

July 6, 2009

Master Ghost Letter Provisions

&&& is the general contractor
*** is our client, the subcontractor

[Name]
[Title]
[Company]
[Address]

Dear [Name]:

We have received and reviewed &&&'s proposed subcontract. Subject to the following subcontract modifications, *** will proceed with the work according to the terms of our earlier bid and the general conditions of your subcontract as modified below. While we agree with most of the terms of the proposed subcontract, there are some terms that are inconsistent with our operations and method of business, and we have set those out below. Please review the following modifications and provide us with either your oral or written notice to proceed if you are in agreement with these modifications. We look forward to performing all of our work in an efficient, quality and timely manner.

Changes in the Scope of Work. All changes must be in writing and mutually agreed upon in terms of scope, price and effect on schedule prior to the performance of the change. All changes must be negotiated on an individual basis. If an agreement is not reached as to the scope or price of a change, *** will not perform the change. This is the only proven way of avoiding misunderstandings or disputes over changes to the scope of work.

Claims. We are not in the business of litigation or submitting claims. However, if we are adversely impacted during the course of our work, we will submit an appropriate claim to you. We do not agree to any set arbitrary time limitation within which we must submit our claim lest it be waived. We also do not agree to any specific notice procedure. Rather we will submit notice of our claim in timely manner so that an appropriate representative of your company is made aware of the nature of our claim. Upon request, we will submit all of the appropriate back up information supporting our claim. We do not limit our claims to time extensions only. Impacts to us may result in a claim for additional amounts under our agreement. We do not waive damages for loss of

efficiency, or productivity or any similar form of damages or compensation as a result of scheduling of our work.

Correction of Work. We will, of course, correct any of our work that is incomplete or defective, but we need reasonable notice. Reasonable notice depends upon the circumstances. In the event that the Contractor directs another party to perform correction work regarding work within the scope of our contract, the Contractor must first give us five (5) working days notice, and an opportunity within that time period to perform the corrective work.

Dispute Resolution. If a dispute arises between the parties, we will meet with &&& and make a good faith effort to resolve the claim or dispute in a professional manner. *** will certainly consider mediation in the event of a dispute, but *** does not agree that mediation shall be a condition precedent to trial or arbitration. Any dispute that we may have is strictly between *** and &&&. If we have a claim, we will take that matter up directly, one-on-one with &&& and vice-versa. Any claims that &&& may have against *** will be similarly resolved on a one-on-one basis. We do not agree to any pass-through claims procedure. If we cannot amicably resolve the dispute, then either party is free to file suit in a court of appropriate jurisdiction. The prevailing party will be entitled to reasonable attorney's fees as fixed by the court. We are not closing the door on a privately arranged arbitration or mediation and reserve our possible agreement to that on those matters to a later date.

Joint Checks/Direct Payment. We do not agree to the issuance of joint checks payable to *** and other parties. Nor do we agree to your reservation of right to directly pay our vendors and subcontractors. *** will assume full responsibility for paying its vendors and subcontractors.

Main Contract. Since we have not reviewed the main contract between &&& and the owner, we cannot agree to be legally bound by the main contract. If there is something in the main contract that you wish us to review, then please send to us those provisions that you want us to review, so that we can determine whether we will agree to be bound, and/or whether an adjustment to the subcontract price will be necessary.

Pay-if-Paid Clause. We do not agree to &&& conditioning payment to us upon &&&'s receipt of payment from the owner. There are several reasons. We are not in a position to review your applications for payment or receipt of payments from the owner. &&& could possibly become involved in some dispute with the owner which results in the owner withholding payment from &&& for reasons having nothing to do with work performed by us. Our suppliers or employees are not operating on a pay-if-paid basis with us, nor are the applicable taxing authorities. Additionally, *** may present claims to &&& that no relation to acts or omissions of the owner and there fore will never be paid by the owner for such claims. We will submit timely applications for payment to &&& and will make every attempt to do so within the period of time that will allow &&& to make timely applications for payment to the owner.

Payment. We will submit monthly progress and final invoices to &&& by the tenth (10th) day of the month following the month in which our work was performed. We expect payment to us no later than thirty (30) days after submittal of these invoices. We do not agree to withholding of any retainage from interim or final payments. We will furnish lien releases/waivers as required by you during the course of the project. We will submit timely invoices to enable you to be promptly paid for our work by the owner.

Protection of Work. We will protect our work until such time as our work has been completed and we have removed our materials and equipment from the area. After we have left the area, damage caused by other trades is the responsibility of &&&. We do not agree that *** or other subcontractors may occupy or use any portion of our work safety risks upon our crews.

Scheduling. *** agrees that it shall be responsible for any delays and/or resulting costs and damages incurred by &&& as a result of ***'s failure to timely commence, perform, and complete the work. In the same fashion, *** shall be reasonably compensated and receive an extension of time to complete the work if &&& or the owner impose significant scheduling changes (accelerations or delays) on ***. In the event that *** makes a claim on account of &&&'s acceleration or delay, *** shall submit the claim in writing within a reasonable period of time.

We will proceed to meet the schedule of &&& and complete the work in a timely manner. We have bid this job on the assumptions of continuous and uninterrupted work, reasonable access to the site, normal interface with other trades on site, no overtime, no multiple crews, and no multiple shifts. If our work is impacted by other trades or if &&& or the owner schedule changes during the course of the work, we will adjust our schedules accordingly. Usually, there is a little bit of adjusting of schedules on the job and there's always a little bit of interfacing with other trades. If it significantly impacts our costs on the job, however, we will submit an appropriate claim for further compensation and an extension of time. We do not agree to limit compensation for extensions or delays to only an extension of time.

This is not to say that we will not accelerate our work, work multiple shifts, work overtime, etc. We will do whatever it takes to meet &&&'s revised schedules. However, we have been provided with an initial schedule, upon which we have based our bid. If things change and our labor costs are significantly adversely impacted, we will still keep in step with the revised schedules and we will track our impacted time and submit the appropriate claim for time and compensation. Claims, if any, will be submitted as soon as practicable, but we do not agree to any specific or arbitrary time.

Termination for Convenience. We do not agree that &&& may terminate the subcontract without cause or at its own convenience. Similarly, we agree not to terminate our performance under the subcontract without cause or at our own convenience.

We look forward to working with &&&. Please provide us with either your oral or written notice to proceed.

Sincerely yours,

Read and Approved:

Dated _____

Jon Barnes, Project Manager
&&&