



ASA of Metro Washington SUBCONTRACT ADDENDUM (2021)

CUSTOMER: _____

PROJECT: _____

LOCATION: _____

DATE: _____

DESIGNER: _____

PLANS AND SPECIFICATIONS: _____

ADDENDA (LIST): _____

- 1. Applicable Terms and Precedence.** The undersigned Subcontractor accepts the terms of the proposed subcontract **ATTACHED**, subject, however, to the modifications set forth in this Addendum or indicated in the subcontract form and initialed by Subcontractor. Anything to the contrary notwithstanding, this Addendum shall take precedence over any inconsistent provisions of the subcontract and any other contract documents. Customer's acceptance shall be evidenced by Customer's signature or by permitting Subcontractor to commence work on the project.
- 2. Scope of Work.** Subcontractor's scope of work includes **items agreed to in the Subcontract Agreement**.
- 3. Contract Documents.** Subcontractor shall have the benefit with respect to Customer of all the same rights, remedies and redress that Customer has pursuant to its contract with its own customer. No document included by reference in the subcontract is binding on subcontractor except for the following documents, copies of which have been provided to subcontractor:

Prime Contract, Payment Bond, if applicable, Minutes of Pre-Bid meetings and Other

- 4. Financial Information.** The subcontract is subject to credit approval by Subcontractor, and Subcontractor shall be provided with the legal description of the property; the name, address and representative of the project owner; evidence of adequate owner project financing and, if requested, other documents obtained by Customer evidencing owner's financial condition; and a copy of Customer's payment bond for the project, if any. Customer shall promptly notify Subcontractor of material changes in the project owner's identity or financial arrangements. Subcontractor shall not be obligated to commence or continue Subcontract Work absent adequate assurances of payment.
- 5. Payment Terms. A Subcontractor submitted** Schedule of Values shall be used to determine progress payments.. Subcontractor will receive payment within Seven (7) days of receipt by General Contractor of payment from the Owner for Subcontractors work. The General Contractor will not object to the Subcontractor making a request to the Owner for information regarding payments made to the General Contractor for the Subcontractor's Work.
- 6. Retainage.** Customer shall not deduct retainage from Subcontractor's payments except to the extent of retainage held by project Owner on Subcontractor's work. Within seven (7) days after receiving any retainage relating to Subcontractor's work, Customer will pay the same to Subcontractor or interest shall accrue as provided for late payments. Customer will use best efforts to secure release of retainage as soon as it is possible in accordance with Customer's written agreement with project Owner as existing and disclosed to Subcontractor on the date hereof, or else Subcontractor may look to Customer for payment of all amounts retained by the project owner plus interest. To the extent Subcontractor is qualified as an early-completing subcontractor entitled to obtain a release of retainage under the applicable law, Customer agrees to assist Subcontractor in securing such retainage.
- 7. Backcharges Assessed.** No backcharge, deductive change order, offset, or other claim by Customer shall be valid except in circumstances where the General Contractor has first given written notice to



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The Subcontractor and allowed Subcontractor reasonable time to correct any deficiency before General Contractor incurs costs chargeable to Subcontractor. No backcharge shall be valid unless it is assessed in writing and 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 limited to only those amounts necessary to cover the anticipated liability. All remaining payment amounts not in dispute shall be promptly paid.

8. Project Schedule.

- i. Subcontractor shall be entitled to equitable adjustments of the contract price, including but not limited to any increased costs of labor, supervision, equipment, materials, incidentals and actual overhead and reasonable profit, for any modification of the previously agreed upon project schedule differing from the bid schedule, and for any other delays, acceleration, out-of-sequence work and schedule changes beyond Subcontractor's reasonable control, including but not limited to those caused by labor or civil unrest, fires, floods, acts of nature or government, pandemics, epidemics, wars, embargoes, vendor priorities and allocations, transportation delays, suspension of work for non-payment or as ordered by Customer, or other delays caused by Customer or others.
- ii. Should work be delayed by any of the aforementioned causes for a period exceeding ninety (90) days, Subcontractor shall be entitled to terminate the subcontract. Subcontractor change proposals must be processed within thirty (30) days of submission of the change proposal.

9. Extra Work.

Subcontractor shall be entitled to equitable adjustments of the schedule and compensation for extra work it performs in accordance with the subcontract documents, and for extra work it performs pursuant to written instructions of Customer, provided that Subcontractor gives Customer notice (except in an emergency threatening bodily injury or loss of property), prior to starting such extra work, identifying the date and source of the instructions considered as requesting extra work.

Subcontractor may also claim damages for cumulative impact of multiple changes on Subcontractor's work, productivity, or efficiency.

10. Temporary Site Facilities.

Except as specifically required in Subcontractor's scope of work, Customer shall furnish all temporary site facilities, including but not limited to proper site access, storage space, guard rails, covers for floor, security, parking, safety orientation, break and lunch facilities, toilet and wash facilities, and other water facilities, electrical service, lighting, heat, ventilation, weather protection, and trash and recycling services.

11. Hold Harmless Restriction.

Any indemnification or hold harmless obligation of Subcontractor extends only to claims relating to bodily injury and property damage (other than to the Subcontractor's work), and then only to that part or proportion of any claim caused by the negligence or intentional act of Subcontractor, its sub-subcontractors, their employees or others for whose acts they may be liable. Subcontractor shall not have a duty to defend. This paragraph does not, however, restrict obligations of Subcontractor, if any, to indemnify Customer against intellectual property infringement claims or against claims for payment for work for which Subcontractor has been paid.

12. "All-Risk" Insurance.

Customer shall, if the project owner does not, purchase and maintain all risk insurance upon the full value of the work performed, materials delivered to the jobsite, materials stored at a temporary storage location away from the site, and materials in transit, which shall include the interest of Subcontractor.

13. Suspension of Work.

In the event of a suspension of work by the project owner, Customer, or by Subcontractor in accordance with paragraph 8(ii), above, Customer's liability to Subcontractor is for payment in full for all Work performed to the date of suspension, costs of delay, demobilization and remobilization that result from the suspension, and an equitable adjustment of the schedule.

14. Assignment of Subcontract.

Neither party shall assign the subcontract or sublet it in whole or in part without the written consent of the other.



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15. Dispute Resolution. The parties will endeavor to resolve all claims, disputes and matters arising out of or relating to this Agreement by mediation, as a condition precedent, to any other dispute resolution procedure. The mediation may be formal with a mediator, or informal, without a mediator, but it shall be convened within thirty (30) days of any party making a request for mediation with the other party. If the matter is unresolved after mediation efforts are unsuccessful, or if the party receiving the request does not respond or refuses to mediate, the parties may proceed in either forum: (1) Arbitration (using the current Construction Industry Arbitration Rules of the American Arbitration Association or the Parties may mutually agree to select another set of arbitration rules) and the administration of the arbitration shall be as mutually agreed by the Parties; OR (2) Litigation by filing an appropriate action in state or federal court.

Arbitration and/or litigation shall not be stayed pending resolution of any disputes between the Customer, project owner or other third parties. Any dispute shall be governed by the law of the state where the project is located, or the law of the District of Columbia if the project is located in D.C. 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. Should either party employ an attorney to institute litigation or arbitration to enforce any provision of this Subcontract or to collect damages or debt under this Subcontract, the prevailing party shall be entitled to recover its actual attorneys' fees, costs and expenses incurred, without regard to any court schedule of fees.

16. Limitation on Damages. Customer shall make no demand for liquidated damages or actual damages for delays in excess of the amount paid by the Customer for unexcused delays actually caused by Subcontractor. Customer expressly waives all claims for special, incidental or consequential damages it may have against Subcontractor, including without limitation damages for principal office expenses, loss of financing, loss of business and reputation, and loss of use.

17. Incomplete Design. Subcontractor will review the Contract Documents pertaining to its applicable Scope of Work and if Subcontractor observes that any of the Contract Documents are at variance with its applicable Scope of Work, Subcontractor will promptly notify the Customer and/or Owner in writing explaining the variance. Under no circumstance shall Subcontractor be responsible or liable for any costs of any kind incurred by Subcontractor or Customer/Owner with respect to items which were caused in whole or in part by incomplete, silent, inaccurate, conflicting, and/or misleading design documents, including drawings, specifications, shop drawing submittal reviews, RFI responses, or like documentation. Customer agrees to submit claims to the Owner for costs which could have or should have been avoided through a complete and error free design package from the Owner.

18. Other. Insert additional terms below -



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SUBCONTRACTOR: _____ (enter your company's name)
BY: _____ AS ITS _____ (your signature) (your title)

CUSTOMER: _____ (enter your customer's company name)
BY: _____ AS ITS _____ (customer's authorized signature) (title of person signing for customer)