LEGISLATIVE REPORT:

INSURANCE / INDEMNITY / LIENS

AGC Texas Building Branch
Convention

Presented: June 21, 2011

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LEGISLATIVE SUMMARY

A Regular Legislative Session in Texas is like watching an NBA game. Nothing really matters until the fourth quarter in most NBA games and very few legislative issues get resolved until the last month in the Session. In the case of this most recent Legislative Session (the 82nd Regular Legislative Session), it was more like an NBA game which ended regulation play in a tie and was forced into overtime.

To almost no one's surprise, most Legislators' time and attention was directed to the budgetary crises in Texas. Add redistricting for state legislative and Congressional districts, as well as other "hot-button" issues such as immigration/sanctuary cities, voter identification, "loser-pay", and sonograms before abortions, it is not surprising that many legislative issues were left unresolved by the end of the Regular Session. Statistically, 5796 House and Senate Bills were filed and only 1378 were finally passed and sent to the Governor for his approval or veto. That means less than 24% of all bills filed made it through the entire legislative process.

Of course, at the end of the day, almost 1400 enacted bills is still a lot of new legislation. Even though many of those bills deal with local and somewhat mundane issues, there were a number of significant bills passed by the Legislature and signed by the Governor – including several very significant bills impacting the construction industry.

June 19, 2011, was the deadline for the Governor to veto or to sign bills (or to allow bills to become law by filing without signing). He vetoed 24 bills – none of which directly impacted the construction industry.

Below is a brief discussion of the bills relating to construction insurance and indemnity issues, as well as mechanic's liens and bond claims, that have passed both the House and the Senate and have received final action by the Governor.

INSURANCE / INDEMNITY

Insurance Sunset Bill / Surety Requirements for Public Works:

HB 1951 (Taylor / Hegar) -- *relating to the continuation and operation of the Texas Department of Insurance and the operation of certain insurance programs; imposing administrative penalties.*

HB 1951 is the "Sunset" bill for the Texas Department of Insurance. For the most part, it deals with the operation of the Department and technical insurance issues. One provision, however, that directly impacts construction is the amended Section 3505.005 of the Texas Insurance Code relating to surety bonds required under Chapter 2253 of the Government Code (the former "McGregor Act") for public works projects.

Currently, a surety writing "Government Code" payment and performance bonds must be "Treasury-Listed" (on the list of the U. S. Department of Treasury as authorized for

issuing bonds on federal projects) if the bonds exceed $100,000, or the surety must have obtained reinsurance for any liability in excess of $100,000. In other words, any liability over $100,000 would be covered (by the primary surety or reinsurance) by a Treasury-Listed surety or reinsurer.

HB 1951 changes the reinsurance threshold from $100,000 to $1 Million. However, what does that mean? If the amount of the bond exceeds $100,000, the surety does not have to be Treasury Listed as long as it has reinsurance for liabilities over $1 Million. Accordingly, if the bond amount is $950,000, it would appear that neither the surety nor the re-insurer must be Treasury Listed. It also modifies the requirement for reinsurers. They no longer have to be "authorized" in Texas and be Treasury Listed. The reinsurer (for the liability in excess of $ 1 Million) must either be an "authorized reinsurer" in Texas or be Treasury Listed. Arguably, this puts public owners and claimants at additional risk for bonded projects under $1 Million.

Effective 09/01/2100, but only applies to insurance policies, contracts or evidences of coverage delivered or issued on or after January 1, 2012.

Consolidated Insurance Programs / Anti-Indemnity Legislation:

HB 2093 (Thompson / Van de Putte) -- *relating to the operation and regulation of certain consolidated insurance programs.*

For almost the entire legislative Session, HB 2093 was simply a bill that sought to provide more transparency and uniformity to "consolidated insurance programs" (wrap policies) for construction projects. Notwithstanding much haggling among various groups, including carriers, large brokerage houses, general contractors, and public owner groups, compromise legislation finally emerged. Nothing earth-shaking. Its most important feature is to require all such policies to include completed operations coverage for no less than three years.

However, in the closing days of the legislative Session, HB 2093 became quite controversial as the "anti-indemnity" legislation (from SB 362 / HB 2010) was added to the bill.

The "anti-indemnity" language added to HB 2093 was the result of the "mediated" compromise in 2009 between the Texas Building Branch-AGC, the Texas Construction Association, and the Texas Civil Justice League that voids "broad and intermediate" form indemnity and defense requirements, as well as Additional Insured coverage providing for broad or intermediate form indemnity, except in connection with employee bodily injury claims.

As we all recall, the legislation effort to enact this compromise language failed in 2009, primarily as a result of the late-hour "chubbing" in the House. The 2009 opponents (mostly public and private Owners and some large, individual contractors) were more vocal in 2011. The Texas Civil Justice League dropped its support and became very actively opposed. As a result of the increased opposition to restrictions on the right of

parties to contract freely for broad or intermediate indemnity and the over-all legislative congestion resulting from the Legislature's pre-occupation with funding and appropriation issues, SB 362 / HB 2010 seemed doomed – until the language from SB 362/HB 2010 was added to HB 2093.

In order to remove some opposition, the "anti-indemnity" language was modified to exclude the statutory restrictions on broad and intermediate form indemnity in contracts for municipal public works and residential construction. As with the original "anti-indemnity" legislation, broad and intermediate form indemnities for employee injury claims as well as broad form indemnity in loan documents and in general indemnity agreements obtained by sureties in connection with their underwriting process will continue to be allowed. Additionally, joint defense agreements entered into after a claim has been filed will be enforceable.

In a nutshell, HB 2093 does the following:

1. As a general rule, HB 2093 prohibits a person (the indemnitor) from indemnifying another person (the indemnitee) from claims or damages to the extent caused by the indemnitee's negligence. Indemnity clauses violating this prohibition will be void and unenforceable.

   This general prohibition applies to both claims arising from the indemnitee's sole negligence (which is "broad form" indemnity) and the indemnitee's partial negligence (which is "intermediate form" indemnity).

2. The general prohibition extends to obligations to defend claims (other than "joint defense agreements" entered into *after* a claim has been asserted). In other words, the contract cannot require an indemnitor to "defend" the indemnitee for claims based upon the indemnitee's negligence.

   The practical problem with this restriction on the defense obligation is that the decision to defend must be made before there is any finding of fault. Accordingly, this will mean that everyone will have to hire their own lawyers (which is often the case in the real world.... especially for larger claims).

3. Additional Insured endorsements to an indemnitor's liability insurance policy that purport to provide coverage to an indemnitee for its sole or partial negligence are also void and unenforceable. This means that the currently available Additional Insured endorsements that provide coverage for the indemnitee's partial negligence, so long as the claim arises from the indemnitor's work, will no longer be enforceable in Texas. It is very likely that ISO will prepare specific Additional Insured endorsement forms for Texas (but see # 4 below).

4. The restrictions on indemnification (both with regard to claims and defense of claims) and on Additional Insured endorsements do NOT apply to on-the-job employee bodily injury claims. Accordingly, an indemnitee

can still make the indemnitor defend and indemnify the indemnitee for its sole, as well as partial, negligence for a personal injury claim by an employee of the indemnitor (or its subcontractors). This means that the current broad or intermediate form Additional Insured endorsements will still be enforceable in Texas for on-the-job personal injury claims.

5. While HB 2093 does restrict Additional Insured endorsements, parties can still obtain insurance to cover these risks. A "consolidated insurance program" (such as an OCIP or CCIP) can provide coverage for all named insureds (which really serves the same purpose as an Additional Insured endorsement to one party's insurance policy).

   Additionally, Owners can purchase an Owners and Contractors Protective Liability policy. This policy is often furnished by the Contractor through its CGL insurer, but it is a separate policy protecting the Owner from bodily injury and property damage claims arising out of ongoing operations performed for the Owner by the Contractor on a construction project and for the Owner's acts or omissions in connection with the "general supervision" of those operations. While it does not provide "completed operations coverage", it does cover the Owner's risk from "vicarious" or "derivative" liability claims arising from the ongoing work of the project. OCP policies are currently affordable and commercially available.

Over the course of the next few weeks, quite a lot will be written about HB 2093 and how it will impact the construction industry and the risk profile for Owners, General Contractors and Subcontractors. HB 2093 takes a surprisingly simple approach to the very complex issue of indemnity. It will remain to be seen if the approach works well. For better or worse (and we all really hope *and believe* that it will be "for better"), it will become the law.

Effective 01/01/2012 for consolidated insurance programs for projects that begin on or after the effective date and for "original contracts" (and subcontracts thereunder) entered into on or after the effective date.

Certificates of Insurance:

SB 425 (Carona / Hancock) – *relating to property and casualty certificates of insurance and approval of property and casualty certificate of insurance forms by the Texas Department of Insurance; providing penalties.*

A new Chapter 1811 entitled "Certificates of Property and Casualty Insurance" will be added to the Texas Insurance Code which will require forms for Certificates of Insurance for property and casualty coverage to be approved by the Texas Department of Insurance ("TDI"). Standard ACCORD forms will be deemed approved by TDI.

The statute clearly points out that a Certificate of Insurance is not a policy of insurance

and does not alter, amend or extend coverage afforded by the referenced policy. It further provides that a property and casualty insurer or agent may not issue a Certificate of Insurance that purports to alter, amend, or extend the coverage or terms and conditions of the referenced insurance policy. It expressly provides that a Certificate of Insurance may not purport to give a person the right to notice of cancellation, nonrenewal, or material change with regard to the policy unless (a) that person is named in the policy or an endorsement to the policy and (b) the policy or endorsement requires such notice to be given to that person.

Third parties shall be prohibited from requiring insurers or agents to issue any document or correspondence that is inconsistent with statutory conditions and limitations with regard to Certificates of Insurance. Legislative intent (House floor debate) makes it clear that a party is not prohibited from requiring the insured to furnish copies of the actual policy of insurance and the endorsements.

Persons violating the statute are subject to a civil penalty of up to $1,000 for each violation.

The statute does not really answer the $64,000 question... "What good does it do someone who obtains a Certificate of Insurance?" If someone really needs to confirm the existence of coverage with the carrier and/or the scope of insurance coverage, one really needs to see the respective policy and endorsements.

Effective 01/01/2012 for certificates of insurance issued on or after effective date.

LIENS / BONDS

Attorney's Fees in Lien / Bond Claim Litigation:

SB 539 (Carona / Kleinschmidt) – *relating to the award of costs and attorney's fees in certain proceedings concerning mechanic's, contractor's, or materialmen's liens.*

Section 53.156 of the Texas Property Code is amended by changing "may" to "shall" with regard to the Court's award of costs and reasonable attorney's fees in a proceeding to foreclose a lien, enforce a payment bond claim, or declare a lien or claim to be invalid or unenforceable. Late in the legislative process, language was also added to provide that the court is not required to order a property owner on a residential construction contract to pay costs and attorney's fees.

The intent of the legislation is to prevent Courts from not awarding attorney's fees to one side or the other in a suit to enforce a lien or bond claim. Technically, this does not convert the attorney's fee provision in the mechanic's lien statutes to a "prevailing party" provision (because the Court must still determine an award for costs and fees that are "equitable and just"). Accordingly, while the statute does appear to require the Court to make an award for "costs and reasonable attorney's fees", it does not necessarily mandate how much will be awarded (could we start having some $1 awards?) or to whom they

will be awarded – except with regard to awards against property owners in an action relating to a residential construction contract.

The late added language regarding residential construction contracts is somewhat problematic. What does it mean when the statute requires the court to award attorney's fees in a proceeding but does not require an award against the owner? If the intent was to exclude residential projects from the mandatory language, why only have it apply to the property owner in those actions? Too much sausage making and not enough thought went into this one (of course, one can say that about most legislation).

Effective 09/01/2011 for actions commenced on or after effective date.

Contractual and Statutory Retainage:

HB 1390 (Deshotel / Estes) – *relating to retainage under certain construction contracts.*

Most practitioners would agree that the most complicated part of the Texas mechanic's lien laws has to do with the interplay between "statutory retainage" (which is somewhat unique to Texas law) and "contractual retainage" and the often misunderstood procedures for perfecting claims against those different types of retainage. For better or worse, HB 1390 makes significant changes in the statutory requirements for perfecting claims against both "statutory retainage" and "contractual retainage".

Currently, the deadline for a derivative claimant (a claimant other than an original contractor) to give a notice of contractual retainage is the 15th day of the second month following the first delivery of materials or performance of work after the claimant has agreed to the contractual retainage. Because of the early notice requirement, many subcontractors and suppliers fail to timely perfect lien claims for the contractual retainage withheld from their monthly progress payments. By the time many claimants realize that there might be a problem with the payment of their contractual retainage, it is often too late to perfect a claim for most of that retainage.

Even if a notice is properly and timely sent under the current statute, claimants often lose their lien rights because they wait to file their lien affidavit within the extended time period permitted under Section 53.052 of the Texas Property Code (15th day of the 4th month after the claimant's indebtedness accrues). Because a notice of contractual retainage typically does not include "fund-trapping" language, the lien affidavit often perfects a claim limited to the "statutory retainage" the owner was required to withhold. If the owner has properly withheld statutory retainage for at least 30 days after final completion and has closed out the project before the claimant files its lien affidavit, the claimant may end up with a "timely" but a worthless lien claim.

HB 1390 attempts to address both of these major problems for claimants. With regard to the notice of contractual retainage, HB 1390 extends the preliminary notice deadline by moving it to the 30th day after the claimant's work is completed, terminated or abandoned or the original contract is terminated or abandoned (whichever occurs first). Under current law, many claimants were required to send the notice before any significant work

was done under their subcontract. Now, they can wait until their subcontract is complete (or the original contract has been terminated or abandoned) before sending the notice.

Because the preliminary notice will still not be a "fund-trapping" letter (arguably, a claimant could include "fund-trapping" language but most claimants will elect not to do so because of the problems it causes for owners and contractors in managing progress payments), claimants still have the problem of meeting the early deadline for filing a lien affidavit before the owner has paid out the statutory retainage (*i.e.*, 30 days after completion of the original contract).

HB 1390 addresses this problem by creating an exception to the early lien filing requirement for statutory retainage. If a claimant has properly and timely sent its notice of contractual retainage, the claimant does NOT have to file its lien affidavit to meet the early statutory retainage deadline. It can wait until the end of the extended period set out in Section 53.052. HOWEVER, that period can be cut short as follows:

1. If an owner files an affidavit of completion and the owner sent a copy of the affidavit to the claimant within the time and in the manner required under Sec. 53.106, the claimant must file its lien affidavit within 40 days after the date of completion stated in the affidavit;

2. If an owner sends a notice relating to termination or abandonment of the original contract to the claimant within the time and in the manner required under Sec. 53.107, the claimant must file its lien affidavit within 40 days after the date of termination or abandonment stated in the notice; or

3. If an owner sends a written notice of demand for the claimant to file its lien affidavit within the time and in the manner required under the newly added Sec. 53.057(g), the claimant must file its lien affidavit within 30 days after the owner sent the notice to the claimant.

To be sure, this all seems very complicated. However, HB 1390 addresses very complicated issues and is based upon an underlying logic that does make some sense. An owner can still have the benefit of an early close-out of the project by complying with the statutory retainage requirements. The close-out period does get extended by 10 days in most situations (as a practical matter it now becomes 40 days instead of 30 days after final completion). HB 1390 also extends the period an owner can safely pay out statutory retainage with regard to those subcontractors who send timely notices of contractual retainage (those claimants could have a lien on the statutory retainage by waiting the full period for filing their lien affidavit -- which could be several months after completion); however, it gives the owner the ability to send a written demand to a claimant who has sent notice to require the claimant to file the lien affidavit early or lose its claim. This gives the owner a tool for getting all claims on record so they can be paid or bonded around within 40 days after the completion of the project. If the owner complies with the statute, it still gets almost the same protection for early close-out of the project as exists under current law.

HB 1390 also addresses a current ambiguity raised in *Page v. Structural Wood Components, Inc.*, 102 S.W.3d 720, 723 (Tex. 2003) where the Court arguably ignored *General Air Conditioning Co. v. Third Ward Church of Christ*, 426 S.W.2d 541 (Tex. 1968) by holding that a claimant who failed to file its lien affidavit within 30 days after completion lost its claim on statutory retainage even though it was not clear that the owner fully complied with the statutory retainage requirements. The *Page* Court based its holding on the fact that the claimant did not file its lien affidavit within the 30 day window. HB 1390 amends Section 53.105 to make it clear that a claimant does have a lien on statutory retainage if the owner does not comply with the statutory retainage requirements and the claimant complies with the lien perfection requirements in Subchapter C (*i.e.*, filing the affidavit within the extended lien filing deadlines).

This one is good news for attorneys.

Effective 09/01/2011 for claims arising under original contracts (and subcontracts thereunder) entered into on or after effective date.

Statutory Waiver/Releases of Liens and Bond Claims:

HB 1456 (Orr / Deuell) – relating to the waiver and release of a mechanic's, contractor's, or materialman's lien or payment bond claim and to the creation of a mechanic's, contractor's, or materialman's lien for certain landscaping.

A new Subchapter L entitled "Waiver and Release of Lien or Payment Bond Claim" is added to Chapter 53 of the Texas Property Code which provides for statutory forms for waiver and release of mechanic's liens and payment bond claims, both conditional (upon receipt of payment) and unconditional (full and final). In order for a waiver and release to be effective, the form of lien waiver and release must be in substantial compliance with the statutory forms.

Four statutory forms have been created: (a) Conditional Waiver and Release on Progress Payment; (b) Unconditional Waiver and Release on Progress Payment; (c) Conditional Waiver and Release on Final Payment; and (d) Unconditional Waiver and Release on Final Payment. Copies of these forms (set out *verbatim* from HB 1456) are attached hereto in the Appendix. The difference between "conditional" and "unconditional" is that a "conditional" waiver and release may be given prior to actual receipt of payment (i.e., it is conditioned upon a payment to be made).

When using a "conditional" waiver and release, the form must specifically reference the specific payment to be made. It cannot be used to require a claimant to provide a blanket waiver of its lien rights prior to a specific, promised payment. The statute expressly prohibits contractual waivers of lien rights except for contracts for labor or for labor and materials (but not materials-only contracts) for construction or "land development" of residential (single-family, townhouse or duplex) projects.

Although the forms include language in which the party signing the waiver and release "warrants" that it has already paid or will use the funds to pay in full all bills incurred for

work covered by the payment, a lien waiver/release on the statutory form would not constitute a true "bills paid affidavit" under Section 53.085 of the Texas Property Code. Accordingly, there is some question whether true "bills paid" language (and a jurat) could be inserted in the statutory forms or whether separate affidavits must be used. Additionally, many current waiver and release forms for progress payments require an unconditional waiver and release for prior progress payments and a conditional waiver and release for the requested progress payment. Again, it is unclear whether that language can be combined into a single form or whether separate waivers/releases have to be furnished. Arguably, owners may end up requiring 3 separate forms to be provided by a contractor in connection with a progress payment (a bills paid affidavit, a conditional waiver for the requested payment, and an unconditional waiver covering the prior payments).

What if a claimant furnishes a waiver/release and still files a lien affidavit? For most claimants, they could be subject to the fraudulent lien statute (Section 12.002 of the Texas Civil Practices and Remedies Code). However, where there has been an enforceable contractual blanket waiver (see discussion above), the claimant will NOT be subject to the fraudulent lien statute unless the claimant fails to release its lien within 14 days after written notice from the owner or original contractor setting out the basis for nonpayment, evidence of the contractual waiver, and demand for release.

Interestingly, the statute expressly exempts releases furnished *after* a lien affidavit has been filed or a bond claim has been made. In other words, a party seeking a release of a perfected lien or bond claim will not have to use the statutory forms.

A last minute amendment was added in the Senate which was totally unrelated to waivers and releases. It amends Section 53.021(d) of the Texas Property Code with regard to the lien rights of persons providing landscaping services. Currently, in order to have a statutory lien, the claimant must have had a written contract with the owner or its agent. This effectively precludes subcontractors from being able to perfect mechanic's liens for those services. HB 1456 amends that language so that the written contract can be with a contractor or subcontractor. In other words, subcontractors furnishing landscaping services will be able to perfect statutory mechanic's liens.

Effective 01/01/2012 for contracts entered into / executed on or after effective date.

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So, what's next? Will there be an Interim Study on Mechanic's Liens? Here are a few issues that may be discussed in an Interim Study.... and may find their way into legislation in 2013.

1. **Lien on Removables.** Lenders and Title Companies filed unsuccessful legislation in 2011 (HB 1860) to limit even further the right of lien claimants to assert a lien claim on "removables" after the foreclosure of the defaulted construction loan. This was primarily a fight between lenders and subcontractors (because generals typically "subordinate" their lien rights to the lender). However, the issue does illustrate just how few rights contractors and subcontractors have in Texas when the construction loan goes into default and the lender seeks foreclosure.

2. **Construction Trust Funds / Rights to Retainage.** A major bill (HB 1428) that did not pass was the proposed change to the "Construction Trust Fund Act" (Chapter 162, Texas Property Code) that would have required all retainage withheld by the Owner from the General Contractor to be deposited and held in a trust account to the extent the funding came from loan proceeds. In other words, when the Owner received a construction draw from the lender, the Owner would have to deposit the "retainage" portion of the draw into a trust account. The Contractor and perfected lien claimants would have a priority (even over the lender) to those trust funds. This would have corrected the situation where a lender takes over a project from a defaulted borrower/owner and forecloses on the project, wiping out the Contractor's lien rights. Currently, the lender has no obligation to turn over the retainage to the Contractor. In other words, even though the retainage really belongs to the Contractor, the lender has no obligation to fund the retainage and, as a practical matter, gets the benefit of those funds (and the value of the work performed by the Contractor). Had HB 1428 passed, the Contractor would have, at least, been able to recover the retainage.

   HB 1428 was not publicly opposed by lenders; however, it was opposed by owners and developers who complained that they would have to borrow the full amount of each loan draw and pay interest on the retainage. They completely ignored the small point that it really is not their money -- so why shouldn't they have to do that?

   This is an issue that needs to be addressed in 2013, possibly as part of a larger look at the rights of Contractors and claimants relative to the rights of construction lenders and purchasers at foreclosure.

3. **Retainage.** Notwithstanding the major changes to contractual and statutory retainage in HB 1390, the subcontracting segment of the construction industry still has problems with retainage at the subcontractor level. There is a belief among many subcontractors that, if statutory retainage were eliminated altogether, subcontractor retainage would be eliminated or reduced as well. Accordingly, there could be legislation proposed in 2013 to eliminate statutory retainage altogether. This will, of course, pit subcontractors against suppliers (who are the primary beneficiary of statutory retainage).

   For General Contractors, if you look at the issue in a vacuum, the elimination of statutory retainage would probably be a welcome change to the lien laws. However, subcontractors will also be pushing for a mandatory restriction on the amount of retainage that can be withheld by Owners and General Contractors on both public and private works projects. In other words, they will not stop at simply eliminating "statutory retainage" but will also seek to eliminate or restrict contractual retainage. This could have significant adverse consequences for General Contractors.

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APPENDIX:

STATUTORY LIEN WAIVER FORMS

1. **CONDITIONAL WAIVER FOR PROGRESS PAYMENTS**
2. **UNCONDITIONAL WAIVER FOR PROGRESS PAYMENTS**
3. **CONDITIONAL WAIVER FOR FINAL PAYMENT**
4. **UNCONDITIONAL WAIVER FOR FINAL PAYMENT**

[Note: the attached forms are duplicated *verbatim* (without editing) from HB 1456.]

FORM 1: CONDITIONAL WAIVER FOR PROGRESS PAYMENTS

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CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of $_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the

recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

_____ (Company name)

By _____ (Signature)

_____ (Title)

FORM 2: UNCONDITIONAL WAIVER FOR PROGRESS PAYMENTS

*** * * * * * ***

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

The signer of this document has been paid and has received a progress payment in the sum of $_____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute

related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

_____ (Company name)

By _____ (Signature)

_____ (Title)

FORM 3: CONDITIONAL WAIVER FOR FINAL PAYMENT

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CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of $_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds

received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____

_____ (Company name)

By _____ (Signature)

_____ (Title)

FORM 4: UNCONDITIONAL WAIVER FOR FINAL PAYMENT

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NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds

received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____

_____ (Company name)

By _____ (Signature)

_____ (Title)