

## MASTER SUBCONTRACTOR AGREEMENT

**THIS MASTER SUBCONTRACTOR AGREEMENT** ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a \_\_\_\_\_ ("Contractor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Subcontractor").

1. **Recitals:** Contractor has entered into a contract with an owner or owner(s) ("Owner") to provide work and/or materials in connection with one or more individual residential construction projects ("Projects"). Contractor wishes to subcontract to Subcontractor and Subcontractor desires to perform certain portions of the work specified in the Owner's contract with Contractor. Contractor shall issue a Purchase Order ("Purchase Order") to Subcontractor for each Project on which Contractor requests Subcontractor's work and/or materials. Each Purchase Order shall identify the Project, the work and/or materials to be provided by Subcontractor ("Subcontract Work"), the Subcontract Price, the commencement and completion dates for the Subcontract Work, and any special contract provisions relating to the Project. The terms of the contract between Contractor and Subcontractor for each Project shall be as defined in this Agreement, the Purchase Order, the contract and its general conditions between the Owner and the Contractor and the plans and specifications for the Project, unless the Purchase Order provides otherwise. In consideration of the foregoing matters and the mutual rights and obligations of the parties contained in this Agreement, the Contractor and Subcontractor agree as set forth below.
  
2. **Subcontract Price:** Contractor agrees to pay the Subcontractor for the full, complete and faithful performance of the Subcontract Work the Subcontract Price (as defined in the Purchase Order). If required by the Contractor, no intermediate or final payment shall be made under this Agreement unless Subcontractor submits evidence in such form as Contractor may designate indicating that everything in connection with the Subcontract Work has been paid in full to the date of the applications for any payment. In the event Contractor is notified of any unpaid amount, the Contractor, in addition to all rights granted in this Agreement, shall have the right to withhold such unpaid amount or claim or claims out of the payments next becoming due to the Subcontractor, and the Contractor shall have the right to make payment of the unpaid amounts and deduct such amounts out of the next payments which may become due to the Subcontractor. The Contractor may withhold any payment, in whole or in part, from the Subcontractor on account of the failure of the Subcontractor to comply fully with any requirements of this Agreement, or because of any delay on the part of the Subcontractor.
  
3. **Subcontractor's Obligations:** Subcontractor agrees:
  - a. To furnish all supervision, labor, materials and equipment, and perform the Subcontract Work in accordance with the applicable Purchase Order;
  - b. Not to assign or sublet any portion of the Subcontract Work without the prior written consent of Contractor, which may be withheld by Contractor in its sole discretion;
  - c. To commence the Subcontract Work on the date specified in the Purchase Order or on such other date as determined by the Contractor in its sole discretion if the Subcontract Work cannot commence on the date specified in the applicable Purchase Order due to weather conditions, fire or other casualty or act of God, arbitration, failure of any subcontractor or materialmen, legal acts of public authorities, war, delays or defaults by public or private carriers, labor or material shortages, or the acts or omissions of the Subcontractor, strikes, walkouts, or any other conditions over which the Contractor has no control or for which the Contractor is not responsible;
  - d. To cooperate fully with other subcontractors and to plan and conduct the Subcontract Work so as not to interfere with their operations. Contractor shall not be responsible for any delays or interference resulting from the acts or operations of other subcontractors, suppliers or other persons. Contractor will endeavor to notify Subcontractor of any delays. Subcontractor will endeavor to notify Contractor of same;
  - e. Contractor may order extra Subcontract Work or make changes by altering, adding to or deducting from the Subcontract Work, and the Subcontract Price shall be adjusted accordingly. All extra Subcontract Work shall be governed by this Agreement and the applicable Purchase Order. Any claim for extension of time caused by extra Subcontract Work must be agreed upon at the time of ordering such change. Subcontractor shall make no claims for extra Subcontract Work unless the same shall be fully agreed upon in writing by Contractor prior to the performance of the extra Subcontract Work;
  - f. Subcontractor is deemed, for all purposes under this Agreement, an "independent contractor" and not an employee, agent or partner of Contractor. Subcontractor has no authority to bind, obligate or contract on behalf of Contractor. Contractor shall in no way be liable as an employer of, or on account of any of the employees of, the Subcontractor. Subcontractor will, as an employer, conform to all rules and regulations of Social Security Acts and Unemployment Commissions created by any laws and shall furnish satisfactory evidence to Contractor that it is conforming to said

laws, rules and regulations. Subcontractor releases and indemnifies Contractor from all liabilities under said laws, rules and regulations;

- g.** To comply with all federal, state and local laws, codes, ordinances and regulations, and all municipal laws, codes, ordinances and regulations, present or future, applicable to the Subcontract Work and to obtain, at its own expense, all licenses and permits necessary for the performance of the Subcontract Work;
  - h.** That if any federal, state or local government or agency having proper jurisdiction shall direct Contractor to undertake or refrain from undertaking the Subcontract Work or certain types of work and as a result of such order, the labor, materials or equipment ordered for the Subcontract Work shall become unnecessary, Contractor may, without liability, cancel this Agreement in whole or in part by written notice to Subcontractor;
  - i.** To pay any and all federal, state and municipal taxes, including sales taxes, for which Subcontractor may be liable in connection with the labor, materials or equipment used in carrying out this Agreement;
  - j.** That all materials delivered by or on account of Subcontractor and intended to be incorporated into the Subcontract Work shall become the property of Owner when delivered to the Project site and permanently affixed to the Project;
  - k.** To commence and at all times to perform and complete this Agreement to the complete satisfaction of Contractor in accordance with the construction schedule for completing the Subcontract Work as prescribed by the Contractor from time to time;
  - l.** At the completion of the Subcontract Work, to clean up all rubbish created by Subcontractor and to promptly remove all excess materials, tools, structures and other items which may have been brought on the Owner's premises by Subcontractor, and in the event of the failure of Subcontractor to do so, Contractor may, after reasonable notice to Subcontractor, clean up such premises at the cost and expense of Subcontractor;
  - m.** Time is of the essence with respect to the performance of the Subcontractor's obligations under this Agreement; and
  - n.** To comply with all safety regulations of OSHA, the Contractor and other federal, state or local laws and regulations in the performance of the Subcontract Work and to indemnify and hold the Contractor harmless from all fines, penalties, settlements and other monetary losses caused by any legal action initiated by a governmental agency or individual if the loss results from the Subcontractor's violation of the foregoing safety regulations.
- 4. *Warranty:*** Subcontractor guarantees that the Subcontract work shall be free from any defects due to faulty materials or workmanship or any violation of this Agreement for one (1) year from the date of closing or the Completion Date (as defined in the Purchase Order), whichever is longer.
- 5. *Subcontractor's Insurance:*** Subcontractor shall carry, at its own expense, one or more policies of general public liability and property damage insurance, issued by one or more insurance companies authorized to do business in Kentucky, with the following minimum coverage:
- a.** Worker's Compensation – minimum statutory amount;
  - b.** Comprehensive General Liability Insurance in an aggregate limit of not less than \$\_\_\_\_\_ and a limit of not less than \$\_\_\_\_\_ per occurrence; and
  - c.** Such policy or policies shall name Contractor as an additional insured and shall provide that they may not be cancelled on less than thirty (30) days notice to Contractor. Certificates of insurance as called for herein shall be furnished to Contractor prior to commencing any of the Subcontract Work.
- 6. *Indemnity:*** Subcontractor shall indemnify and save harmless Contractor, its agents and employees, from and against all suits, claims, actions, losses, costs, penalties and damages, of whatsoever kind and nature, including attorney's fees, arising out of, in connection with, or incident to Subcontractor's performance of this Agreement, including but not limited to, any acts or omissions, negligence, gross negligence, strict liability or breach of express or implied warranty by the Subcontractor, its agents and employees.
- 7. *Termination:*** In the event the Owner elects to cease or postpone the Project or the Project is terminated due to the inability to obtain a sanitary sewer tap-in, the Contractor may terminate this Agreement by written notice to the Subcontractor. Such termination shall be effective in the manner specified in the notice and shall be without prejudice to any claims which the Owner or the Contractor may have against the Subcontractor. On receipt of such notice, the Subcontractor, unless the notice

directs otherwise, shall immediately discontinue the Subcontract Work and the placing of orders for materials, facilities and supplies in connection with the performance of the Subcontract Work, and shall, if requested, make every reasonable effort to procure cancellation of existing orders and sub-subcontracts upon terms satisfactory to the Contractor and Owner, and shall do only such work as may be necessary to preserve the Subcontract Work already in progress and to protect materials, plant or equipment on the site or in transit. In the event the Subcontractor should, at any time after notice, refuse to replace defective materials or Subcontract Work, fail to prosecute the Subcontract Work with diligence, or violate any condition of this Agreement, or should the Subcontractor make a general assignment for the benefit of its creditors, or should a receiver of any property of the Subcontractor be appointed, or should a petition be filed, either by or against the Subcontractor, in any bankruptcy or insolvency proceedings, the Contractor may terminate this Agreement upon three (3) days written notice to Subcontractor, and enter the Project and take possession of all tools, machinery, equipment and appliances which may be owned by or be in the possession of the Subcontractor and which are at the Project site and required for the completion of the Subcontract Work, and may exercise all options, privileges and rights with respect thereto, and may complete, or employ any other person or persons to complete, the Subcontract Work at the Subcontractor's expense, without prejudice to Contractor's other rights or remedies for loss or damage sustained.

8. **Governing Law:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Kentucky.
9. **Entire Agreement:** This Agreement, and the applicable Purchase Order, plans and specifications, and contract between the Contractor and the Owner, along with its general conditions, shall constitute the entire agreement between Contractor and Subcontractor and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
10. **Dispute Resolution:**
  - a. **Mediation:** In the event of any claims, disputes or other matters in question between the parties with regard to this Agreement, the parties agree first to try in good faith to settle the dispute by mediation. Any mediation conducted pursuant to this Section shall be conducted, if reasonably possible, by the Better Business Bureau, Cincinnati, Ohio, in accordance with its rules. Demand for mediation shall be filed in writing with the other party to this Contract and with the Better Business Bureau. Any demand for mediation must be made within a reasonable time after the claim, dispute or other matter in question has arisen. The Contractor and the Subcontractor agree to use best efforts to reach a mediated settlement and fully cooperate with all requests and suggestions of the Better Business Bureau.
  - b. **Arbitration:** Any claim, dispute or other matter in question not resolved by mediation or conciliation shall be decided by arbitration in accordance with Chapter 417 of the Kentucky Revised Code. The arbitration process and hearing must be initiated through the Circuit Court of the County in which the Project is located ("Circuit Court"). Hearings on all mediation and arbitration matters must be held in Northern Kentucky. A demand for arbitration may be made concurrently with a demand for mediation and must be made within a reasonable time after the claim, dispute or other matter in question has arisen.
  - c. **Discovery:** The parties shall allow and participate in discovery in accordance with the Kentucky Rules of Civil Procedure for a period of ninety (90) days after the filing of an answer or other responsive pleading. All issues regarding compliance with discovery requests shall be decided by the arbitration panel appointed under the auspices of the Circuit Court.
  - d. **Arbitration Award:** The arbitration panel shall have the authority to award any remedy or relief, other than the awarding of punitive damages, that a court of the State of Kentucky could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process. The arbitration award must be in writing and must specify the factual and legal basis for the arbitration panel's decision. The award rendered by the arbitration panel shall be final upon approval by the Circuit Court, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
  - e. **Fees and Expenses:** The parties shall share equally the expense of the mediation fees, the arbitration fees and filing fees. Each party shall be responsible for all expenses of its experts and witnesses and the preparation and presentation of its proofs. The prevailing party shall be entitled to an award of reasonable attorney fees. In the event that both parties are determined to be at fault, awards for reasonable attorney fees may be equitably allocated by the arbitration panel. The arbitration panel may also determine that no attorney fees are due from either party.
  - f. **Additional Parties:** The Contractor shall have the right to include (i) the Subcontractor as a party in any mediation or arbitration between the Contractor and the Owner or the Subcontractor and its subcontractors or suppliers and (ii)

any subcontractors or suppliers of Subcontractor as parties in any mediation or arbitration between the Contractor and the Subcontractor or Owner.

11. **No Waiver:** The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as waiving any such terms and conditions; but such terms and conditions shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
12. **Safe Work Environment:** Contractor and Subcontractor agree to work together to provide a safe work environment, including, but not limited to, safe access to the Project, readily available portable toilet facilities, and the use of safe practices with respect to the Subcontractor's trade.
13. **Immigration Law Compliance:** Subcontractor shall employ only United States citizens and aliens who are authorized to work in the United States and shall not unlawfully discriminate on the basis of citizenship or national origin. Subcontractor acknowledges and agrees that in compliance with the Immigration Reform and Control Act of 1986, each new employee of Subcontractor, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility.
14. **Non-English Speakers:** If the Subcontractor has workers or visitors or a subcontractor or supplier who has workers or visitors on the Project site who have speech or hearing impairments or who cannot speak or understand English (collectively "Non-English Speakers"), the following requirements shall apply.
  - a. There must be a representative on the Project site who can effectively communicate with the Contractor and all Non-English Speakers during the periods in which such individuals are present ("Representative").
  - b. The Representative shall insure that all Non-English Speakers are trained to properly and safely perform their respective jobs prior to their commencing any portion of the Work.
  - c. The Representative must be able to train Non-English Speakers to recognize and handle hazards of the Project site and those associated with the Subcontract Work to be performed by Non-English Speakers.
  - d. Representatives shall be present in sufficient numbers and at such locations as are necessary to effectively communicate with Non-English Speakers.
  - e. Costs incurred by the Owner or the Contractor as a result of work stoppages or delays due to lack of effective communication with Non-English Speakers shall be paid upon demand by the Subcontractor or offset against sums due the Subcontractor.
  - f. The Contractor shall have the right to require the Subcontractor to leave the Project site where the Contractor's site or safety directives are not effectively communicated with Non-English Speakers. Such an occurrence may be grounds for termination of the Subcontractor under Section 7 of this Agreement.
  - g. The Representative shall promptly report all safety concerns raised by Non-English Speakers to the Contractor.
  - h. The Subcontractor is responsible for providing workers' compensation coverage for all employees, including Non-English Speakers, who enter the Project site. The Representative shall provide evidence of such coverage to the Contractor prior to commencement of any portion of the Work by any Non-English Speakers subject to this requirement. Any affected Non-English Speakers who are discovered to be without workers' compensation insurance shall be required to leave the Project site immediately. Any affected Non-English Speakers whose workers' compensation insurance cannot be adequately documented shall likewise be required to leave the Project site immediately.
15. **Lower Tier Subcontractors:** Subcontractor agrees to require that all lower tier sub-subcontractors be subject to the terms of the contract between Contractor and Subcontractor as defined in Paragraph 1, including, but not limited to, its requirements as regards insurance (described in Paragraph 5), Dispute Resolution (described in Paragraph 10), and Non-English Speakers (described in Paragraph 14).

Contractor and Subcontractor execute this Agreement on the date indicated above.

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

**SUBCONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

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**PURCHASE ORDER**

**THIS PURCHASE ORDER** ("Purchase Order") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a \_\_\_\_\_ ("Contractor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Subcontractor").

1. Subcontractor has entered into a contract with \_\_\_\_\_ ("Owner") dated \_\_\_\_\_, 20\_\_\_\_, for work at the premises located at \_\_\_\_\_, \_\_\_\_\_ County, Kentucky ("Owner's Contract").
2. Contractor agrees to pay to Subcontractor, for the full, complete and faithful performance of the Work described herein as part of the Owner's Contract the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Subcontract Price") payable as follows: \_\_\_\_\_
3. Subcontractor agrees that the labor, materials and equipment to be furnished and the work to be performed by Subcontractor are as follows ("Subcontract Work"): \_\_\_\_\_  
\_\_\_\_\_. Subcontractor further agrees to perform all incidental work reasonably necessary to complete the Subcontract Work.
4. Subcontractor agrees to begin the Subcontract Work within \_\_\_\_\_ (\_\_\_\_) days after Contractor provides notice, either oral or written, to Subcontractor to begin the Subcontract Work.
5. Subcontractor shall complete the Subcontract Work by \_\_\_\_\_, 20\_\_\_\_ ("Completion Date").
6. The parties agree to the following special provisions: \_\_\_\_\_
7. This Purchase Order shall be governed in all respects by the Master Subcontractor Agreement between the parties dated \_\_\_\_\_, 20\_\_\_\_.

**IN WITNESS WHEREOF**, Contractor and Subcontractor have executed this Purchase Order on the dates set forth below.

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

**SUBCONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_