

# SUBCONTRACT AGREEMENT



for  
«PROJECT» «PROJECTDESCRIPTION»

Page 1 of 10: (plus attachments 1 – 9)  
Subcontract #: \*1234-99999  
Contract Date:  
Vendor #:

<b>FOR OFFICE USE ONLY</b>	
_____	Insurance Requirements Met
_____	Bond Received (if applicable)
_____	Contract Language Approved
_____	Scope of Work Reviewed
_____	Integrate Authorized Changes
PM Assistant / Reviewer _____	Date _____

TO: Sample Subcontractor, Inc.  
123 Main Street  
Town, City Zip

SHIP TO: The MacMillin Company, Inc.  
c/o

TERMS: 10% Retainage	DATE REQUIRED:	WRITTEN BY: Project Manager	TO: Subcontractor Contact	TEL: - -	FAX: - -
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Item	Phase	Description	Quantity	UM	Unit Price	Extended Price
1	02001	Sitework		LS		100,000.00
<b>TOTAL SUBCONTRACT AMOUNT</b>						<b>\$100,000.00</b>

SAMPLE

**PLEASE SIGN PAGE 10** and return both copies of this subcontract to us *within ten (10) days of the above date.*

**Your Detailed Schedule of Values and a Current, Job-Specific Certificate of Insurance** are also required and should accompany the return of your signed subcontract if these have not already been provided.

Upon our receipt of your signed subcontract, we will return one executed copy to you for your record.

***Do not alter the attached subcontract.***

*Any changes to this document must be mutually agreed upon by the subcontractor and MacMillin Company. Any and all changes will be incorporated into your subcontract as an attachment to this document.*

Is a 100% Performance and Payment Bond required? **YES**

These requirements must be satisfied prior to the commencement of your work on this project.

**\*PLEASE REFERENCE THE ABOVE SUBCONTRACT NUMBER ON ALL REQUISITIONS.**



# Subcontract Terms and Conditions

## ARTICLE I - GENERAL PROVISIONS

**1.1 Subcontract:** The “Subcontract” consists of The MacMillin Company, Inc. Subcontract Agreement between MacMillin and Subcontractor, including documents incorporated herein or therein, these Subcontract Terms and Conditions, the “General Contract” between MacMillin and the Owner, all documents and schedules incorporated therein, and all plans and specifications included or referenced therein to the extent the same pertain to the Work. All equal opportunity, nondiscrimination, and wage clauses if any, contained in the General Contract shall specifically be incorporated herein. This Subcontract is subject to any termination and/or scope of work reduction clauses contained in the General Contract.

**1.2 Project:** The “Project” means the work which is the object of the General Contract and which is described in the section of the MacMillin Company Subcontract Agreement entitled “Project Name.”

**1.3 Execution:** The parties hereby agree that this Subcontract supersedes all prior negotiations, representations, or agreements and that no other agreements, verbal or written, except Subcontract Change Orders executed by MacMillin and Subcontractor, shall alter, amend, or modify this Subcontract.

**1.4 Bound to General Contract:** The Subcontractor agrees to be bound to the terms of the General Contract and to assume toward MacMillin all of the obligations and responsibilities that MacMillin assumes toward the Owner insofar as applicable to this Subcontract. Subcontractor shall require similar provisions in contracts with its sub-subcontractors. Copies of the General Contract will be available for review at MacMillin’s field office on the site, and if no office on the site then at MacMillin’s main office in Keene, New Hampshire.

**1.5 Bonds:** MacMillin shall have the right to require the Subcontractor to furnish bonds with a corporate surety acceptable to MacMillin covering the faithful performance of the Subcontract and the payment of all obligations arising thereunder. Notwithstanding the prior sentence, at a minimum, any surety furnishing a bond shall have a minimum rating of Best’s rating “A-” and Best’s Financial size category “IX”, and the surety shall be listed on the U.S. Treasury list and licensed in the state which the work is to be performed. In the event that the surety fails to meet the requirements set forth herein, MacMillin can request and Subcontractor will provide a new bond with a surety complying with the provisions hereof. It is understood that the costs of such bonds are included in the Subcontract Sum if bonds are requested prior to executing this Subcontract, otherwise such costs shall be added to the Subcontract Sum by Change Order.

**1.6 Notice:** Notice to either party shall be deemed given upon deposit, by certified mail through the United States Postal Service, postage prepaid, to the address indicated in the Subcontract, or to such other address as either party may have designated by notifying the other party in writing prior to the notice.

**1.7 Waiver of Subcontract Terms:** A waiver by either party of any of these terms and conditions shall not be deemed a waiver of any other terms and conditions of the Subcontract. None of the remedies provided by this Subcontract are intended to be exclusive and both parties expressly reserve the right to exercise any other remedies provided by law or in equity.

**1.8 Governing Law:** All of the terms and conditions of this Subcontract shall be construed according to the laws of the jurisdiction in which the Project is located.



**1.9 Titles:** The titles of the paragraphs contained herein are used for ease of identification only, and shall not limit the interpretation of the text.

**1.10 Work:** Shall mean the work to be performed by Subcontractor, as set forth in Attachment 1, hereto.

**1.11 Time of the Essence:** **TIME IS OF THE ESSENCE IN THIS SUBCONTRACT.**

## **ARTICLE 2 - THE SUBCONTRACTOR**

**2.1 Field Conditions:** By executing the Subcontract, the Subcontractor represents that it has visited the site, familiarized himself with the local conditions (including soils, climate and labor relations) under which the Work is to be performed and correlated its observations with the requirements of the Subcontract and of the General Contract.

**2.2 Scope of Work:** The Subcontractor agrees to furnish all labor, materials, tools, equipment, supervision, testing and inspection necessary to fully and punctually perform the Work in a good and workmanlike manner and in accordance with the Subcontract, including General Contract and all plans, specifications, addenda and other documents which are applicable to the Work. Subcontractor acknowledges the Work is subject to the approval of the Architect and/or Owner as well as MacMillin. Any Work not so approved shall be removed and replaced by the Subcontractor at its own expense.

**2.3 Engineering and Layout:** While MacMillin will provide initial benchmarks or control points, the Subcontractor shall provide all additional layout and engineering to complete the Work. Before proceeding with the Subcontract Work, Subcontractor shall check the correctness of contiguous work installed by others, and the failure to detect or report obvious discrepancies will preclude the Subcontractor from recovery of any resulting cost, expense, or damage. In the event the scope of the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of Subcontractor to examine the items so provided and thereupon handle, store, and install such items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts of Subcontractor shall be deducted from any amounts due or to become due to Subcontractor.

**2.4 Work in Harmony:** The Subcontractor shall furnish workers that will work in harmony with all other subcontractors on the Project, whether or not they are members of any labor or collective bargaining organization. The Subcontractor shall not suffer, support or take any action to picket, strike, handbill, engage in, or sympathize with any unfair labor practice strikes or work stoppages, or otherwise interfere with the Work or business of MacMillin or any of its subcontractors. The Subcontractor shall not suffer its employees to honor or recognize any picket line.

**2.5 Guaranty:** The Subcontractor warrants to the Owner and MacMillin that materials and equipment furnished under this Subcontract will be of good quality, new, free of liens and free from defects. The Subcontractor guarantees the Work against all defects of materials and/or workmanship and will repair or replace any broken, defective, or malfunctioning Work at its sole cost and expense. This guarantee shall extend for the greater of the period specified in the General Contract or the period of time that any bond(s) are outstanding or one year from the date of final acceptance of MacMillin's work by the Owner.

**2.6 Taxes:** The Subcontractor shall pay all sales, consumer, use and other similar taxes for the Work provided by the Subcontractor, and shall furthermore furnish MacMillin, if applicable, copies of any and all certificates received by Subcontractor evidencing payment, withholding or waiver of any tax.



**2.7 Permits, Fees, and Licenses:** The Subcontractor shall secure and pay for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work.

**2.8 Subcontractor's Schedule:** In order to coordinate its Work with the work of others on the Project, the Subcontractor shall, within ten (10) days of the date of this Subcontract, furnish MacMillin, a schedule for the Work based upon MacMillin's project schedule for the work specified in the General Contract (the "Schedule"). The Schedule shall be subject to further coordination with others on the Project by MacMillin's Project Manager and Project Superintendent. The Subcontractor agrees to perform the Work in a prompt and diligent manner commensurate with MacMillin's Project schedule and the Subcontractor's Schedule, as approved by MacMillin. The Subcontractor shall perform the Work in such a way as to avoid conflict, delay in or interference with the work of MacMillin, other Subcontractors or Owner's own forces. Failure of the Subcontractor to submit the Schedule or failure by MacMillin to enforce the Subcontractor's obligation to provide the Schedule shall not constitute a waiver by MacMillin of Subcontractor's duty to proceed with its Work in accordance with this Subcontract and the Project schedule established by MacMillin. Should the Subcontractor in any way delay the progress of the Project so as to cause any damage or expense to MacMillin, or any damages for which MacMillin shall be held responsible, the Subcontractor shall compensate MacMillin therefor in accordance with MacMillin's Backcharge Policy (as set forth on Attachment 5). Subcontractor shall devote sufficient manpower to maintain the progress of the Work without delaying other aspects of the Project. At the request of MacMillin, the Subcontractor shall add extra manpower or order overtime labor in order to timely complete the Work, without any increase in the Subcontract Sum. Extensions of time granted MacMillin under the General Contract shall be granted to the Subcontractor in the event they impact Subcontractor's Work.

**2.9 Schedule of Values:** The Subcontractor shall, within ten (10) days of the date of this Subcontract, submit to MacMillin, for its approval, a schedule of values on AIA Documents G702 and G703 allocating the various portions of the Work aggregating to the Subcontract Sum. In applying for payment, the Subcontractor shall submit requisitions based upon this schedule. Each schedule of values shall include a line item for costs and expenses associated with closing out the Project, which shall encompass all facets of closing out the Project, including, but not limited to, preparation and delivery of "as-builts" and delivery of operations and maintenance manuals.

**2.10 Shop Drawings, Material Data, Samples and "As BUILTS":** The Subcontractor shall, within fifteen (15) days of the date of this Subcontract, submit to MacMillin: (a) lists of all long-lead items required for the performance of the Subcontractor's Work, including materials to be furnished by its subcontractors and suppliers, (b) ten (10) sets of all shop drawings, samples, and operating manuals for all portions of its Work, meeting the requirements of the Contract Documents (as set forth on Attachment 3) for the approval of MacMillin, Architect and/or Owner, so as to cause no delay to the Project. In addition, Subcontractor shall provide MacMillin, on completion of the project, an "as built" set of prints along with operations and maintenance manuals, and any and all documents or instruments necessary to close out the Project. All addenda, alternates, Change Orders, actual revisions as a result of job conditions shall be recorded. "As built" drawings must be revised weekly to reflect deviations from the Contract Documents. "As built" will be kept at MacMillin's field office. All written information, manuals and instructions received in the equipment packaging will be delivered by the Subcontractor to MacMillin and kept on record and filed at MacMillin's field office. Handover documentation (8 1/2 x 11 size documentation or equivalent material) shall be submitted by Subcontractor in 3-ring binders and indexed. In addition to any other remedies available to MacMillin, at law or equity, failure to comply with the requirements contained in this Article will be considered as material non-compliance with the Subcontract and MacMillin may withhold payments and require that Subcontractor correct deficiencies within a stated time period.

**2.11 Cleanup:** The Subcontractor agrees to assume all expense for cleanup and removal of its debris to a designated dumpster on a daily basis. Failure to comply will result in the cost being chargeable to the Subcontractor and deducted from progress payments.

**2.12 Stored On-Site Materials:** The Subcontractor shall be solely responsible for the safety and security of any stored on-site materials.



**2.13 Signs, Trailers, and Facilities:** The Subcontractor shall not place any signs, storage or office trailers or other facilities on the job site without the prior approval of MacMillin, which shall be in MacMillin's sole discretion.

**2.14 Sub-subcontracting and Assignment:** The Subcontractor agrees not to assign this Contract or any amounts due hereunder without the written consent of MacMillin. The Subcontractor shall not subcontract any portion of its Work without the prior written approval of MacMillin, which approval shall not be unreasonably withheld. Subcontractor shall require by written agreement that all sub-subcontractors be bound to the terms of this Subcontract and to assume towards the Subcontractor all the obligations and responsibilities which the Subcontractor assumes towards MacMillin, Owner and Architect, including, but not limited to, the Indemnification provisions set forth in Section, 3.2, below.

**2.15 Independent Contractor:** Subcontractor agrees that its relationship to MacMillin is as an independent contractor. Subcontractor acknowledges and agrees that MacMillin has no legal responsibility to withhold state or federal income tax, unemployment compensation, Social Security, or to provide any form or manner of pension or other fringe benefits. All employees of Subcontractor shall be employees of Subcontractor and not of MacMillin. Except as specifically set forth herein, Subcontractor shall have no right or authority to assume or undertake any obligation of any kind, express or implied on behalf of MacMillin or to bind MacMillin in any way.

### **ARTICLE 3 - COMPLIANCE AND INDEMNIFICATION**

**3.1 Compliance with Laws Regulations and Requirements:** The Subcontractor agrees to comply fully with all local, state and federal ordinances, regulations, and laws applicable to the Subcontractor's Work including, but not limited to, the Occupational Safety and Health Act of 1970, as amended, and the Americans with Disabilities Act. The Subcontractor shall pay for all fines, penalties and corrective measures attributable to its noncompliance, including, but not limited to, fines or penalties assessed against MacMillin resulting from Subcontractor noncompliance, all of which may be deducted from the Subcontractor's payments due.

**3.2 Indemnification:** To the fullest extent permitted by law, the Subcontractor shall indemnify, defend and hold harmless the Owner, Architect, MacMillin, and the officers, directors, agents and employees of any of them from and against all claims, damages, losses and expenses, including attorney's fees, interest, penalties, and fines, arising out of, relating to or resulting from the acts, failure to act or omissions of the Subcontractor, a supplier, a sub-subcontractor, anyone directly or indirectly employed or controlled by them or anyone for whose acts they may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or whether or not it is covered by Subcontractors insurance carrier. In addition, and in no way abrogating or limiting the foregoing Subcontractor shall defend, indemnify and hold harmless Owner, Architect, MacMillin, and the officers, directors, agents and employees of any of them, from any and all claims, damages and liabilities arising out of or relating to injuries to employees of Subcontractor as well as injuries to employees of any sub-subcontractors and suppliers, while on or about the site whether or not it is caused in part by a party indemnified hereunder or whether or not it is covered by Subcontractors insurance carrier.

**3.3 No Limitation Upon Liability:** The indemnification obligation shall not be limited by the amount or type of damages, compensation or benefits payable by or for the Subcontractor or its sub-subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

