

## **ADDENDUM TO AGCC-3**

This is an Addendum to the AGCC-3 Long Form Standard Subcontract and shall amend and modify the Subcontract and any Contract Documents.

### **1. Section 3:**

*Add the following language:*

Unless otherwise stated, the contract price includes all taxes.

### **2. Section 4:**

*Add the following language:*

With each progress payment billing, Subcontractor must include a signed Claim Waiver and Release Upon Progress Payment, which states as follows:

*The undersigned, on its own behalf and on behalf of its directors, officers, employers, agents, partners, affiliates, subsidiaries, representatives, insurers, sureties, successors and assigns, hereby acknowledges and agrees that in consideration of the payment referred to herein, it has waived, released and agreed to defend and hold harmless Owner, Rudolph & Sletten, Inc., construction manager, engineer, architect and/or design consultant or professional hired by any of them, or any of their respective directors, officers, employers, agents, partners, affiliates, subsidiaries, representatives, insurers, sureties, successors and assigns from any and all claims, liabilities, demands, damages, or losses ("Claims"), whether past, present or future, known or unknown, legal or equitable, accrued or unaccrued, and regardless of the negligence or fault of the person to be defended or indemnified, except for those Claims that are expressly listed in writing on this form of release as having been reserved.*

### **3. Section 5:**

*Replace the last paragraph with the following two paragraphs:*

Subcontractor acknowledges that it will have to perform work in areas occupied by other forces and that it will have to perform its work in a sequence or manner to accommodate and facilitate the progress of the work as a whole, rather than in the manner most efficient desirable for Subcontractor. Subcontractor's price is based upon Contractor exercising the rights indicated in Sections 5 and 6, as well as those indicated above, and upon Subcontractor having planned to perform its work under such circumstances. Milestone or completion dates of segments of Subcontractor's work within the overall schedule

shall be met. Failure to meet such milestone or completion dates shall be considered a breach of contract.

To the greatest extent permitted by law, Subcontractor's sole remedy for delay, disruption or suspension of the work, including without limitation any delay, disruption or suspension caused by the fault or negligence of Owner, Contractor (or any agent or representative thereof), or from any other cause whatsoever, shall be an extension of the time for performance. Subcontractor shall not be entitled to and hereby waives any and all claims for any productivity losses, efficiency losses, increased supervisory costs, home office overhead, extended job site overhead, disruption costs, "ripple effect" costs, trade stacking, compression, acceleration, consequential damages, damages of any other type, lost profits, lost opportunity costs, or similar damages or costs, however denominated, as well as any other monetary relief, for any delay, disruption or suspension of the work (collectively, "Impact Costs and Consequential Damages"), except to the extent of such sums as may be recovered on Subcontractor's account from Owner. Subcontractor further waives any and all claims against Contractor for damages or additional compensation which is related to, caused or contributed to by delay and/or disruption of Subcontractor's performance, or by any act, omission, or other conduct causing or contributing any Impact Costs and Consequential Damages (including negligent conduct on the part of Contractor or any other person). If Subcontractor wishes to seek compensation for Impact Costs and Consequential Damages of any kind, or for any other increase in the Contract Sum, it must give the Contractor written notice no later than ten (10) days after the beginning of the underlying cause thereof, or such shorter period of time as may be provided by this Agreement. Failure to provide such written notice shall be a waiver of and a conclusive defense to any claim by Subcontractor. The requirement to give such notice in no way shall be deemed to authorize or to furnish entitlement for recovery for Impact Costs and Consequential Damages or for any other form of relief which may be sought by Subcontractor.

#### **4. Section 6:**

*Add the following text:*

Change orders shall include the following language:

Execution of this Change Order by \_\_\_\_\_ constitutes a binding agreement that no adjustment and compensation or time extension shall be made as a result of the foregoing, except as provided herein. \_\_\_\_\_ acknowledges that the amounts set forth in the Change Order are full and final compensation for the changes and scope of work detailed in this Change Order and that no delay, acceleration, ripple, disruption, or other impact costs are due to subcontractor as a result of this Change Order.

Additionally, the undersigned acknowledges that this Change Order constitutes a general release, and expressly, voluntarily, knowingly and advisedly WAIVES any and all rights granted under California Civil Code Section 1542, which reads as follows:

**A general release does not extend to claims which the creditor does**

**not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

All Change Orders shall constitute a contract document. Unit prices from Subcontractor's bid will be utilized where, in Contractor's sole discretion, Contractor deems them to be applicable to Change Order work. If not covered by unit prices, a complete breakdown of the estimated costs for changed work is to be submitted to Contractor for approval. If Contractor does not agree with the additional costs submitted, Contractor may, in its sole discretion, direct that the work be performed on a not-to-exceed time and material basis with Subcontractor providing written information concerning such hours and material each day for Superintendent's review and verification. Refusal to perform directed additional or changed work on a time and material not-to-exceed basis shall constitute a material breach of contract.

**5. Section 13.1:**

*Replace the second and third paragraphs of Section 13.1 with the following text:*

Subcontractor acknowledges that Contractor has entered into labor agreements covering work at its construction jobsites with the labor unions listed in Addendum A below. Subcontractor hereby expressly agrees that all of the provisions of the applicable labor agreements are incorporated into this Agreement as if they were set forth in their entirety.

Subcontractor agrees to comply with all of the terms and conditions of those labor agreements set forth in Section 25 as if it were a party to said agreements including signatory status if required. Subcontractor further agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and observe the hours and all other terms and conditions set forth in the respective labor agreements referenced in Addendum A below. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration provisions. Furthermore, Subcontractor agrees to comply with the terms and provisions of said agreement setting forth the jurisdiction and scope of work therein for resolution of jurisdictional disputes. In the absence of any such procedure or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense and upon request by Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed herein below may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO and/or the United Brotherhood of Carpenters and Joiners of America but not listed herein. When the terms and conditions of the below-referenced labor agreements so require, Subcontractor shall perform its jobsite work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO and/or the United Brotherhood of Carpenters and Joiners of America.

## **6. Section 14.1.2:**

*After the phrase, "default with diligence and promptness", add the words "and to complete the cure of such default within the time period stated in Contractor's default notice."*

## **7. Section 14.1.3:**

*After the phrase, "notice issued under Section 14.1.2", add the words, "and/or fails to complete the cure of such default within the time period stated in Contractor's default notice".*

## **8. Section 15: Indemnity:**

*Delete Section 15 and replace with the following:*

(a) To the full extent allowed by California law, to indemnify, defend and save harmless Owner, and Contractor from and against any and all claims, debts, demands, damages, judgments, awards, losses, liabilities, interest, attorneys' fees, costs and expenses of any kind at any time arising out of or in any way connected with the Subcontractor's performance or failure to perform the Subcontract work, from all causes, including the passive negligence of the Owner and/or Contractor and including transportation of men and equipment and/or materials to and from the site of the work. This Section 15 shall not insure and indemnify Owner or Contractor from loss, damage, or expense caused by the sole or active negligence or willful misconduct of Owner or Contractor. This Section 15 will apply, but not be limited, to the following:

- (1) Claims relating to the infringement or violation of patent rights.
- (2) Claims relating to personal injury and wrongful death including claims by Subcontractor employees or their heirs and representatives.
- (3) Claims for destruction of, injury to or loss of use of real or personal property including property of Owner, Prime Contractor or Contractor and each individual Joint Venture Partner therein.
- (4) Mechanic's lien claims, stop notice claims and claims against any bond furnished with respect to the contract work with Contractor as principal.
- (5) Claims for taxes, permits, license fees, fines, penalties, and/or union contributions, allowances or deductions.

(b) Where partial indemnity is provided hereunder, all Costs and Expenses shall be indemnified on a pro rata basis. "Costs and Expenses" means all damages suffered, including but not limited to labor, material or equipment costs, losses, expenses, general and administrative costs and other amounts incurred. Such pro rata allocation of Costs and Expenses will be determined in the sole discretion of Contractor.

(c) Contractor may at any time and for any reason, or no reason, elect to reallocate Subcontractor's pro rata obligation for Costs and Expenses. Such reallocated

obligation will be effective upon a written statement regarding how the allocated share of Costs and Expenses was determined.

(d) Contractor, in its sole discretion, will control the timing or immediacy of Subcontractor's defense obligations pursuant to this Section 15. Upon written tender of a claim for indemnity from Contractor to Subcontractor, Subcontractor must:

- (1) Within 30 days of tender, notify Contractor of its intention to provide a complete defense of Contractor, with counsel of Subcontractor's choice but subject to approval of Contractor, of all claims or portions thereof to the extent alleged to be caused by Subcontractor resulting from Subcontractor's Subcontract work or;
- (2) Pay, within 30 days of demand from Contractor, Subcontractor's pro rata allocation of Contractor's defense fees and costs, including but not limited to court costs, witness costs and consultant costs on an ongoing basis during the pendency of the claim and including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. Additionally, Subcontractor must pay, within 30 days of demand from Contractor, 100% of any special costs related solely to defense of claims relating to Subcontractor's Subcontract work, including but not limited to specialty consultant and/or expert witness fees and costs.

(e) If Subcontractor fails to timely and adequately perform the obligations under section d(1), Contractor, in its sole discretion, shall have the right to pursue a claim against Subcontractor for any resulting compensatory damages, consequential damages, reasonable attorneys' fees, and costs including but not limited to court costs, witness costs and consultant costs pursuant to *Civil Code* section 2782.05(f).

(f) If Subcontractor fails to timely perform its obligations under section d(2), Contractor shall have the right, in its sole discretion, to pursue a claim against Subcontractor for any resulting compensatory damages, interest, in the amount of 2% per month, on defense and indemnity costs from the date incurred, consequential damages, reasonable attorneys' fees, and costs incurred to recover those amounts pursuant to *Civil Code* section 2782.05(f).

(g) Nothing in this Section 15 waives Contractor's right to seek equitable indemnity, and all other available legal remedies, for any claim.

(h) This agreement to insure and indemnify is in addition to the obligations to insure and indemnify imposed by the General Contract. However, to the extent requirements to insure and indemnify contained in the General Contract conflict with California law, including but not limited to *Civil Code* sections 2782 and 2782.05, the terms of this Section 15 will control. This Section 15 shall be interpreted under the laws of the State of California, notwithstanding any contrary choice-of-law provision in the General Contract or the Subcontract Agreement.

(i) Nothing in this Section 15 affects the obligation of Subcontractor to maintain insurance coverage, including additional insured endorsements covering acts or

omissions of Subcontractor during ongoing and completed operations, as required by the Subcontract and the General Contract.

(j) To the extent that any provision of this Section 15 is determined to be void or unenforceable, the remaining provisions of this Section 15 shall remain in full force and effect.

**9. Section 16.1.2:**

*Change the limits of liability to \$2 million each occurrence and \$2 million in the aggregate. Add the following text:*

"All insurance shall be provided from a California admitted carrier with an A.M. Best's Rating of A- or better, financial capacity VII or greater. Contractor reserves the right, in its sole and subjective discretion, to reject an insurer and require Subcontractor to obtain policies from another insurer."

Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Agreement including the duty to indemnify and hold harmless Contractor under other provisions hereof. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Subcontractor for liability in excess of such coverage nor shall it preclude the Contractor from taking such other actions as is available to it under any other provision of the contract or law. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor shall comply with such requirements.

Subcontractor shall not provide any liability coverage under a "wasting" policy or other form of policy that reduces the amount of coverage, in whole or in part, by amounts expended on defense of claims.

**Hazardous Materials.** If Subcontractor and/or its subcontractors or suppliers, regardless of tier, perform remediation of hazardous materials or if their operations create an exposure to hazardous materials as those terms are defined in federal, state or local law, Subcontractor and its subcontractors and suppliers must obtain a "Contractor's Pollution Liability" policy with limits not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate for Bodily Injury, Personal Injury, and Property Damage, naming Contractor as an additional insured. If Subcontractor or its subcontractors or suppliers haul hazardous material (including, without limitation, waste), they must carry Automobile Liability Insurance with a \$1 million combined single limit per occurrence for Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include MCS 90.

**Professional Liability.** Any Subcontractor performing work that includes any design/build work or services shall obtain a Professional Liability Insurance Policy. Design/build work includes, without limitation, design/build work with respect to mechanical, electrical, structural, plumbing and fire sprinkler systems. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. Subcontractor shall obtain coverage for a minimum of three

years following completion of the project, either through continued purchase of policies for such years or through purchase of an extended reporting period. If Owner or Contractor elects to purchase a project design policy, Subcontractor's policy shall be endorsed to indicate that Subcontractor's policy shall provide coverage once the project design policy has been exhausted.

**Riggers Liability.** Should Subcontractor's work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.

**Aircraft Liability.** If Subcontractor (or its subcontractors or suppliers, regardless of tier) use any owned, leased, chartered or hired aircraft of any type in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability. Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the Project.

**Work near Railroads.** If Subcontractor (including any lower tier subcontractor or supplier) performs any work or conducts any operations within fifty feet of any railroad (including any light rail, fixed rail or other rail system), Subcontractor shall obtain an endorsement of its Commercial General Liability Policy to delete any exclusion, including the "Contractual Liability" exclusion, for work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to any work or operations by Subcontractor within fifty feet of any railroad."

**10. Section 17.1.2:**

*Add:*

"For those matters in which the aggregate amount in dispute is \$75,000 or greater, and in the absence of an agreement on the manner in which alternate dispute resolution is to be accomplished, the parties shall submit their disputes to a neutral third party construction mediator. The mediation shall be nonbinding and shall be conducted as follows. Contractor shall propose a list of three mediators, from which Subcontractor within five working days of receipt of the list shall select the proposed mediator. The mediation shall be scheduled for a date within 60 days of Contractor's proposal of the candidates for mediator, unless Contractor agrees to a longer period before mediation. The cost of the mediation shall be shared pro rata."

**11. Section 24:**

*Delete this section in its entirety and replace with:*

"Notwithstanding any other provision of this Agreement or applicable law, or any provisions of the Contract Documents that may be incorporated, neither Subcontractor

nor Contractor shall be permitted to recover attorney's fees or costs of suit in any dispute or litigation. Subcontractor expressly waives the right to recover attorney's fees and costs of suit from Owner, Contractor and from Contractor's sureties. This waiver of the right to fees and costs, to the greatest extent permitted by law, shall be effective as to statutory rights such as those afforded by Civil Code Sections 3250 through 3252. This provision shall not limit, impair or waive Contractor's rights to be defended by, to be indemnified by, to be held harmless by, to receive contribution from Subcontractor, and to receive the benefits of insurance furnished by Subcontractor or any other persons, with respect to attorney's fees, expert costs and other expenses."