

OKLAHOMA SUPPLEMENTAL TERMS AND CONDITIONS

VERSION 1.0, REVISED JULY 1, 2018

1. REVISIONS TO THE STANDARD TERMS AND CONDITIONS.

- 1.1 Replace *Section 3.3 Partial Payments and Retainage* of the *Standard Terms and Conditions* in its entirety with the following:
- “3.4 Partial payments shall be due to Subcontractor in the amount of ninety percent (90%) of the Work in place that has been approved by Contractor and Owner. If the Contract Documents allow Contractor partial payments for stored materials, partial payments shall also be due to Subcontractor in the amount of ninety percent (90%) of the stored materials that have been approved by Contractor and Owner. For purposes of determining partial payments, Subcontractor shall submit to Contractor for approval a breakdown of the total price of each Subcontract Agreement showing the amount included therein in each principal category of work within five (5) days of the execution of the Subcontract Agreement. In the event Contractor disapproves said breakdown, Contractor shall establish a reasonable breakdown that shall serve as the basis for partial payments.
- Notwithstanding the fact that Oklahoma's statute regarding retainage only applies to public projects, Subcontractor agrees that the retainage provisions contained in this Section 3.3 shall apply.”
- 1.2 Replace *Section 3.5 Payment of Subcontractors and Suppliers* of the Subcontract Agreement in its entirety with the following:
- “3.8 Subcontractor shall insure that, at all times, all subcontractors, employees, and suppliers are paid all amounts due in connection with the performance of the Subcontract Agreement. After the first partial payment hereunder, Contractor shall have the right to withhold any subsequent partial payments until Subcontractor submits evidence satisfactory to Contractor that all amounts owed in connection with the performance of the subcontract Agreement have been paid. Further, Subcontractor agrees that Contractor may pay all persons that have not been paid the monies due to them in connection with the Subcontract Agreement, whether or not a claim has been filed, and Subcontractor shall, to the extent that Contractor has not recovered said amounts pursuant to withholding, pay said amounts to Contractor upon demand. Subcontractor shall also immediately reimburse Contractor for any amounts paid by Contractor as a result of claims asserted against Contractor or Contractor's payment bond by any subcontractor, employee, or supplier of Subcontractor, including, without limitation, attorneys' fees, expert witness fees, and costs of litigation. Subcontractor acknowledges that pursuant to OKLA. STAT. tit. 42, § 152(1) (2008), the amounts payable under the Agreement shall, upon receipt by Subcontractor, be held as trust funds for the payment of all lienable claims due and owing or to become due and owing by Subcontractor by reason of the Agreement.”

2. PUBLIC PROJECTS.

In any contract for the purpose of making any public improvements or constructing any public building or making repairs to or performing maintenance on the same, the below provisions apply. To the extent that any of the provisions of this Article 2 conflict with the general payment provisions of the Standard Terms & Conditions, the provisions of this Article shall control, but only with respect to public projects.

2.1 Retainage.

Pursuant to OKLA. STAT. tit. 61, § 226(B), Contractor may withhold from Subcontractor as retainage a percentage up to ten percent (10%) of the amount of the payment due to Subcontractor. Any amount withheld as retainage by Subcontractor from any of its subcontractors may not exceed ten percent (10%). When the gross proper invoice of Subcontractor (or subcontractor, as applicable) first equals or exceeds fifty percent (50%) of the value of the subcontract, the retainage percentage withheld shall not exceed that percentage withheld from the entity withholding retainage.

Pursuant to OKLA. STAT. tit. 61, § 226(C), within ten (10) calendar days of Contractor's receipt of retainage withheld by Owner, Contractor shall release the share of those funds that have been withheld from Subcontractor. Within seven (7) calendar days of Subcontractor's receipt of retainage withheld by Contractor, Subcontractor shall release the share of those funds that have been withheld from its subcontractors.

2.2 Time for Payment.

Pursuant to OKLA. STAT. tit. 61, § 224(A)-(B), if Subcontractor has performed in accordance with the provisions of the Subcontract Agreement, Contractor shall make payment to Subcontractor no later than ten (10) calendar days after Contractor receives its corresponding payment for the work performed. If a sub-subcontractor or material supplier has performed in accordance with the provisions of a construction contract with Subcontractor, payment by Subcontractor shall be due to the sub-subcontractor or material supplier no later than seven (7) calendar days after Subcontractor receives its corresponding payment for the Work performed.

2.3 Invoice Reduction.

Pursuant to OKLA. STAT. tit. 61, § 223(C), Contractor may reduce the proper invoice of Subcontractor in accordance with the notice provisions of the statute. If Contractor reduces Subcontractor's proper invoice, Subcontractor shall notify all other affected entities having a construction contract with Subcontractor within seven (7) calendar days. Except as affected by a prior reduction, Subcontractor may not reduce the proper invoice of one of its subcontractors or material suppliers without detailing and forwarding to such subcontractor or material supplier, within seven (7) calendar days of receipt of the proper invoice, the reasons for reduction. Contractor may also reduce a payment of Subcontractor from a previous proper invoice by such amount as is reasonable to correct the reasons for reduction, as set forth in writing. Written notification to Subcontractor of reasons for reduction, as set forth in OKLA. STAT. tit. 61, § 223(C) (2008), shall not be required if the reduction is less than one percent (1%) of its net proper invoice or is due to mathematical errors.

2.4 Late Payments and Interest.

Pursuant to OKLA. STAT. tit. 61, § 225(E), if Contractor receives interest on late payments from Owner after Contractor has already paid Subcontractor, then no interest is due and owing to Subcontractor. If Contractor fails to timely pay Subcontractor, Subcontractor shall be entitled to interest as provided by OKLA. STAT. tit. 61, § 225(E).

3. WORKING CONDITIONS.

- 3.1 Subcontractor shall comply promptly with any requests by Contractor relating to the emphasis or relative emphasis to be placed on various aspects of the Work, or to such other matters pertaining to said Work as are indicated of concern to Owner.
- 3.2 Subcontractor must be licensed to perform the Work under the laws, rules, and regulations of the State of Oklahoma. Subcontractor shall only use duly licensed subcontractors in connection with Work.
- 3.3 Subcontractor shall enforce strict discipline and good order among Subcontractor's employees, agents, independent contractors, and subcontractors' employees. Subcontractor shall not permit employment of persons not skilled in tasks assigned to them. Owner or Contractor may, by written notice, request Subcontractor to remove from the Work or Project site any person who Owner or Contractor reasonably deems incompetent, careless, or otherwise objectionable.

4. NONDISCRIMINATION.

In connection with the performance of Work and the Subcontract Agreement, Subcontractor agrees to observe all applicable Oklahoma and federal law regarding nondiscrimination, including, but not limited to, OKLA. STAT. tit. 25, § 1302 regarding discrimination in employment. It shall be a discriminatory practice for Subcontractor: (i) to fail or refuse to hire, to discharge, or otherwise to discriminate against an individual with respect to compensation or the terms, conditions, privileges or responsibilities of employment, because of race, color, religion, sex, national origin, age, or handicap unless such action is related to a *bona fide* occupational qualification reasonably necessary to the normal operation of Subcontractor's business or enterprise; or (ii) to limit, segregate, or classify an employee in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee, because of race, color, religion, sex, national origin, age, or handicap unless such action is related to a *bona fide* occupational qualification reasonably necessary to the normal operation of the Subcontractor's business or enterprise. The aforesaid provisions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subcontractor agrees to post notices in conspicuous places, available for employees and applicants for employment, prepared by Subcontractor, and approved by the government when required, setting

forth the provisions of this Article.

5. RECORDS.

- 5.1 Contractor shall own any and all cost estimates, all schedules and all other documents submitted by Subcontractor or any of its subcontractors to Contractor or otherwise during preconstruction services and/or during the Work.
- 5.2 The wage, payroll, and cost records of Subcontractor, and its subcontractors, and all records subject to audit in accordance with the Agreement, shall be retained for a period of not less than five (5) years from the making of such records.

6. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.

Each and 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.