

THE FINE ART OF OBTAINING FINAL PAYMENT

TABLE OF CONTENTS

| I. | CONTRACT ISSUES: | Page |
|-----------|---|-------------|
| A. | PROPOSAL AND BID TERMS AND CONDITIONS 1 (Form – TAB 1) | |
| B. | ADDENDUM TO PROPOSED SUBCONTRACT..... 2 (Form - TAB 1) | |
| C. | CONTRACT CLAUSES TO WATCH OUT FOR..... 3 | |
| | (i) Sample Contract Clauses from GCs | |
| | -Indemnity..... 3 | |
| | -No Damage for Delay..... 4 | |
| | -Condition Precedent Payment Language..... 5 | |
| | -Change Orders..... 5 | |
| | -Supplemental Forces..... 7 | |
| | -Scheduling..... 8 | |
| | (ii) AIA Contracts..... 9 | |
| | (iii) Exhibits attached to Proposed Subcontract..... 9 (Beware of language added to these forms) | |
| | - Sample Unlawful Waiver (TAB 2) | |
| | - Sample GC Change Order (TAB 2) | |
| | - Sample GC Contract Information Sheet (TAB 2) | |
| | (iv) Scope of Work..... 9 | |
| | (v) Attorney's Fees / Arbitration clauses..... 10 | |
| D. | NEGOTIATING WITH GENERAL CONTRACTORS..... 12 | |

- (i) Relationship with GC
- (ii) Size of Project (Relative to your company)
- (iii) Relative need for the particular project
- (iv) When not to sign (red flags)

2. OTHER PRE-WORK ISSUES (PRELIMINARY ENFORCEMENT ISSUES)

A. Twenty-Day Notice (Form and Law - TAB 3)..... 12

- (i) What your Notice provider should be doing for you
 -Statutory compliance: Language in form and mailing / affidavit
- (ii) What your Notice provider may not be doing for you
 -Indemnity clause
- (iii) What your Notice should include
 -Statutory Requirements
 -Bond information

B. Sub-subcontracts..... 13

C. Insurance..... 13

3. DURING PROJECT ISSUES (CHANGE ORDERS, WAIVERS, ETC.)

A. Change Orders (Sample Form - TAB 4)..... 14

B. Conditional Waivers (Statutory Format - TAB 5)..... 14

| | | |
|----|---|----------|
| C. | Stop Notices (Form and Laws - TAB 6)..... | 15 |
| D. | Prompt Payment and Stop Work Form (Form and Laws TAB 7)..... | 16 |
| 4. | POST-WORK ISSUES (BOND CLAIMS and LIEN CLAIMS) | |
| A. | When to make bond claim / how to make bond claim..... | 17 |
| | (Form and Law - TAB 8) | |
| B. | When to record lien / how to prepare lien (Law - TAB 9)..... | 18 |
| 5. | TIMELINES / DEADLINES FOR PROCESSING / ENFORCING PAYMENT IN ARIZONA..... | (TAB 10) |
| 6. | FACTUAL SCENARIOS..... | (TAB 11) |

******FORMS INCLUDED HEREIN ARE FOR INSTRUCTIONAL PURPOSES AND THEY ARE NECESSARILY INCOMPLETE. BY DEFINITION THESE "FORMS" CANNOT TAKE INTO ACCOUNT THE SPECIFICS OF YOUR PARTICULAR CONTRACT-RELATED ISSUES. ACCORDINGLY, THESE FORMS SHOULD BE USED IN CONJUNCTION WITH REVIEW BY LEGAL COUNSEL AS THEY RELATE TO YOUR SPECIFIC CONTRACT-RELATED ISSUES. THE LAW INCLUDED HEREIN IS TO BE USED AS A REFERENCE POINT AND MAY NOT BE THE MOST RECENT LAW OR THE ONLY LAW APPLICABLE TO YOUR GIVEN SITUATION. AGAIN, LEGAL REVIEW OF YOUR PARTICULAR BUSINESS AND ISSUES IS ADVISABLE.***

