

Addendum to Agreement between Contractor and Tower Water

THIS ADDENDUM TO AGREEMENT (the "Addendum") is entered into by and between the Contractor and TOWER CLEANING PLUS INC., d/b/a TOWER WATER ("Subcontractor").

WHEREAS, on this same date, Contractor and Subcontractor executed an agreement to which this Addendum is annexed (the "Agreement") relating to, among other things, certain obligations of the Subcontractor as to insurance and indemnity obligations under any contracts, purchase orders and/or orders to proceed (collectively the "Contracts") subsequently entered into between Contractor and Subcontractor; and

WHEREAS, the parties wish to modify the Agreement, as provided in this Addendum.

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

1. Notwithstanding any terms contained in the Agreement or any Contracts to the contrary, the parties agree as follows:

a. Subcontractor's indemnification obligation under the Agreement and/or any Contract issued pursuant thereto shall be limited to indemnifying Contractor from and against third party claims arising from, and only to the extent of, the negligent acts or omissions of Subcontractor and/or its subcontractors. In no event shall Subcontractor be liable for, nor have any indemnity obligation, for claims arising from Contractor's, the project owner's, other contractors' and/or other subcontractors' acts or omissions. For claims for which Subcontractor has an obligation to indemnify Contractor, Contractor shall tender the defense of the subject claim to Subcontractor. If Contractor wishes to participate in the subject action with its own counsel, it may do so at its sole expense.

**b. IN NO EVENT SHALL SUBCONTRACTOR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE OR LOST PROFITS, REGARDLESS OF THE BASIS FOR THE UNDERLYING CLAIM, AND REGARDLESS OF WHETHER THE LOSS COULD HAVE BEEN FORESEEN OR WHETHER SUBCONTRACTOR WAS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.**

**c. In no event shall Subcontractor's liability under the Agreement or any Contract exceed the amount paid to Subcontractor under the Agreement or the subject Contract.**

2. Unless expressly agreed in the Agreement or the subject Contract, Subcontractor's payment terms are net thirty (30) days of date of invoice. If Subcontractor's invoice is not paid when due, then upon five (5) days' prior written notice, Subcontractor shall have the right to suspend performance under the Agreement or the subject Contract until Subcontractor's receipt of payment in full.

3. Any pre-printed terms appearing on (or on the reverse of) any Contract issued to Subcontractor that purports to supplement or modify the terms otherwise agreed to by Contractor and Subcontractor shall be of no force and effect unless expressly agreed to and accepted by Subcontractor.

4. Subcontractor shall not be bound by any terms of any agreement between Contractor and any project owner (the "Owner Agreement") unless Subcontractor has first received a copy of the Owner Agreement and has accepted the related Contract as being subject to said Owner Agreement.

5. Except as amended hereby, the Agreement, and any Contract issued pursuant thereto, shall be binding upon the parties hereto, their successors and assigns.