damaged or rendered unsafe by Subcontractor's operations, Subcontractor shall, at its sole expense, make such repairs and provide such temporary provision as necessary or required for safety as will be acceptable to ECC, governmental authorities, Client or Project or installation, highway, road or other property.

Unless expressly stated herein, Subcontractor shall not do any work that might disrupt or otherwise interfere with the operation of any pipelines, telephone or utility transmission line, ditch or structure.

Subcontractor shall keep all work areas free from rubbish, waste, excess material, equipment, including tools, and debris at all times. If Subcontractor fails to remove such waste or equipment in a timely manner, ECC shall have the right to remove same and charge the cost therefore against monies due or to become due to Subcontractor.

## **ATTACHMENT 1 - WORK AUTHORIZATIONS**



## **ATTACHMENT 2 - SF1413**

**STATEMENT AND ACKNOWLEDGMENT**OMB Control Number: 9000-0014  
Expiration Date: 1/31/2021

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U.S.C. § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0014. We estimate that it will take .05 hours to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: U.S. General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

**PART I - STATEMENT OF PRIME CONTRACTOR**

1. PRIME CONTRACT NUMBER		2. DATE SUBCONTRACT AWARDED		3. SUBCONTRACT NUMBER	
4. PRIME CONTRACTOR				5. SUBCONTRACTOR	
a. NAME				a. NAME	
b. STREET ADDRESS				b. STREET ADDRESS	
c. CITY		d. STATE	e. ZIP CODE	c. CITY	
6. The prime contract <input type="checkbox"/> does, <input type="checkbox"/> does not contain the clause entitled "Contract Work Hours and Safety Standards Act - Overtime Compensation."					
7. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 to the subcontractor identified in item 5 by the following firm:					
a. NAME OF AWARDED FIRM					
b. DESCRIPTION OF WORK BY SUBCONTRACTOR					

8. PROJECT		9. LOCATION	
10a. NAME OF PERSON SIGNING		11. BY (Signature)	
10b. TITLE OF PERSON SIGNING		12. DATE SIGNED	

**PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR**

13. The subcontractor acknowledges that the following clauses of the contract shown in item 1 are included in this subcontract:			
Contract Work Hours and Safety Standards Act - Overtime Compensation (If included in prime contract see Block 6)		Construction Wage Rate Requirements	
Payrolls and Basic Records		Apprentices and Trainees	
Withholding of Funds		Compliance with Copeland Act Requirements	
Disputes Concerning Labor Standards		Subcontracts (Labor Standards)	
Compliance with Construction Wage Rate Requirements and Related Regulations		Contract Termination - Debarment	
		Certification of Eligibility	
14. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY			
A		C	
B		D	
15a. NAME OF PERSON SIGNING		16. BY (Signature)	
15b. TITLE OF PERSON SIGNING		17. DATE SIGNED	

AUTHORIZED FOR LOCAL REPRODUCTION  
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Prescribed by GSA/FAR (48 CFR) 53.222(s)

## **ATTACHMENT 3 - APPLICABLE WAGE DETERMINATION**

**DAVIS BACON WAGE DETERMINATION NO. \_\_\_\_\_ MOD/REV \_\_\_\_ DATED \_\_\_\_\_**

**CERTIFIED PAYROLLS ARE TO BE SENT TO THE FOLLOWING ADDRESS:**

**ENVIRONMENTAL CHEMICAL CORPORATION**

**ATTN: \_\_\_\_\_**

**ADDRESS**

## ATTACHMENT 4 – REPRESENTATIONS AND CERTIFICATIONS

The Prime Contract solicitation contains provisions requiring ECC to ascertain information relative to compliance with certain requirements. The offeror must provide full, accurate and complete information as required by this solicitation. You are required to complete these Representations and Certifications Form and return the original to ECC's Contracting Representative to be considered responsive to the solicitation.

### 1. Small Business Program Representation

#### (a) Representations.

(1) The offeror represents as part of its offer that it \_\_\_\_ is, \_\_\_\_ is not a small business concern.

(2) [Complete only if the offeror represented itself as a small business concern in paragraph (a)(1) of this provision.] The offeror represents, for general statistical purposes, that it \_\_\_\_ is, \_\_\_\_ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the offeror represented itself as a small business concern in paragraph (a)(1) of this provision.] The offeror represents as part of its offer that it \_\_\_\_ is, \_\_\_\_ is not a women-owned small business concern.

(4) [Complete only if the offeror represented itself as a small business concern in paragraph (a)(1) of this provision.] The offeror represents as part of its offer that it \_\_\_\_ is, \_\_\_\_ is not a veteran-owned small business concern.

(5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (a)(4) of this provision.] The offeror represents as part of its offer that it \_\_\_\_ is, \_\_\_\_ not a service-disabled veteran-owned small business concern.

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (a)(1) of this provision.] The offeror represents, as part of its offer, that-

(i) It \_\_\_\_ is, \_\_\_\_ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It \_\_\_\_ is, \_\_\_\_ is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (a)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) [Complete if offeror (Subcontractor) represented itself as Disadvantaged in paragraph (a)(2) of this provision.] The offeror shall check the category in which its ownership falls:

\_\_\_\_ Black American.  
\_\_\_\_ Hispanic American.  
\_\_\_\_ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

\_\_\_\_ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China,

Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, The Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

\_\_\_\_ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal)

\_\_\_\_ Individual/concern, other than one of the preceding.

#### (b) Definitions. As used in this provision-

"Service-disabled veteran-owned small business concern"-

(1) Means a small business concern (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Govt. contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"Veteran-owned small business concern" means a small business concern- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (2) Whose management and daily business operations are controlled by one or more women.

### 2. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that-

(i) The Offeror and/or any of its Principals-

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror has ( ) has not ( ), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to ECC if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure to furnish a certification or provide ECC with requested information, may disqualify Offeror.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Govt., ECC may terminate the subcontract resulting from this solicitation for default.

### 3. Prohibition of Segregated Facilities.

By execution of this document the Offeror certifies that it is in full compliance with the provisions set forth in FAR 52.222-21.

### 4. Previous Contracts and Compliance Reports.

The offeror represents that --

- (a) It \_\_\_\_\_ has \_\_\_\_\_ has not participated in a previous contract or subcontract subject to the Equal Opportunity Clause of this solicitation;
- (b) It \_\_\_\_\_ has \_\_\_\_\_ has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

### 4. Affirmative Action Compliance - FAR 52.222-22 (Feb 1999).

The offeror represents that (a) it \_\_\_\_\_ has developed and has on file, \_\_\_\_\_ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it \_\_\_\_\_ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

### 4. EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)

By execution of this document the Offeror certifies that it is in full compliance with the provisions set forth in FAR 52.222-35.

*\* Exempt if work is to be performed outside U.S. by employees who were not recruited within the U.S.*

### 5. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)

By execution of this document the Offeror certifies that it is in full compliance with the provisions set forth in FAR 52.222-36.

*\* Exempt if work is to be performed outside U.S. by employees who were not recruited within the U.S.*

### 6. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)

By execution of this document the Offeror certifies that it is in full compliance with the provisions set forth in FAR 52.222-37.

### 7. CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (MAY 2001)

By execution of this document the Offeror certifies that it is in full compliance with the provisions set forth in FAR 52.223-6.

### 8. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

(a) Executive Order 13148, of April 21, 2000, Greening the Govt. through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the Offeror certifies that-

1. As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know

Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C.

13106), the Offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical

Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

2. None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R

filing and reporting requirements because each such facility is exempt for at least one of the following reasons:

*[Check each block that is applicable.]*

[ ] (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

[ ] (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

[ ] (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

[ ] (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their

corresponding North American Industry Classification System sectors:  
 (A) Major group code 10 (except 1011, 1081, and 1094).  
 (B) Major group code 12 (except 1241).  
 (C) Major group codes 20 through 39.  
 (D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).  
 (E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or  
 [ ] (v) The facility is not located in the United States or its outlying areas.

#### 9. Type of Business Organization.

By checking the applicable box, Offeror represents that--

It operates as \_\_\_\_\_ a Corporation incorporated under the laws of the State of \_\_\_\_\_, \_\_\_\_\_ an individual, \_\_\_\_\_ a partnership, \_\_\_\_\_ a nonprofit organization, or \_\_\_\_\_ a joint venture.

#### 10. FAR 3.104 PROCUREMENT INTEGRITY

According to FAR 3.104-3(d), a former official acting on behalf of a federal agency may not accept compensation from a contractor as a consultant, employee, officer, or director for a period of one year after:

- Serving as the procuring contracting officer, source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was awarded a contract in excess of \$10 million
- Serving as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10 million awarded to that contractor
- Making a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10 million to that contractor
- Making a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10 million
- Making a decision to approve a contract payment/payments in excess of \$10 million to that contractor
- Making a decision to pay or settle a claim in excess of \$10 million with that contractor. As defined by FAR 3.104-1, participating “personally and substantially” in a federal agency procurement means active and significant involvement in any of the following activities directly related to that procurement:
- Drafting, reviewing, or approving the specification or statement of work for the procurement
- Preparing or developing the solicitation
- Evaluating bids or proposals, or selecting a source
- Negotiating price or terms and conditions of the contract
- Reviewing and approving the award of the contract.

#### 11. Place of Performance.

(a) The offeror, in the performance of any contract resulting from this solicitation, \_\_\_\_\_ intends, \_\_\_\_\_ does not intend (check applicable block) to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror checks “intends” in paragraph (a) above, it shall furnish in the spaces provided below the required information:

Place of Performance \_\_\_\_\_ (Name and address of Client  
 Address, City \_\_\_\_\_ and Operator of the Plant or

County, State, Zip	Facility if other than Code)
_____	_____
_____	_____
_____	_____
_____	_____

#### 12. Certificate of Independent Price Determination

(a) The offeror certifies that--

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to--

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

- (1) Is the person in the offeror’s organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or
- (2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision \_\_\_\_\_ [insert full name and title of person(s) responsible for determining the prices offered
- (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and
- (iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

#### 13. Buy American Act--Balance of Payments Program Certificate

(A) The offeror certifies that each end product, except those listed in paragraph (B) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(B) Foreign End Products:

Line Item No	Country of Origin
_____	_____
_____	_____
_____	_____
[List as necessary]	

(C) ECC will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

14. Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program Certificate

(A) The offeror certifies that each end product, except those listed in paragraph (B) or (C) of this provision, is a domestic end product (as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program") and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(B) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":  
NAFTA Country or Israeli End Products:

Line Item No	Country of Origin
--------------	-------------------

_____	_____
_____	_____
_____	_____

[List as necessary]

(C) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (B) of this provision) as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No	Country of Origin
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_____	_____
_____	_____
_____	_____

[List as necessary]

(D) ECC will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.  
Alternate I (Feb 2000). As prescribed in 25.1101(b)(2)(ii), substitute the following paragraph (B) for paragraph (B) of the basic provision:

(B) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

Canadian End Products:

Line Item No.

(List as necessary)

Alternate II (Feb 2000). As prescribed in 25.1101(b)(2)(iii), substitute the following paragraph (B) for paragraph (B) of the basic provision:

(B) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

Canadian or Israeli End Products:

Line Item No	Country of Origin
--------------	-------------------

_____	_____
_____	_____
_____	_____

[List as necessary]

15. Trade Agreements Certificate

(A) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(B) The offeror shall list as other end products those supplies that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products:

Line Item No	Country of Origin
--------------	-------------------

[List as necessary]

(C) ECC will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation

16. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)

(a) *Definitions.* As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

17. Historically Black College or University and Minority Institution Representation. The offeror represents that it—

( ) is ( ) is not a Historically Black College or University;  
( ) is ( ) is not a Minority Institution.

18. In the event Offeror receives a subcontract from ECC which equals or exceeds \$5,000,000 and has a performance period of 120 calendar

days or more, Offeror must comply with the requirements of (FAR) 52.203-13: Contractor Code of Business Ethics and Conduct. If applicable, Offeror must check the following conditions that apply:

- a) Offeror certifies that it ☐ does, ☐ does not have a compliant written Code of Business Ethics and Conduct.
- b) Offeror certifies that it ☐ does, ☐ does not have compliant business ethics awareness and compliance programs;
- c) Offeror certifies that it ☐ does, ☐ does not have compliant internal control programs.

#### 19. COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (OCT 2008)

☐ \*This is to certify that the Offeror is a Small Business Concern and is therefore exempt from CAS. (This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.)

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract. If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

##### I. Disclosure Statement--Cost Accounting Practices and Certification

(a) Any contract in excess of \$650,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision. *Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting subcontract performance cost data.*

(c) Check the appropriate box below:

☐ (1) *Certificate of Concurrent Submission of Disclosure Statement.* The Offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

- (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and
- (ii) One copy to the cognizant Federal auditor. (Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed:

The Offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) *Certificate of Previously Submitted Disclosure Statement.*

The Offeror hereby certifies that the required Disclosure Statement was filed as follows: Date of Disclosure Statement: \_\_\_\_\_

Name and Address of Cognizant ACO or Federal Official Where Filed:

The Offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) *Certificate of Monetary Exemption.*

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) *Certificate of Interim Exemption.*

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement. *Caution: Offerors are currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.*

**II. Cost Accounting Standards--Eligibility for Modified Contract Coverage** - If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately. *Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.*



III. Additional Cost Accounting Standards Applicable to Existing Contracts - The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ yes ☐ no

*Alternate I (Apr 1996).* As prescribed in 30.201-3(b), add the following paragraph (c)(5) to Part I of the basic provision:

☐ (5) *Certificate of Disclosure Statement Due Date by Educational Institution.*

If the Offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202-1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the Offeror hereby certifies that (check one and complete):

☐ (i) A Disclosure Statement Filing Due Date of \_\_\_\_\_ has been established with the cognizant Federal agency.

☐ (ii) The Disclosure Statement will be submitted within the 6-month period ending \_\_\_\_\_ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official Where Disclosure Statement is to be Filed: \_\_\_\_\_

20. FOREIGN CORRUPT PRACTICES ACT – (Applicable ONLY for work performed outside the United States) Subcontractor hereby represents and warrants that none of its officers, directors, agents or employees are (a) an official, employee or agent of the Govt. or any state-owned enterprise, public international organization, candidate for public office, member of a royal family, an officer, director, or employee, or an affiliate of a ECC client; and (b) as of the date below, no Govt. official, and no official of any Govt. agency or Instrumentality of the Govt, is or will become associated with, or will own or presently owns an interest, whether direct or indirect, in Subcontractor or has or will have any legal or beneficial interest in this Agreement or the payments made by ECC to Subcontractor hereunder.

#### 21. EXPORT CERTIFICATION

This Export Certification is required and hereby included in the representations and certifications completed for award of all Defense related subcontracts.

ECC requires that its offerors certify the following information to ensure compliance with the U.S.Govt. export laws and regulations including the U.S. International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120 et seq., the Export Administration Regulations (EAR), 15 C.F.R. §§ 730 et seq., and the asset control and sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (OFAC), 31 C.F.R. §§ 500 et seq.

A. Offeror is ( ), is not ( ) a "U.S. Person" as defined in the ITAR 22 CFR Part 120.15 and the EAR 15 CFR Part 772. *ITAR 22 CFR Part 120.15 and the EAR 15 CFR Part 772 defines a U.S. person as a person who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business, association, a partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity.*

B. Offeror is registered ( ), is exempt from registration ( ), is not registered ( ) with the U.S. Department of State, Directorate of Defense Trade Controls per ITAR 22 CFR Part 122.1(a) and (b). Expiration Date of Registration

( ), if registered.

*In accordance with ITAR 22 CFR Part 122.1(a) any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Directorate of Defense Trade Controls (DDTC) unless exempted by one of the four conditions listed in ITAR 22 CFR Part 122.1(b). Furthermore, the offeror is responsible for the protection of any information or defense articles provided to them by ECC to assist in the manufacture of a defense article or provision of a defense service. The release of such information by the offeror to a Foreign Person employee or its transfer to another Foreign Person is defined as an export (ITAR 22 CFR parts 120.17 and 124.13 and EAR 15 CFR part 734.2(b)(2)(ii) and supplements 1 and 2 of Part 774 and subject to the licensing requirements of the ITAR and EAR as applicable.*

22. REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DEVIATION 2012-00004) (JAN 2012)

(a) In accordance with sections 8124 and 8125 of Division A of the Consolidated Appropriations Act, 2012,(Pub. L. 112-74) none of the funds made available by that Act may be used to enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Govt..

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Govt.

(b) The Subcontractor represents that—

(1) It is ☐ is not ☐ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

(2) It is ☐ is not ☐ a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

23. Other Certifications - USE OF GOVERNMENT PROPERTY  
Complete the following statement(s) as applicable:

A. The Offeror and/or its suppliers ☐ will, ☐ will not use Govt. property in performance of work under the proposed subcontract.

B. The Offeror certifies that to the best of its knowledge this proposed subcontract ☐ does, ☐ does not involve the acquisition of Govt. property, the disposal of which may be restricted by patent or other rights.

ACCOUNTING SYSTEM - Has the Offeror's accounting system been reviewed and deemed adequate as to the collection of costs?

☐ yes ☐ no Date of review: \_\_\_\_\_

Reviewing agency: \_\_\_\_\_

GOVERNMENT PROPERTY SYSTEM - The Offeror certifies that it's Govt. Property System ☐ has, ☐ has not been approved by the Govt.

in accordance with Part 45 of the FAR. If approved, state the approving agency's name and date of last approval.

Date of review: \_\_\_\_\_

Reviewing agency: \_\_\_\_\_

If approval has not been obtained, please explain below:

---

PURCHASING SYSTEM - The Offeror certifies that its Purchasing System [ ] has, [ ] has not been approved by the Govt. in accordance with Part 44 of the FAR. If approved, state the approving agency's name and date of last approval.

Date of review: \_\_\_\_\_

Reviewing agency: \_\_\_\_\_

If approval has not been obtained, please explain below:

---

**\*\* AS APPLICABLE FILL OUT ATTACHED FORM FOR  
REQUIREMENTS OF FAR 52.222-27 \*\***

24. Authorized Signature

By signing below, the offeror hereby certifies all the foregoing representations and certifications are correct:

---

Company Name (Please Print)

---

Street Address

---

City State Zip Code

---

Tax Identification Number

---

Printed Name and Title

---

Signature of Authorized Representative

---

Date

**FAR 52.222-27**

**AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION**

The following notice shall be included in and shall be a part of all solicitations for offers and bids on all federal and federally-assisted construction subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Secretary of Labor.

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE**

**EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
  
2. The goals and timetables for minority and women participation, *expressed in percentage terms* for the Subcontractor's aggregate workforce *in each trade* on all construction work in *the covered areas* are as follows:

<b>Award Date ____MM/____DD/____YY until Project Completion ____MM/____DD/____YY</b>	<b>Goals for Minority Participation in Each Trade</b>	<b>Goals for Women Participation in Each Trade</b>
Trade:	County:     %	%
Trade:	County:     %	%
Trade:	County:     %	%
Trade:	County:     %	%
Trade:	County:     %	%
Trade:	County:     %	%
Trade:	County:     %	%
Trade:	County:     %	%
Trade:	County:     %	%
Trade:	County:     %	%
Trade:	County:     %	%

These goals are applicable to all the Subcontractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Subcontractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Subcontractor also is subject to the goals for both its federally involved and non-federally-involved construction.

The Subcontractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and women employment and training must be substantially uniform through the length of the contract, and in each trade, and the Subcontractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The

transfer of minority or women employees or trainees from Subcontractor to Subcontractor or from project to project for the sole purpose of meeting the Subcontractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is **(insert description of the geographical areas where the subcontract is to be performed giving the state, county, and city, if any).**

STATE & COUNTY: \_\_\_\_\_

\_\_\_\_\_

## ATTACHMENT 5 – LIEN WAIVERS

## Work Authorization - Interim Waiver of Lien and Release of Claims

Agreement # \_\_\_\_\_

The undersigned, \_\_\_\_\_ ("Subcontractor Name"), has been employed by or on behalf of a project for ENVIRONMENTAL CHEMICAL CORPORATION ("ECC"), to furnish labor, materials, and / or equipment for construction or improvements at ECC's Project known as \_\_\_\_\_ (Site Name), located at \_\_\_\_\_ (the "Property"), and which Property is owned by \_\_\_\_\_ (the "Owner").

Upon receipt of the sum of \$ \_\_\_\_\_, (*Progress Payment Invoice Amount*) Subcontractor hereby waives and releases any and all liens or claims of lien or any right it has upon or against the Property or the Owner for the work through the date of this Interim Waiver of Lien and Release.

Furthermore, upon receipt of payment, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Subcontractor does hereby waive, release, and relinquish any and all rights, claims, demands, claims for relief, causes of action, and the like, whether arising at law, by statute, under contract, in tort, in equity, or otherwise, that Subcontractor now has or may have through the date of this Waiver of Lien and Release, arising out of the performance of its work or the furnishing of labor, materials, or equipment by Subcontractor or its subcontractor in connection with, arising from, or related to the Property, ECC, or the Owner, except and only to the extent as to any claims that are specifically described herein.

"ECC" and "Owner" shall be deemed to mean and refer to not only ECC and Owner, but also their officers, agents, owners, successors, representatives, employees, directors, and any and all others acting on their behalf.

This Waiver and Release of Claims is freely and voluntarily given and Subcontractor acknowledges, warrants, and represents that it has fully reviewed its terms and conditions, is fully informed with respect to the legal effect of this Waiver of Lien and Release, is the sole owner of all claims released herein, has not sold or assigned such claims to any other party, and has voluntarily chosen to make this Waiver of Lien and Release in return for and in consideration of the payment recited above.

Except as Subcontractor specifically lists herein or in an attachment affixed to this document, Subcontractor further represents that all of its obligations -- legal, equitable, or otherwise -- related to or arising out of its work have been fully paid and satisfied, including but not limited to the following obligations:

- Any fringe benefit plan or obligations;
- Obligations to employees, laborers, materialmen, and subcontractors employed by Subcontractor;
- Labor, materials, equipment, and supplies furnished by others to Subcontractor;
- Sales and use taxes, Social Security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

Subcontractor does hereby agree to indemnify and hold ECC and Owner harmless from and against any and all claims, damages, losses, expenses, and the like, including legal expenses and attorneys' fees, incurred by reason of any claim that Subcontractor has not fully paid for all labor, materials, equipment, and expenses incurred in connection with its work.

Subcontractor further agrees that making and receipt of payment and execution of this Waiver of Lien and Release shall in no way release Subcontractor from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of Subcontractor.

IN WITNESS WHEREOF, on behalf of Subcontractor, with full authority, I have executed this instrument under seal effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
[NAME OF SUBCONTRACTOR]

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

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

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

## Work Authorization - Final Waiver of Lien and Release of Claims

Agreement # \_\_\_\_\_

The undersigned, \_\_\_\_\_ ("Subcontractor Name"), has been employed by or on behalf of a project for ENVIRONMENTAL CHEMICAL CORPORATION ("ECC"), to furnish labor, materials, and / or equipment for construction or improvements at ECC's Project known as \_\_\_\_\_ (Site Name), located at \_\_\_\_\_ (the "Property"), and which Property is owned by \_\_\_\_\_ (the "Owner").

Upon receipt of the sum of \$ \_\_\_\_\_, (Total Sum to be Received under the Subcontract Agreement Listed above to include the final invoice amount of \$ \_\_\_\_\_ which is submitted with this document) Subcontractor hereby and forever waives and releases any and all liens or claims of lien or any right it has upon or against the Property or the Owner.

Furthermore, upon receipt of payment, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Subcontractor does hereby waive, release, and relinquish any and all rights, claims, demands, claims for relief, causes of action, and the like, whether arising at law, by statute, under contract, in tort, in equity, or otherwise, that Subcontractor now has or may have through the date of this Waiver of Lien and Release, arising out of the performance of its work or the furnishing of labor, materials, or equipment by Subcontractor or its subcontractor in connection with, arising from, or related to the Property, ECC, or the Owner, except and only to the extent as to any claims that are specifically described herein.

"ECC" and "Owner" shall be deemed to mean and refer to not only ECC and Owner, but also their officers, agents, owners, successors, representatives, employees, directors, and any and all others acting on their behalf.

This Waiver and Release of Claims is freely and voluntarily given and Subcontractor acknowledges, warrants, and represents that it has fully reviewed its terms and conditions, is fully informed with respect to the legal effect of this Waiver of Lien and Release, is the sole owner of all claims released herein, has not sold or assigned such claims to any other party, and has voluntarily chosen to make this Waiver of Lien and Release in return for and in consideration of the payment recited above.

Except as Subcontractor specifically lists herein or in an attachment affixed to this document, Subcontractor further represents that all of its obligations -- legal, equitable, or otherwise -- related to or arising out of its work have been fully paid and satisfied, including but not limited to the following obligations:

- Any fringe benefit plan or obligations;
- Obligations to employees, laborers, materialmen, and subcontractors employed by Subcontractor;
- Labor, materials, equipment, and supplies furnished by others to Subcontractor;
- Sales and use taxes, Social Security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

Subcontractor does hereby agree to indemnify and hold ECC and Owner harmless from and against any and all claims, damages, losses, expenses, and the like, including legal expenses and attorneys' fees, incurred by reason of any claim that Subcontractor has not fully paid for all labor, materials, equipment, and expenses incurred in connection with its work.

Subcontractor further agrees that making and receipt of payment and execution of this Waiver of Lien and Release shall in no way release Subcontractor from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of Subcontractor.

IN WITNESS WHEREOF, on behalf of Subcontractor, with full authority, I have executed this instrument under seal effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
[NAME OF SUBCONTRACTOR]

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

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

**ATTACHMENT 6 - SUBCONTRACTOR CERTIFICATE(S) OF INSURANCE**  
(to be provided by Subcontractor)



## ATTACHMENT 7

### Environment, Safety and Quality Additional Requirements

**Subcontractor must submit the EHS ESQ Questionnaire and disclose all requested information. Failure to do so may result in disqualification.**

1. Subcontractor acknowledges and understands all OSHA, US Army Corps of Engineers (USACE), and ECC ESQ safety requirements for the scope of work, and commits to compliance with the most stringent of these requirements.
2. The costs of compliance with all safety ESQ requirements are included in Subcontractor's bid. ECC will not consider additional charges for compliance with OSHA regulations, USACE requirements or ECC Site Safety and Health and Quality Control Plans. These costs are to include all costs associated with quality control testing specified in the Contract Documents.
3. Subcontractor agrees to all activities and requirements associated with each Definable Feature of Work identified in ECC Work and Quality Control Plans. These requirements include participation in all aspects of the USACE Four Phase Control System (Preparatory Meeting, Initial Inspection, Follow-Up Inspections, and Closeout Inspection). Subcontractor also agrees to submit an Activity Hazard Analysis (AHA) for each major phase of its work to ECC at least one week prior to commencement of site operations. ECC will provide the format for the AHA.
4. Subcontractor agrees to attend the following meetings and to participate in discussions concerning environment, safety and quality issues concerning its operations:
  - a. Pre-construction meeting (Management representative)
  - b. Phase Preparatory Inspections/meeting(s) with ECC's client for each definable feature of work (Management representative)
  - c. Weekly progress meetings (Management representative)
  - d. Daily briefings and tailgate meetings (all workers and supervisors)
  - e. Plan of the Day Meetings
  - f. Four Phase Process Control (all workers and supervisors)
  - g. Incident investigation reviews (Management representative)
  - h. Safety Committee meetings (Management representative)
  - i. Closeout Inspection (Management representative)
5. **Inspections.** In addition to daily inspections by the Competent Person, Subcontractor Management will conduct a weekly inspection of all of its work areas and activities, and provide documentation of findings and corrective action status to ECC. Subcontractor will offer ECC an opportunity to accompany Subcontractor on its weekly inspections. Subcontractor agrees to participate in ECC inspections, as requested.
6. **Employee Training.** Subcontractor employees will be trained in the recognition and control of hazards associated with their work. Training will include hazards of tools and machinery, chemical hazards, and biological hazards. Subcontractor will train employees in the provisions of the Activity Hazard Analyses for the work. Subcontractor employees will complete a web-based Project ESQ Orientation prior to arriving at the site for the first day of work. ECC will provide the url and access code. Subcontractor employees will also attend an ECC Site-specific Orientation Training prior to starting work on the site.
7. **Housekeeping.** Work areas will be maintained in an orderly fashion, free of debris creating a tripping or fire hazard. Waste materials will be containerized and disposed of properly.
8. **Personal Protective Equipment.** Subcontractor will provide all necessary personal protective equipment for their employees. PPE will meet applicable OSHA, NIOSH or ANSI standards. The minimum PPE required for ECC sites includes hard hats, safety-toe footwear, industrial safety glasses, shirts with sleeves and long pants. Work around mobile equipment and vehicles requires Class 2 minimum high visibility garments. Additional equipment may be detailed in the Contract Documents, Site Safety and Health Plan, and Activity Hazard Analyses.
9. **Incident Reporting.** Subcontractor will report all incidents, no matter how minor, immediately to ECC. Subcontractor will investigate and prepare a written report on all incidents that involve: OSHA recordable injuries and illnesses;

property damage greater than \$500 in value; fires; environmental spills and releases including fuels and hydraulic oils; quality failures and rework resulting in cost impacts of more than \$1,000; exposures to airborne contaminants or radiological sources in excess of occupational exposure limits regardless of the use of respirators; employee complaints of signs and symptoms consistent with exposure to site chemicals; and any incident, which under slightly different circumstances could have resulted in the consequences listed above.

10. **First Aid.** Subcontractor will have a trained first aid provider and first aid supplies on each shift.
11. **Hearing Protection.** Subcontractor will provide hearing protectors and require their use when occupational noise exposure exceeds 85 dBA.
12. **Exposure to Airborne Contaminants.** Subcontractor will use engineering controls to the extent feasible to maintain employee exposures to airborne contaminants to levels below the Permissible Exposure Limits.
13. **Exposure to Silica.** Subcontractor shall fully and properly implement the engineering controls, work practices, and respiratory protection specified for the task on Table 1 of 29 CFR 1926.1153. Where a task presenting the potential for silica exposure is not included in Table 1, the Subcontractor will assess employee exposure through personal exposure monitoring, and comply with the relevant portions of 1926.1153.
14. **Hazard Communication.** Safety Data Sheets for hazardous substances will be submitted to ECC prior to bringing the materials onto the site. Copies will be maintained at the site and will be available to employees using the materials.
15. **Fire Prevention and Protection.** Subcontractor will maintain its work area free of fire hazards. Suitable fire extinguishers will be provided and employees will be trained in their use. Hot Work Permits will be issued by a Competent Person for all flame and spark producing activities, including welding, cutting, and grinding operations and temporary heating devices. Copies will be submitted to ECC.
16. **Accident Prevention Signs, Tags and Barricades.** Subcontractor will provide and abide by suitable and standard accident prevention signs and tags. Work adjacent to, or in, public rights of way will be protected by signs and barricades in accordance with the latest version of the Manual of Uniform Traffic Control Devices. Other hazardous work areas, such as contaminated exclusion zones and excavations will be protected by suitable signs, barricades and access control procedures.
17. **Storage.** Subcontractor will store construction materials in a safe manner to prevent falling, rolling, collapse, tripping hazards or fire hazards.
18. **Tools.** Subcontractor will provide the proper tools, in good condition and will ensure their proper use. Guards provided by the manufacturer will be used and maintained. Utility knives will only be used with leather or cut resistant gloves.
19. **Electrical Safety.** Electrical connections, disconnections, installations and repairs will only be made by qualified electrical workers. Power tools and equipment will be properly grounded or double insulated type. Extension cords will be Extra Hard Usage duty and will be inspected daily by the users. All cord and plug equipment will be protected with Ground Fault Circuit Interrupters. GFCIs will be tested at least monthly. For work on or near energized equipment with exposed parts the contractor and all exposed personnel must follow the latest edition of NFPA 70E pertaining to establishing Arc-Flash Boundaries, implementing safe work practices, and donning the appropriated Arc-Flash Hazard Category PPE based on the AC or DC systems being worked on. All personnel shall have training as required by NFPA 70E.
20. **Ladders.** Subcontractors will use only Heavy Duty ladders of composite construction and will ensure that employees are properly trained in their use, and use them properly. Ladders will be inspected before each use and inspections must be documented.
21. **Mobile Construction Equipment.** All mobile construction equipment will be new or in like-new condition and will include reverse signal alarms; fire extinguishers; safety glass where enclosed cabs are provided; seat belts; and roll over protection structures (ROPS). Subcontractor will perform an initial inspection when the equipment is first brought onto the site. ECC and ECC's client will be given the opportunity to observe the initial inspection. Operators will conduct and record a daily inspection. Equipment with deficiencies affecting safe operations will be removed from service until repaired. Equipment used for clearing and demolition operations will have Falling/flying Object Protection Structures and metal cab shields. Equipment will be operated in a safe manner at all times, and other equipment and employees will be kept out of the working radius of mobile equipment.
22. **Concrete and Masonry.** Employees engaged in concrete pours will be provided with adequate protection against and first aid for skin exposure to wet concrete. Masonry walls under construction will be properly braced or shored.

23. **HS Personnel:** As specified in the Contract Documents, Subcontractor agrees to furnish full time or collateral duty HS personnel. Minimum requirements will include current training as necessary for HAZWOPER sites (40 Hour, Refresher, and Supervisor Training) and OSHA 10 Hour Construction training. HS personnel shall have the experience and skills specified in the Contract Documents. Subcontractor shall provide ECC with the resume(s) for the HS personnel to demonstrate that the individual(s) have appropriate experience.
24. **QC Personnel:** As specified in the Contract Documents, Subcontractor agrees to furnish full time or collateral duty QC personnel. Minimum requirements will include current USACE QCM training. QC personnel shall have experience and skills as specified in the Contract Documents. Subcontractor shall provide ECC with the resume(s) for the QC personnel to demonstrate that the individual(s) have appropriate experience.
25. **Competent Person.** Subcontractor will designate a Competent Person who is capable of identifying hazards in the workplace and has authority to direct corrective actions and to do routine inspections of Subcontractor's work areas and activities. Subcontractor will also designate a Competent Person for specific activities, as required by OSHA, e.g. fall protection, excavation, scaffolding, confined space entry, and lockout/tagout. Subcontractor will provide ECC with the documentation to demonstrate the competency for the assigned activity or task.
26. **Equipment Operators.** Operators of construction equipment will be qualified by training or experience, meet the requirements of state and local laws and regulations, and authorized by the Subcontractor. Subcontractor will submit certificates of training and competency for forklift operators. Subcontractor will submit copies of certifications of competency from the employer or third party for all crane operators.
27. **Lead Exposure.** When the Subcontractor's scope involves working with materials containing lead, or on lead-based coatings, the Subcontractor will submit a Lead Compliance Plan, written by a Competent Person, to ECC at least 30 calendar days prior to commencement.
28. **Asbestos.** When asbestos abatement is required, Subcontractor will submit an Asbestos Abatement Plan to ECC at least 30 calendar days prior to commencement.
29. **Hazardous Waste Operations.** When Subcontractor's scope requires work in a Hazardous Waste Operations exclusion or contamination reduction zone, certificates of OSHA required training and medical qualifications will be submitted to ECC for each employee prior to commencement.
30. **Confined Space Entry.** Subcontractor will comply with all OSHA requirements for confined space entry and provide proof of training for employees engaged in work requiring entry into confined spaces. Entry permits will be issued by a qualified Supervisor each shift and copies will be submitted to ECC.
31. **Cranes.** Mobile Cranes will be manufactured and inspected in accordance with ANSI B.30. Subcontractor will submit to ECC an annual inspection report, a pre-use inspection, and copies of daily operator inspections. Other submittals, including rope certifications may be required by ECC clients. Cranes will have anti-two block devices, and either: load moment shut offs or alarms; or load and boom angle indicators. Operators will be proficient at reading load charts. Subcontractor will submit Critical Lift Plans to ECC whenever lifts involve: loads greater than 30,000 lbs; lifts at greater than 75% capacity in the specific configuration; blind lifts; lifts involving more than one crane; lifts involving loads containing liquids; lifts of hazardous materials; lifts involving unusual rigging; any lifts determined by the operator to need a lift plan. For all other Lifts, a Standard Lift Plan will be required.
32. **Rigging.** All slings and hardware used in lifting will be tagged with safe working load capacities and will be inspected on a daily basis by a Competent Person. Defective equipment will be removed from service and tagged or destroyed.
33. **Fall Protection.** Subcontractor will ensure its employees implement 100% fall protection when working at elevations in excess of 6 feet. Priorities for fall protection include: stable platforms with standard guardrails; fall restraint systems; personal fall arrest systems (PFAS). PFAS will be designated by a Competent Person and users will be trained. PFAS equipment will be provided by the Subcontractor.
34. **Scaffolds.** Scaffolds will be erected and inspected under the supervision of a Competent Person, who will tag scaffolds as safe for use. Proper access will be provided. Fall protection will be provided on all working levels.
35. **Elevating Work Platforms.** Operators of boom lifts and scissor lifts will be trained. Personal fall restraint systems will be used by personnel in all elevating work platforms, with lanyards attached to designated attachment points. Crane-suspended platforms will require design and testing submittals to ECC prior to use.
36. **Steel Erection.** Notwithstanding OSHA's Steel Erection standard, Subcontractor agrees to implement 100% fall protection above 6 feet.

37. **Excavations.** Subcontractor will designate a Competent Person to inspect excavations on a daily basis and after each precipitation event. Cave in protection will be provided for all excavations deeper than 5 feet. Cave in protection will be provided for excavations less than 5 feet deep unless determined safe by the Competent Person. The perimeter of excavations will be protected against traffic and pedestrians, whether public or site workers, by suitable barricades, signs and/or fall protection.
38. **Underground Utilities.** Subcontractor whose work includes intrusive activity such as excavation or drilling must implement procedures to protect workers, consumers and the environment from inadvertent contact with underground utilities such as electric, gas, petroleum products, telecommunications, water, and sewer. The procedures must comply with all state and local requirements and will include contacting the appropriate utility locating and marking service (e.g. DIGSAFE).
39. **Demolition.** Subcontractor will conduct an engineering survey prior to demolition of structures. A report will be submitted to ECC that will detail structural hazards, presence of utilities, presence of hazardous or toxic materials, and appropriate demolition methods. Mobile construction equipment used in demolition will include metal cab protectors and Falling/flying Object Protection Structures. Dust will be controlled with water sprays, and the runoff will be collected and managed to prevent environmental impacts.
40. **Control of Hazardous Energy (Lockout/Tagout).** Subcontractor will implement a program for protecting workers from unintentional functioning of equipment or exposure to hazardous energy. Potential sources could include electrical, mechanical, pressure (pneumatic, hydraulic, or steam), hazardous substances in closed systems.
41. **Quality Control Testing.** Subcontractor agrees to perform all quality control testing as specified in the Contract Documents using qualified personnel.

<b>Company Name:</b>		<b>Primary NAICS Code:</b>	
<b>ECC Project Name/Location/Dates (if applicable):</b>		<b>Purchase Order No. (if available):</b>	

  

<b>Loss History</b>	Current Year	Last Year	Previous Year	Previous Year
Experience Modification Rate (EMR) <i>(Attach verification letter from your workers' comp carrier)</i>				
Number of Fatalities				
Number of OSHA Recordable Injuries/Illnesses				
Number of cases with days away from work				
Total Employee Hours Worked by Year				

  

<b>Environmental Health and Safety (EHS) Compliance History</b>
<p>The following compliance questions relate to your company and operations over the past 5-year period. The term company is inclusive of all operations nationwide, all companies and operating divisions, and all company names currently and previously used.</p>
<p>Has OSHA (federal or state) issued any citation(s) to your company? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>Has OSHA (federal or state) issued any citation(s) to subcontractors working on projects or sites managed by your company? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>Are there any past or pending environmental enforcement actions or environmental compliance violations for your company or subcontractors working on projects or sites managed by your company? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b><i>If yes to one of the above questions, attach a copy of the violation, citation, or enforcement action description, and a description of the company action taken to resolve the issue and prevent recurrence.</i></b></p>

  

<b>Substance Abuse Programs</b>
<p>Does your company have a substance abuse program which includes pre-employment, "for cause", and post accident employee drug and alcohol testing? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p>
<p>Does your company have a program in place that complies with the Federal Drug-Free Workplace Act? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p>

  

<b>Environmental Health and Safety Programs</b>
<p>Does your company have an EHS program in place that complies with OSHA, EPA, DOT, and other applicable federal, state, and local regulations? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b>Include a copy of the table of contents of your EHS Programs.</b></p>

  

<b>Certification and Signature</b>
<p>I certify and declare under penalty of law that the foregoing environmental health and safety compliance history is true and correct, and that I am a duly authorized representative of the company.</p>
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p style="text-align: center; margin-top: 10px;">_____ Printed Name</p> <p style="text-align: center; margin-top: 10px;">_____ Signature</p> </div> <div style="width: 45%;"> <p style="text-align: center; margin-top: 10px;">_____ Title</p> <p style="text-align: center; margin-top: 10px;">_____ Date</p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 20%;"> <p>_____ Phone</p> </div> </div>

## **ATTACHMENT 8**

### **Bonds Forms & Requirements for Standby Letters of Credit**

## LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, as principal (hereinafter called "Subcontractor"), and \_\_\_\_\_ as surety (hereinafter called "Surety"), are held and firmly bound unto **Environmental Chemical Corporation**, a corporation organized under the laws of the State of \_\_\_\_\_, as Obligee (hereinafter called "ECC"), for the use and benefit of claimants as herein below defined, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Subcontractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Subcontractor has entered into an Agreement with ECC dated \_\_\_\_\_, 2008 (the "Contract"), for providing certain labor, materials, services, and work to the project known as \_\_\_\_\_ (the "Project"), all in conformance with the terms and conditions of the Contract, which Contract (and all amendments or modifications) is hereby incorporated by reference and made a part hereof; and

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Subcontractor shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as (a) one having a direct contract with Subcontractor or with a subcontractor of Subcontractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract; or (b) one having a right to file a lien against the Project; or (c) Obligee.

2. The above named Subcontractor and Surety hereby jointly and severally agree with ECC that every claimant as herein defined who has not been paid in full before the expiration of a period of ninety (90) calendar days after the date on which the last of such claimant's work or labor was done or performed or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. ECC shall have no liability for the payment of any costs or expenses of any such suit.

3. In the event that the jurisdiction of the Project permits the same, a true and correct copy of this bond may be filed as a lien discharge bond for any lien filed by a claimant. In such event, this bond shall be construed to afford at least the minimum requirements of a lien discharge bond for the jurisdiction in question.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL:

\_\_\_\_\_ [SEAL]

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

Witness \_\_\_\_\_

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

SURETY: \_\_\_\_\_

[SEAL]

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

Witness \_\_\_\_\_

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

## SUBCONTRACTOR PERFORMANCE BOND

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, That \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ (hereinafter called the "Principal"), as Principal, and \_\_\_\_\_ a corporation organized and existing under the laws of the State of \_\_\_\_\_ (hereinafter called the "Surety"), as Surety, are held and firmly bound unto **Environmental Chemical Corporation**, a corporation organized under the laws of the State of Kentucky (hereinafter called the "Obligee"), in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment of which sum well and truly to be made the said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee is the Prime Contractor of a Project, described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
(the "Project"); and

WHEREAS, the Principal has entered into an Agreement with the Obligee dated \_\_\_\_\_, 2008 (the "Contract") to perform, as Subcontractor, the Work (as defined in the Contract) in connection with said Project, consisting of, among other things, providing labor, materials, work, and services in conformance with the terms and conditions of the Contract, which Contract (and all amendments or modifications) is hereby incorporated by reference, referred to and all obligations of Principal thereunder made a part hereof and of Surety's obligation hereunder.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal and Surety shall well and truly perform all the undertakings, covenants, terms, conditions, and agreements of said Contract within the time provided therein and any extensions thereof that may be granted by the Obligee, including specifically obligations that survive or extend past the completion of the Work as defined in said Contract, and shall stand behind and perform fully any guaranty or warranty required under said Contract or by law, and shall, at all times, perform its Contract obligations as provided by law, and shall also well and truly perform all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, and shall indemnify and save harmless said Obligee of and from any and all loss, damage, and expense, including but not limited to damages, delay damages, liquidated damages, consequential damages, costs and attorneys' fees, which the said Obligee may sustain by reason of failure so to do, and including but not limited to damages, delay damages, liquidated damages, consequential damages, costs and attorneys' fees incurred in enforcing the Contract or this Bond, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of the said Contract or in the said work to be performed, or in the specifications, or in the plans, shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such changes, extensions of time, alternations, additions, omissions, and other modifications.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL:

\_\_\_\_\_  
[SEAL]

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

Witness \_\_\_\_\_

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

SURETY: \_\_\_\_\_

[SEAL]

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

Witness \_\_\_\_\_

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



## **IRREVOCABLE STANDBY LETTERS OF CREDIT - REQUIREMENTS**

1. The instrument must be a Standby Letter of Credit (LOC) issued in favor of Environmental Chemical Corporation, 1240 Bayshore Highway, Burlingame, CA, 94010.
2. The LOC must be in the form and format shown by the attached example.
3. Bank Guarantees are NOT acceptable;
4. The LOC must state that it is issued pursuant to the ISP98. The LOC cannot be issued pursuant to ICC Publication No. 458, which is the Uniform Rules for Demand Guarantees (URDG);
5. The LOC must be ADVISED by BANK OF AMERICA N.A., PENNSYLVANIA, SWIFT: BOFAUS3N.
6. The LOC must expire at the counters of BANK OF AMERICA N.A.;
7. The LOC must allow for partial payments;
8. In cases where the financial risk profile of the issuing bank and/or country from which the LOC originates is “HIGH”, the standby letter of credit must require that BANK OF AMERICA, or another creditworthy international bank with branches in the United States, adds its “Confirmation”. If ‘Confirmation’ is required, as solely determined by ECC’s Finance Dept., the issuer (Subcontractor) must pay the Confirmation fee. It is typically 1-2% of the LOC amount.
9. The LOC must state that payments against the LOC will be made available to ECC upon its presentation of:
  - a. Sight Draft(s); and
  - b. Statement or Certificate of Demand (Note that the form of this statement must be drafted by ECC and BANK OF AMERICA and will be worded for the specific purpose at hand [i.e., Performance, Financial Obligation, etc.] A draft will be provided to the applicant for their review and for the incorporation of it in the Final version of the standby letter of credit application the applicant will make with their Bank.

**If the Applicant (Subcontractor) believes that any of the Terms or Conditions noted below cannot be complied with, contact Andrew Doble at [ADoble@ecc.net](mailto:ADoble@ecc.net), prior to the issuance of the LOC required. That will minimize unnecessary delays that will result from the processing of amendments to correct the shortcomings.**

## IRREVOCABLE STANDBY LETTER OF CREDIT FORM

TO BE ISSUED AS AN MT700 OR MT760, BUT THE GOVERNING RULE MUST BE THE ISP98

ISSUING BANK: [ISSUING BANK NAME]

ADVISING BANK: **THIS NEEDS TO BE A UNITED STATES BANK THAT CONFIRMS THE LETTER OF CREDIT. ANY CONFIRMATION THAT IS REQUIRED (DUE TO APPLICANT SELECTION OF ISSUING BANK) IS AN EXPENSE OF THE APPLICANT.**

**SECONDARY ADVISING BANK**

**Bank of America N.A.** (SWIFT BIC: {BOFAUS3N})

One Fleet Way

MC: PA6-580-02-30

Scranton, PA. 18507-1999

ATTN: STANDBY LETTER OF CREDIT DEPT.

APPLICANT: [INSERT APPLICANT NAME]

BENEFICIARY: Environmental Chemical Corporation  
1240 BAYSHORE HIGHWAY  
BURLINGAME, CA 94010

AMOUNT: USD [AMOUNT IN NUMBERS]

EXPIRATION DATE/PLACE: [MONTH DD, YYYY], [COUNTRY]

DOCUMENTS REQUIRED:

BENEFICIARY'S STATEMENT ON ITS LETTERHEAD DATED AND SIGNED BY THE BENEFICIARY, INDICATING NAME AND TITLE OF THE SIGNER WORDED AS FOLLOWS:

WE HEREBY DRAW ON [ISSUING BANK NAME] LETTER OF CREDIT NO. <L/C NO.> IN THE AMOUNT OF USD <AMOUNT> AS [APPLICANT NAME] HAS FAILED TO PERFORM ANY OR ALL OF THEIR CONTRACTUAL OBLIGATIONS RELATING TO THAT CERTAIN CURRENT SUBCONTRACT AGREEMENT# [SUBCONTRACT NUMBER] DATED [DD.MM.YY] FOR THE [ECCI PROJECT NAME] AND ANY CURE AND WARRANTY PERIODS PROVIDED FOR THEREIN HAS PASSED WITHOUT REMEDY.

PARTIAL DRAWINGS AND MULTIPLE PRESENTATIONS MAY BE MADE UNDER THIS IRREVOCABLE STANDBY LETTER OF CREDIT, PROVIDED, HOWEVER, THAT EACH SUCH DEMAND THAT IS PAID BY US SHALL REDUCE THE AMOUNT AVAILABLE UNDER THIS IRREVOCABLE STANDBY LETTER OF CREDIT.

ALL DOCUMENTS ARE TO BE DISPATCHED BY COURIER SERVICE TO [ISSUING BANK NAME & SPECIFIC ADDRESS].

ALL COMMUNICATIONS TO US WITH RESPECT TO THIS IRREVOCABLE STANDBY LETTER OF CREDIT MUST BE ADDRESSED TO US IN WRITING AT OUR OFFICE ADDRESS AS INDICATED ABOVE.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE "INTERNATIONAL STANDBY PRACTICES" (ISP 98) INTERNATIONAL CHAMBER OF COMMERCE (PUBLICATION NO. 590).

WE HEREBY ENGAGE WITH YOU THAT ALL DRAWING(S) MADE UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS IRREVOCABLE STANDBY LETTER OF CREDIT WILL BE DULY HONORED IF DRAWN AND PRESENTED FOR PAYMENT AT OUR OFFICE LOCATED AT [ISSUING BANK NAME] <SPECIFIC ADDRESS> ON OR BEFORE THE EXPIRATION DATE OF THIS CREDIT, [MONTH DD, YYYY].