

Summary of Legislation Affecting the Texas Construction Industry Passed by the 82nd Texas Legislature

HUB INTERNATIONAL RIGG
INSURANCE and BONDS

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Introduction

From time to time, the Texas Legislature enacts changes to the statutes which affect the construction industry. The 2011 changes, however, will have a significant impact on the Texas construction industry and owners, contractors and subcontractors will want to make several changes to their contracts and other commonly used project documents. Some of the changes will impact lenders, sureties, and design professionals as well. The following pages are a summary of the most important changes.

You are advised to review the new legislation with your counsel and to determine the changes you may need to make to your contracts and project documents.

More than 5700 bills were introduced into the regular session of the 82nd Legislature. Of those, 1379 passed. Of the 13 bills discussed below which affect the construction industry, 8 of them take effect on September 1, 2011. The remainder will take effect January 1, 2012. You can obtain the full text of any of these bills from Texas Legislature Online at www.capitol.state.tx.us or from our office.

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	BILL NO.	TITLE	EFFECTIVE DATE
1.	House Bill 2093	The Anti-Indemnity Bill	January 1, 2012
2.	House Bill 1390	Retainage Notices	September 1, 2011
3.	House Bill 1456	Waiver and Release of Mechanic's Liens and Payment Bonds	January 1, 2012
4.	Senate Bill 1048	Public/Private Partnerships (P3s)	September 1, 2011
5.	House Bill 628	Alternative Delivery Systems in Public Procurement	September 1, 2011
6.	House Bill 345	Prompt Pay Act Interest	September 1, 2011
7.	House Bill 679	Change Order Approval for Certain Political Subdivisions	September 1, 2011
8.	House Bill 1711	Disaster Remediation Contracts	September 1, 2011
9.	Senate Bill 539	Attorneys Fees Pertaining to Liens and Bonds	September 1, 2011
10.	House bill 2284	Professional Design Services	September 1, 2011
11.	House Bill 398	Criminal History Background Checks	Immediately
12.	House Bill 1951	Relating to Surety Bonds	January 1, 2012
13.	Senate Bill 425	Property and Casualty Certificates of Insurance	January 1, 2012

“THE ANTI-INDEMNITY BILL”

HOUSE BILL 2093: Prohibitions on Broad Form Indemnity and Defense/Consolidated Insurance Programs

Anti-Indemnity

In the past, the construction industry in Texas has commonly seen contract provisions that require a general contractor to indemnify the owner for the owner’s negligence (and similarly, provisions that require a subcontractor to indemnify the general contractor for the general contractor’s negligence).

House Bill 2093 prohibits a person (the “Indemnitor”) from indemnifying another person (the “Indemnitee”) from claims or damages which are caused by the Indemnitee’s negligence. Indemnity clauses which violate this prohibition are unenforceable and void. This prohibition will apply to claims arising from the Indemnitee’s sole negligence (which are commonly called broad form indemnities) as well as the Indemnitee’s partial negligence (which are commonly called intermediate form indemnities).

The prohibition against these indemnities extends to the obligation to defend another from claims. Hence, a contract cannot require an Indemnitor to defend the Indemnitee for claims based on the Indemnitee’s negligence.

The bill applies to “construction contracts” and agreements “collateral to or affecting a construction contract” and will pertain to obligations entered into by owners, architects, engineers, contractors, construction managers, subcontractors, suppliers and equipment and material lessors.

The bill does not affect a cause of action for breach of contract or warranty that exists independently of an indemnity obligation.

Additional Insured Endorsements

A requirement that an Indemnitor has to provide insurance coverage to an Indemnitee for the Indemnitee's sole or partial negligence through an additional insured endorsement will also be void and unenforceable. The current additional insured endorsement forms, which provide coverage for an Indemnitee's partial negligence, will not be enforceable to the extent they provide broader coverage than allowed by the bill.

Bodily Injury/Death Exception

The new restrictions do not apply to a provision in a construction contract that requires a person to indemnify another party for the bodily injury or death of an employee of the Indemnitor, its agent or its subcontractors of any tier. So, a general contractor can still make a subcontractor indemnify and defend the general contractor for the general contractor's sole, as well as joint or concurrent negligence, for a personal injury claim by an employee of the subcontractor or its sub subs. Therefore, the broad form and intermediate form additional insured endorsements currently used will still be proper for personal injury claims.

Joint Defense Exception

Another exception to the new rule on indemnities covers situations where the parties have entered into a joint defense agreement after a claim has been asserted.

OCIPS / CCIPS

The bill still allows parties to obtain insurance through an OCIP or CCIP to cover all named insureds. In effect, this type of policy serves the same purpose as the additional insured endorsement.

Does Not Apply to Municipal Projects or Residential Projects

The anti-indemnity bill does not apply to broad form and intermediate form indemnities in contracts for: 1) municipal public works projects and 2) residential construction (single-family house, townhouse, duplex or “land development directly related thereto”).

Completed Operations for 3 Years Required

The bill also requires all OCIPs and CCIPs that provide CGL coverage to provide completed operations coverage for no less than three years.

Effective Date

The bill is effective January 1, 2012 for “original contracts” entered into on or after January 1, 2012, (and all of the subcontracts that follow), and for consolidated insurance programs for projects that begin on or after January 1, 2012.

HOUSE BILL 1390: RETAINAGE LIENS

House Bill 1390 makes major changes in the statutory requirements for perfecting claims against statutory retainage and contractual retainage on private projects.

The History of the Issue

In the past, the deadline for a claimant other than a general contractor (also called a derivative claimant, meaning a subcontractor or first tier supplier) to give notice of contractual retainage is the 15th day of the second month after the first delivery of materials or performance of work after the claimant agreed to the contractual retainage. This is known as the early notice requirement and is not used very often. Many subcontractors and suppliers do not perfect their lien claims for contractual retainage because they either do not know about the early notice requirement or choose not to use it because it may be politically difficult to send the notice so early in the job. Once the subcontractor realizes there may be a problem with getting paid, the early notice deadline has long passed.

Under Section 53.052 of the Texas Property Code, claimants have to file a lien affidavit by the 15th day of the fourth month after the claimants' indebtedness accrues. Typically, claimants wait until the end of that period. The notice of contractual retainage normally does not include fund-trapping language and the lien affidavit which is filed by the claimant perfects a claim limited to the statutory 10% retainage, which the Owner was required to withhold. However, if the Owner withholds that retainage for 30 days after final completion, he can then close out the project and distribute all funds to the general contractor before lower tier claimants file their liens affidavits and perfect their claims. That problem has created difficulties for these players in the industry for many years.

The New Bill

House Bill 1390 attempts to deal with this scenario. With regard to the notice of contractual retainage, the new bill extends the preliminary notice deadline by moving it to the end of the work and makes it due on or before 30 days after the claimants' work is completed, terminated, or abandoned or the original prime contract is terminated or abandoned, whichever occurs first. Claimants can now wait until their subcontract work is complete before sending their notice of contractual retainage. Since the wording of the early notice does not include fund-trapping language, Claimants still have to meet the early deadline for filing a lien affidavit before the Owner has dispersed all of the statutory retainage funds (which can occur 30 days after completion of the original contract). The new bill creates an exception to the early lien filing requirement for statutory retainage. If a claimant timely sends its notice of contractual retainage, the claimant does not have to file its lien affidavit to meet the early statutory retainage deadline. It can file the affidavit by the 15th day of the 4th month as set out in Section 53.052. However, the bill provides three ways in which that period can be shortened.

1. First, if an Owner files an affidavit of completion and sends a copy to the claimant within the time and manner required by Section 53.106, the claimant must file its lien affidavit within 40 days after the date of completion stated in the affidavit;
2. Second, if an Owner sends a notice of termination or abandonment of the original contract to the claimant within the time and manner required under Section 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. Third, if an Owner sends a written notice of demand for the claimant to file its lien affidavit within the time and manner required under new Section 53.057(g),

the claimant must file its lien affidavit within 30 days after the Owner sent notice to the claimant.

Under the new statutory scheme, the Owner can still close out the project early. The close out period does get extended by ten days in some situations with regard to subcontractor retainage claims, the Owner can be exposed to perfected lien claims for a longer period of time but the bill gives the Owner the ability to send a written demand to the claimant and gives the Owner a method of getting all claims on record so that they can be paid out or bonded around within 40 days after completion of the project. The new statute does make the process more complex, but it also provides clarity and more certainty to claimants.

The new bill also amends Section 53.105 to state that a claimant can have a lien on statutory retainage even if the Owner does not comply with the statutory retainage requirements and if the claimant complies with its lien perfection requirements.

Effective Date

The effective date will be September 1, 2011, for claims which arise under original contracts (and the subcontracts thereunder) entered into on or after the effective date.

HOUSE BILL 1456: WAIVER AND RELEASE OF MECHANIC'S LIENS AND PAYMENT BONDS

House Bill 1456 creates a new set of statutory lien waiver forms that are required to be used on private projects. There are four new forms:

- a. Conditional Waiver and Release on Progress Payment
- b. Unconditional Waiver and Release on Progress Payment
- c. Conditional Waiver and Release on Final Payment
- d. Unconditional Waiver and Release on Final Payment

The language for the four forms is set-out verbatim in House Bill 1456 and copies of these forms are attached to this summary. The conditional waiver and release is to be used prior to actual receipt of payment and it is conditioned upon a payment that is to be made in the future. The conditional waiver form specifically references the specific payment to be made. It cannot require a claimant to provide a blanket waiver of its liens rights before a specific promised payment is made. The statute prohibits blanket contractual waivers of lien rights, except for contracts or subcontracts for labor or for labor and materials for construction or "land development" of residential projects, (i.e., single-family house, townhouse or duplex projects). The statute also prohibits blanket contractual waivers for contracts or subcontracts for residential projects that are "materials only" contracts.

Many currently used lien waiver forms contain an "all bills paid" affidavit as part of the lien waiver form. It does not appear that these forms can be modified to add the "all bills paid" affidavit language. Also, some lien waiver forms currently require an unconditional waiver for prior progress payments and a conditional waiver for the specifically requested progress payment at issue. It does not appear that the forms can be modified to accommodate that type of language. It may require Owners and contractors to use three separate forms in connection with each progress payment, (1) a bills paid affidavit, (2) a conditional waiver for the specific progress payment, and (3) an unconditional waiver for all prior payments.

The new bill also states that a party seeking a release of a perfected lien or bond claim will not have to use the statutory forms.

Landscaping Companies

In the past, landscaping companies could not have lien rights unless they had a written contract with the Owner or the Owner's agent. The new bill does away with the language that requires the written contract with the Owner. The new language says that the written contract can be with a contractor or subcontractor, thus allowing subcontractors who furnish landscaping services to now perfect statutory mechanic's liens.

SB 1048: PUBLIC/PRIVATE PARTNERSHIPS (P3s)

A public/private partnership (or a P3) generally refers to the development of projects involving governmental entities that own real property in partnership with private developers who bring funding to the project. P3s have been used for everything from convention facilities to hospitals, airports, sports venues, port facilities and governmental offices. While P3 projects have been used in Texas for some time, they have been implemented on an informal basis and with no real policy or procedure to govern them.

The new bill, which is modeled after the P3 law of Virginia, establishes a process for private entities and governmental entities to contract with each other to construct these various facilities. State highways are specifically excluded from the statute. The statute provides a procedure for the public and private entities that wish to consider entering into such a partnership. A governmental entity can adopt guidelines including the criteria for selecting the contractor. The bill deals with a host of other issues. The contractor has the ability to develop the project, assess user fees (such as tolls approved by the governmental entity) and collect payments. The statute requires that the P3 agreement address certain items including plan review, lease payments, termination, insurance, inspection, and general business terms. The bill requires bonding of the project and compliance with the Professional Services Procurement Act.

The procedures put in place by the bill are not exclusive and do allow for other procedures allowed by other statutes. The bill has a list of specific considerations for state entities that are not required for local governmental entities.

Effective Date

The legislation goes into effect September 1, 2011. The bill also establishes a Partnership Advisory Commission to review proposals for state government projects.

***HOUSE BILL 628: ALTERNATIVE DELIVERY SYSTEMS IN
PUBLIC PROCUREMENT***

This bill takes the various statutes regarding alternative delivery methods, such as the design/build method, construction manager at risk, competitive bid, competitive sealed proposals, construction manager agent, and job order contracting, which are found in the Education Code, the Local Government Code, and the Government Code, and consolidates all of the provisions into a new chapter 2267 in the Government Code.

The bill applies to state and local governmental entities uniformly. It applies to public junior colleges, but not to institutions of higher education. It specifically exempts TxDOT, regional toll road authorities, regional mobility authorities and local government corporations which are exempt from competitive bidding requirements under Chapter 431 of the Transportation Code. The bill also prohibits reverse auctions in construction procurement where a payment or performance bond is required.

The bill sets out the criteria for “best value” bidding and requires Owners to state the criteria and weighting of the criteria in the RFP.

The bill also provides for certain reforms relating to school construction defect cases. The bill requires notice to the Commissioner of Education, an opportunity for the Commissioner to join in the lawsuit and requires that recoveries on projects which receive state funding must be used for repair of the project. The bill attempts to remove any incentive to file frivolous lawsuits by requiring that all amounts recovered, but not used for repairs, must be returned to the State.

Effective Date

The bill is effective September 1, 2011 and will apply to construction projects for which a governmental entity first advertises or requests bids on or after that date.

HOUSE BILL 345: “PROMPT PAY ACT INTEREST”

A number of lawsuits have been filed in recent years by contractors suing various governmental entities for breach of contract. These suits have included claims for prompt pay act interest against the governmental entity. Many of these claims have been denied by various trial and appellate courts. This new statute will put that issue to rest. This bill amends Section 271.153 of the Local Government Code to permit the recovery of interest if payment is overdue under the prompt pay act statute, Chapter 2251 of the Texas Government Code.

Effective Date

This bill is made effective for all adjudications commenced after September 1, 2011.

***HOUSE BILL 679: CHANGE ORDER APPROVAL FOR
CERTAIN POLITICAL SUBDIVISIONS***

This bill changes the Local Government Code to authorize those persons responsible for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less. It raises the change order threshold to \$50,000 for certain local governmental entities, including water districts, and allows the governmental entity to delegate the change order approval to a designated employee.

Effective Date

This act takes effect September 1, 2011.

HOUSE BILL 1711: DISASTER REMEDIATION CONTRACTS

The bill regulates contracts for the removal, cleaning, sanitizing, demolition, and reconstruction or other treatment of improvements to real property caused by a natural disaster. The contracts are required to be in writing and may not require any payment before commencement of work. Payments must be reasonable and “proportionate to the work performed” and a disclosure must be included in the contract.

The bill creates a new Chapter 57 to the Texas Business and Commerce Code. The contracts may not require any full or partial payment before commencement of the work. Contracts subject to the new bill must include specific statutory language. Failure to comply with the new code section will constitute a deceptive trade practice under Chapter 17 of the Texas Business and Commerce Code.

The bill does not apply to contracts with contractors licensed by TCEQ with regard to solid waste treatment and disposal or to contractors who have maintained a physical address in the county or an adjacent county in which the property is located. So in effect, local contractors do not have to comply with the new requirements. The contractor must maintain a physical business address in the county for at least one year preceding the date of the contract. The bill provides that a person may not waive this chapter by contract or other means.

Effective Date

The act takes effect September 1, 2011.

SENATE BILL 539: ATTORNEYS FEES PERTAINING TO LIENS AND BONDS

Currently, Section 53.156 of the Texas Property Code states that a court “may” award costs and reasonable attorneys’ fees in suits to foreclose a lien, enforce a payment bond claim or declare a lien claim to be invalid and unenforceable. The court may award costs and reasonable attorneys’ fees as are “equitable and just.”

The new bill changes the “may” to “shall.” The bill was intended to prevent courts from not awarding attorneys’ fees to one side or the other in a suit to enforce a lien or bond claim. The bill also adds language to provide that the court is not required to order a property owner on a residential construction contract to pay costs and attorneys’ fees. This new provision is confusing. If the intent was to exclude residential projects from the mandatory language, the legislature could have done so more clearly. The new language says the court is not required to order an Owner to pay fees and costs, but it does not address the contractor in the residential scenario.

Effective Date

This bill goes into effect on September 1, 2011, for suits commenced on or after the effective date

HOUSE BILL 2284: PROFESSIONAL DESIGN SERVICES

Historically, engineers and architects have disagreed over what constitutes the practice of “architecture” and “engineering.” A number of cases have involved engineers who prepare complete sets of building plans for projects without the involvement of a licensed architect. The bill defines which building design services fall exclusively within one realm or the other, and which services can be performed by both engineers and architects. It also provides that an engineer who is not also a licensed architect cannot provide or prepare a complete comprehensive set of building plans designed for human use or occupancy unless the “architectural plans and specifications” have been prepared under the supervision of an architect or under the supervision of an engineer who received administrative approval by the Texas Board Architectural Examiners to practice architecture under the new bill. Under the new bill (see new section 1051.607 of the occupations code), the new section authorizes the architectural examiners to create a list of engineers licensed before January 1, 2011, who can demonstrate they prepared architectural plans and specifications for three or more projects built before January 1, 2011 that were adequate and safe. That group of engineers will be authorized to engage in the practice of architecture based on their engineering license subject to certain restrictions. The bill grandfathers certain experienced engineers licensed before January 1, 2011, but makes it more difficult for those who are not grandfathered in.

Effective Date

This law is effective September 1, 2011.

HOUSE BILL 398: CRIMINAL HISTORY BACKGROUND CHECKS

In 2007, the legislature passed legislation requiring background checks for teachers, administrators, and other school employees, and employees of businesses that contract with school districts. While unintended, the bill required that subcontractors were not required to check the background of their own employees, but general contractors were responsible for checking the background of both their own employees and their subcontractors' employees. An amendment was passed in 2009 to correct the problem, but the correction was drafted and implemented in error. The new bill corrects the drafting error and now requires that subcontractors and contractors submit to the same background check as other similarly situated non-teacher employees, rather than the background check required for teachers.

HOUSE BILL 1951: RELATING TO SURETY BONDS

This bill amends Section 3505.005 of the Texas Insurance Code. Under Chapter 2253 of the Government Code, if the bond exceeds \$100,000, the surety must be U.S. Department of Treasury listed or the surety must have obtained reinsurance for the liability in excess of \$100,000. The new bill changes the reinsurance threshold from \$100,000 to \$1,000,000. If the amount of the bond exceeds \$100,000, the surety does not have to be Treasury listed, as long as it obtains reinsurance for the amount over \$1,000,000.

The bill also modifies the requirement for reinsurers. A reinsurer does not have to be treasury listed and authorized to write insurance in Texas. The reinsurer on the liability and excess of \$1,000,000 has to be either an authorized reinsurer in Texas or be treasury listed. For bonds under \$1,000,000, it appears the bill does not require the surety or the reinsurer to be Treasury listed. This may put public and private Owners and claimants at more risk on smaller projects.

Effective Date

The effective date of this bill is September 1, 2011, but the bill only applies to insurance policies, contracts, or coverages delivered or issued after January 1, 2012.

SENATE BILL 425: PROPERTY AND CASUALTY CERTIFICATES OF INSURANCE

The new bill will require forms for certificates of insurance for property and casualty coverage to be approved by the Texas Department of Insurance. The standard ACCORD forms are approved under the statute. The statute states that a certificate of insurance is not a policy of insurance and does not alter, amend, or extend coverage. The statute provides that: (a) a certificate of insurance may not purport to give a person the right to notice of cancellation, non-renewal, or a change in the policy unless that person is named in the policy or an endorsement to it, and (b) the policy or endorsement requires notice to be given to that person. The provision also allows the insured to furnish copies of the actual policy and the endorsement to others.

The statute does not really change the dilemma that contractors routinely face on a construction project. When a subcontractor gives a general contractor a certificate of insurance, what does that really give the general contractor? If the contractor needs to be certain of the subcontractor's coverage, the general contractor should obtain the policy itself and any endorsements, since the general contractor cannot rely upon the certificate of insurance to represent the coverage obtained by the subcontractor.

Effective Date

The bill goes into effect on January 1, 2012, for certificates of insurance issued on or after that date.

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 I: CONDITIONAL WAIVER FOR PROGRESS PAYMENTS

* * * * *

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

* * * * *

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

* * * * *

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)