Subcontractor Agreement—

In Favor of Subcontractor

Purpose of the Form. This is a full version of an Agreement between a general contractor and subcontractor. Special provisions have been inserted to benefit the subcontractor, as opposed to the general contractor. 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.#: _____________

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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.

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:

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

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. 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.

5. **Payment.** The foregoing prices are subject to additions or deductions directed by contractor. Progress and final payments shall be made less the aggregate of previous payments and retainage, with payment made within ten (10) calendar days after receipt of a billing or invoice. 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 ____ days after completion of the project.

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.

Subcontractor will deliver to contractor at its main office application for payment by contractor by the 25th of the month.

Contractor has the right, prior to making a progress or final payment to subcontractor, to secure a statement that all obligations to such persons have been paid to date, or shall be paid upon receipt of funds.

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.

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 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 we 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 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. Subcontractor shall follow the progress of the project, be prepared to commence work when notified, and maintain any reasonable progress schedule, as revised by contractor.

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. 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, changes, subcontractor shall provide contractor with its price and time requirements, together with any necessary supporting documentation within ten days of request.

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%.

8. **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 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, so others may not be delayed.

9. **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.

10. **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.
11. 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.

12. Default by subcontractor. If subcontractor fails or refuses to perform under this Agreement, contractor may give written notice to correct any deficient performance. Subcontractor will then commence corrective work within five (5) days of receipt of such notice and continue to satisfactorily make such corrections.

13. 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.

14. 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.

15. 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.

16. 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. As such, subcontractor shall promptly repair or replace any deficient work, equipment, or materials, including any elements that fail to function properly.

17. 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 binders must contain a clause indicating that certificate holders be given a minimum of 10 days written notice prior to cancellation.

18. 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.

19. 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.

20. Indemnification. Both parties shall indemnify, protect, defend, and hold harmless each other (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, negligence, whether passive or active, of the other.

21. 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.

22. Interest. Subcontractor may claim interest or finance charges on sums allegedly due, at the rate of ____% per month until paid.

23. 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.
24. **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.

25. **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.

26. **Labor agreements.** Subcontractor shall comply with all applicable labor provisions to which contractor is bound by any master agreement or otherwise.

27. **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.

28. **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.

29. **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.

30. **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.

31. ** 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.

32. **Successors.** This Agreement shall be binding on the parties and their successors, heirs, and assigns.

33. **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.

34. **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.
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
Sample