

**Addendum to Standard Form of Agreement Between
Design-Builder and Subcontractor AGC 450/455 (1999)**

Copyright © 2000, 2002, American Subcontractors Association, Inc.

The undersigned Subcontractor accepts the terms of the proposed Agreement attached subject to the Design-Builder's agreement to the modifications set forth in this Addendum, as well as those changes incorporated within the Agreement by interlineation or deletion. Anything to the contrary notwithstanding, this Addendum shall take precedence over any inconsistent provisions of the Agreement or other contract documents. Design-Builder's acceptance shall be evidenced by Design-Builder's signature or by first permitting Subcontractor to commence work on the project.

1. Article 1 - The Scope of Work shall include only the work set forth in the attached Subcontractor's proposal or description of work, which proposal or description is expressly incorporated and made a part of the Subcontract Documents between the Design-Builder and the Subcontractor.

2. ¶2.3 and Article 13 - No terms and conditions or other document included by reference in the Agreement shall be binding on the Subcontractor unless a copy of any such terms and conditions or document has been furnished to the Subcontractor prior to execution of the Agreement unless expressly accepted in writing signed by the Subcontractor.

3. ¶¶3.2 and 3.22.2.1 - In lieu of these provisions Subcontractor's work shall be executed in substantial compliance with the Contract Documents in a good and workmanlike manner and free of defect not inherent in the type of work. Design-Builder may reject Subcontract Work only for demonstrated non-compliance with the Subcontract Documents and only if the Architect/Engineer concurs that the Subcontract Work is unacceptable.

4. ¶3.3 - Subcontractor is entitled to rely on the accuracy and completeness of the plans and specifications provided to the Subcontractor.

5. ¶¶3.7 and 3.8 - Any design services provided by the Subcontractor or its Designer will be reviewed by the Architect/Engineer responsible for the overall project to assure that the design will be acceptable when integrated with the entire work. Design-Builder, Owner and Architect are entitled to rely on the accuracy and completeness of the

designers hired by Subcontractor only if all design criteria are furnished to the Subcontractor by the Design-Builder, Owner and Architect.

6. ¶3.9 - In lieu of this provision, Design-Builder shall provide all temporary site facilities and utilities without cost to Subcontractor unless otherwise specifically agreed in writing signed by Subcontractor.

7. ¶¶3.13.2, 3.15 and 8.27 - No backcharge or claim of the Design-Builder shall be valid unless Subcontractor has been given written advance notice, has been allowed reasonable time to correct any deficiency, and has failed to do so. Even then, no backcharge shall be valid unless billing is rendered no later than the 15th day of the month following the charge being incurred. Furthermore, any payments withheld under a claim of Subcontractor default shall be reasonably calculated to cover the anticipated liability and all remaining payment amounts not in dispute shall be promptly paid.

8. ¶3.14.3 - Subcontractor shall not be liable for erecting Project safety barriers unless expressly and specifically agreed to be part of the Subcontractor's Work.

9. ¶3.14.9 - Delete the last sentence of ¶3.14.9. Each party to the Agreement shall be liable for any safety violation fines or penalties imposed upon it, regardless of the cause of the fine or penalty.

10. ¶3.21 - Notwithstanding ¶3.21, Subcontractor's warranty shall commence on the date of Substantial Completion of Subcontract Work or a designated portion thereof.

11. ¶¶4.3.1 and 4.5 - Subcontractor shall be provided, upon written request, with the legal description of the property, the name, address and representative of the Owner, and evidence of adequate owner project financing. The Design-Builder shall promptly notify Subcontractor of material changes in the Owner's identity or financial arrangements. Subcontractor shall not be obligated to commence or continue Subcontract Work unless adequate assurance of payment is received.

12. Article 5 -- Subcontractor shall be entitled to an extension in subcontract time and an equitable adjustment in the price of the work, including but not limited to any increased costs of labor, including overtime, or materials, resulting from any change of schedule, acceleration, out of sequence work or delay caused by others for whom Subcontractor is not responsible. Subcontractor shall not be liable for any delays beyond

its reasonable control nor be required to commence or continue work unless sufficient areas are ready to ensure continuous work.

13. ¶¶5.3 and 7.3 - Subcontractor's entitlement to adjustments in the subcontract time or price for changes in the work shall not be contingent upon or limited to the amount that the Design-Builder receives from the Owner. Under no circumstances does the Subcontractor waive its right to payment for extra work performed by the Subcontractor pursuant to instructions from the Design-Builder.

14. ¶¶5.4.1 and 5.4.2 - Under no circumstances shall Subcontractor be liable for any consequential damages.

15. ¶7.6 - The percentage for overhead and profit shall represent a fixed percentage and not a maximum percentage.

16. Article 8 - No provision of this Agreement shall serve to deny Subcontractor's entitlement to full payment each calendar month for properly performed work or suitably stored materials. Payment shall be due seven (7) days after payment is received or should have been received by Design-Builder from Owner. Final payment, including release of retainage, shall be due within 30 days after substantial completion of Subcontractor's Work, less the reasonable value of uncompleted Subcontract Work. Interest shall become due and payable on any Subcontractor billing that remains unpaid after the payment due date. The rate of interest shall be three percentage points above the prevailing prime interest rate at the largest national bank in the state where the project is located.

17. ¶8.3.2 and 3.12 - Design-Builder will not require any contract closeout procedures or any forms that have not been provided to and specifically accepted by the Subcontractor before signature of the Agreement.

18. ¶8.6 - Payments received by the Design-Builder for Subcontract Work shall be held in trust and used solely for the benefit of Subcontractor, its sub-subcontractors and suppliers.

19. ¶8.7 - Design-Builder's right to contact Subcontractors' sub-subcontractors and suppliers concerning payment status shall apply only if Subcontractor fails to furnish reasonable evidence, upon written request, that payments made by Design-Builder to Subcontractor for the Work of sub-subcontractors and suppliers have been properly paid to such sub-subcontractors and suppliers.

20. ¶8.8 - Any form or contract language wherein the Subcontractor purports to release the Design-Builder, Owner or Design Professional is hereby qualified by the following language whether or not the Subcontractor specifically adds the language: “This release shall apply only to work for which payment has been received in full by Subcontractor; shall not apply to retention; shall not apply to unbilled changes, to claims which have been asserted in writing or which have not yet become known to Subcontractor; and shall be conditional upon receipt of funds to Subcontractor’s account.”

21. ¶¶9.1.1 and 9.1.2 - Any indemnification or hold harmless obligation of the Subcontractor shall extend only to claims relating to bodily injury and property damage and then only to that part or proportion of any claim, damage, loss or defect that results from the negligence or intentional act of the indemnitor or someone for whom it is responsible. Subcontractor shall not have a duty to defend.

22. ¶9.2 and Article 13 - Notwithstanding any provision to the contrary, Subcontractor shall maintain the types and limitations on insurance as shown on the attached certificate of insurance. Subcontractor is not required to include Design-Builder, Owner, or any others as additional insured or named insured, nor to waive any claims or rights of subrogation against the Design-Builder, Owner, or any others for losses and claims covered or paid by Subcontractor’s workers compensation or general liability insurance.

23. If available, then before commencement of work the Subcontractor may be required to provide, at Design-Builder’s expense, an Owners & Contractors Protective Liability Policy (CG 00 09) naming the Design-Builder, Owner and such others as Design-Builder may designate as insureds, with limits of liability equal to the limits of the primary general liability policy required to be maintained by Subcontractor. All such named insureds waive all claims and rights of subrogation they may have against Subcontractor for losses and claims covered by the said Owners & Contractors Protective Liability Policy, which shall provide for such waivers of subrogation by endorsement.²⁴

¶¶9.2.7.2 and 9.2.7.3 - If Owner and Design-Builder fail to provide Builder’s Risk insurance for the full value of Subcontract Work including stored material and material in

transit, Subcontractor shall be entitled to reimbursement of any insurance premium paid by Subcontractor for Builder's Risk insurance on the Subcontractor's Work.

25. ¶¶10.3 and 10.6 - In the event of a suspension of work by the Owner or the Design-Builder, Design-Builder's liability to the Subcontractor is for payment in full for all Work performed to date of suspension and any additional costs incurred as a result of the suspension, including demobilization and remobilization, plus reasonable overhead and profit.

26. ¶10.4 - In the event of a termination by the Owner or by the Design-Builder which is not justified by a default of the Subcontractor, Subcontractor shall be entitled to payment from the Design-Builder for all costs incurred by the Subcontractor for which the Subcontractor has not received payment, including, but not limited to, reasonable overhead, profit, expenses and damages, including attorneys' fees and interest, including profit on unperformed work.

27. Article 11 - In lieu of the provision of Article 11, all claims, disputes, and matters arising out of or relating to this Agreement or breach thereof shall first be submitted to mediation through the American Arbitration Association and if not resolved by mediation shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, unless the parties mutually agree otherwise at the time. The mediation and/or arbitration shall not be stayed pending resolution of any disputes between the Design-Builder and the Owner or other third parties.

28. Any dispute shall be governed by the law of the state where the project is located. The federal or state courts in the state where the project is located shall have exclusive jurisdiction and venue, and any arbitration shall be conducted within the state where the project is located.

29. Notwithstanding any provision to the contrary, Subcontractor may take all steps reasonably necessary to preserve and enforce its lien and bond rights.

30. If the Agreement specifically includes a liquidated damage provision, Design-Builder shall make no demand for liquidated or actual damages for delay in excess of the amount assessed against Design-Builder for unexcused delays to the extent actually caused by Subcontractor.

31. Other (if applicable) insert below --

Subcontractor

Design-Builder

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____