

SOUTH DAKOTA SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement (the "Agreement") is made between:

Contractor: _____ with a mailing address of _____ (the "Contractor"), AND

Subcontractor: _____ with a mailing address of _____ (the "Subcontractor").

WHEREAS, the Contractor intends to pay the Subcontractor for Services provided, effective _____ (mm/dd/yyyy) (the "Effective Date"), under the following terms and conditions:

1. **The Client.** The Subcontractor acknowledges that any work performed under this Agreement must be in accordance with the latest version of the agreement (the "Prime Contract") made between the Contractor and _____ who has a mailing address of _____ (the "Client").

2. **Services.** The Subcontractor agrees to perform the following (the "Services"):

3. **Subcontractor Responsibilities.** The Subcontractor shall be responsible for providing the following when performing the Services: (check all that apply)

- Labor. Including, but not limited to, employees, subcontractors, and any other individuals or agents.
- Materials. Including, but not limited to, all supplies and products.
- Equipment. Including, but not limited to, machinery, accessories, or devices.
- Transportation. Including, but not limited to, ensuring that the above-mentioned responsibilities are provided at the Location mentioned in Section 4.
- Other: _____.

The Subcontractor shall not be responsible for any aforementioned items that are not selected unless otherwise stated in this Agreement.

4. **Location.** The primary location for the Services completed by the Subcontractor shall be: (choose one)

- Specific Address: _____ (the "Location").
- Determined at a later time by the Contractor (the "Location").

5. **Start Date.** The Subcontractor shall be permitted to begin the Services on _____ (mm/dd/yyyy) (the "Commencement Date").

6. Completion. The Subcontractor will be required, unless otherwise stated under the terms of this Agreement, to complete the Services: (choose one)

- By the specific date of _____ (mm/dd/yyyy).
- In a reasonable time period in accordance with industry standards.
- Other: _____.

7. Payment Amount. Payment for the Services shall be as follows: (choose one)

- \$_____ for the Services (the "Payment").
- At an hourly rate of \$_____ per hour (the "Payment").
- Other: _____ (the "Payment").

Payment shall be made by the Contractor to the Subcontractor as follows: (choose one)

- Immediately upon completion of the Services to the satisfaction of the Contractor.
- Within _____ (#) business days after completion of the Services to the satisfaction of the Contractor.
- Shall be paid on a weekly monthly quarterly other _____ basis. If the Subcontractor completes the Services to the satisfaction of the Contractor before the full amount or balance has been fully paid, any remaining amount shall be payable immediately.
- Other: _____.

Completion shall be defined as the fulfillment of Services as described in Section 2 in accordance with industry standards and to the approval of the Contractor, not to be unreasonably withheld.

8. Termination. During the course of this Agreement: (choose one)

- NEITHER party can terminate this agreement until the Services have been complete.
- Contractor ONLY can terminate this agreement with _____ (#) days' notice.
- Subcontractor ONLY can terminate this agreement with _____ (#) days' notice.
- BOTH parties can terminate this agreement with _____ (#) days' notice.

9. Subcontracting. The Subcontractor shall have: (choose one)

- Right to Subcontracting: The Subcontractor may subcontract, either in part or in whole, the Services authorized under this Agreement. The Subcontractor shall be required to obtain a written agreement from each subcontractor that is the same or comparable to the Sections of this Agreement and approved, in writing, by the Contractor.
- No Right to Subcontracting: The Subcontractor may not subcontract, either in part or in whole, the Services authorized under this Agreement.

10. Insurance. The Subcontractor agrees to bear all responsibility for the actions related to themselves and their employees or personnel under this Agreement. In addition, the Subcontractor agrees to obtain comprehensive liability insurance coverage in case of bodily or personal injury, property damage, contractual liability, and cross-liability (the "Liability Insurance").

The amount (\$) for the Liability Insurance shall: (choose one)

- Be a minimum amount of combined single limit of \$_____.
- NOT have a minimum amount required, unless otherwise required by federal, state, or local laws and authorities.

11. Resolution of Disputes. If a dispute arises concerning the provisions of this Agreement or the performance of any of the parties mentioned, the parties hereby agree to settle the dispute by equally paying for one of the following: (choose one)

- Binding Arbitration as regulated under the laws in the State where the Services are being performed. The parties agree to accept the final decision made by the Arbitrator.
- Non-Binding Arbitration as regulated under the laws in the State where the Services are being performed. The parties have the right to not accept the decision of the arbitrator; in such event, the dispute shall be solved by litigation.
- Mediation as regulated under the laws in the State where the Services are being performed. The parties agree to enter into negotiations, in good faith, and through a neutral mediator in an attempt to resolve the dispute. If a resolution to the dispute cannot be made by mediation, the parties agree to enter into binding arbitration.

12. Assignment. The Subcontractor shall not have the right to assign any rights under this Agreement or any part of the Services issued herein. Subject to the foregoing, this Agreement shall be binding upon the parties' heirs, executors, successors, and assigns.

If the parties have a dispute, regardless of which of the above are checked, the Contractor may, before, during, or after any arbitration or mediation, take any steps required by law to preserve or secure any lien on the property to enforce payment of monies due. Specifically, the Contractor may record one or more lien certificates in the appropriate Registry of Deeds and may commence legal action to enforce and preserve any lien as provided under State law.

Completion, as determined under this Section, may be changed if the Services cannot begin or end due to circumstances beyond the control of the Contractor including, but not limited to, lack of readiness of the Location, unavailability of building materials, or any other issues considered outside the control of the parties in this Agreement.

13. Claims. If any claim is made by the Contractor or the Subcontractor in connection with a Change Order or regarding any related issue with this Agreement or the performance of Services and/or Services to be provided, either party shall have the right to submit written notice of such claim through certified mail with return receipt. After receipt of a written claim by either party of this Agreement, the parties shall have thirty (30) business days to correct the claim prior to seeking a resolution under the instructions in Section 12.

- 14. Required Licenses.** All parties of this Agreement including, but not limited to, the Contractor, the Subcontractor, other subcontractors, and all parties' direct or indirect employees and agents shall be licensed in accordance with respective State laws where the individual is performing their trade or service. All individuals under this agreement shall be regulated by their respective licensing board which has jurisdiction to investigate complaints made by any third (3rd) parties.
- 15. Change Orders.** Any alteration or deviation from the Services mentioned or any other contractual specifications that result in a revision of this Agreement shall be executed and attached to this Agreement as a change order (the "Change Order").
- 16. Delays.** Should the Subcontractor delay the Contractor, or any other contractors, subcontractors, suppliers or materialmen on the entire project, the Subcontractor will indemnify the Contractor and hold the Contractor harmless for any damages, claims, demands, liens, stop notices, lawsuits, attorneys' fees, and other costs or liabilities imposed on the Contractor connected with said delay. Among other remedies for the Subcontractor's delay, the Contractor may supplement the Subcontractor's work and deduct associated costs at the Contractor's election.
- 17. Inspection of Services.** The Subcontractor shall make the Services accessible at all reasonable times for inspection by the Contractor. The Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's Services and give prompt notice of any defect therein. The Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Contractor or any authorized third (3rd) party.
- 18. Labor Relations.** The Subcontractor shall maintain labor policies in conformity with the directions of the Contractor and under State laws.
- 19. Indemnification.** The Subcontractor shall indemnify and hold the Contractor and Client harmless from any loss or liability from performing the Services under this Agreement.
- 20. Warranty.** The Subcontractor warrants to Client and Contractor that any and all materials and equipment furnished shall be new unless otherwise specified and that all Services provided under this Agreement will be performed, at a minimum, in accordance with industry standards. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Prime Contract.
- 21. Notices.** All notices under this Agreement shall be in writing and sent to the address of the recipient specified herein. Any such notice may be delivered by hand, by overnight courier, certified mail with return receipt, or first class pre-paid letter, and will be deemed to have been received: (1) if delivered by hand – at the time of delivery; (2) if delivered by overnight courier – 24 hours after the date of delivery to courier with evidence from the courier; (3) if delivered by certified mail with return receipt – the date as verified on the return receipt; (4) if delivered by first class mail – three (3) business days after the date of mailing.
- 22. Injunctive Relief.** The Subcontractor acknowledges it would be difficult to fully compensate the Client and/or Contractor for damages resulting from any breach of this Agreement. Accordingly, in the event of any breach of this Agreement, the Client and/or Contractor shall be entitled to temporary and/or permanent injunctive relief to enforce such provisions.

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- 23. Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 24. Independent Contractor.** No term, covenant, condition, or provision of this Agreement shall be considered to create an employer and employee relationship, a master-servant relationship, or a principal and agent relationship between the Subcontractor and/or any of the Subcontractor's employees and the Contractor or Client. All parties to this Agreement attest that the relationship between the Contractor and the Subcontractor shall be recognized as the Subcontractor acting as an independent contractor.
- 25. Entire Agreement.** This Agreement represents the entire agreement between the Contractor and the Subcontractor. This Agreement supersedes any prior written or oral representations. The Subcontractor and its subcontractors, suppliers, and/or materialmen are bound to the Contractor by the Prime Contract and any contract documents incorporated therein to the same extent as the Contractor is bound to the Client insofar as they are related in any way, directly or indirectly, to the Services provided and covered in this Agreement.
- 26. Force Majeure.** Neither party shall be liable for any failure to perform under this Agreement when such failure is due to causes beyond that party's reasonable control including, but not limited to, acts of State or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquakes, accident, and prolonged shortage of energy. In the event of such delay, any date stated herein shall be extended by a period of time necessary by both the Contractor and the Subcontractor. If the delay remains in effect for a period more than thirty (30) days, the Contractor has the right to terminate this Agreement upon written notice to the Subcontractor.
- 27. Governing Law.** This Agreement shall be governed under the laws in the State of South Dakota.
- 28. Attachments.** The Contractor may attach any plans, schematics, drawings, details, or other information to assist the Subcontractor with the aforementioned Services. Any attachment made shall be made part of this entire Agreement.
- 29. Additional Provisions.**

IN WITNESS WHEREOF, this Agreement was signed by the parties under the hands of their duly authorized officers and made effective as of the undersigned date.

Contractor Signature: _____ **Date:** _____

Print Name: _____

Subcontractor's Signature: _____ **Date:** _____

Print Name: _____