

# MASONRY SUBCONTRACT AGREEMENT

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65 Pine Avenue Suite 310  
Long Beach, CA 90802

THIS SUBCONTRACT  
AGREEMENT IS  
ENTERED INTO  
THIS DATE:

**PHONE (800) 555-5151 CELL (800) 555-5151**

<i>and</i> <b>PRIME/ GENERAL CONTRACTOR</b>	NAME			
	PROJECT ADDRESS		STATE/ZIP	PHONE
	ALTERNATE ADDRESS (IF ANY)		STATE/ZIP	PHONE

**LENDER:** (If Any)

Subcontractor, hereinafter called "Subcontractor" agrees to perform the work described in the specifications as may be referred to herein by reference to the plans and specifications.

Work performed at \_\_\_\_\_

**DESCRIPTION OF WORK:** \_\_\_\_\_

Subcontractor shall perform the work described construction in accordance with plans and specifications on the property:

(Description of property, if known)

- Check here if this space insufficient for complete specifications (attach specifications as original and each copy).
- Check here if there are plans (staple plans to original and each copy).

Sample

**SCOPE OF WORK:** All work necessary or incidental to complete work for the project in strict accordance with this subcontract and all terms and conditions hereof and as more particularly specified as (in): \_\_\_\_\_

with the following additions or deletions: \_\_\_\_\_

**OTHER SPECIAL PROVISIONS:** \_\_\_\_\_

**PAYMENT** Prime/General Contractor, \_\_\_\_\_, here agrees to pay to the Subcontractor for the satisfactory performance of the Subcontractor's work the sum of \_\_\_\_\_ and for extra work, if any, as follows: \_\_\_\_\_

and for extra work, if any, as follows: \_\_\_\_\_

**SCHEDULE OF PAYMENT(S):** This schedule of \_\_\_\_\_ and is not conditioned upon Contractor first being paid by Owner. Contractor's obligation to pay Subc \_\_\_\_\_ is independent of Contractor receiving payment from Owner. \_\_\_\_\_

**TIME AND SCHEDULING WORK:** Subcontractor \_\_\_\_\_ to the jobsite or commence work until notified to do so by Contractor. Subcontractor shall commence work \_\_\_\_\_ written notice from Contractor. After Subcontractor commences work, Subcontractor will then complete \_\_\_\_\_ working days thereafter, subject to excusable delays. Working days are defined as Monday through \_\_\_\_\_ included. Scheduling of work, as provided for in this subcontract, is based on acceptable industry standards.

The subcontract provision for price and time included \_\_\_\_\_ on of the Subcontractor, if Subcontractor is not called upon to commence work within six (6) months from the \_\_\_\_\_ reement. Should this situation arise, Subcontractor is relieved of any responsibility to perform under this \_\_\_\_\_ shall be held harmless by Contractor of any liability associated with refusal to perform. Any amounts that \_\_\_\_\_ or interest at a rate of 1½% per month until paid or the maximum rate permitted by law, whichever is higher \_\_\_\_\_ or of this project may be the designated agent for the Contractor.

**SOLE AGREEMENT:** This Agreement, including \_\_\_\_\_ of, is expressly agreed to and constitutes the entire Agreement as of this date. No other Agreement or \_\_\_\_\_, expressed or implied, are a part of this Agreement unless specified herein.

**IN WITNESS HEREOF** the parties have accepted \_\_\_\_\_ or first above written.

**SUBCONTRACTOR:**

**CONTRACTOR:**

_____	(Name)	_____	(Name)
_____	(Address)	_____	(Address)
_____	(City, State, Zip)	_____	(City, State, Zip)
_____	(Phone)	_____	(Phone)
_____	(License)	_____	(License)

**By:**

**X**  
\_\_\_\_\_  
(Signature)

**X**  
\_\_\_\_\_  
(Signature)



# TERMS AND CONDITIONS < Terms used by Sub

**1. Asbestos and Hazardous Materials.** Asbestos or other hazardous materials disturbance, removal or abatement is not provided for by the terms of this subcontract and in the event that asbestos or other hazardous material is encountered or discovered to complete this project, it will be treated as extra work under Paragraph 11 of this Agreement. Subcontractor may stop work upon discovering asbestos or hazardous material, until the terms of the "extra" are negotiated. Subcontractor, at his sole option, can require Owner or Contractor to be responsible for the cost of abatement of asbestos or any other hazardous materials found on the job site.

**2. Arbitration, Validity and Damages.** Any controversy or claim arising out of or related to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be enforced in any court having jurisdiction thereof. Claims within the monetary limit of the Small Claims Court shall be litigated in such court at the request of either party. Any claim filed in Small Claims Court shall not be deemed to be a waiver of the right to arbitrate. If a claim in excess of the jurisdiction of the Small Claims Court may be filed in the Superior Court, then the party filing in the Small Claims Court may do so in addition pursuant to this paragraph.

In case one or more of the provisions of this Agreement or any provision hereof shall be invalid, unenforceable or illegal, the validity, enforceability and effect of the remaining provisions and other application shall not in any way be affected.

**ANY DAMAGES FOR WHICH SUBCONTRACTOR MAY BE HELD LIABLE BY OWNER OR CONTRACTOR SHALL NOT, IN ANY EVENT, EXCEED THE CONTRACT PRICE OF THIS AGREEMENT.**

**3. Reservation of Rights of Dispute.** In the event that the Subcontractor deems it appropriate, to proceed with and complete any work which is the subject of a dispute between the Contractor and the Subcontractor as to whether such work is classified as a "change" or as an "extra," Subcontractor may, if it deems it appropriate, but is not required to, proceed with such work, and thereafter refer the dispute to arbitration in accordance with the Construction Industry Arbitration Rules of the Arbitration Association, to determine whether such work is in fact an "extra" without waiving any said rights, as well as determining the effect of such work.

**4. Attorney Fees.** In the event legal action or arbitration is instituted by either party of any term or condition of this subcontract, the prevailing party shall be entitled to recover of reasonable attorney fees in said action or arbitration, in addition to all other reasonable expenses incurred in the prosecution or defense of said action or arbitration.

**5. Removal of Debris.** Upon completion of the work, the Subcontractor shall remove all of its own debris and surplus materials from Owner's property in a neat and broom-clean condition. Subcontractor will not be held responsible for any pro-rated proportion of general clean-up of the premises or for the disposal of central scrap piles.

**6. Failure to Make Payments.** If Contractor fails to make the scheduled payments as defined in "Schedule of Payments," then Subcontractor shall have the option to cease the performance of any further work until such time said payment is received. If said payment is more than ten (10) working days late, Subcontractor shall consider such late payment as a material breach of this Subcontract Agreement and will proceed to complete the balance of this subcontract. Subcontractor may then proceed as described herein for any and all damage incurred including but not limited to lost profits.

**7. Retention.** Contractor is authorized to withhold retention from Subcontractor to the extent that Owner withholds funds from Contractor for the work performed by Subcontractor. In no event shall Contractor withhold more than ten percent (10%) of payments due Subcontractor. All retentions must be paid to Subcontractor within five (35) days of the date the Subcontractor substantially completes a portion of the work.

**8. Items Not Responsibility of Subcontractor.** Unless specifically stated in this Agreement, Subcontractor shall not be held responsible for any violations of applicable building regulations or ordinances, whether cited by the applicable code or not. Subcontractor is not responsible for any abnormal or unusual conditions. Correction of any such violations or abnormal conditions shall be considered additional work and shall be dealt with as hereinafter provided in Paragraph 11 for extra work.

**9. Excusable Delays.** If the Subcontractor is delayed in the performance of the work by conditions that could not be reasonably foreseen by Subcontractor or over which Subcontractor has no control or Subcontractor, which include, but are not limited to actions of God; fire; explosions or other casualty losses; strikes, boycotts, labor disputes; lockouts; hazardous material disturbance, abatement, or removal; or government body, then Contractor shall grant Subcontractor a reasonable extension of time. If additional work or cost is required of, or incurred by, Subcontractor because of the delay, then Subcontractor shall be entitled to compensation as provided in Paragraph 11.

**10. Contractor's Responsibilities and OSHA Requirements.** Waiver of Contractor's electric utilities from the serving agency to the point of entry at Owner's premises. The metering devices are required and are the responsibility of the Contractor.

In compliance with Federal and State law, Contractor agrees to make drinking water and toilet facilities available to all workers, or compensate Subcontractor for cost of rental units.

Contractor agrees to provide electricity at the job site to effect the work herein. Contractor shall provide adequate job site storage and work area as required for the use of Subcontractor for work under this Agreement.

Contractor agrees to comply with all local, state, and national laws, including without limitation the provisions of the Accident and Safety Health Act of 1970 and the Occupational Safety and Health Act of 1969, and Subcontractor is not responsible for any liability arising from Contractor's noncompliance.

Contractor shall provide in a good and workmanlike manner only the materials specified therein. Additional work not specified in this Agreement shall be provided only upon written authorization of Contractor. However, in the event that the parties cannot agree on the sum necessary to compensate Subcontractor for extra work, then Subcontractor shall be paid his actual costs for the additional work as well as his normal overhead and profit.

For any extra work performed, Contractor shall be compensated in an amount to be determined by the parties. The extra work is performed and such amount, including Contractor's normal overhead and profit shall be made as the extra work progresses, concurrently with the payments made under payments scheduled. However, in the event that an agreement cannot be reached, then Subcontractor may proceed upon the verbal authorization of the Contractor's job superintendent and request written confirmation of the Contractor within seventy-two (72) hours.

**Assignment and Subcontracting.** Subcontractor shall be allowed to assign any part of this contract or subcontract any portion of it without the written consent of Contractor.

**Protection of Work.** To the extent noted herein, Subcontractor will protect its own work and the work of others. To allow Subcontractor to protect the work, Contractor shall provide to Subcontractor adequate storage space and security on the job site. Once Subcontractor's work is completed, then Contractor shall be responsible for the protection of the work as well as the entire project.

If Contractor's work is damaged or destroyed during the course of Subcontractor's work, then Contractor shall agree to repair or replace said damaged work. If the work is damaged or destroyed as a result of actions beyond the reasonable control of the Subcontractor or negligence of persons other than Subcontractor, then Subcontractor shall be responsible for the repair or replacement of such damaged work but will do so only upon being notified in writing. Compensation shall be treated as extra work and the amount shall be determined as provided in Paragraph 11.

**Conditions.** In the event that Subcontractor encounters rock, ground conditions, utilities or other conditions unknown to Subcontractor and not foreseeable by Subcontractor, then Subcontractor shall immediately stop work and call Contractor's attention to such concealed conditions in writing. The amount of extra work and price will be equitably adjusted in writing.

Contractor will procure at Contractor's expense and before the start of any work under this contract, fire insurance, with course of construction, and malicious mischief clauses attached. The insurance is to be in the name of Contractor and Subcontractors as additional insured, and to protect Owner, Contractor, Subcontractors, and construction lender as their interests may appear. If Contractor fails to do so, Subcontractor may procure to do so. If the project is damaged by any accident, disaster, or calamity such as fire, storm flood, earthquake, or by theft or vandalism, any work done by Subcontractor in rebuilding or restoring the project shall be paid for by the Contractor as provided in Paragraph 11 above. If, however, the cost of replacement of work already accomplished by Subcontractor exceeds ten percent (10%) of the contract price, Contractor shall have the option to not proceed with the work and in that event, shall pay Subcontractors usual overhead and a net amount of \_\_\_\_\_ percent, of all work performed by Subcontractor before cancellation.

Contractor will carry Worker's Compensation Insurance to protect Subcontractor's workmen during the progress of the work. Contractor shall obtain and pay for insurance for its own employees and persons not under the control of Subcontractor.

**Indemnification.** Contractor shall indemnify and hold harmless Subcontractor from and against all claims arising from Contractor's use of the job site, or from Contractor's business or from any activity, work or things done, permitted or otherwise in or about the job site or elsewhere, and shall further hold harmless Subcontractor from and against any and all claims arising from Contractor's default in the performance of any obligation on the Contractor's part under the terms of the Subcontract Agreement, or arising from any negligence in the performance of any obligation on the Contractor's part to be performed under the terms of the Subcontract Agreement, or arising from any negligence or any of Contractor's agents, Contractors, subcontractors, or employees, or from and against all costs, attorney's fees, expenses and liabilities incurred by Contractor or any of such claims or any action or proceeding brought thereon; or from and against any action or proceeding brought against Subcontractor by reason of any negligence of Contractor, upon notice from Subcontractor shall defend same at Contractor's expense by counsel satisfactory to Subcontractor.