

INSTRUCTIONS

- a. This form does not incorporate Subcontractor's bid proposal by reference, and so Subcontractor's scope of work must be restated on this form (if the space provided is insufficient, use the blank provided to reference another document, such as "see Attachment A"). That is because this form should not be incorporated into a contract already incorporating the *ASA Subcontractor Bid Proposal (2011)*, and because use of this form is only contemplated for situations where the scope of work has changed from the bid scope, or in other special circumstances where the terms and conditions in Subcontractor's bid proposal are not binding as contractual obligations on Subcontractor and Customer (as where Subcontractor's bid proposal is merely conditioned on "mutually agreeable terms," or where Customer has properly made a counter-offer to Subcontractor's bid proposal). In cases where the *ASA Subcontractor Bid Proposal (2011)* (or a similar form) is used, and Customer orders Subcontractor to commence work, Subcontractor should typically consider that its bid proposal has been accepted by conduct, and therefore constitutes a binding contract no longer subject to further negotiation. In such a situation, use of this form is not indicated because Customer is already bound by contract to sign a ConsensusDOCS 750 (2011) subcontract, incorporating the scope and conditions of Subcontractor's bid proposal by reference. Incorporating the *ASA Subcontractor Bid Proposal (2011)* by reference into this form, and then attaching both to a subcontract document other than the ConsensusDOCS 750 (2011), would likely create considerable confusion about the applicable contract terms. The user is therefore cautioned to take extra care with respect to the description of its work required by the use of this form, particularly inclusion of all accepted alternates and exclusion of all matters properly excluded.
- b. Complete every blank on the form as indicated, attach Customer's proposed subcontract form as indicated (¶ 1), attach your schedule of values as indicated (¶ 5), and have your customer sign where indicated. When a blank has insufficient space for the information the subcontractor would like to include, it may be useful to refer to another document, such as "see Attachment A." When a blank is intentionally left unused, insert the word "None" or other appropriate language. If you sign the customer's proposed subcontract form, be certain to insert language above your signature indicating that your agreement is subject to the terms of this form, such as "**SUBJECT TO ASA SUBCONTRACT ADDENDUM (2011), ATTACHED.**"
- c. Subcontractor's cost of insurance is **not** reflective of Subcontractor's cost to participate in a wrap-up (OCIP or CCIP) project. Additional wrap-up costs and risks include, but are not limited to, loss of agent services and fiduciary protection, loss of volume discounts on Subcontractor's own insurance program, compliance with new and additional payroll and claim reporting procedures, review of non-standard coverage terms, purchase of gap-filling policy endorsements, and risk of insurance program default. This addendum opts out of all wrap-up insurance programs. If you intend to participate in a wrap-up insurance program you should remove ¶ 17 and should incorporate by reference in ¶ 26, and attach to this Addendum, the ASA Addendum to Subcontract Agreement Pertaining to Project-Specific Insurance (2011).
- d. Additional terms may be written into ¶ 26 of this addendum, or may be included in a separate document that is incorporated by reference into ¶ 26 of this addendum, e.g., "see Attachment A."
- e. Applicable laws may require changes to this subcontract addendum. Consult an attorney about the laws in the state in which your project is located.

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 only the following:

[Insert your scope and pricing information below. Many subcontractors may wish to substitute a different format.]

WORK CATEGORY(IES) AND SPECIFICATIONS TO WHICH THIS BID PROPOSAL APPLIES: _____

_____ EXCLUDING,

HOWEVER: _____

Subcontractor's obligation to examine documents, the project site, and materials and work furnished by others is limited to notification of Customer of any defects or deficiencies that a person in the trade of Subcontractor would discover by reasonable visual inspection. No testing beyond reasonable visual inspection shall be required. Subcontractor is entitled to rely on the accuracy and completeness of plans, specifications, and reports of site conditions provided to Subcontractor. Any design services provided by Subcontractor will be reviewed by Designer to assure acceptability when integrated with the entire work. Customer is entitled to rely on the accuracy and completeness of design services or certifications provided by Subcontractor only to the extent that design responsibility is specifically delegated to Subcontractor by agreement in writing and all design and performance criteria are furnished to Subcontractor. A change in the price of an item of material of more than 5% between the date of subcontractor's bid proposal and the date of installation shall warrant an equitable adjustment in the subcontract price.

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: _____

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 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. The **ATTACHED** Schedule of Values shall be used to determine progress payments. All sums not paid when due shall bear interest at the rate of 1½ % per month from due date until paid or the maximum rate permitted by law, whichever is less. Subcontractor does not accept the risk of Customer's receipt of payments from any source,

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and in no event will payments to Subcontractor be based upon, or subject to, Customer's receipt of payment for Subcontractor's work. Subcontractor will only issue waivers of lien or bond rights that exclude any waiver of lien or bond rights securing payment of retainage, unbilled changes, and claims which have been asserted in writing or which have not yet become known to Subcontractor, and any such waivers shall either apply only through the date of work covered by Subcontractor's last payment application that has been paid in full, or shall be conditional upon receipt of funds to Subcontractor's account. Should Subcontractor's payment be delayed because (a) Customer fails to receive timely payment of amounts certified and approved, or (b) Customer fails to make timely payment after itself receiving payment for Subcontractor's work, or (c) because Customer's payments are not received by Customer for reasons not the fault of or directly related to Subcontractor's work, then Subcontractor may suspend work after giving at least seven (7) days written notice to Customer of the intent to suspend and the date of intended suspension. Should Subcontractor's work be thereafter suspended for at least twenty-one (21) days, Subcontractor may terminate this subcontract upon written notice of termination to Customer. Payments received by Customer for Subcontract Work shall be held in trust and used solely for the benefit of Subcontractor and those for whom it is responsible.

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.

7. Backcharge Claims. No backcharge or claim of Customer for services shall be valid except by an agreement in writing by Subcontractor before the work is executed, except in the case of Subcontractor's failure to meet any requirement of the subcontract. In such event, Customer shall notify Subcontractor of such default, in writing, and allow Subcontractor reasonable time to correct any deficiency before incurring any costs chargeable to Subcontractor. 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. Project Schedule. Subcontractor shall be entitled to equitable adjustments of the contract price, including but not limited to any increased costs of labor, supervision, equipment or materials, and reasonable overhead and profit, for any modification of the 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 unrest, fires, floods, acts of nature or government, wars, embargos, 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. 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 in not more than thirty (30) days or as otherwise indicated on the change proposal.

9. Extra Work. Subcontractor shall be entitled to equitable adjustments of the contract time for extra work it performs in accordance with the subcontract documents, and for extra work it performs pursuant to written or verbal 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 shall also be entitled to payment for said extra work at the following rates and/or mark-ups: _____

Subcontractor may also claim damages for cumulative impact of multiple changes on Subcontractor's efficiency. Subcontractor's entitlement to adjustments shall not be contingent upon, or limited to, adjustments received by Customer. Any request of Contractor to Subcontractor without a written order is a breach of the Subcontract.

10. Warranty. Notwithstanding any higher standard stated elsewhere, Subcontractor's work shall be executed in substantial compliance with the Subcontract Documents, in a good and workmanlike manner [as reflected in the following industry quality standard, if inserted: _____], and free of defect not inherent in the design or specified materials. This warranty excludes any remedy for damages or defects caused by ordinary wear and tear, improper or insufficient maintenance, abuse, or modifications performed by others. Customer expressly acknowledges and agrees that Subcontractor does not warrant the adequacy, sufficiency, suitability or building code compliance of the plans, specifications, or other Contract Documents including, without limitation, any specified sole source or brand-named products, equipment, or materials, and Customer accepts the manufacturer's warranty as its sole recourse with regard to such items. THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE

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HEREBY DISCLAIMED BY SUBCONTRACTOR. Subcontractor is not responsible for special, incidental, or consequential damages. Subcontractor is not responsible for damage to its work by other parties, and any repair work necessitated by such damage is extra work. Subcontractor's responsibility for damage or loss in transit ceases upon delivery in good condition to a public carrier. All materials shall be furnished in accordance with the respective industry tolerance of color variation, thickness, size, finish, texture and performance standards. All warranty claims must be received by Subcontractor not more than one (1) year after substantial completion of subcontractor's work, and Subcontractor must be provided a reasonable opportunity to inspect and make corrections, or such warranty claims are barred.

11. 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 site access, storage space, hoisting facilities, guard rails, covers for floor, roof and wall openings, security, parking, safety orientation, break and lunch facilities, toilet and wash facilities, drinking water and other water facilities, electrical service, telecommunication service, lighting, heat, ventilation, weather protection, fire protection, and trash and recycling services.

12. Closeout Documentation. Customer will not require any contract closeout procedures or any forms that have not been provided to and specifically accepted by Subcontractor prior to signature of the subcontract.

13. 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.

14. Insurance Restriction. Subcontractor is not required to name additional insureds to its general liability insurance policy, nor to waive subrogation for claims covered by workers' compensation or commercial general liability insurance. Subcontractor shall maintain insurance with coverage and limits only as provided by Subcontractor's existing insurance program as shown by its certificate of insurance available on request.

15. OCP Optional. If available, then before commencement of work Subcontractor may be required to provide, at Customer's expense, an Owners & Contractors Protective Liability Policy (CG 00 09) naming Customer, project owner and such others as Customer 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.

16. "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.

17. Wrap-Up Projects (OCIPs and CCIPs). Subcontractor shall not participate in a consolidated insurance program ("CIP").

18. Safety Barriers and Fines. Subcontractor shall not be liable for erecting or maintaining project safety barriers unless expressly and specifically agreed to be part of the Subcontractor's Work. 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.

19. Suspension of Work. In the event of a suspension of work by the project owner, Customer, or by Subcontractor in accordance with paragraph 5, 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.

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

21. Termination of Subcontract. In the event of any termination by the project owner or Customer which is not justified by a default of Subcontractor, or termination by Subcontractor, Subcontractor shall be entitled to payment from Customer for all costs incurred by Subcontractor for which Subcontractor has not received payment, plus reasonable overhead, profit, expenses, attorneys' fees, interest, and overhead and profit on unperformed work. In the event of



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termination by the project owner or Customer for any reason, regardless of default by Subcontractor, project owner or Customer shall be entitled to an interest in and the use of only those materials and supplies at the project site for which payment has been made to Subcontractor. Under no circumstances shall project owner or Customer be entitled to any interest in or use of Subcontractor's tools, machinery or equipment, regardless of whether the same are located on the project site.

22. Lien and Bond Rights Preserved. Notwithstanding any provision to the contrary, Subcontractor may take all steps reasonably necessary to preserve and enforce its lien and bond rights.

23. Performance Bond Restriction. To the extent that performance and payment bonds are required by the subcontract to be provided by Subcontractor, the bond forms must be the ConsensusDOCS 706 (2007) and ConsensusDOCS 707 (2007) published by ConsensusDOCS.

24. 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 shall be convened within thirty (30) days of any party filing a demand for mediation with the other party and shall be concluded no more than fifteen (15) days thereafter. If the matter is unresolved after submission of the matter to mediation, the parties shall submit the matter to the binding dispute resolution procedure selected herein (check one):

- [Choose one:] 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. The administration of the arbitration shall be as mutually agreed by the Parties.
- Litigation by filing an appropriate action in state or federal court.

Mediation, 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, 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.

25. 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. Subcontractor's maximum liability for delay damages shall not exceed 5% of the original subcontract value. 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.

26. Other. Insert additional terms below —

SUBCONTRACTOR: _____ <div style="text-align: center; font-size: small;">(enter your company's name)</div>
BY: _____ AS ITS _____ <div style="display: flex; justify-content: space-between; font-size: x-small;"> (your signature) (your title) </div>

CUSTOMER: _____ <div style="text-align: center; font-size: small;">(enter your customer's company name)</div>
BY: _____ AS ITS _____ <div style="display: flex; justify-content: space-between; font-size: x-small;"> (customer's authorized signature) (title of person signing for customer) </div>