

Texas Lien & Bond Law Booklet

Presented by:

**Jason C. Spencer
Telephone: (512) 900-3032
Facsimile: (512) 900-3082
jspencer@andrewsmyers.com
www.andrewsmyers.com**

AUTHOR BIO

Jason C. Spencer is a shareholder in the Austin office of the construction law firm of Andrews Myers (www.andrewsmyers.com; Austin, Houston). Since 1994 he has practiced in the area of construction law with a focus on construction litigation. Before forming another construction specialty firm with his partners (2004) he served as special counsel on Legislative Affairs to Governor George W. Bush, built his own construction law practice as a solo practitioner and worked at a large Austin law firm. His practice focuses on the litigation of construction disputes involving construction defects, contract disputes, mechanics liens and bond claims. He often litigates and arbitrates complex construction disputes before judges, arbitrators and juries to final judgment. He also serves as mediator to assist parties in resolving their construction disputes before trial.

Jason is a member of the State Bar of Texas, the American Bar Association, the State Bar of Texas Construction Law Section (Council Member 2012-2014), the Austin Bar Construction Law Section and the College of the State Bar. He is a member of the Construction Forum of the American Bar Association and has served as Chair, Vice Chair and Treasurer of the Austin Bar Construction Law Section. He is Chairman of the Associated General Contractors legal Affairs Committee and has served as a Board member of the Austin Bar Association. Jason is also certified by the U. S. Green Building Council as a LEED® (Leadership in Energy and Environmental Design) Green Associate. He currently serves as Chairman of the State Bar of Texas Construction Law Section's Texas Board of Legal Specialization Committee. Jason has published articles and presented seminar papers and continuing legal education seminars on a variety of construction law subjects.

Jason received his Doctor of Jurisprudence from St. Mary's Law School (1993) and his undergraduate degree from the University of Texas at Austin (1990) where he majored in political science with a minor in history. He also studied under United States Supreme Court Justice A. Scalia at the University of Innsbruck's Institute on World Legal Problems in Innsbruck, Austria (1992).

He may be contacted at (512) 900-3032 or jspencer@andrewsmyers.com.

PREFACE

We have prepared this booklet of information as an educational tool to help explain the otherwise complex nature of Texas law governing lien and payment bond claims. We have attempted to distill this information into a practical, straightforward form that will prove useful in the business endeavors of construction industry members.

Before proceeding, it is important to note two things. First, this information is not a substitute for legal advice. Every project is unique, and an attorney should be consulted to ensure that appropriate steps are taken to protect payment rights. Second, the Texas Legislature meets every other year to review and revise the statutes that govern lien and bond claims. While the information is current as of the date of this presentation, an attorney should be consulted to make sure that the information in this booklet has not changed.

We welcome the opportunity to be of service and want to hear any thoughts you may offer on improving these materials.

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INTRODUCTION

This booklet is divided into three parts. Part One addresses Texas lien law with respect to private, non-residential projects. Non-residential lien claims are governed by Chapter 53 of the Texas Property Code. Part Two addresses payment bond claims on public works projects, which are governed by Chapter 2253 of the Texas Government Code (f/k/a “The McGregor Act”). Part Three addresses statutory release and waivers related to progress and final payment. While the procedures for perfecting lien and bond claims are similar, there are several differences that must be accounted for to ensure proper perfection for each type of claim.

Lawyers and contractors agree that the Texas law governing lien and bond claims is among the most complicated in the nation. It can be mastered, but any uncertainty should be met with expert advice. That said, we have attempted to break down the procedure and make it manageable. In doing so, we have provided sample forms to assist you in understanding and perfecting a lien or bond claim.

Before getting into the nuts and bolts of the process, there are few things to note. First, and most importantly, the deadlines identified herein are strictly enforced by courts when deciding whether to enforce a lien or bond claim. Missing a deadline unnecessarily limits a claimant’s payment rights.

Second, the Property Code and Government Code use differing terminology. Where possible, we have avoided the use of these terms to simplify the material. However, one recurring term you will see regarding lien claims is “original contractor.” This is a contractor with a direct contract with the owner. If you do not have a direct contract with the owner, you are a subcontractor under the Property Code. Under the Government Code, a contractor with a direct contract with the public owner is termed a “prime contractor.” These distinctions become important when determining which parties should receive the required forms. As with deadlines, failure to send each form to the appropriate party will likely invalidate a lien. Although these people are identified in the explanatory notes to each form, one simple rule can alleviate any uncertainty. When in doubt, a party should send each form to everyone above it in the contracting chain, as well as any surety providing a payment bond.

Last, all of the forms should be sent via certified mail, return receipt requested. The purpose of this is two fold. First, in most instances it is required under Texas law. Second, in all cases it is the most fail safe mechanism for later proving that the intended recipient received what was sent. In addition to certified mail (and not in lieu of), you may send each form via facsimile, hand delivery or any other format.

PART ONE:
NON-RESIDENTIAL LIEN CLAIMS

OVERVIEW

Contractors and suppliers of all tiers are provided lien rights on non-residential projects under Chapter 53 of the Texas Property Code. The benefit of a lien claim cannot be overstated. Normally a contracting party must look solely to the person with whom it has a contract for payment. The lien claim gives direct recourse against the improved property and owner. A contractor who has properly perfected its lien may force a sale of the property to satisfy its claim for unpaid labor and/or materials.

The steps that must be taken to perfect a lien claim are complex. To simplify this process, we have broken down these steps into four primary sections: (1) Gathering Information, (2) Early Notices, (3) Notices of Unpaid Account, and (4) Perfecting the Claim. If you follow the steps outlined in these sections, you will have properly perfected your lien claim.

It should be noted that owners often avoid having liens encumber their property by providing or requiring that the original contractor provide a payment bond for the project. Although contracting parties must then look to the payment bond for recourse, it still provides an otherwise unavailable source for payment for labor and/or materials provided. The procedures for perfecting a payment bond claim on a private project are the same as lien perfection procedures. If you follow the steps in this section, you will have a valid payment bond claim.

SECTION ONE: GATHERING INFORMATION

Under the Texas Property Code, there are a few steps every contractor should take as soon as a contract is in place to make sure it will be entitled to a lien in the event it is not paid for its work. This section addresses those steps. The following forms should be used to assist with gathering information that will be used to perfect a lien in the event of nonpayment.

It is advisable to send these forms early to prevent missing a deadline later in the lien process and forfeiting lien rights.

FORM 1.1NR: Request for Information to Original Contractor

Original contractors need not use this form. For subcontractors of any tier, however, this is an avenue to get the information necessary to perfect a lien. There is no deadline to request this information. This request may be sent before Form 1.2NR to determine the owner's identity, or, if the owner's identity is known, it may be sent simultaneously with Form 1.2NR to ensure that the necessary information is in hand when it is needed. The original contractor must respond within ten days of receipt of the request. Parties without a direct contract with the original contractor must reimburse it for *actual costs* of complying with the request, up to a maximum amount of \$25.00.

WHO SENDS: Subcontractors.
DEADLINE: Best practice – as soon as contract is in place.

FORM 1.2NR: Request for Information to Owner

This form should be used by contractors of all tiers to obtain information that will be necessary to perfect a lien claim. While there is no deadline for requesting this information, the best practice is to send this request as soon as the contract is signed.

WHO SENDS: All contractors.
DEADLINE: Best practice – as soon as contract is in place.

FORM 1.3NR: Response to Request for Information

This form should be used by an original contractor or owner who has received a request for information from a subcontractor.

WHO SENDS: Any party that receives a request for lien information.
DEADLINE: Within ten days of receipt.

**FORM 1.1NR:
REQUEST FOR INFORMATION TO OWNER**

[Date]

Via Certified Mail No. [Number]

Return Receipt Requested

[Owner's Name and Address]

Re: Request for Information to Owner regarding [Project Description] (the
"Project")

Our company is providing labor and/or materials to improve the above-referenced Project. It is our understanding that you are the owner of the real property and improvements at the Project. If this is incorrect, please advise us immediately.

In accordance with the Texas Property Code, please furnish us with the following information:

- (1) a description of the real property being improved legally sufficient to identify it;
- (2) whether there is a surety bond and, if so, the name and last known address of the surety and a copy of the bond; and
- (3) whether there are any prior recorded liens or security interests on the real property being improved and, if so, the name and address of any person having a lien or security interest.

Pursuant to the Texas Property Code, you are requested to provide this information no later than ten days following receipt of this request.

Sincerely,

[Claimant]

**FORM 1.2NR:
SUBCONTRACTOR'S REQUEST FOR INFORMATION TO ORIGINAL
CONTRACTOR**

[Date]

Via Certified Mail No. [Number]

Return Receipt Requested

[Original Contractor's Name and Address]

Re: Request for Information to Original Contractor regarding [Project
Description] (the "Project")

Our company is providing labor and/or materials to improve the above-referenced Project. It is our understanding that you are the original contractor for the construction of the improvements at the Project. If this is incorrect, please advise us immediately.

In accordance with the Texas Property Code, please furnish us with the following information:

- (1) the name and last known address of the person to whom you furnished labor and/or materials for the Project; and
- (2) whether you have furnished or have been furnished a payment bond for any of the work on the Project and, if so, the name and last known address of the surety(s) and a copy of the bond(s).

Pursuant to the Texas Property Code, you are requested to provide this information not later than ten days following receipt of this request.

Sincerely,

[Claimant]

**FORM 1.3NR:
ORIGINAL CONTRACTOR OR OWNER'S RESPONSE TO REQUEST
FOR INFORMATION**

[Date]

Via Certified Mail No. [Number]
Return Receipt Requested
[Claimant's Name and Address]

Re: Request for Information regarding [Project Description] (the "Project")

Receipt of your letter requesting information regarding the above-referenced Project is acknowledged. The name and address of the person to whom we have furnished labor and/or materials for the Project is: [Owner's Name and Address].

[Alternate 1] We have not furnished and no other party has furnished to us a payment bond for any of the work on the Project.

[Alternate 2] We have furnished or otherwise been furnished with a payment bond(s) for the Project. A copy of the bond(s) is enclosed. The name and last known address of the surety(s) is: [Surety's Name and Address].

[If owner is responding – Alternate 1] A legal description of the Project property is enclosed. There are no prior liens or security interests on the real property.

[If owner is responding – Alternate 2] A legal description of the Project Property is enclosed. The following parties have liens or security interests on the Project property: [Names and Addresses].

[If claimant does not have a direct contractual relationship with the party sending this response: We are entitled to actual costs, not to exceed \$25.00, incurred in complying with your request. Our actual costs exceed this amount; therefore, please remit \$25.00 as reimbursement for our costs of compliance.]

Sincerely,

[Original Contractor]

SECTION TWO: SUBCONTRACTOR'S EARLY NOTICES

Two types of notices should be sent by subcontractors shortly after contracting: Notice of Retainage Agreement and a Notice of Specially Fabricated Materials.

FORM 2.1NR: Notice of Retainage Agreement

This form is used to put others on notice that a party is withholding retainage from a subcontractor. Parties above the subcontractor in the contracting chain need to know of the retainage agreement so that they may withhold a corresponding amount of retainage.

If a subcontractor sends this notice within the required time frame, it need not send the recurring notices detailed in Section Three in order to protect lien rights with respect to retainage. Form 2.1NR need only be sent once. However, if a subcontractor's claim involves more than contractual retainage (i.e. unpaid monthly draws) the notices in Section Three will still have to be sent to protect a subcontractor's right to a lien on these draw amounts.

WHO SENDS: Subcontractors with retainage agreements.
DEADLINE: Not later than the earlier of: (i) The 30th day after the subcontractor's agreement providing for retainage is completed, terminated or abandoned or the 30th day after the prime contract is terminated or abandoned (whichever occurs first). Notice must be sent to the prime contractor and the owner.

FORM 2.2NR: Notice of Specially Fabricated Materials

This form only applies to those contractors that will be specially fabricating materials for the project. Specially fabricated materials are those that cannot be easily reused on other projects. This notice protects a contractor's right to perfect a lien on these materials, even when they have not been delivered or incorporated into the project.

This form must be sent to the owner. It must also be sent to the original contractor if the fabricator of these materials does not have a direct contract with the original contractor.

WHO SENDS: Subcontractors that accept orders for specially fabricated materials.
DEADLINE: No later than the fifteenth day of the second month following receipt and acceptance of the order for specially fabricated materials.

**FORM 2.1NR:
SUBCONTRACTOR'S NOTICE OF RETAINAGE AGREEMENT**

[Date]

Via Certified Mail No. [Number]

Return Receipt Requested

[Owner's Name and Address]

Via Certified Mail No. [Number]

Return Receipt Requested

[Original Contractor's Name and Address]

Re: Notice of Retainage Agreement regarding [Project Description] (the
"Project")

Our company [Name of Company] has entered into a contract with [Name of Party Contracted With And Their Address] on the above-referenced construction Project. Our company is located at [Company Address]. It is our understanding that you are the owner of the Project and/or original contractor of improvements thereon. If this is incorrect, please advise us immediately.

The agreement between our company and [Name of Party Contracted With] calls for us to furnish the following labor and/or materials to the Project: [General Description of Work]. In accordance with the Texas Property Code, please be advised that this contract includes an agreement for contractual retainage as defined in §53.057 of the Texas Property Code. The contract requires retainage to be withheld as follows: [Retainage as stated in your contract, e.g. 10% from each draw]. Our contract value, subject to change orders, is \$[dollar amount]. The retainage is due [Retainage due date as stated in your contract, e.g. thirty days from completion]. Copies of the applicable portions of our contract are enclosed for your review.

This notice is required by statute and may not be any indication that there is a problem on the Project. We routinely send these retainage notices as a matter of our usual business practice.

Sincerely,

[Claimant]

Enclosure

**FORM 2.2NR:
SUBCONTRACTOR'S NOTICE OF SPECIALLY FABRICATED
MATERIALS**

[Date]

Via Certified Mail No. [Number]
Return Receipt Requested
[Owner's Name and Address]

Via Certified Mail No. [Number]
Return Receipt Requested
[Original Contractor's Name and Address]

Re: Notice of Specially Fabricated Materials regarding [Project Description]
(the "Project")

Our company is providing labor and/or materials to the above-referenced Project. It is our understanding that you are the owner of the Project and/or the original contractor of improvements thereon. If this is incorrect, please advise us immediately.

In accordance with the Texas Property Code, please be advised that we have received and accepted an order from [Name of Party Placing Order] for specially fabricated items to be incorporated in the Project. The price agreed upon for said items is [Dollar Amount]. A copy of the order is enclosed for your reference.

This notice is required by statute and is in no way to be construed as any indication that there is a problem on the Project. We routinely send these early retainage notices as a matter of our usual business practice.

Sincerely,

[Claimant]

Enclosure

SECTION THREE: NOTICES OF UNPAID ACCOUNTS

In order to properly perfect a lien, all contractors other than original contractors are required to provide certain notices to the owner and the original contractor. Unlike the notices in Section Two, a subcontractor must send these notices for each month that it was not paid. Copies of these notices should also be sent to the person or entity with whom the claimant has a contract.

FORM 3.1NR: Notice to Original Contractor of Unpaid Account

This form is used to let the original contractor know that a second-tier subcontractor is not getting paid. Subcontractors without a direct contract with the original contractor must send this form to protect their lien rights.

WHO SENDS: Second-tier subcontractors who are not paid in full on monthly draws.
DEADLINE: No later than the fifteenth day of the second month following **each** month in which the subcontractor provided labor and/or materials but was not paid for them.

FORM 3.2NR: Notice to Owner of Unpaid Account

This form is used to let the owner know that a subcontractor is not getting paid. If a subcontractor contracted with someone other than the owner, it must send this form to protect its lien rights.

Note the “fund-trapping” language in the last paragraph. This language must be included to alert the owner to retain funds from the original contractor to cover the subcontractor’s claim.

Subcontractors required to send notice to the original contractor are also required to send notice to the owner. A subcontractor may send one notice letter to both the owner and the original contractor or may send separate letters, so long as each letter meets the deadline for mailing.

WHO SENDS: Subcontractors who have not been paid in full on monthly draws.
DEADLINE: No later than the fifteenth day of the third month following **each** month in which the subcontractor provided labor and/or materials but was not paid for them.

**FORM 3.1NR:
SUBCONTRACTOR'S NOTICE TO ORIGINAL CONTRACTOR OF
UNPAID ACCOUNT**

[Date]

Via Certified Mail No. [Number]
Return Receipt Requested
[Original Contractor's Name and Address]

Re: Notice to Original Contractor of Unpaid Account regarding [Project
Description] (the "Project")

Dear [Original Contractor]:

Our company has furnished labor and/or materials to the above-referenced Project under a contract with [Name of Party Contracted With]. It is our understanding that you are the original contractor on the Project and that [Name of Party Contracted With] is operating under a contract with you or another one of your subcontractors. If this incorrect, please advise us immediately.

In accordance with the Texas Property Code, please be advised that we are owed [Dollar Amount] under our contract for labor and/or materials furnished to the Project that are generally described as follows: [General Description of Work Performed]. The labor and/or materials was provided during the months of [Months and Year Work was Performed]. Enclosed please find a copy of our invoice(s) for this work.

Sincerely,

[Claimant]

Enclosure(s)

cc: *Via Certified Mail No.* [Number]
Return Receipt Requested
[Name and Address of Party Contracted With]

**FORM 3.2NR:
SUBCONTRACTOR'S NOTICE TO OWNER OF UNPAID ACCOUNT**

[Date]

Via Certified Mail No. [Number]

Return Receipt Requested

[Owner's Name and Address]

Re: Notice to Owner of Unpaid Account regarding [Project Description] (the
"Project")

Our company has furnished labor and/or materials to the above-referenced Project under a contract with [Name of Party Contracted With]. It is our understanding that you are the owner of the real property on which the improvements have been made. If this is incorrect, please advise us immediately.

In accordance with the Texas Property Code, please be advised that we are owed [Dollar Amount] under our contract for labor and/or materials that are generally described as follows: [General Description of Work Performed]. This labor and/or materials was provided during the months of [Months and Year Work was Performed]. Enclosed please find a copy of our invoice(s) for this work. This claim has accrued under Section 53.053 of the Texas Property Code and/or is past due under the terms of the above-referenced contract. Demand is hereby made for payment of this amount under Section 53.083 of the Texas Property Code.

Under the Texas Property Code, we must provide you with the following notice: IF THIS ACCOUNT REMAINS UNPAID, YOU WILL BE PERSONALLY LIABLE OR YOUR PROPERTY SUBJECTED TO A LIEN UNLESS YOU WITHHOLD PAYMENT FROM YOUR ORIGINAL CONTRACTOR FOR THE PAYMENT OF THE CLAIM OR UNLESS THE CLAIM IS OTHERWISE PAID OR SETTLED.

Sincerely,

[Claimant]

Enclosure(s)

cc: *Via Certified Mail No.* [Number]

Return Receipt Requested

[Original Contractor's Name and Address]

Via Certified Mail No. [Number]

Return Receipt Requested

[Name and Address of Party Contracted With]

SECTION FOUR: THE LIEN AFFIDAVIT

While compliance with Sections Two and Three protects a claimant's lien rights, a claimant must actually file a lien and send notice of the filing to have a right to payment from the owner. This section details these procedures.

FORMS 4.1NR and 4.2NR: Affidavit of Mechanic's Lien

There are two forms for a mechanic's lien. Form 4.1NR is for use by the original contractor, and Form 4.2NR should be used by all other claimants. The forms vary only slightly and will be treated the same in this section. However, it is important that a claimant use the form applicable to its contracting position.

This form is the actual document claiming a lien on the owner's property. It should be filed in the real property records of the county clerk's office where the project is located. To accomplish this, a claimant must deliver or mail the form to the county clerk with the appropriate filing fee. It must be received and filed in the clerk's office by the statutory due date or the lien will not be valid. Claimants should contact the clerk's office and/or an attorney with questions regarding the proper filing procedure. A claimant need only file one lien affidavit.

Original contractors must file the lien affidavit no later than the fifteenth day of the fourth month following: (1) written termination, (2) abandonment, (3) final settlement, or (4) completion of the original contract.

Subcontractors that want their lien to attach to the retained funds so that they are paid from retained funds in preference to the original contractor must file the lien affidavit within thirty days of completion of the work under the original contract (as opposed to its subcontract). As a practical matter, most subcontractors' lien claims will include a claim for retainage. Thus, subcontractors should generally file the affidavit within thirty days of completion. If the claim does not include retained funds, it must be filed no later than the fifteenth day of the fourth month following the last month in which labor was performed or materials furnished.

A subcontractor that gives the 30 day notice of retainage agreement discussed in Section 2 above has a lien on the retained funds if the subcontractor files the affidavit within thirty days of completion; or the subcontractor files an affidavit the earlier of: the fifteenth day of the fourth month following the last month in which labor was performed or materials furnished; the 40th day after an affidavit of completion is sent to the subcontractor; the 40th day after the subcontractor receives notice of a terminated prime contract; or the 30th day after the owner sends notice to the subcontractor to file the affidavit claiming lien.

For those providing specially manufactured materials, the lien must be filed no later than the fifteenth day of the fourth month following: (1) the last month in which materials were delivered, (2) the last month in which delivery of the last of the material would normally have been required at the jobsite, or (3) the last month of any material breach or termination of the original contract by the owner or contractor or of the subcontract under which the specially fabricated material was furnished.

SECTION FOUR: THE LIEN AFFIDAVIT (CONT.)

FORMS 4.1NR and 4.2NR: Affidavit of Mechanic's Lien (Cont.)

- WHO FILES: Original contractor files Form 4.1NR, subcontractors file Form 4.2NR.
- DEADLINES: Original contractors must file the lien affidavit no later than the fifteenth day of the fourth month following: (1) written termination of the contract, (2) abandonment of the contract, or (3) completion of its work.
Subcontractors should generally file their lien within thirty days of completion (see full discussion above).

FORM 4.3NR: Notice of Mechanic's Lien Filing

Filing a lien affidavit is not the last step. A claimant must send a copy of the lien affidavit to the owner no later than the fifth day following the day of lien filing with the county clerk. If the claimant does not have a contract with the original contractor, the claimant must also send the original contractor notice within the same time period. As a practical matter, the copy should be sent to both parties immediately upon filing.

- WHO SENDS: Lien Claimant.
- DEADLINE: No later than the **fifth day** (including weekends and holidays) following the day of lien filing with the county clerk.

**FORM 4.1NR:
ORIGINAL CONTRACTOR’S AFFIDAVIT OF MECHANIC’S LIEN**

STATE OF TEXAS §
 §
COUNTY OF [COUNTY] §

AFFIDAVIT OF MECHANIC’S LIEN

NOTICE: THIS IS NOT A LIEN. THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN.

BEFORE ME, Notary Public and in for the State of Texas, on this day personally appeared [Name], who upon his oath, deposed and stated the following:

1. My name is [Name]. I am the [Title] of [Claimant] (“Claimant”). I am over 18 years of age, have personal knowledge of the facts set forth below, all of which are true and correct, and am competent and authorized to make this Affidavit on Claimant’s behalf as the sworn statement of its claim.
2. Claimant furnished labor and/or materials for the improvement of real property located at [Address of Project] and more particularly described in the real property records of [County of Project], Texas as: [Legal Description].
3. The name and last known address of the owner or reputed owner of the land and improvements thereon is: [Owner’s Name (“Owner”) and Address].
4. Claimant, as the Original Contractor, furnished labor and materials under a contract with the Owner.
5. The labor, materials, and/or work furnished by Claimant are generally described as follows: [General Description].
6. After allowing all just credits, offsets, and payments, the amount of [Dollar Amount] remains unpaid and is due and owing to Claimant.
7. Claimant’s name and address are as follows: [Name and Mail Address]. [Include Physical Address if Different].
8. Claimant claims a lien against all the above described land and improvements thereon in the amount shown above pursuant to Chapter 53 of the Property Code of the State of Texas, and makes this sworn statement of claim in support thereof.
9. Claimant also claims a constitutional lien on such property pursuant to the provisions of Article 16, Section 37 of the Texas Constitution to the extent that Claimant is deemed an original contractor.

**FORM 4.1NR (CONT.):
ORIGINAL CONTRACTOR'S AFFIDAVIT OF MECHANIC'S LIEN**

10. A copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested to the Owner at all addresses described above.

By: _____
[Name], [Title] and
Authorized Representative of Claimant

STATE OF TEXAS §
COUNTY OF _____ §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME, by [Name], [Title] and Authorized Representative of Claimant on this ____ day of _____, 20__ to certify which witness my hand and official seal of office.

Notary Public – State of Texas

[S E A L]

AFTER RECORDATION PLEASE RETURN TO:

[Claimant's Name and Address]

**FORM 4.2NR:
SUBCONTRACTOR’S AFFIDAVIT OF MECHANIC’S LIEN**

STATE OF TEXAS §
 §
COUNTY OF [COUNTY] §

AFFIDAVIT OF MECHANIC’S LIEN

NOTICE: THIS IS NOT A LIEN. THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN.

BEFORE ME, Notary Public and in for the State of Texas, on this day personally appeared [Name], who upon his oath, deposed and stated the following:

1. My name is [Name]. I am the [Title] of [Claimant] (“Claimant”). I am over 18 years of age, have personal knowledge of the facts set forth below, all of which are true and correct, and am competent and authorized to make this Affidavit on Claimant’s behalf as the sworn statement of its claim.
2. Claimant furnished labor and/or materials for the improvement of real property located at [Address of Project] and more particularly described in the real property records of [County of Project], Texas as: [Legal Description].
3. The name and last known address of the owner or reputed owner of the land and improvements thereon is: [Owner’s Name and Address].
4. The name and last known address of the original contractor for such improvements is: [Original Contractor’s Name and Address].
5. Claimant’s name and address are as follows: [Name and Mail Address]. [Include Physical Address if Different].
6. Claimant furnished labor and materials under a contract with: [Name and Address of Party Contracted With].
7. The labor, materials, and/or work furnished by Claimant are generally described as follows: [General Description]. Claimant is hereby asserting a claim for work performed and/or materials furnished in the following months: [Months and Year Work was Performed].
8. After allowing all just credits, offsets, and payments, the amount of [Dollar Amount] remains unpaid and is due and owing to Claimant.
9. Notice of claim was sent to the Owner and the Original Contractor at all addresses listed above as follows:

**FORM 4.2NR (CONT.):
SUBCONTRACTOR'S AFFIDAVIT OF MECHANIC'S LIEN**

Notice was sent on [Date] to [Owner] via Certified Mail, Return Receipt Requested.

Notice was sent on [Date] to [Original Contractor] via Certified Mail, Return Receipt Requested.

10. Claimant claims a lien against all the above described land and improvements thereon in the amount shown above pursuant to Chapter 53 of the Property Code of the State of Texas, and makes this sworn statement of claim in support thereof.

11. A copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested to the Owner and the Original Contractor at all respective addresses described above.

By: _____
[Name], [Title] and
Authorized Representative of Claimant

STATE OF TEXAS §
COUNTY OF _____ §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME, by [Name], [Title] and Authorized Representative of Claimant on this ____ day of _____, 20__ to certify which witness my hand and official seal of office.

Notary Public – State of Texas

[S E A L]

AFTER RECORDATION PLEASE RETURN TO:

[Claimant's Name and Address]

**FORM 4.3NR:
NOTICE OF MECHANIC'S LIEN FILING**

[Date]

Via Certified Mail No. [Number]

Return Receipt Requested

[Owner's Name and Address]

Via Certified Mail No. [Number]

Return Receipt Requested

[Original Contractor's Name and Address]

Re: Lien Affidavit of [Claimant's Name] regarding [Project Description]

Enclosed is a copy of our mechanic's lien which we are filing with the county clerk. Demand is hereby made for immediate payment of the amount claimed in the affidavit. In addition to this principal sum, interest may be accruing on this debt at the applicable statutory rate.

You are hereby advised that if this account remains unpaid, your property may be subject to foreclosure for satisfaction of the lien. We will be pleased to release the lien upon receipt of the balance due and owing. Please contact us immediately so that this matter can be resolved.

Sincerely,

[Claimant]

Enclosure

**SUMMARY OF PERFECTION PROCEDURES:
NON-RESIDENTIAL LIEN CLAIMS**

Type of Claimant	Notices Due in Second Month	Notices Due in Third Month	Notices Due in Fourth Month
<p>Original Contractor (Direct contractual relationship with owner)</p>	<p>None</p>	<p>None</p>	<p>Affidavit Claiming Lien: filed by 15th day of 4th month after date of completion or termination of work</p> <p>Notice of Filed Affidavit: to owner within 5 days after affidavit is filed</p>
<p>First-Tier Subcontractor or Supplier (Direct contractual relationship with original contractor) *Retainage notice required</p>	<p>None</p>	<p>Notice of Unpaid Accounts: sent to owner and original contractor by 15th day of 3rd month following each month in which work was performed for which payment was not received</p>	<p>Affidavit Claiming Lien: filed by 15th day of 4th month after last month in which subcontractor or supplier furnished labor or materials to the project</p> <p>Notice of Filed Affidavit: sent to owner and original contractor within 5 days after affidavit is filed</p>
<p>Second-Tier Subcontractor or Supplier (Direct contractual relationship with first-tier subcontractor) *Retainage notice required</p>	<p>Notice of Unpaid Accounts: sent to original contractor by 15th day of 2nd month following each month in which work was performed for which payment was not received</p>	<p>Notice of Unpaid Accounts: sent to owner and original contractor by 15th day of 3rd month following each month in which work was performed for which payment was not received</p>	<p>Affidavit Claiming Lien: filed by 15th day of 4th month after last month in which second-tier subcontractor or supplier furnished labor or materials to the project</p> <p>Notice of Filed Affidavit: sent to owner and original contractor within 5 days after affidavit is filed</p>

**TABLE OF NOTICE DEADLINES:
NON-RESIDENTIAL LIEN CLAIMS**

Month Work Furnished	First Tier Subcontractor* (Direct contractual relationship with original contractor)		Second Tier Subcontractor* (Direct contractual relationship with first-tier subcontractor)		
	Notice of Unpaid Accounts: to owner and original contractor	File Lien Affidavit**	Notice of Unpaid Accounts: to original contractor	Notice of Unpaid Accounts: to owner and original contractor	File Lien Affidavit**
January	April 15	May 15	March 15	April 15	May 15
February	May 15	June 15	April 15	May 15	June 15
March	June 15	July 15	May 15	June 15	July 15
April	July 15	August 15	June 15	July 15	August 15
May	August 15	September 15	July 15	August 15	September 15
June	September 15	October 15	August 15	September 15	October 15
July	October 15	November 15	September 15	October 15	November 15
August	November 15	December 15	October 15	November 15	December 15
September	December 15	January 15	November 15	December 15	January 15
October	January 15	February 15	December 15	January 15	February 15
November	February 15	March 15	January 15	February 15	March 15
December	March 15	April 15	February 15	March 15	April 15

* Must send retainage notice also.

** Only applicable if the month work is furnished is the last month during which labor or materials were furnished by the lien claimant.

PART TWO:
PUBLIC WORK PAYMENT BOND CLAIMS

OVERVIEW

Liens are not available for public projects. Instead, the Texas legislature has provided a mechanism requiring payment bonds on public projects for contracts over a specified amount. Instead of relying on the owner's property for recourse, contracting parties can look to the surety issuing the bond for an additional layer of protection in the event of nonpayment.

The procedures for perfecting a payment bond claim on a public project are more streamlined than those required to perfect a lien claim. However, attempting to perfect a payment bond claim should be approached with caution. If the required steps are not strictly followed, the claim will not be valid.

That said, we have broken down the required steps into three primary sections: (1) Gathering Information, (2) Early Notices, and (3) Notices of Unpaid Account. If these steps are followed, you should have a valid payment bond claim against the surety.

Once a payment bond claim is perfected, contracting parties may then proceed to file suit on the bond and recover payment. If there is no legitimate reason to withhold payment, the surety must step in and pay the claimant for the value of labor and/or materials provided.

Prime contractors are not entitled to a payment bond claim. They are the party that is required to provide the payment bond, as principal, through their bonding company (surety). These public payment bonds are for the benefit of the prime contractor's subcontractors and suppliers.

SECTION ONE: GATHERING INFORMATION

A subcontractor should begin protecting payment rights as soon as a contract is in place. Under the Texas Government Code, there are a few steps every subcontractor needs to take to make sure it will be entitled to make a claim on the payment bond in the event it is not paid for its work. This section includes those steps that should be taken up front. The following forms should be used to assist with gathering information that will be used later on to perfect a payment bond claim in the event of nonpayment.

It is advisable to send these forms early to prevent missing a deadline later in the bond claim process and forfeiting statutory bond claim rights.

FORM 1.1P: Request for Information to Prime Contractor

This form should be used by all subcontractors to obtain information necessary to perfect a payment bond claim in the event of nonpayment. While there is no deadline for requesting this information, the best practice is to send this request as soon as the contract is signed. The prime contractor must respond within ten days of receipt of the request. Parties without a direct contract with the prime contractor must reimburse it for actual costs of complying with the request, up to a maximum amount of \$25.00.

WHO SENDS: Subcontractors.
DEADLINE: Best practice – as soon as contract is in place.

FORM 1.2P: Request for Information to Owner

This form requests some of the same information as Form 1.1P. However, this form must be supported by an affidavit attesting to the fact that a subcontractor has not been paid. An owner is not required to respond to this request until nonpayment arises. While there is no deadline to request this information, the best practice is to send this request as soon as payment becomes past due. To obtain this information, a subcontractor must pay any reasonable fee set by the owner for its actual cost of preparing these copies.

WHO SENDS: Subcontractors.
DEADLINE: Best practice – as soon as payment is overdue.

FORM 1.3P: Request for Information to Subcontractor

The Government Code allows the owner, a surety or any party contracting with a subcontractor to send this request to a subcontractor on a public work project. Those contracting with a subcontractor will need this information to perfect their payment bond claim. The information requested must be provided within ten days of receipt of the request. Parties without a direct contract with the subcontractor must reimburse it for actual costs of complying with the request, up to a maximum amount of \$25.00.

SECTION ONE: GATHERING INFORMATION (CONT.)

WHO SENDS: Owner, prime contractor, surety, subcontractors.
DEADLINE: For owner, prime contractor and surety: Best practice – before final payment or when problems arise with a subcontractor paying its subcontractors.
For subcontractors: Best practice – as soon as contract is in place.

**FORM 1.1P:
SUBCONTRACTOR'S REQUEST FOR INFORMATION TO PRIME
CONTRACTOR**

[Date]

Via Certified Mail No. [Number]

Return Receipt Requested

[Prime Contractor's Name and Address]

Re: Request for Information to Prime Contractor regarding [Project
Description] (the "Project")

Our company is providing labor and/or materials to improve the above-referenced Project under a contract with [Name of Party Contracted With].

In accordance with the Texas Government Code, we hereby request that you provide the following information:

- (1) The name and last known address of the governmental entity with whom you have contracted to provide public work for the Project; and
- (2) A copy of the payment and performance bonds for the Project, including bonds furnished by or to you.

As required by the Texas Government Code, please provide this information within ten days of receipt of this request. *[If your contract is not directly with the prime contractor: We will pay your actual cost of providing this information, not to exceed \$25.00, upon request.]*

Sincerely,

[Claimant]

**FORM 1.2P:
SUBCONTRACTOR'S REQUEST FOR INFORMATION TO OWNER**

[Date]

Via Certified Mail No. [Number]

Return Receipt Requested

[Owner's Name and Address]

Re: Request for Information to Owner regarding [Project Description] (the "Project")

Our company has provided labor and/or materials to improve the above-referenced Project under a contract with [Name of Party Contracted With]. We have not been paid in full for this labor and/or materials.

In accordance with the Texas Government Code, we hereby request certified copies of:

- (1) the payment bond provided by the prime contractor for construction of the improvements; and
- (2) the public work contract for which the bond was given.

We will pay your reasonable fee for the actual cost of preparation of the copies upon request.

Sincerely,

[Claimant]

STATE OF TEXAS §
COUNTY OF _____ §

Affiant, upon oath and after being duly sworn, states that he has read the above application and facts contained therein and that such statements are true and correct.

Subscribed and sworn on this the ____ day of _____, 20__.

Notary Public in and for the State of Texas

[S E A L]

**FORM 1.3P:
REQUEST FOR INFORMATION TO SUBCONTRACTOR**

[Date]

Via Certified Mail No. [Number]

Return Receipt Requested

[Subcontractor's Name and Address]

Re: Request for Information to Subcontractor regarding [Project Description]
(the "Project")

It is our understanding that you are a subcontractor on the above-referenced Project. In accordance with the Texas Government Code, we hereby request that you provide the following information:

- (1) The name and last known address of each person from whom you have purchased labor and/or material for the Project;
- (2) The name and last known address of each person to whom you have provided labor and/or material for the Project;
- (3) A statement of whether you have provided a payment bond for the Project; and
- (4) If a payment bond has been provided, the name and last known address of the surety on the bond and copy of that bond.

As required by the Texas Government Code, please provide this information within ten days of receipt of this request. [*If your contract is not directly with this subcontractor: We will pay your actual cost of providing this information, not to exceed \$25.00, upon request.*]

Sincerely,

[Claimant]

SECTION TWO: EARLY NOTICES

Two types of notices should be sent shortly after commencing work on the project. These notices are an integral part of protecting a payment bond claim. This section contains the two notices that must be sent up front.

FORM 2.1P: Notice of Retainage Agreement

This form is used to put others on notice that a party is withholding contractual retainage from a second-tier subcontractor. The prime contractor needs to know of the retainage agreement so that it may withhold a corresponding amount of retainage.

A first-tier subcontractor need not send this notice. However, all subcontractors without a direct contract with the prime contractor must send this form to make the prime contractor aware of the retainage agreement.

WHO SENDS: Second-tier Subcontractors.
DEADLINE: No later than the fifteenth day of the second month following when the claimant first provides labor and/or materials to the project.

FORM 2.2P Notice of Specially Fabricated Materials

This form only applies to those subcontractors that will be specially fabricating materials for a project. Specially fabricated materials are those that cannot be easily reused on other projects. This notice protects a subcontractor's right to perfect a payment bond claim on these materials, even when they have not been delivered or incorporated into the project.

WHO SENDS: Subcontractors.
DEADLINE: No later than the fifteenth day of the second month following receipt and acceptance of the order for specially fabricated materials.

**FORM 2.1P:
SUBCONTRACTOR’S NOTICE OF RETAINAGE AGREEMENT**

[Date]

Via Certified Mail No. [Number]
Return Receipt Requested
[Prime Contractor’s Name and Address]

Re: Notice of Retainage Agreement regarding [Project Description] (the
“Project”)

Our company has entered into a contract with [Name of Party Contracted With] on the above-referenced Project. This agreement requires us to furnish the following labor and/or materials to the Project: [General Description of Work].

In accordance with the Texas Government Code, please be advised that this contract includes a “retainage” provision. The contract requires retainage to be withheld as follows: [Retainage as stated in your contract, e.g. 10% from each draw]. The retainage is due [Retainage due as stated in your contract, e.g. thirty days from completion]. The total sum anticipated to be retained under this contract is [Dollar Amount]. Copies of the applicable portions of our contract are enclosed for your review.

Sincerely,

[Claimant]

Enclosure

cc: *Via Certified Mail No.* [Number]
Return Receipt Requested
[Owner’s Name and Address]

Via Certified Mail No. [Number]
Return Receipt Requested
[Name and Address of Party Contracted With]

**FORM 2.2P:
SUBCONTRACTOR'S NOTICE OF SPECIALLY FABRICATED
MATERIALS**

[Date]

Via Certified Mail No. [Number]
Return Receipt Requested
[Prime Contractor's Name and Address]

Re: Notice of Specially Fabricated Materials [Project Description] (the
"Project")

Our company is providing labor and/or materials to the above-referenced Project. In accordance with the Texas Government Code, please be advised that we have received and accepted an order from [Name of Party Contracted With] for specially fabricated items to be incorporated into the Project. These items are generally described as: [General Description of Items] [or] [as described on the attached order]. The price agreed upon for these items is [Dollar Amount]. A copy of the order is enclosed for your reference.

Sincerely,

[Claimant]

Enclosure

cc: *Via Certified Mail No.* [Number]
Return Receipt Requested
[Owner's Name and Address]

Via Certified Mail No. [Number]
Return Receipt Requested
[Name and Address of Party Contracted With]

SECTION THREE: SUBCONTRACTOR'S NOTICES OF UNPAID ACCOUNTS

In order to properly perfect a payment bond claim, all subcontractors are required to provide certain notices to the prime contractor and the surety. This section details the procedures for sending these notices.

FORM 3.1P: Notice to Prime Contractor of Unpaid Account

A second-tier subcontractor sends this form to let the prime contractor know that it is not being paid. Because second-tier subcontractors do not have a direct contract with prime contractor, they must send this form to protect their payment bond claim.

This form must be sent to the prime contractor no later than the fifteenth day of the second month following **each** month in which a second-tier subcontractor provided labor and/or materials but was not paid for them. Thus, this notice may have to be sent on a recurring basis. A copy of this notice should also be sent to the person or entity with which the claimant has a contract.

WHO SENDS: Second-tier Subcontractors.
DEADLINE: No later than the fifteenth day of the second month following **each** month in which a second-tier subcontractor provided labor and/or materials but was not paid for them.

FORM 3.2P: Notice to Prime Contractor and Surety of Unpaid Account

Contractors of all tiers must send this notice to properly perfect their payment bond claim. This form must be sent to the prime contractor and the surety no later than the fifteenth day of the third month following **each** month in which the subcontractor provided labor and/or materials but was not paid for them. Thus, this notice may have to be sent on a recurring basis.

Note that this form includes a Sworn Statement of Account. This sworn statement must be included and properly notarized or a payment bond claim will not be valid.

WHO SENDS: Subcontractors.
DEADLINE: No later than the fifteenth day of the third month following **each** month in which the subcontractor provided labor and/or materials but was not paid for them.

SECTION THREE: SUBCONTRACTOR'S NOTICES OF UNPAID ACCOUNTS (CONT.)

FORM 3.3P: Notice of Unpaid Retainage

This form addresses the situation where all monthly draws have been paid in full, but the prime contractor fails to pay withheld retainage upon completion of the project. If monthly draw payments have been missed, retainage should have been claimed in the Form 3.2P recurring notices and it is not necessary to send Form 3.3P. This form must be sent to the prime contractor and surety no later than the ninetieth day after the date of final completion of the project (as opposed to final completion of the subcontractor's scope of work).

WHO SENDS: Subcontractors.
DEADLINE: No later than the ninetieth day after the date of final completion of the project.

FORM 3.4P: Request for Information on Bond Claim

The Texas Government Code allows a prime contractor or surety to request the contract, payment and work information from a payment bond claimant so that the prime contractor and surety can evaluate the viability of the claim. A claimant must respond to this request within thirty days of receipt.

WHO SENDS: Prime contractor or Surety.
DEADLINE: Best practice – immediately after receiving a bond claim.

FORM 3.5P: Response to Request for Information on Bond Claim

This form is provided to assist a bond claimant in responding to Form 3.4P. This information must be provided by the thirtieth day after receiving the written request.

WHO SENDS: Recipient of Form 3.4P request.
DEADLINE: No later than thirty days after receipt of a Form 3.4P request.

**FORM 3.1P:
SUBCONTRACTOR'S NOTICE TO PRIME CONTRACTOR OF UNPAID
ACCOUNT**

[Date]

Via Certified Mail No. [Number]
Return Receipt Requested
[Prime Contractor's Name and Address]

Re: Notice to Prime Contractor of Unpaid Account regarding [Project
Description] (the "Project")

Our company has provided labor and/or materials to the above-referenced Project under a written contract with [Name of Party Contracted With], on which you are the prime contractor.

In accordance with the Texas Government Code, please be advised that we are owed [Dollar Amount] under this contract for labor and/or materials furnished to the Project that are generally described as: [General Description of Work]. Enclosed please find a copy of our invoice(s) for this work. If this claim is not promptly paid, we will proceed to perfect our claim against you and your surety. This notice is sent so that you may have an opportunity to see that this amount is paid in full prior to our taking such action.

Sincerely,

[Claimant]

Enclosure

cc: *Via Certified Mail No.* [Number]
Return Receipt Requested
[Owner's Name and Address]

Via Certified Mail No. [Number]
Return Receipt Requested
[Name and Address of Party Contracted With]

**FORM 3.2P:
SUBCONTRACTOR'S NOTICE TO PRIME CONTRACTOR AND
SURETY OF UNPAID ACCOUNT**

[Date]

Via Certified Mail No. [Number]
Return Receipt Requested
[Surety's Name and Address]

Via Certified Mail No. [Number]
Return Receipt Requested
[Prime Contractor's Name and Address]

Re: Notice to Surety and Prime Contractor of Unpaid Account regarding
[Project Description] (the "Project")

Our company has furnished labor and/or materials to the above-referenced Project under a written contract with [Name of Party Contracted With].

In accordance with the Texas Government Code, please be advised that we are owed [Dollar Amount] under this contract for labor and/or materials that are generally described as follows: [General Description of Work Performed]. Enclosed please find a copy of our invoice(s) for this work. Please make arrangements for payment of these amounts immediately.

Sincerely,

[Claimant]

Enclosure

cc: *Via Certified Mail No.* [Number]
Return Receipt Requested
[Owner's Name and Address]

Via Certified Mail No. [Number]
Return Receipt Requested
[Name and Address of Party Contracted With]

**FORM 3.2P:
SUBCONTRACTOR'S NOTICE TO PRIME CONTRACTOR AND
SURETY OF UNPAID ACCOUNT (CONT.)**

The following Sworn Statement of Account is provided as required by the Texas Government Code:

SWORN STATEMENT OF ACCOUNT

Before me, the undersigned authority, on this day personally appeared [Name of Claimant's Representative], who, after being by me duly sworn did depose and state:

- 1. My Name is [Name] and I am the [Title] of [Claimant] and am over the age of 18 and authorized to make this affidavit and the statements contained herein, all of which are true and correct.
- 2. [Claimant] has an outstanding and unpaid claim in the amount of [Dollar Amount] for labor and/or materials provided during the months of [Months and Year] under contract with [Name of Party Contracted With].
- 3. This amount is just and correct and all lawful offsets, payments and credits known to the undersigned have been allowed.
- 4. [If applicable:] This amount includes contractual retainage in the amount of [Dollar Amount] which is now due or will become due on or about [Due Date].
- 5. The invoices attached hereto are true and correct copies of the original invoices on which the above-described claim is based.

By: _____
[Name of Claimant's Representative],
[Title] and Authorized Representative of
[Claimant]

STATE OF TEXAS §
COUNTY OF _____ §

Affiant, upon oath and after being duly sworn, states that he has read the above application and facts contained therein and that such statements are true and correct.

Subscribed and sworn on this the ____ day of _____, 20__.

Notary Public in and for the State of Texas

[S E A L]

**FORM 3.3P:
SUBCONTRACTOR’S NOTICE OF UNPAID RETAINAGE**

[Date]

Via Certified Mail No. [Number]
Return Receipt Requested
[Surety’s Name and Address]

Via Certified Mail No. [Number]
Return Receipt Requested
[Prime Contractor’s Name and Address]

Re: Notice of Claim for Unpaid Retainage regarding [Project Description] (the
“Project”)

Our company has provided labor and/or materials to the above-referenced Project under a written contract with [Name of Party Contracted With].

In accordance with the Texas Government Code, please be advised that the total contract price for the labor and/or materials provided is [Dollar Amount]. We have been paid a total amount of [Dollar Amount], leaving a balance of [Dollar Amount]. This amount is due and owing for retainage withheld during the course of the Project. Enclosed please find a copy of our invoice(s) for this work.

Sincerely,

[Claimant]

Enclosure

cc: *Via Certified Mail No.* [Number]
Return Receipt Requested
[Owner’s Name and Address]

Via Certified Mail No. [Number]
Return Receipt Requested
[Name and Address of Party Contracted With]

**FORM 3.4P:
PRIME CONTRACTOR OR SURETY'S REQUEST FOR INFORMATION
ON BOND CLAIM**

[Date]

Via Certified Mail No. [Number]

Return Receipt Requested

[Claimant's Name and Address]

Re: Request for Information on Bond Claim regarding [Project Description]
(the "Project")

This letter acknowledges receipt of your payment bond claim on the above-referenced Project. In accordance with the Texas Government Code, please provide the following information regarding your claim:

- (1) Copies of any applicable written agreements or purchase orders under which you have provided labor and/or materials to the Project;
- (2) Copies of any statements or payment requests showing the amount claimed and the work performed for which the claim is made; and
- (3) The estimated amount due for each calendar month in which you have performed work or provided labor.

The Texas Government Code requires that you provide this information within thirty days of receipt of this request.

Sincerely,

[Surety or Prime Contractor]

**FORM 3.5P:
SUBCONTRACTOR'S RESPONSE TO REQUEST FOR INFORMATION
ON BOND CLAIM**

[Date]

Via Certified Mail No. [Number]
Return Receipt Requested
[Surety's Name and Address]

Via Certified Mail No. [Number]
Return Receipt Requested
[Prime Contractor's Name and Address]

Re: Response to Request for Information on Bond Claim regarding [Project Description] (the "Project")

Receipt of your letter requesting information regarding our payment bond claim on above-referenced Project is acknowledged. In response to your request we have included the following information:

- (1) A copy of the contract with [Name of Party Contracted With] under which we have provided labor and/or materials to the Project; and
- (2) Copies of all invoices showing the amount claimed and the work performed on which our claim is based.

The estimated amount due for each calendar month in which we performed work on the Project is as follows: [Description of each month work performed and the amount owed for each month].

Sincerely,

[Claimant]

Enclosure

**SUMMARY OF PERFECTION PROCEDURES:
PUBLIC WORK PAYMENT BOND CLAIMS**

Type of Claimant	Notices Due in 2 nd Month	Notices Due in 3 rd Month	Other Requirements
<p>First-Tier Subcontractor (Direct contractual relationship with prime contractor)</p>	<p>None</p>	<p>Notice of Claim: sent to surety and prime contractor by 15th day of 3rd month following <u>each</u> month in which work was performed for which payment was not received</p>	<p>File suit: against surety in no less than 61 days, but within 1 year of date Notice of Unpaid Account is mailed to surety</p>
<p>Second-Tier Subcontractor (Direct contractual relationship with first-tier subcontractor)</p>	<p>Notice of Claim: sent to prime contractor by 15th day of 2nd month following <u>each</u> month in which work was performed for which payment was not received</p>	<p>Notice of Claim: sent to surety, 1st tier subcontractor and prime contractor by 15th day of 3rd month following <u>each</u> month in which work was performed for which payment was not received</p>	<p>File suit: against surety in no less than 61 days, but within 1 year of date Notice of Unpaid Account is mailed to surety</p>

**TABLE OF NOTICE DEADLINES:
PUBLIC WORK PAYMENT BOND CLAIMS**

Month Work Furnished	First Tier Subcontractor (Direct contractual relationship with prime contractor)	Second Tier Subcontractor (Direct contractual relationship with first-tier subcontractor)	
	Notice of Unpaid Accounts: to surety and prime contractor	Notice of Unpaid Accounts: to prime contractor	Notice of Unpaid Accounts: to surety and prime contractor
January	April 15	March 15	April 15
February	May 15	April 15	May 15
March	June 15	May 15	June 15
April	July 15	June 15	July 15
May	August 15	July 15	August 15
June	September 15	August 15	September 15
July	October 15	September 15	October 15
August	November 15	October 15	November 15
September	December 15	November 15	December 15
October	January 15	December 15	January 15
November	February 15	January 15	February 15
December	March 15	February 15	March 15

PART THREE:
RELEASE OF LIEN OR BOND CLAIM

OVERVIEW

The Texas Legislature mandated the use of statutory waiver and release of lien or bond claims for all contracts entered into after January 1, 2012. In order for waiver and release of a lien or bond claim to be effective, owners and contractors must use a form that substantially complies with the statutory forms.

Four statutory forms have been created: (1) Conditional Waiver and Release on Progress Payment; (2) Unconditional Waiver and Release on Progress Payment; (3) Conditional Waiver and Release on Final Payment; and (4) Unconditional Waiver and Release on Final Payment. The “conditional” forms may be given prior to actual receipt of payment, but the form must specifically reference the specific payment to be made. The “conditional” form cannot be used to require a claimant to provide a blanket waiver of its lien rights prior to a specific, promised payment.

The “unconditional” forms can only be used after payment has been received. Please note that the statute requires that the “unconditional” waiver forms for both progress and final payment provide a “Notice” at the top of the form advising the claimant of the rights it is about to release. This “Notice” must be the largest bold face font on the page, and not less than 10 point font, and it must remain at the top of the form. Examples of the statutory waiver and release forms are provided in the following sections.

[Note: the attached forms are duplicated verbatim (without editing) from Tx. Prop. Code Chpt. 53 Subchpt. L. The notary jurat & acknowledgement were added]

SECTION ONE: PROGRESS PAYMENT FORMS

FORM 1.1R: 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)

THE STATE OF TEXAS §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, in and for said county and state, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, in his/her capacity as _____ of _____, and acknowledged to me that the same was the act and deed of said company; that he/she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME on the undersigned authority on this the ___ day of _____, 20___, to certify which witness my hand and seal of office.

Notary Public-State of Texas
Printed Name: _____
My Commission Expires: _____

FORM 1.2R:
UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS 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 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.

SECTION TWO: FINAL PAYMENT FORMS

**FORM 2.1R:
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)

THE STATE OF TEXAS §

§

COUNTY OF _____

§

BEFORE ME, the undersigned authority, in and for said county and state, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, in his/her capacity as _____ of _____, and acknowledged to me that the same was the act and deed of said company; that he/she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME on the undersigned authority on this the ___ day of _____, 20___, to certify which witness my hand and seal of office.

Notary Public-State of Texas

Printed Name: _____

My Commission Expires: _____

**FORM 2.2R:
UNCONDITIONAL WAIVER AND RELEASE ON 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.

