

LAST REVISED 07/20/07

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FRAMING CONTRACTORS ASSOCIATION

This addendum is endorsed by the Framing Contractors Association

Addendum to Subcontract

Contractor: _____

Project: _____

Date: _____

PRECEDENCE AND ACCEPTANCE. The undersigned Subcontractor accepts the terms of the proposed subcontract SUBJECT TO the Contractor’s agreement to the modifications set forth in this addendum. This addendum to the subcontract shall take precedence over the subcontract or other contract documents. Contractor’s acceptance shall be evidenced by Contractor’s signature or by first permitting Subcontractor to commence work on the project.

1. CONTRACT PARTIES. Subcontractor is not a party to the contract between Contractor and Owner and it shall have no bearing with respect to the work to be performed or the payment by Contractor to Subcontractor for said work. Only _____ may modify this agreement for Subcontractor.

2. CONTRACT DOCUMENTS. The contract documents are limited to:

- 1. This “Addendum to Subcontract”
- 2. _____

Other agreements (for example: subcontract agreement)

- 3. _____

Associated subcontract exhibits (for example: pay applications, enumeration of plans)

- 4. _____

Construction documents (for example: project drawings, specifications, shop drawings, etc.)

3. SCOPE OF WORK. The scope of work shall include or exclude only the work set forth in the Subcontractor’s proposal.

4. APPROVAL OF WORK. Work to be per contract documents and local industry standards, and is only subject to approval of the local building department.

5. HOLD HARMLESS RESTRICTION. Any indemnification, defense, 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, demand, damage, injury, loss, impact, or defect that results from the intentional act of the Subcontractor, its sub-subcontractors, their employees or others for whose acts they may be liable. Subcontractor shall not have a duty to defend.

6. INSURANCE RESTRICTION. Subcontractor shall only maintain the insurance types and limitations as shown on the certificates already furnished to Contractor or in the attached sample certificates if none have been furnished to date.

7. “ALL-RISK” OR “BUILDER’S” INSURANCE. Protection of Work performed on the project shall not be the liability of the Subcontractor. The Contractor shall, if the Owner does not, purchase and maintain all risk insurance upon the

full value of the work performed or be responsible for any losses. Subcontractor shall be named as additional insured on the policy.

8. PROJECT FINANCIAL DISCLOSURES. Subcontractor shall be provided the legal description of the property, the name, address and representative of the Owner and Lender, and upon request, evidence of adequate owner project financing. The Contractor 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.

9. PLAN DESIGNER/ARCHITECT/ENGINEER AS THE RESPONSIBLE AUTHORITY. This project has been bid as specifically designed by the Project Designer/Architect/Engineer per the project drawings received. In the event of a contradiction between the project drawings and any building codes, Subcontractor will only be obligated to perform work per the project drawings received and will not be liable or responsible to perform additional work, if any, due to incompleteness of project drawings or Project Designer/Architect/Engineer's failure to correctly detail project drawings per said codes (for example: If project drawings are not drawn and detailed to A.D.A. or a particular municipality's standards then additional work, if any, to meet those standards is excluded).

10. DESIGN DELEGATION. Any design services provided by the Subcontractor or its sub-designer will be reviewed by the Architect/Engineer responsible for the overall project to ensure that the design will be acceptable when integrated with the entire project. Contractor, Owner and Architect/Engineer are entitled to rely on the accuracy and completeness of design services or certifications provided by Subcontractor only to the extent that design responsibility for a particular part of the Subcontract Work is specifically delegated to Subcontractor by agreement in writing and all design and performance criteria are furnished to the Subcontractor.

11. COMPLETENESS OF PLANS. Subcontractor is entitled to rely on the accuracy and completeness of the project drawings and specifications provided to the Subcontractor. Project will be constructed per the structural design to look like the architectural design; means and methods shown on architectural pages may be modified to conform with structural designs/details or for ease of construction if non-structural.

12. REVISIONS. All revisions on the project, including changes to project drawings or dimensioning, must be addressed through the Subcontractor's Project Manager. Contractor shall provide written directive to proceed with all revisions/modifications to subcontract work. Appropriate sets of "For Construction" plans and/or revisions to plans shall be provided at no cost to Subcontractor.

13. EXTRA WORK. The standard hourly rate for T&M labor and the basis for calculating extra work shall be \$___.00 per hour. Material and equipment costs will be calculated with ___% added to the costs.

14. EXAMINATION OF DOCUMENTS, SITE & "PRE-WORK" CONDITIONS. Subcontractor's obligations to examine construction documents, project site, and materials and/or work furnished by others prior to or necessary for Subcontractor's work, referred to as "Pre-Work", is limited to the obligation to bring to the attention of the Contractor any obvious defects or deficiencies that a person in the trade of the Subcontractor would discover by reasonable visual inspection; no testing beyond reasonable visual inspection shall be required. Subcontractor shall not be held liable for work performed over incorrect work by other trades.

15. ACCESS AND TEMPORARY SITE FACILITIES. Subcontractor shall have unencumbered accessibility to all areas of site that Subcontractor is to perform work in. This area is to be free of excavations, debris, material storage, or work being performed by other trades that will slow down Subcontractor's production. Contractor to provide adequate electrical service to site with power terminals within 150' from all areas Subcontractor will be performing work. Contractor to provide a dumpster for debris or debris will be centrally piled on site; Subcontractor is not responsible for removal of debris from site. A fire hydrant shall be located within 300ft of wood storage, debris, or construction. Contractor shall provide toilet facilities accessible for use by Subcontractor.

16. PROJECT SCHEDULE. The project schedule is to be mutually agreed upon. Work will be substantially completed subject to delays caused by inclement weather, modifications to applicable labor laws, acts of god, forces of nature, causes beyond reasonable control, Contractor, Owner or their employees or other third parties under Contractor or Owner's direction or control. Due to additional costs Subcontractor may incur, Subcontractor shall not be required to commence work until all "Pre-Work" necessary for Subcontractor's work to be performed is complete and correct. If "Pre-Work" is incomplete or incorrect, Subcontractor, at his option, may commence work in area(s) ready but time schedule for completion of Subcontractor's work shall not begin until all "Pre-Work" has been completed and/or corrected. Any modification of the project schedule differing from the mutually agreed upon schedule shall allow Subcontractor a reasonable time to complete Subcontractor's work in an efficient manner. Subcontractor shall be entitled to an equitable adjustment in the price of the work, including but not limited to any increased costs of labor, supervision, equipment or materials, and reasonable overhead and profit, for any change of schedule, acceleration, out of sequence work or delays not caused by Subcontractor, its sub-subcontractors, their employees or others for whose acts they may be liable.

17. INSPECTIONS/TESTING. All inspections/testing are to be coordinated between Subcontractor and Contractor, and paid for by Contractor.

18. PAYMENT. No provision of this Subcontract shall serve to deny Subcontractor's entitlement to full payment each payment period as required under NRS 624.624 for properly performed work or suitably stored materials. Payments shall be due within 30 days from invoice submittal or ten (10) days after payment is received by Contractor from Owner, whichever is earlier per NRS 624.624. Any term or clause of the contract which makes payment to the Subcontractor contingent upon the Owner paying the General Contractor is null and void and of no legal effect. Late payments shall accrue interest at the rate of 1.5% per month on the unpaid balance.

19. WITHHOLDINGS. Any amounts withheld from payments to the Subcontractor over the course of the work must be fully paid when the Subcontractor has completed the performance of his work or the furnishing of his materials or equipment and no later than the time said work, materials or equipment is no longer required to be accessible or exposed for inspection by a building official, for example, after structure has passed framing inspection.

20. DAMAGE TO OTHER WORK. Contractor, Owner or their other trades/suppliers/agents shall not work or store materials under areas being constructed by Subcontractor or they will be responsible for their own work and materials if damaged, for any reason, by Subcontractor. Subcontractor is not responsible or liable for work damaged by Contractor, Owner or their other trades/suppliers/agents to Subcontractor's work.

21. SUBCONTRACTOR CLAIMS. Subcontractor shall be entitled to an equitable adjustment of the schedule and of its compensation, including reasonable overhead and profit, for any extra work it performs pursuant to written or verbal instructions of Contractor, provided that the Subcontractor gives the Contractor advance, written notice stating the date, circumstances, and source of the instructions, and that Subcontractor regards the instructions as a change to the Scope of Work. Under no circumstances does the Subcontractor waive its right to payment for extra work performed by the Subcontractor pursuant to instructions from the Contractor or for failure to meet Contractor imposed deadlines or procedural methods for payment application/notification of claim.

22. BACKCHARGE CLAIMS. No back charge or claim of the Contractor for services shall be valid except by an agreement in writing by the Subcontractor before the work is executed, except in the case of the Subcontractor's failure to meet any requirement of the subcontract. In such event, the Contractor shall notify the Subcontractor of such default, in writing, and allow the Subcontractor reasonable time to correct any deficiency before incurring any costs chargeable to the Subcontractor. No back charge 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's default shall be reasonably calculated to cover the anticipated liability, and all remaining payment amounts not in dispute shall be promptly paid.

23. CONSEQUENTIAL DAMAGES. Contractor shall make no demand for liquidated damages or actual damages for delays in excess of the amount paid by the Contractor for unexcused delays actually caused by Subcontractor. Contractor expressly waives all claims for 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.

24. MATERIALS. Materials must be delivered to the project within 60 days from: _____, otherwise the cost of the materials are subject to any cost increases. Materials will be billed when received at project site or other location agreed upon. If materials are delivered within 60 days but the project is not ready to construct, the materials are the property of the Contractor and costs for replacement due to theft or weathering will be borne by the Contractor. Sub-surfaces will be considered acceptable when other trade's materials are installed or a maximum of 30 days have elapsed from substantial completion of the Subcontract Work area. Shell building walls will not be shimmed or shaved.

25. EMBEDDED HARDWARE. Locations of the embedded hardware shall be the responsibility of the Architect/Engineer. If requested, and as a courtesy, Subcontractor will assist Contractor in properly locating his embedded hardware and will draft an embed layout drawing. Under no circumstances shall Subcontractor be liable for accuracy of placement of embedded hardware. All expansion or epoxy bolt work is excluded unless specifically listed as included.

26. BLOCKING/BRIDGING/BRACING. Blocking/bracing/bridging for other trades is excluded unless specifically drawn in plans.

27. DRAFT/FIRE STOPPING. Due to the numerous methods listed by the I.B.C. to achieve draft/fire stopping and the additional impact of whether the area in question is to be provided fire sprinklers or not, all draft/fire stop facing or framing is excluded except at walls, columns and as a separation between vertical and horizontal areas of the building. Wood draft/fire stopping applied over metal framing being performed by others is excluded. Draft/fire stopping separating horizontal areas in attics, soffits, cornices, crickets, parapet bracing, concealed spaces, etc. is excluded unless wood draft/fire stopping for the horizontal area in question is specifically drawn and detailed in the plans and no other alternate/optional draft/fire stop method is drawn or specifically referred to.

28. SUBCONTRACTOR'S EMPLOYEES. Contractor agrees not to solicit the employment of Subcontractor's employees.

29. SAFETY. Safety to be per Subcontractor's written Safety Policy and Fall Protection Plan, with either to be made available to Contractor upon request. Subcontractor shall not be liable for erecting or maintaining project safety barriers beyond what is necessary for Subcontractor's own work.

30. CLOSEOUT DOCUMENTS. Contractor will not require contract closeout procedures that have not been provided to and specifically accepted by the Subcontractor prior to signature of the Subcontract. Subcontractor is not required to provide "As-built" drawings.

31. WARRANTY. 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 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. The Contractor expressly acknowledges and agrees that Subcontractor does not warrant the adequacy, sufficiency, suitability or building code compliance of the project drawings, specifications, or other contract documents including, without limitation, any specified sole source or brand-named products, equipment, or materials, and Contractor accepts the manufacturer's warranty as its sole recourse with regard to such items. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, INCLUDING THE IMPLIED

WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. Upon discovery of any nonconforming work, the Contractor shall promptly notify the Subcontractor, in writing, and shall provide the Subcontractor with a reasonable opportunity to inspect and correct the work at Subcontractor's expense. Any failure by the Contractor to provide prompt written notice and a reasonable opportunity to inspect and correct the work shall constitute a waiver by Contractor of any right to claim a breach of this warranty with respect to such nonconforming work. This warranty shall not be extended by corrective work performed by Subcontractor. This and any other Subcontractor warranties arising out of Subcontractor's work shall be for a period of one year from the date of substantial completion of Subcontractor's work, or the issuance of a certificate of occupancy, whichever comes first.

32. SUSPENSION OF WORK. In the event of a suspension of work by the Owner, Contractor, or by the Subcontractor in accordance with paragraph entitled "PAYMENT" above, Contractor's liability to the Subcontractor is for payment in full for all work performed and material/equipment supplied to the date of suspension, demobilization and remobilization costs resulting from the suspension, material replacement costs due to weathering and/or restocking charges, and an equitable adjustment of the schedule.

33. TERMINATION OF SUBCONTRACT. In the event of any termination by the Contractor which is not justified by a default of the Subcontractor, or termination by Subcontractor, Subcontractor shall be entitled to payment from the Contractor for all costs incurred by the Subcontractor for which the Subcontractor has not received payment, including, but not limited to, any additional costs associated with Subcontractor having to break his commitments with his suppliers, reasonable overhead, profit, expenses and damages, including attorneys' fees, interest, and profit on unperformed work.

34. GOVERNING LAW AND VENUE RESTRICTION. The laws of the state in which the project is located shall have exclusive jurisdiction and venue.

35. ASSIGNMENT. This agreement cannot be assigned by either party without the written consent of the other party.

36. ATTORNEYS' FEE AND COSTS. 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 their actual attorneys' fees, costs and expenses incurred, without regard to any court schedule of fees.

36. SEVERABILITY. The terms and provisions of this addendum are independent of one another. If any provision of this Addendum or any part thereof shall at any time be held to be invalid, then such provision shall continue in effect only to the extent permitted and the remaining provisions of this Addendum shall nevertheless remain in full force and effect.

Check this box if modifications to this addendum are necessary, see attachment titled _____.

Contractor: _____

Subcontractor: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____