

## EXHIBIT "B"

### UNIVERSITY OF PENNSYLVANIA PURCHASE ORDER SUPPLEMENTARY TERMS AND CONDITIONS FOR CONSTRUCTION WORK

This document amends and supplements the Terms and Conditions applicable to Purchase Orders issued by the University of Pennsylvania, Division of Facilities and Real Estate Services and other University entities for construction work. To the extent that any of these Supplementary Terms and Conditions are inconsistent with the Purchase Order Terms and Conditions, then these Supplementary Terms or Conditions shall govern. These Supplementary Terms and Conditions, the Terms and Conditions and the Purchase Order, together with the plans, specifications and other documents ("Project Documents") attached to or incorporated by reference herein and therein, constitute the full and complete Agreement between the Contractor ("Contractor") and The Trustees of the University of Pennsylvania ("Owner"). References to the Supplier in the Terms and Conditions shall be deemed to refer to the Contractor herein, and vice versa.

#### SUPPLEMENTARY TERMS AND CONDITIONS

##### Permits and Licenses

Contractor is responsible for securing all applicable licenses and permits and compliance therewith, and the price shall be deemed to include the cost of these items.

##### Payments

Unless Owner agrees in writing to waive this requirement, Contractor, prior to commencing work under this Order, shall prepare a Schedule of Values and Payments which, when approved by Owner, shall be the basis for all payments under this Order.

All requests for payment shall be submitted on AIA Payment Request Forms (Form 701/702) and shall be in accordance with the approved Schedule of Values. Each Request for Payment shall indicate the percentage completion and/or value of work for which payment is requested. In addition to any other requirements in this Order, each application for payment shall be supported by a Contractor's Monthly Affidavit, Release and Waiver of Liens in the form attached hereto as **Exhibit "B-1"** with respect to work performed and materials supplied for the Project and monies to be paid pursuant to the application for payment. If required by Owner, each application for payment shall also be supported by a Subcontractor's Monthly Affidavit, Release and Waiver of Liens in the form required by Owner, for each subcontractor who has performed work on the Project during the period covered by the Payment Request Form.

In addition to any other requirements in this Order, the Contractor's final payment application shall be supported by the following additional documentation, each in a form satisfactory to the Owner:

- (i) The Contractor's Final Payment Affidavit, Release and Waiver of Liens in the form attached hereto as **Exhibit "B-2"**,
- (ii) For each Subcontractor of Contractor, a Final Payment Affidavit, Release and Waiver of Liens in the form attached hereto as **Exhibit "B-3"**, and
- (iii) For each Sub-subcontractor, a Final Payment Affidavit, Release and Waiver of Liens in the form attached hereto as **Exhibit "B-4"**.

Should Contractor fail or be unable to provide a Final Payment Affidavit, Release and Waiver of Liens from a Subcontractor or Sub-subcontractor with respect to work performed and/or materials supplied for the Project as set forth above, then Owner may withhold payment from Contractor in such amounts as Owner may determine are necessary to protect Owner against claims or liens by such Subcontractor or Sub-subcontractor, subject to Contractor's right to provide Owner with a bond (from a surety company, and in form and substance, acceptable to Owner) to indemnify, defend and hold harmless the Owner against all possible claims and liens by such Subcontractors and Sub-subcontractors.

CONTRACTOR FOR ITSELF AND ALL OF ITS SUBCONTRACTORS HEREBY WAIVES ALL RIGHTS UNDER THE CONTRACTOR AND SUBCONTRACTOR PAYMENT ACT AND AGREES THAT THE ACT SHALL NOT BE APPLICABLE TO THIS ORDER. To the extent that this waiver is legally ineffective, payment terms specified in this Order shall constitute "terms otherwise agreed by the parties." Contractor agrees to include this provision in all subcontracts issued pursuant to this Order.

##### Security and Cleaning

Contractor shall secure all materials and the site where Work is performed, and shall leave all areas broom clean (unless a more stringent cleanliness standard is set forth in the Project Documents) and in a safe condition at the end of each work day and upon completion of the Work. In case of dispute, Owner may remove waste at Contractor's expense.

### Coordination and Directions

Contractor shall identify and shall bring to the attention of Owner's project manager any errors, omissions or inconsistencies in the Project Documents or other directions provided to the Contractor. Contractor shall coordinate the work of all trades and coordinate all work with actual field conditions. Where appropriate, Contractor shall obtain direction from the Owner's project manager before proceeding with specific elements of the work.

### Background Checks

Contractor shall ensure that federal, state and county of residence criminal background checks are conducted on all persons performing work at the Project location, and shall exclude from the Project locations any dishonest, dangerous or otherwise unqualified persons. Contractor shall comply with all applicable laws, rules and regulations including, but not limited to the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations or ordinances. Contractor agrees that it shall make available to Owner, within one week after Owner's request, a list of all persons then engaged in performing work at the Project location together with copies of all background checks for those persons.

### Performance of the Work.

The work shall be performed in a first class and workmanlike manner in accordance with the plans and specifications and any other documents incorporated by reference or identified in the Purchase Order. Where no specific standard is referenced in the plans and specifications, the work shall be performed in strict conformity with the strictest quality standards mandated and/or recommended by all generally recognized organizations establishing quality standards for work of the type to be performed hereunder. Contractor shall be solely responsible for controlling the manner and means by which it and its employees perform labor and services, and it shall observe, abide by and perform all of its obligations in accordance with all legal requirements. Without limiting the foregoing, Contractor shall control the manner and means of the labor and services so as to perform the work in a reasonably safe manner and comply fully with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association, for work of the type to be performed hereunder. In addition to any other requirements that may be set forth or incorporated by reference in this Order, Final Completion of the Project shall occur only after completion of all punchlist items and submission to Owner of all operating and maintenance manuals, warranties and as-built drawings.

### Workplace Safety

Prior to commencing any of the work, the Contractor shall prepare for the review and approval of the Owner a written work-site safety program to govern all activity at the work site. The Contractor shall incorporate into the program any comments of the Owner or its insurers. However, the review or approval of the safety program by the Owner or its insurers shall not relieve the Contractor from its complete, sole and full responsibility for work site safety.

### Workforce

The Contractor shall maintain on the Site at all times a sufficient work force to carry out its obligations in an efficient and timely manner. The Contractor shall employ only competent, skilled, reliable and honest workmen who will work in harmony with other workmen on the Project Site.

The Contractor shall maintain harmony and cooperation among the various trades. No time extensions will be granted by the Owner in the event of job-site labor disputes, work stoppages or suspensions of work unless such disputes or other events are area-wide in nature. The Contractor shall continue performing its Work on the Project notwithstanding any labor disputes or strikes.

The Contractor shall provide a competent, experienced, reliable and honest supervisory staff, including a Project Manager or Managers and a Project Superintendent or Superintendents, who shall be subject to the Owner's approval, to administer, coordinate, supervise and superintend the Work. An authorized representative of the Contractor with authority to act on its behalf shall be present at the Site at all times while Work is being performed.

Unless Owner agrees in writing to waive or modify this requirement, Contractor shall conduct weekly job meetings to discuss the progress of the work and to resolve any issues that arise. The Contractor's Project Manager(s) or Superintendents(s), or an authorized officer of the Contractor and of all subcontractors performing the work shall attend and participate in all scheduled job meetings at the Project or at a convenient nearby location designated by the Owner.

### Conduct of Workforce

All persons furnished by Contractor shall be deemed Contractor's employees or agents and Contractor shall comply with all applicable statutes regarding worker's compensation, employer's liability, unemployment compensation, and/or old age benefits and all other applicable laws relating to or affecting the employment of labor.

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees and subcontractors and their respective agents and employees, and other persons performing portions of the Work.

The Contractor and all subcontractors and all other persons performing portions of the Work shall comply with all applicable codes, laws, rules, regulations, writs, and orders of governmental authorities covering nondiscriminatory practices and employment and affirmative action.

The Contractor shall maintain the good order and discipline of its employees and other persons under its direction or control or present at, or in vicinity of, the Site in connection with the Work, and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that may constitute a danger to life, health or property. The Contractor shall also comply with the Owner's "zero tolerance" policy with regard to any harassment-related incidents.

At the Owner's instruction, the Contractor shall promptly remove from the Site any employee who, in the Owner's opinion, represents a threat to the safety or progress of the Project or persons on the Site or who has engaged in any improper conduct, specifically including conduct which the Owner perceives as constituting harassment of students or other persons.

### Emergencies

In the event of an emergency threatening health, life or property, the Contractor shall take such action as may be necessary to save lives and protect persons from injury and, this being done, to protect and preserve property. The Contractor shall notify the Owner of any such emergency as promptly as is practicable under the circumstances.

### Substitution/Modification

Owner shall not be required to consider any proposals for substitutions or deviations from the Project Documents. With any request for approval of a substitution or deviation, Contractor shall include a breakdown of any associated reduction in Owner's cost along with a complete description of any differences in quality and/or functionality of the proposed change compared to the specified item. If Owner approves any substitution or deviation requested by the Contractor from the Project Documents, Contractor shall nevertheless be responsible for the cost and proper functioning of any such deviation or any substituted item of material and equipment, including any modifications to the work necessitated by such substitution or deviation.

### Submissions

Where required by Project Documents or when requested by Owner, Contractor shall submit in a timely manner so as not to disrupt the schedule for performance of the work, shop drawings, samples, manufacturer's specifications or other appropriate information regarding material or equipment constituting a portion of the work.

When requested by Owner, Contractor shall provide as-built drawings for all work performed pursuant to this Purchase Order, and shall furnish satisfactory evidence of the kind, quality and quantity of labor and materials used or to be used.

### Changes to the Work

The Owner may, from time to time require changes in the work by a written change order to this Purchase Order. When a change in the work is required or proposed by the Owner, the Contractor shall, as soon as practicable, deliver to the Owner a Change Order Proposal ("Proposal"), which shall include the Contractor's proposed equitable adjustment to the price resulting from the change, and any proposed equitable adjustment to the Project schedule, including in all instances an itemized breakdown of costs containing sufficient detail to allow Owner to evaluate the reasonableness of the Proposal. Any Proposal shall conclusively be presumed to entail (i) no impact or ripple effect on any unchanged work and (ii) no extensions of time unless these are identified and are separately itemized in detail in the Proposal. All change orders shall be for a lump sum amount, unless the Owner directs in writing that the change is to be performed on a time and material or other basis. If the Owner approves a Proposal, the Owner and the Contractor shall execute an appropriate change order, based on such Proposal. In the event of a dispute concerning the Contractor's entitlement to, or the

amount/duration of, any change in the price or Project schedule, the Owner may direct the Contractor to proceed with such disputed work. In that event, the Contractor shall proceed expeditiously to perform the disputed work upon receipt of a written directive from Owner to do so. The Contractor shall then maintain a separate record, on a daily basis, of all of its actual costs incurred to perform the disputed work, and Contractor shall submit a claim seeking compensation for such disputed work. In order to avoid delays to the Project, Contractor shall continue to perform all of the work, including without limitation all disputed work and all changed work, and shall not delay, slow down or refuse to perform any of the work, pending the resolution of any or all claims and disputes; subject, however, to a reservation of rights by Contractor and Owner against each other with regard to all such claims and disputes provided that timely written notice thereof was provided by each party to the other so as not to prejudice either party. Any such claim shall be adjusted equitably and the Owner and Contractor agree that in determining appropriate reimbursement for labor and materials and appropriate mark-ups, the provisions addressing change orders contained in Owner's currently applicable Construction Services Agreement shall be presumed to constitute an equitable basis for resolving these matters.

#### Additional Insurance Requirements

Prior to commencing work under this Purchase Order, Contractor shall file with University's Division of Facilities and Real Estate Services certificates of insurance evidencing the insurance required under Paragraph 10 of the Purchase Order Terms and Conditions, signed by authorized representatives of the insurance companies, naming the Owner as an additional insured and stating that in the event of any material change in or cancellation of the coverage, at least 10 days prior written notice will be given to Owner's Office of Risk Management, 421 Franklin Building, 3451 Walnut Street, Philadelphia, PA 19104-6205, and Owner's Division of Facilities and Real Estate Services, Attn: Contracts Coordinator, 3101 Walnut Street, Ground Floor, Philadelphia, PA 19104-6289.

Except as expressly modified by these Supplementary Terms and Conditions, the Purchase Order Terms and Conditions shall apply and shall govern the work described in this Exhibit "B." Without limiting the general applicability of the Purchase Order Terms and Conditions, Contractor agrees to carry insurance satisfying the requirements set forth in paragraph 10 and to assume the indemnity obligations set forth in paragraph 8 thereof.

Exhibit B-1

**CONTRACTOR MONTHLY AFFIDAVIT, RELEASE AND WAIVER OF LIENS**

**TO OWNER:** \_\_\_\_\_

**FROM CONTRACTOR:** \_\_\_\_\_

PROJECT: \_\_\_\_\_

Payment Request No.: \_\_\_\_\_

Period From: \_\_\_\_\_, 20\_\_ to \_\_\_\_\_, 20\_\_ (hereinafter the "Partial Completion Date")

Payment Request Amount: \$ \_\_\_\_\_

1. **CERTIFICATIONS AND WARRANTIES.** The Contractor (hereinafter "the Undersigned"), hereby certifies and warrants as follows:

(a) The Payment Request Amount set forth above represents the actual value of all work performed for the payment request period listed above for which payment is due under the Contract (and all authorized changes thereto) between the Undersigned and the Owner, including (i) all labor furnished for the Project, (ii) all materials and equipment delivered to the site and incorporated or to be incorporated in the Project; (iii) all materials and equipment for the Project stored off-site to the extent payment therefore is permitted by the Contract, (iv) all other services performed for the Project, and (v) all equipment used, or provided for use, in or for the Project. Items (i) through (v) above are hereafter collectively referred to as "work performed for the Project."

(b) Subject to receipt of payment for the Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, less retainage, for all work performed for the Project through the Partial Completion Date set forth above and, except for retainage, the Undersigned has no claims, on its own behalf or on behalf of others, against Owner or the Project, based upon or relating to work performed for the Project through the Partial Completion Date, except for outstanding written requests for change orders previously submitted by Contractor to Owner in writing and in conformity with the terms of the General Conditions of the Contract.

(c) The Undersigned has not assigned any claim, lien or any right to file a lien against Owner or the Project.

(d) The Undersigned has paid in full all laborers and, subject to retainage no greater than the percentage retainage held by Owner, all subcontractors, sub-subcontractors, materialmen, suppliers, and others for all work performed for the Project through and including the last application for payment for which Owner has paid Contractor.

(e) Any security interests given by the Undersigned have been released for any materials, equipment, appliances, fixtures or furnishings which have been or are to be installed as part of the Project, and the Undersigned is conveying good title to the same to Owner.

2. **WAIVER OF LIENS AND RELEASE.** Subject to receipt of payment for the Payment Request Amount set forth above, the Undersigned does hereby waive and release all rights that presently exist or hereafter may accrue to the Undersigned to assert a mechanics lien or other lien upon the land and/or improvements comprising the Project by reason of work performed for the Project through the Partial Completion Date. Subject to receipt of payment for the Payment Request Amount set forth above and to paragraph 1(b) above, the Undersigned hereby releases, acquits and forever discharges Owner and its trustees, directors, officers, employees, agents, and their successors and assigns, from all claims, liabilities, obligations, liens, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project from its inception through the Partial Completion Date.

3. **INDEMNIFICATION.** Subject to receipt of payment for the Payment Request Amount set forth above, the Undersigned hereby agrees to indemnify, defend and hold harmless Owner and its trustees, directors, officers, employees, agents, successors and assigns, from and against all damages, judgments, liabilities, mechanics liens, suits and expenses (including attorney's fees) directly or indirectly relating to any cause of action, claim or lien filed by any person with respect to any work performed under the Undersigned's contract, or otherwise by or for the Undersigned or any of its subcontractors, for the Project through the Partial Completion Date. Upon demand, the Undersigned shall defend such causes of actions, claims or liens, and shall bond off any mechanics' liens, at its sole expense.

CONTRACTOR: \_\_\_\_\_

By: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_ DAY

OF \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Exhibit B-2

**CONTRACTOR FINAL PAYMENT AFFIDAVIT, RELEASE AND WAIVER OF LIENS**

**TO OWNER:** \_\_\_\_\_

**FROM CONTRACTOR:** \_\_\_\_\_

PROJECT: \_\_\_\_\_

Payment Request No.: \_\_\_\_\_ (Final Payment)

Period From: Inception to \_\_\_\_\_, \_\_\_\_\_ (hereinafter the "Final Completion Date")

Final Payment Request Amount: \$ \_\_\_\_\_

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Contractor (hereinafter "the Undersigned") hereby affirms, certifies and warrants as follows:

(a) The Undersigned has completed all of its work on the Project, and has achieved Final Completion of the Project.

(b) The Final Payment Request Amount set forth above represents the actual value of all work performed through Final Completion and for which final payment is due under the terms of the Contract (and all authorized changes thereto) between the Undersigned and the Owner relating to the Project, including (i) all labor expended or furnished for the Project, (ii) all materials and equipment incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized by Owner and for which payment therefor is permitted by the Contract, (iv) all services furnished or performed for the Project, and (v) all equipment used, or provided for use, in or for the Project. Items (i) through (v) above are hereafter collectively referred to as "work performed for the Project."

(c) Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, including all retainage, for all work performed through Final Completion of the Project; and the Undersigned certifies that no further payments are or will be due to it on this Project. The Undersigned further certifies that it has no claims, on its own behalf or on behalf of others, against Owner or the Project, based upon or relating to work performed for the Project or otherwise relating to or arising from the Project, whether for labor, materials, equipment or otherwise relating to the Project.

(d) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against Owner or the Project.

(e) The Undersigned has paid in full all laborers, Subcontractors, sub-subcontractors, suppliers, materialmen and others with respect to all work performed for the Project through Final Completion.

(f) Any security interests given by the Undersigned have been released for any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and the Undersigned is conveying good title to the same to Owner.

2. **WAIVER OF LIENS AND RELEASE.** Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned does hereby forever waive and release all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed for the Project or by reason of any other cause, matter or thing relating to the Project, to assert a mechanics lien upon the land and/or improvements comprising the Project. Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned hereby releases, acquits and forever discharges Owner and its trustees, directors, officers, employees, agents, successors and assigns, from all claims, liabilities, obligations, liens, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever, from inception of the project through Final Completion.

3 **INDEMNIFICATION.** Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned hereby agrees to indemnify, defend and hold harmless Owner and its trustees, directors, officers, employees, agents, successors and assigns, from and against any and all damages, costs, judgments, liabilities, mechanics liens, demands, suits and expenses (including attorney's fees) directly or indirectly relating to any cause of action, claim or lien filed by any person with respect to any work performed for the Project. Upon demand, the Undersigned shall defend such causes of actions, claims or liens, and shall bond off any liens, at its sole expense.

SWORN TO AND SUBSCRIBED

BEFORE ME THIS\_\_ DAY OF \_\_\_\_\_, \_\_\_\_

\_\_\_\_\_  
Notary Public

CONTRACTOR: \_\_\_\_\_

By: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit B-3

**SUBCONTRACTOR FINAL PAYMENT AFFIDAVIT, RELEASE AND WAIVER OF LIENS**

**TO CONTRACTOR:** \_\_\_\_\_

**FROM SUBCONTRACTOR:** \_\_\_\_\_

PROJECT: \_\_\_\_\_;

**OWNER:** \_\_\_\_\_

Payment Request No.: \_\_\_\_\_ (Final Payment)

Period From: Inception to \_\_\_\_\_, \_\_\_\_\_ (hereinafter the "Final Completion Date")

Final Payment Request Amount: \$ \_\_\_\_\_

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned SubContractor (hereinafter "the Undersigned") hereby affirms, certifies and warrants as follows:

(a) The Undersigned has completed all of its work on the Project, and has achieved Final Completion of the Project.

(b) The Final Payment Request Amount set forth above represents the actual value of all work performed through Final Completion and for which final payment is due under the terms of the contract (and all authorized changes thereto) between the Undersigned and Contractor relating to the Project, including (i) all labor expended or furnished for the Project, (ii) all materials and equipment incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized by Owner and for which payment is permitted by the contract, (iv) all services furnished or performed for the Project, and (v) all equipment used, or provided for use, in or for the Project. Items (i) through (v) above are hereafter collectively referred to as "work performed for the Project."

(c) Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, including all retainage, for all work performed through Final Completion of the Project; and the Undersigned certifies that no further payments are or will be due to it on this Project. The Undersigned further certifies that it has no claims, on its own behalf or on behalf of others, against Contractor, Owner or the Project, based upon or relating to work performed for the Project or otherwise relating to or arising from the Project, whether for labor, materials, equipment or otherwise relating to the Project.

(d) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against Owner or the Project.

(e) The Undersigned has paid in full all laborers, sub-subcontractors, suppliers, materialmen and others with respect to all work performed for the Project through Final Completion.

(f) Any security interests given by the Undersigned have been released for any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and the Undersigned is conveying good title to the same to Contractor and Owner.

2. **WAIVER OF LIENS AND RELEASE.** Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned does hereby forever waive and release all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed for the Project or by reason of any other cause, matter or thing relating to the Project, to assert a mechanics lien upon the land and/or improvements comprising the Project. Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned hereby releases, acquits and forever discharges Contractor, Owner and their successors and assigns from all claims, liabilities, obligations, liens, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever, from inception of the project through Final Completion.

3. **INDEMNIFICATION.** Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned hereby agrees to indemnify, defend and hold harmless Contractor, Owner and their successors and assigns from and against any and all damages, costs, judgments, liabilities, mechanics liens, demands, suits and expenses (including attorney's fees) directly or indirectly relating to any cause of action, claim or lien filed by any person with respect to any work performed under the Undersigned's contract, or otherwise by or for the Undersigned or any of its subcontractors, for the Project. Upon demand, the Undersigned shall defend such causes of actions, claims or liens, and shall bond off any liens, at its sole expense.

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_

SUBCONTRACTOR: \_\_\_\_\_

By: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT B-4**

**SUB-SUBCONTRACTOR FINAL PAYMENT AFFIDAVIT, RELEASE AND WAIVER OF LIENS**

**TO SUBCONTRACTOR:** \_\_\_\_\_

**FROM: SUB-SUBCONTRACTOR:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_; **CONTRACTOR:** \_\_\_\_\_;

**OWNER** \_\_\_\_\_

Payment Request No.: \_\_\_\_\_ (Final Payment)

Period From: Inception to \_\_\_\_\_, \_\_\_\_\_ (hereinafter the "Final Completion Date")

Final Payment Request Amount: \$ \_\_\_\_\_

1. **CERTIFICATIONS, AFFIRMATIONS AND WARRANTIES.** The undersigned Sub-Subcontractor (hereinafter "the Undersigned") hereby affirms, certifies and warrants as follows:

(a) The Undersigned has completed all of its work on the Project, and has achieved Final Completion of the Project.

(b) The Final Payment Request Amount set forth above represents the actual value of all work performed through Final Completion and for which final payment is due under the terms of the contract (and all authorized changes thereto) between the Undersigned and Subcontractor relating to the Project, including (i) all labor expended or furnished for the Project, (ii) all materials and equipment incorporated or to be incorporated in the Project; (iii) all materials, fixtures and equipment for the Project stored off-site to the extent authorized by Owner and for which payment is permitted by the contract, (iv) all services furnished or performed for the Project, and (v) all equipment used, or provided for use, in or for the Project. Items (i) through (v) above are hereafter collectively referred to as "work performed for the Project."

(c) Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned certifies that it has received payment in full, including all retainage, for all work performed through Final Completion of the Project; and the Undersigned certifies that no further payments are or will be due to it on this Project. The Undersigned further certifies that it has no claims, on its own behalf or on behalf of others, against Subcontractor, Contractor, Owner or the Project, based upon or relating to work performed for the Project or otherwise relating to or arising from the Project, whether for labor, materials, equipment or otherwise relating to the Project.

(d) The Undersigned has not assigned to anyone any claim, any lien, or any right to file or perfect a lien, against Owner or the Project.

(e) The Undersigned has paid in full all laborers, suppliers, materialmen and others with respect to all work performed for the Project through Final Completion.

(f) Any security interests given by the Undersigned have been released for any materials, equipment, appliances, machines, fixtures or furnishings which have been or are to be installed as part of the Project, and the Undersigned is conveying good title to the same to Subcontractor, Contractor and Owner.

2. **WAIVER OF LIENS AND RELEASE.** Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned does hereby forever waive and release all rights that presently exist or hereafter may accrue to the Undersigned, by reason of work performed for the Project or by reason of any other cause, matter or thing relating to the Project, to assert a mechanics lien upon the land and/or improvements comprising the Project. Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned hereby releases, acquits and forever discharges Subcontractor, Contractor, Owner and their successors and assigns from all claims, liabilities, obligations, liens, causes of action and demands whatsoever, whether known or unknown, arising now or in the future, relating to or arising from the Project, based upon any cause, matter or thing whatsoever, from inception of the project through Final Completion.

3. **INDEMNIFICATION.** Subject to receipt of the Final Payment Request Amount set forth above, the Undersigned hereby agrees to indemnify, defend and hold harmless Subcontractor, Contractor, Owner and their successors and assigns from and against any and all damages, costs, judgments, liabilities, mechanics liens, demands, suits and expenses (including attorney's fees) directly or indirectly relating to any cause of action, claim or lien filed by any person with respect to any work performed under the Undersigned's contract, or otherwise by or for the Undersigned or any of its subcontractors, for the Project. Upon demand, the Undersigned shall defend such causes of actions, claims or liens, and shall bond off any liens, at its sole expense.

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

SUB-SUBCONTRACTOR: \_\_\_\_\_

By: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public