

Subcontractor Agreement—

In Favor of General Contractor

Purpose of the Form. This is a full version of an Agreement between a general contractor and subcontractor. The provisions are crafted to favor the general contractor, as opposed to the subcontractor. It can be used for any project, whether residential, light commercial, commercial, or industrial.

How to Fill-Out. All needed clauses are already included. Simply add the personal information as prompted in the blank spaces or lines.

SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement ("Agreement") is entered into on the date given below by the following:

Between

General Contractor: (Company Name): _____
(Address): _____
Phone(s): _____
Fax: _____
Email: _____

and

Subcontractor:

(Company Name): _____
(Owner): _____
(Address): _____
Phone(s): _____
Fax: _____
Email: _____

Business is a:

___ Sole Proprietorship; ___ Partnership; ___ Corporation

Federal Tax I.D.# or S.S.#: _____

RECITALS

WHEREAS the general contractor ("hereinafter "contractor") has entered into a contract ("Prime Contract") dated _____ with _____ ("owner") for the construction of:

_____ at:
_____ (Project") and

WHEREAS subcontractor desire to perform portions of the work specified in the prime contract,

NOW, THEREFORE, in consideration of the mutual covenants set forth, and intending to be legally bound, it is agreed as follows:

1. **General scope.** Subcontractor agrees in conformity with the contract documents and the latest addition of all applicable building codes to perform, supply, furnish and pay for all labor, supervision, administration, material, equipment, drawings, transportation, fuel, energy, light, water, telephone service, tools, and other facilities, utilities, services, supplies and things necessary to fully and safely perform all work, or as may be directed by change order, and in strict and accordance with the terms of the prime contract, which is incorporated therein by reference. Accordingly, subcontractor as to the performance under this subcontract is bound to the contractor by the terms of the prime contract and assumes toward the contractor all of the obligations that contractor assumes toward the owner.
2. **Contract documents.** Subcontractor will perform its work in accordance with all contract documents, which are identified as follows:
 - (a) This Subcontract Agreement
 - (b) The prime contract
 - (c) Plans identified as:
 - (d) Specifications identified as:
 - (e) Addenda
 - (f) Other identified as:
 - (g) Other identified as:

Subcontractor warrants it has been furnished all contract documents and has thoroughly familiarized itself with the project location and existing site conditions. This Agreement includes all labor and materials that are both specified and reasonably implied by the contract documents and required by current building codes.

If there is a conflict between the plans, specifications, or this Agreement, then this Agreement is controlling.

Subcontractor shall promptly, and in a manner that will not hinder or delay progress, submit shop drawings and revisions, schedules, and other matters contractor or owner deems necessary for the expeditious performance of the work.

3. **Subcontract work.** Subcontractor agrees to perform the following work for the following prices, and within the following time frames:

The work will be performed under the general direction and supervision of the contractor and owner's representatives and shall be subject to the same rigid and close inspection as set forth in the prime contract. Unless otherwise agreed in writing, subcontractor's work shall include any customary and reasonable cleaning, finishing, and preparation work.

EXCLUSIONS: Labor, material, and equipment for the following work is not included:

____ Additional work description attached.

4. **Commencement.** Subcontractor shall commence, at such times and places as contractor may designate, the work to be done. **TIME IS OF THE ESSENCE** in all aspects of subcontractor's performance. Subcontractor shall be liable for all damages suffered by contractor due to the failure to perform in a timely manner, including but not limited to any liquidated damages which may be imposed by owner upon contractor and any other damages or expenses, including overhead expense.
5. **Payment.** The foregoing prices are subject to additions or deductions directed by contractor. Progress and final payments shall be measured, certified and approved by _____, less the aggregate of previous payments and retainage, with payment made within ten (10) calendar days after receiving payment by contractor from the owner and submission of a satisfactory invoice. Payment shall consist of the actual work performed, less all loss and damage, including expenses incurred based on the delay of subcontractor, if any. Upon final approval and acceptance by the owner or representative, as well as the building inspection department, contractor will make final payment to subcontractor of the balance due within 30 days after completion of the project and full payment for such work has been received by contractor from the owner. If a notice of completion is authorized by state

law, final payment shall be 30 days after recording such notice and receipt of funds from the owner.

Payments will be made to subcontractor at the same intervals as are made by owner to contractor and in an amount equal to the value of work performed. Receipt of payment from the owner shall be deemed an express condition precedent to the payment by contractor to subcontractor, without regard to the reason for any delay in such payment by owner.

As a condition to receiving a payment, subcontractor must deliver to contractor at its main office application for payment, on forms approved by contractor, by the earlier of a) the 25th of the month or b) not less than five days prior to the date contractor's pay estimate is due to owner.

As a further condition to receiving payment, subcontractor shall furnish contractor: a) a list of sub-subcontractors and suppliers under contract with subcontractor and b) partial and final lien waivers for any material/equipment suppliers and sub-subcontractors under contract with subcontractor. No money shall be deemed payable until subcontractor has paid all obligations for labor, materials, and equipment to any suppliers or sub-subcontractors. Any monies remaining unpaid shall be considered held by contractor as trust funds for the benefit of any such suppliers and sub-subcontractors who may have a claim until it is paid. Contractor reserves right to make payment directly to such persons. Contractor has the right, prior to making a progress or final payment to subcontractor, to secure a statement under oath that all obligations to such persons have been paid to date or shall be immediately paid upon receipt of funds.

Payment to subcontractor shall not be deemed an admission of the sufficiency of the work, nor shall any payment constitute a release of subcontractor from any liability hereunder. Subcontractor agrees to timely submit to contractor applications for payment with related documentation, as provided for by contractor or as specified in the prime contract, so as to enable contractor to timely apply for payment. As a condition of receiving payment, contractor may require from subcontractor satisfactory evidence as to the status of its accounts relating to this subcontract, including a verified statement setting forth the names of all its sub-subcontractors and suppliers, the amounts of each such subcontract and purchase order, the amounts paid, and the amounts still due.

Contractor reserves the right to make checks payable jointly to subcontractor and any of its suppliers or sub-subcontractors.

In the event of the filing of a mechanic's lien by any sub-subcontractors or suppliers, subcontractor will defend and hold contractor and owner harmless from any such lien or claim. Subcontractor shall, within ten calendar days of the filing, at its own expense, fully satisfy such liens. Contractor shall have the right to retain out of any payments to become due subcontractor: a) an administrative fee of ____ % and b) an amount sufficient to completely protect and make whole contractor and owner from any and all loss, damage, liability, or expenses. Subcontractor agrees that monies

received shall be used solely for labor and materials on this project and shall not be diverted to satisfy obligations on other contracts or projects.

Subcontractor agrees that monies received, other than the actual amounts due subcontractor, shall be used solely for the benefit of suppliers and sub-subcontractors and shall constitute a trust fund for their benefit and shall not in any instance be diverted by subcontractor for any other purpose or project.

Contractor shall be entitled to withhold 10% as retainage for all progress draws. That same retention shall be withheld until final payment is made by under this paragraph.

- 6. Time of performance.** Subcontractor agrees to keep fully informed as to the progress of the project and to faithfully prosecute its work to the satisfaction of the contractor and owner, and at such times and in such order as contractor considers necessary to keep the same sufficiently in advance of the other parts of the project and to avoid delay in the completion of the whole. Time shall be considered of the essence as to any dates for completion. Subcontractor shall follow the progress of the project, be prepared to commence work when notified, maintain any reasonable progress schedule, as revised by contractor, and be responsible for damages caused by any delay, including liquidated damages assessed under the terms of the prime contract.

This is a fast track project and due to the pressure being exerted by the owner on the contractor, the potential penalties to be assessed because of delay, the fact that the general contractor has obligated itself to complete the overall project to the owner's satisfaction by _____ ("completion date") and because it would be extremely difficult or impossible to determine the actual damages if completion were delayed, the parties specifically agree there shall be liquidated damages in the amount of \$ _____ per day if not completed by that completion date.

- 7. Changes directed by contractor.** Contractor is not a guarantor of the amount or nature of the work. Accordingly, Contractor may, at any time, and without notice to subcontractor's sureties, make changes (including additions, deletions, and changes in the sequence or scheduling) by either: 1) a written change order agreed upon by the parties prior to commencing the change, which written agreement shall specify the changes, price modifications, and extension of time for performance, if any, or 2) a verbal field directive or written notice, without a prior agreement as to any adjustment in the time or subcontract price. If directed to proceed, subcontractor must submit within 10 calendar days from receipt of such directive, written notice of any claim for adjustment to the subcontract price or time. If owner requests pricing or duration of performance information for changes, subcontractor shall provide contractor with its price and time requirements, together with any necessary supporting documentation within ten days of request.

Subcontractors is bound to the terms of the prime contract relating to changes, changed conditions, extra work, owner furnish property or other materials, and claimed damages and disputes, as a result of work required or caused by the owner.

If contractor directs extra work and there is no agreement as to cost, subcontractor shall nevertheless be obligated to proceed with such work and shall be paid the actual cost of labor, materials, and equipment, plus profit and overhead, not to exceed 15%. Such an agreement shall only be through the project manager or principal owner of contractor, with no exceptions.

It is expressly understood that the sole fund from which claims for extra compensation are paid shall come from owner's payment to contractor and that payment is a condition precedent to payment by contractor to subcontractor.

- 8. Pre-existing conditions.** Subcontractor acknowledges it has satisfied itself as to all preexisting conditions, the nature and location of the site, general and local conditions bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, or similar physical conditions at the site and assumes the risks attendant thereto.
- 9. Changes by subcontractor.** Under no circumstances shall there be any change, modification, addition, or deletion to the subcontract work without the prior written consent, in the form of a written change order signed before the work commences by either the general contractor, architect, project engineer, or owner. Such a written change order shall be considered a condition precedent to the receipt of any additional compensation. Without such a signed writing, subcontractor has no authority to make such changes that shall not be entitled to claim the work is an extra.
- 10. Job coordination.** It is understood that work to be performed by subcontractor will require coordination with work performed by others and subcontractor agrees to integrate fully with other trades and suppliers so as not to interfere with their operations or timetables. Subcontractor acknowledges it may be necessary for its work to be started prior to or in conjunction with other such work and it is vital subcontractor perform its work expeditiously, so others may not be delayed.

Subcontractor shall notify contractor prior to commencement of its work of any defect, deficiency, or incompatibility of expected performance by others which may affect the performance or quality of subcontractor's work.

- 11. Delay.** If subcontractor is delayed in the progress of its work by any act or neglect of contractor, the architect, project engineer, owner, or any other subcontractor or supplier, then the subcontract time and price shall be equitably adjusted. If such delay is not the fault of contractor, its subcontractors, suppliers, or the owner, but as a result of causes beyond the control of subcontractor, then subcontractor shall be allowed only such additional time as is allowed by the owner to contractor for such cause. If such delay is caused by the fault of subcontractor or its suppliers or sub-subcontractors, no adjustment of time or price shall be allowed. No additional time shall be allowed to subcontractor unless it gives written notice of the cause of the delay within 10 days of the occurrence of that delay.

Subcontractor should not be entitled to any damages for delay by the acts of owner, contractor, or other subcontractors or suppliers unless damages are allowed and paid by the owner to contractor, which payment shall be deemed a condition precedent to any payment to the subcontractor. Otherwise, subcontractor's sole remedy shall be an extension of time to complete its work.

- 12. Owner disputes.** Contractor agrees to present to the owner, in contractor's name, any dispute or claim of subcontractor which is timely submitted, whenever same arises out of an act, omission or responsibility of the owner, and under those provisions of the prime contract for resolving disputes. Subcontractor agrees in such instances to abide by the remedies available under the prime contract, and to be bound, to the same extent that contractor is bound, by those dispute resolution provisions and any decisions made by a party, panel, board or court so authorized in the prime contract.

Subcontractor waives any rights against contractor in regard to such a claim and agrees not to look to contractor for payment except to the extent, if any, contractor may be paid by the owner. If a dispute is prosecuted or defended by contractor, whether on its own behalf or on behalf of subcontractor, or both, against the owner, subcontractor agrees to furnish all documents, witnesses, and other information required by contractor, and to reimburse contractor for all expenses and costs, including attorney's fees and expert witnesses.

- 13. Contractor--Subcontractor disputes.** The interpretation and/or enforcement of this Agreement, as well as any and all disputes between the contractor and subcontractor, on any basis, whether at law or equity, and pertaining to any cause of action, whether equitable, contractual, or tortious, and pertaining to any alleged damages, shall be determined by private binding arbitration, without the right to appeal. The arbitration shall be conducted by a single arbitrator chosen by the parties after the circulation of a list of available arbitrators to be supplied privately by the parties and/or their attorneys or through whatever public or private arbitration/mediation organization chosen. The cost and fees of the arbitration shall be borne equally by the parties and shall be considered costs awardable to the prevailing party. Any award from the arbitrator shall become a judgment of any court of competent jurisdiction. Arbitration shall be held within 30 miles of the location of the project.

- 14. Default by subcontractor.** If subcontractor fails or refuses to supply enough properly skilled workers, proper materials, maintain the schedule of work, fails to make a payment to its workers, sub-subcontractors or suppliers, causes damage, interferes or interrupts progress of the job or the schedules of other subcontractors, disregards laws, ordinances, rules, and regulations, or orders of any public authority having jurisdiction, or otherwise fails to perform under this Agreement, subcontractor shall be deemed in material breach. If subcontractor fails within 72 hours after receipt of written notice of such default to commence and continue satisfactorily correction with diligence, then contractor without prejudice to any other rights, shall have the right to any or all of the following remedies:

- a. Supply or contract for such number of workers, other subcontractors, materials, equipment and other facilities as contractor deems necessary for the completion of subcontractor's work. After taking over subcontractor's work, contractor may use the property, materials, and equipment of subcontractor to

complete the performance. Neither the taking over of the work nor its completion shall be a forfeiture of contractor's right to recover damages from subcontractor for failure to complete or for the delay in such completion. Upon the taking over of the work, no further payment will be made to subcontractor until the work is completed. Contractor's decision to assume such responsibility shall not constitute its sole remedy or an election of remedies; contractor reserves all other remedies available to it at law or equity,

- b. Withhold payment of any monies due subcontractor pending corrective action,
- c. In the event of an emergency affecting the safety of persons or property, or in cases in which improvements made are in imminent danger of damage, loss, or destruction, contractor may proceed as set forth in (a) and (b) without prior notice,
- d. Terminate this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to subcontractor to complete subcontractor's work.

Contractor will have no duty to pay subcontractor any remaining funds until the corrective work has been completed. All of the costs incurred by contractor in so performing subcontractor's work, including costs of labor, material and other subcontractors, together with reasonable overhead, profit, and attorneys fees, shall be deducted from any monies due subcontractor. Subcontractor shall be liable for any amount by which such expense exceeds the unpaid balance of the subcontract price.

15. Assurances. If at anytime either party shall have reasonable doubt as to the ability of the other to perform its duties because of financial, labor, or other reasons, the party seeking assurances may request from the other written assurances of ability to perform and shall be provided same within five business days of receipt of demand. The failure to so provide shall be a default.

16. Termination for convenience. Contractor may, without cause and at any time, terminate this Agreement in whole or in part by written notice to subcontractor. In event of such termination, subcontractor may claim reasonable costs incurred prior to the effective date of termination, plus reasonable profit and overhead not to exceed 15%, and will not be entitled to any other costs or damages.

17. Default by contractor. If contractor fails to comply with any material term, subcontractor may, after giving five business days prior written notice, temporarily cease doing further work until such terms as complied with. Three such instances causing subcontractor to give notice or stop work shall give it the right to terminate the subcontract. This shall not prejudice any other remedy which subcontractor may have as a result of contractor's breach.

18. Bankruptcy. A material breach shall have occurred if subcontractor dissolves its business, has entered against it an order for relief in an involuntary bankruptcy proceeding, or commences a voluntary bankruptcy proceeding, makes an assignment

for the benefit of creditors, becomes insolvent, or fails to pay its obligations as they become due.

- 19. Warranties.** Subcontractor warrants and guarantees for one year after completion of the overall project the workmanship and materials covered by this subcontract and agrees to make good, at its own expense, any defect in material or workmanship which may occur or develop prior to contractor's release from responsibility to the owner. As such, subcontractor shall promptly repair or replace any deficient work, equipment, or materials, including any elements that fail to function properly.

Subcontractor shall also repair any surrounding parts of the structure that are damaged due to any failure in Subcontractor's work. Subcontractor warrants that all work, materials and equipment will become the property of the owner upon incorporation in the construction.

- 20. Insurance.** Before commencing work on the project, subcontractor and its subcontractors of every tier will supply to contractor duly issued certificates of insurance, naming contractor as an "additional insured," showing in force the following insurance for comprehensive general liability, automobile liability, and worker's compensation:

comprehensive general liability with limits of not less than \$_____ per occurrence;
automobile liability in comprehensive form with coverage for owned, hired, and non-owned automobiles;
worker's compensation insurance in statutory form.

All insurance binder must contain a clause indicating that certificate holders be given a minimum of 10 days written notice prior to cancellation. Subcontractor must furnish the insurance binder referred to above as an express condition precedent to the contractor's duty to make any progress payments to subcontractor.

Subcontractor's insurance shall be the primary insurance and neither contractor's nor owner's insurance shall be called on to contribute to a loss caused in whole or part by the negligence of subcontractor.

Subcontractor, if it does not carry worker's compensation insurance coverage to protect principals and its employees from work-related injuries hereby fully releases, holds harmless, and indemnifies contractor from any injuries that may occur to subcontractor and its crew.

- 21. Safety.** Each party shall take all responsible safety precautions pertaining to its work and conduct. Each shall strictly comply with all applicable laws, ordinances, codes, rules, regulations and orders issued by any public authority, whether Federal, state, or local, including, but not limited to, the Federal Occupational Safety and Health Act and all regulations thereunder, and the safety measures called for in the prime contract.

- 22. Housekeeping.** Subcontractor shall perform its work in such a manner that the premises are clean, orderly, and free from debris. Upon completion, subcontractor shall remove all the equipment and excess materials from the site, clean up any and

all refugee and debris and generally leave the site in good condition. Contractor may back charge subcontractor \$35.00 an hour if cleanup and debris removal is not performed on a regular basis.

- 23. Indemnification.** All work performed by subcontractor shall be done at its sole risk. Subcontractor and its agents shall indemnify, protect, defend, and hold harmless contractor and owner (including its principals, officers, directors, sureties, agents, and employees) from all loss and damage, against all claims; demands; personal injury, death, or property damage; lawsuits; arbitrations; mechanic's liens; administrative proceedings; debts; awards; fines; judgments; interest; attorneys' fees; and costs caused or contributed to by any act, omission, misconduct, negligence, whether passive or active, of subcontractor and its agents or employees.

Such duties of indemnification shall extend to all acts or omissions, negligence, intentional misconduct, or gross negligence, whether active or passive, on the part of owner, except as to matters arising from the sole negligence, acts, or omissions of the owner or contractor, as well as their officers, agents, or employees.

- 24. Assignment.** Contractor has entered into this Agreement based upon the experience and skills of subcontractor and therefore this Agreement may not be assigned to any third party without the prior written consent of contractor. However, subcontractor may assign non-material portions of this Agreement without such consent if the persons so performing are reasonably qualified.

Subcontractor shall not assign or sell any earnings under this subcontract without the express written consent of contractor.

- 25. Interest.** Subcontractor waives any claim for interest or finance charges on sums allegedly due, except to the extent that interest is recovered from owner.

- 26. Compliance with laws.** Subcontractor shall comply with all applicable Federal, state, and local laws, regulations, standards, and recognized trade practices for the protection of workers and other persons about the work area, including without limitation those governing labor, safety, health, and sanitation. Subcontractor shall promptly comply with any directives relating to safety. Subcontractor agrees to indemnify contractor for any loss, expense, claim, or damage, including attorneys' fees, resulting from the violation by any of these obligations.

- 27. Warning signs and barricades.** Subcontractor shall provide, erect, and maintain proper warning signs, signals, lights, barricades, and fences along the line of its work and shall take all other necessary precautions for the protection of the work and safety of the public. Subcontractor shall comply with all safety regulations imposed by contractor, owner, and the applicable laws.

- 28. Supervision.** Subcontractor shall provide adequate supervision for its work and employ a competent superintendent, foreman, or principal at the job site, with authority to act for subcontractor.

- 29. Labor agreements.** Subcontractor shall comply with all applicable labor provisions to which contractor is bound by any master agreement or otherwise.
- 30. Independent contractor.** Subcontractor is an independent contractor and employing unit, subject to all applicable Social Security and unemployment compensation statutes, and shall make reports and payments for such taxes as required.
- 31. Waiver.** Acceptance by subcontractor of final payment shall constitute a waiver of any and all claims against contractor, its surety, or owner.
- 32. Severability.** Should any provision of this Agreement be in conflict with any law, ruling, or regulation, then such provisions shall continue in effect only to the extent it remains valid. If any provision becomes inoperative, the remaining provisions of this agreement shall remain in full force and effect.
- 33. Venue.** The laws of the state of the project shall govern as to all matters arising under or related to this Agreement. Any action, proceeding, or arbitration shall be brought in _____ county, State of _____. Provided however, if the prime contract requires a different venue, that provision shall take precedence.
- 34. Remedies.** The remedies provided in this Agreement are not exclusive, and contractor shall be entitled to pursue any other remedies provided at law or equity. A waiver by contractor of any breach shall not constitute a waiver of any further or additional breach.
- 35. Entire agreement.** This subcontract is the final and entire agreement of the parties and supersedes all prior or contemporaneous oral or written communications, understandings, representations, or agreements. There are no promises, terms, conditions, or obligations other than those contained in this Agreement. This subcontract shall not be modified in any way except in writing signed by the party against whom the modification is asserted.
- 36. Successors.** This Agreement shall be binding on the parties and their successors, heirs, and assigns.
- 37. Notices.** Any notices required to be given by either party may be sent to the addresses first given above, and can be in the form of personal delivery, mail, e-mail, or fax.
- 38. Attorney's fees.** The prevailing party in any action or proceeding, including court or arbitration, shall be entitled to reasonable attorney's fees and costs.
- 39. Reserved.**

IN WITNESS WHEREOF, the parties have caused this Subcontractor Agreement to be executed by their duly authorized agents, effective as of the date below.

CONTRACTOR:

Company name: _____

By _____

Title: _____

Date: _____

SUBCONTRACTOR:

Company name: _____

By _____

Title: _____

Date: _____

Sample

Attachments

Sample

Sample