

**GENERAL INSTRUCTIONS  
FOR USE  
OF MASTER SUBCONTRACT AGREEMENT**

This document has been prepared to assist you with your use of Selective's recommended Master Subcontract Agreement form. It is a guideline intended to assist you with your completion of the Subcontract and to highlight certain significant provisions. To the extent that there may be any divergence between these instructions and the materials comprising the Subcontract, the Subcontract's terms and provisions shall govern.

Selective grants you, it's insured, permission to use and copy the Subcontract Agreement. However, Selective's copyright notice may not be removed from any copies made of the Subcontract Agreement.

We recommend that you enter into this agreement with your subcontractors on an annual basis.

We strongly recommend that you have these instructions, the Subcontract Agreement, **Exhibit B** ("Insurance Provisions") and the other attachments referred to in the Subcontract Agreement reviewed by counsel of your choice in order to determine their suitability for specific projects and to insure they comport with applicable state or other applicable jurisdictional law.

**Purpose of Master Agreement Form:**

- The purpose of this form is to constitute a Master Agreement for a prescribed period of time during which you can enter into individual Work Orders thereunder for specific projects. Nothing in this Agreement compels you as Contractor to issue any Work Order or to guarantee a particular number of projects to a Subcontractor. The term of the Master Agreement will be determined at the time of execution. The specific terms concerning Project Schedule, compensation, the identity of the Contract Documents, and other specific aspects peculiar to an individual Project will only be decided at the time the Work Order is executed. However, each Work Order will incorporate by reference the terms of this Subcontract, which will function in effect as general conditions that have been pre-agreed-to between the Parties.

**Introductory Paragraph:**

- Insert the effective date of the Subcontract, which normally should correspond to the day when both Parties have executed the document.
- The names of the Contractor and Subcontractor, the jurisdictions in which they have been organized, and their principal places of business should be inserted in the appropriate spaces provided. Unless otherwise agreed by the Parties, these addresses will be the locations to which all notices as required by the Subcontract should be sent.

**Article 1 – Scope of the Subcontract:**

- There is no guarantee to the Subcontractor that any minimum number of Work Orders will be issued.
- Each Work Order will precisely define the scope of the Work, Project Schedule, and the compensation to be paid to the Subcontractor.
- The Term of the Subcontract must be agreed upon and inserted in the blank appearing in paragraph C.

**Article 2 – Subcontractor's Work:**

- The Subcontractor's Work on an individual Project will be identified in the individual Work Order issued for that Project. The Contract Documents should also be identified on the Work Order along

with any assumptions, clarifications or additional documentation that is intended to be part of the Project Documents.

### **Article 3 – Payment:**

- The Subcontract Price will be determined at the time the Work Order is executed by both Parties.
- In the first sentence of paragraph 3.b., insert the percent of the retainage which is to be withheld from the Subcontractor. Ensure that this is adjusted at the time of execution of the Work Order to be at least be identical to the percentage being withheld by the Owner from the Contractor. In the third sentence of this paragraph, insert the percentage to be paid for stored materials. Again, be certain that this is also consistent with the terms of the Contract Documents for each individual Project.
- Paragraph 3.b. includes a type of “pay when paid” contingent payment provision that obligates the Contractor to make payment within ten (10) days of receipt from Owner. However, in the event of Owner non-payment for reasons which are not the Subcontractor’s fault, then this paragraph contemplates that the Contractor will ultimately have an obligation to pay such funds to the Subcontractor and assume the risk of Owner non-payment. There is a 90-day buffer provided as the reasonable time during which the Subcontractor may have to wait for receipt of payments-due.
- Paragraph 3.d. identifies the supporting documentation that is expected to be furnished with respect to progress payments. Paragraph 3.e. addresses the conditions of final payment.

### **Article 4 – Indemnification and Subcontractor’s Liability**

- Paragraph 4.a. confirms that the Subcontractor assumes responsibility for risk of loss to the Work until acceptance of the Work by the Owner.
- Paragraph 4.c. contains an indemnification provision intended to hold the Subcontractor liable for bodily injury or property damage arising from the Subcontractor’s negligence or any individuals or entities for which it is deemed to be vicariously liable. Care must be taken to consult with legal counsel to determine whether any anti-indemnity statutes or case law in the particular jurisdiction in which the Work is to be performed affects whether this clause will be fully enforced as written or will need to be modified to conform to state law.

### **Article 5 – Subcontractor’s Insurance:**

- The minimum coverages to be furnished by the Subcontractor are to be set forth on the attached **Exhibit B** which can be tailored as necessary to specific Project needs or requirements. **Please note that this provision must be signed and dated.**

### **Article 6 – Time of Performance:**

- Paragraph 6.a contemplates that the Project Schedule will be developed and attached with each Work Order. This Schedule must be consistent with any requirements of the Contract.
- Paragraph 6.a also emphasizes that time is of the essence to ensure that the scheduling requirement will be enforceable as written.

### **Article 7 – Changes and Claims:**

- The Contractor maintains the right to issue unilateral written changes to the Subcontract and compel the Subcontractor to immediately comply even if final adjustments arising from any change have not been agreed upon.

- A distinction is made between Owner Claims for which Subcontractor will be obliged to comply under the terms of the Contract Documents and those other changes independently ordered by the Contractor.
- For non-Owner claims and changes, the Subcontractor will be bound by the unit rates set forth on **Exhibit C** which will need to be negotiated and agreed upon at the time the Master Agreement is signed.

#### **Article 8 – Failures to Perform**

- The Contractor's remedies in the event of a Subcontract default including, but not limited to termination for default, are set forth in this article. The option is afforded to the Contractor to terminate the Subcontractor's right to proceed with an individual Work Order or the entire Subcontract.
- The effect on the Subcontractor of any Owner termination of the prime agreement is also addressed.

#### **Article 9 – Settlement of Disputes**

- Consistent with the Changes and Claims, Article 7 above, a distinction is made between Owner Claims and non-Owner Claims; with the former being handled in strict accordance with the terms of the Contract Documents. Mediation is provided as an option.
- There is a need to indicate in paragraph 9.d. the choice of the Parties as to whether non-Owner Claims will be resolved by arbitration or litigation. If litigation is selected then the venue needs to be set forth; this normally being the location of the Contractor's principal place of business.

#### **Article 10 – Termination for Convenience:**

- This very important protection for the Contractor affords it the right to terminate without cause even in the event its prime agreement with the Owner is not terminated.

#### **Article 11 – Assignment**

- Explains that the Subcontractor may not assign the Subcontract or any Work Order without the written consent of the Contractor and the Subcontractor's surety.

#### **Article 12 – Safety:**

- The Contractor's disclaimer of any responsibility for physical conditions or safety at any Project site is important in order to minimize potential liability. As the entity responsible for determining the means and methods of performing the Work, the Subcontractor is charged with the primary responsibility for protection of its employees, property, and other individuals affected by the Work.

#### **Article 13 – Bonds:**

- The Contractor must decide whether performance or payment bonds, or both, will be required for each individual Project and must indicate its decision in the proper location in the individual Work Order. If required, the bonds are to be in the form attached as **Exhibit D**.

#### **Article 14 – Cleanup:**

- Specifies the Subcontractor's obligations related to this aspect of its Work.

#### **Article 15 – Governing Law:**

- Specifies which state's laws will apply and needs to be inserted here. This normally is the law of the state where the Contractor's principal place of business is located, unless otherwise agreed to by the parties to the Subcontract or mandated by other provisions of law.

**Article 16 - Presumption Arising from Authorship:**

- This paragraph is intended to protect the Contractor, as the drafter of the Subcontract, from being held responsible for any alleged ambiguities which may be subsequently asserted by the Subcontractor.

**Exhibit A –Work Order Form**

- Exhibit A must be completed in order to insure that all of the parties are properly identified, the terms of compensation are made clear and that the scope of the work that is required by the work order is adequately described. It is extremely important to complete this form accurately. **It must be signed and dated by the Contractor and the Subcontractor.**

**THIS DOCUMENT HAS IMPORTANT LEGAL AND INSURANCE CONSEQUENCES, AND IT IS NOT INTENDED AS A SUBSTITUTE FOR COMPETENT PROFESSIONAL SERVICES AND ADVICE. CONSULTATION WITH AN ATTORNEY AND AN INSURANCE ADVISER IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.**

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