

CALIFORNIA SUPPLEMENTAL TERMS AND CONDITIONS

VERSION 1.0, REVISED APRIL 1, 2021

1. REVISIONS TO THE STANDARD TERMS AND CONDITIONS.

1.1 Replace *Section 3.2 Partial Payments and Retainage* in its entirety with the following:

“3.2 Partial Payments.

“Partial payments under each *Subcontract Agreement* for satisfactory performance, subject to withholdings or off-sets as provided herein, shall be due within seven (7) days following receipt of payment from the Owner by Contractor. Any payment made hereunder prior to completion and acceptance of the Work shall not be construed as evidence of acceptance or acknowledgment of completion of any part of Subcontractor’s Work.”

1.2 Replace *Section 3.7 Final Payment* in its entirety with the following:

“Final payment under each *Subcontract Agreement*, subject to withholdings or off-sets as provided herein, shall be made after Subcontractor’s work has been completed and approved by the Owner, satisfactory proof of payment of all amounts owed by Subcontractor in connection with the *Subcontract Agreement* has been provided and all of Subcontractor’s obligations under the *Subcontract Agreement*, including delivery of all warranties and other closeout documents, are complete.”

1.3 Replace *Section 3.8 Partial and Final Releases* in its entirety with the following:

“As a condition for each partial payment under each *Subcontract Agreement*, and as a condition for final payment under each *Subcontract Agreement*, Subcontractor shall execute a release in a form satisfactory to Contractor, waiving and releasing all claims arising from prior work, including, but not limited to, claims against Contractor’s payment bond and mechanic’s liens or similar claims. Subcontractor shall also certify that Subcontractor has paid all its bills, taxes, or other obligations. If requested by Contractor, as a further condition for each partial payment and as a condition for final payment, Subcontractor shall furnish Contractor such executed releases from all subcontractors, suppliers, and materialmen of Subcontractor. All requests for payment and certifications shall be in a form acceptable to Contractor. All releases required under this Section shall be substantially in the form set forth at CIVIL CODE § 3262(d).”

1.4 Add the following as *Section 3.10 Reasonable Time for Payment* to the *Standard Terms and Conditions*:

“3.10 Reasonable Time for Payment.

“If Owner fails to make any payment due Contractor, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. ‘Reasonable time’ shall be determined according to the relevant circumstances, but in no event shall such time be less than the time Contractor and Contractor’s sureties require to prosecute and conclude their legal remedies against Owner.”

1.5 Replace *Article 5 Performance and Payment Bonds* in its entirety with the following:

If required by Contractor, Subcontractor shall execute payment and performance bonds, in an amount equal to one hundred percent (100%) of the Subcontract Price for the Work. Said bonds shall be executed by a corporate surety admitted in the State of California, with a rating of ‘A-’ or better by Best’s Rating Service or an equivalent rating service certified by the California Insurance Commissioner, and said bonds shall also be on a form satisfactory to Contractor. Subcontractor shall pay the premium on said bonds unless otherwise provided herein or in the Subcontract Agreement.”

1.6 Replace *Section 8.2 Compensation for Delays* in its entirety with the following:

“Subcontractor shall be entitled to additional compensation for compliance with schedule amendments only to the extent the Contract Documents entitle Contractor to additional compensation or reimbursement. Contractor shall make payment to Subcontractor for delays or schedule amendments within seven (7) days of Contractor’s receipt of payment for the same from Owner.”

1.7 Add the following as *Section 18.15 Payroll Records* to the *Standard Terms and Conditions*:

“18.15 Payroll Records.

“Subcontractor shall maintain and furnish, at Contractor’s request, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury. Subcontractor’s payroll records shall contain, among other things, the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Subcontractor in connection with the Project. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (a) the information contained in the payroll record is true

and correct; and, (b) Subcontractor has complied with the requirements of CALIFORNIA LABOR CODE Sections 1771, 1811, and 1815 for any Work performed by Subcontractor's employees. In the event it is determined that Subcontractor has failed to pay Subcontractor's workers the requisite prevailing rate of wages, Contractor shall be entitled to retain sufficient funds due Subcontractor to offset any such non-payment of wages by Subcontractor including, without limitation, any penalties assessed, or which may be assessed. Failure by Subcontractor to pay Subcontractor's workers the requisite prevailing rate of wages shall constitute default under this Agreement, for which Contractor, in its sole discretion, may elect to terminate this Subcontract Agreement pursuant to its terms. **SUBCONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CONTRACTOR FROM ANY WAGES, FINES, PENALTIES OR OTHER AMOUNTS WITHHELD OR ASSESSED BY THE OWNER OR ANY OTHER PUBLIC ENTITY RESULTING FROM VIOLATIONS BY SUBCONTRACTOR OR ITS SUBCONTRACTORS OF THE PREVAILING WAGE REQUIREMENTS AS DESCRIBED, THE CONTRACT DOCUMENTS, THIS AGREEMENT, THE CALIFORNIA LABOR CODE OR THE DAVIS-BACON ACT.**"

1.8 Add the following as *Section 18.16 Compliance with Applicable Laws* to the *Standard Terms and Conditions*:

"23.6 Compliance with Applicable Laws.

"Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act."

1.9 Add the following as *Section 18.17 Prevailing Wages* to the *Standard Terms and Conditions*:

"18.17 Prevailing Wages

To the extent required by applicable law, the Contract Documents, Subcontractor shall pay its workers the general prevailing rate of *per diem* wages and the general prevailing rate for holiday and overtime work in the locality in which the Project is located for each craft, classification, or type of worker needed by Subcontractor to execute the Work. Subcontractor shall fully comply with any Labor Compliance Program established by the Owner or applicable to the Project. Subcontractor shall also comply with California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Prior to making final payment to Subcontractor, Subcontractor shall provide Contractor with an affidavit signed, under penalty of perjury, by an authorized representative of Subcontractor stating that Subcontractor has paid the requisite general prevailing rate of *per diem* wages and the general prevailing rate for holiday and overtime work to Subcontractor's workers on the Project along with any amounts due pursuant to Labor Code Section 1813. If the Project is covered by Davis Bacon Act prevailing wages, the Subcontractor must pay the higher of the DBA prevailing wages or the California Labor Code *per diem* wages."

2. CONTRACTOR'S LICENSE REQUIREMENT.

The Subcontractor must be licensed through the Contractors State Licensing Board.

3. ARBITRATION.

The Parties agree to interpret and apply the provisions in the *Subcontract Agreement* concerning arbitration and dispute resolution in accordance with the United States Arbitration Act ("FAA").

4. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.

Every provision of laws and clauses required by law to be inserted in this Subcontract Agreement and will be deemed to be inserted herein and incorporated by reference. The Subcontract Agreement will be read and enforced as though it were included and if—through mistake or otherwise—any such provision is not inserted or not correctly inserted, then upon the application of other party the Subcontract Agreement will be amended to make such insertion.