

# SUBCONTRACT for CONSTRUCTION

## Agreement between Contractor and Subcontractor

Made this \_\_\_\_\_ day of \_\_\_\_\_

Between The Contractor: **Cornerstone Design/Build Services, Inc.**  
**163 Grand Army Highway**  
**Swansea, MA 02777**

And The Subcontractor: **Subcontractor**  
**Street Address**  
**City, State Zip Code**

Project: **Project**  
**Street Address**  
**City, State Zip Code**

Architect: **Architect**  
**Street Address**  
**City, State Zip Code**

The Contractor and Subcontractor agree as set forth below.

### **ARTICLE ONE - CONTRACT DOCUMENTS**

1. The Contract Documents consist of this Agreement, and any attached Exhibits, Bid Forms, Specifications, Drawings, Addenda, approved Shop Drawings, and any directives from the Contractor to the Subcontractor issued under any provision of any of the foregoing documents. The Subcontractor hereby represents that he has examined all such documents and is familiar with the same. These documents are hereinafter referred to as the "Subcontract for Construction," and all are fully a part of the Subcontract for Construction as if attached to this Agreement or repeated herein.

2. The term "Project Schedule" as used in the Contract Documents shall mean the amount of time to complete the project.

### **ARTICLE TWO - THE WORK**

1. The Subcontractor shall provide any pay for all labor, materials, permits, tools, taxes, equipment, insurance, professional and non-professional services, "as-built" drawings, warranty information, and shall perform all acts and supply all other things necessary to fully and properly perform and complete the following, unless specifically otherwise noted:

2. All Work rendered necessary in the consequence of the performance of any part of the Work herein agreed upon, or reasonably inferable from the contract Documents shall be deemed to be included in and shall form a part of this Agreement. Although not mentioned herein, and no additional payment shall be made to the Subcontractor for the same.

3. Work called for in the plans and not mentioned in the specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked, or specified shall be as similar parts that are detailed, marked or specified. Unless otherwise noted, the Subcontractor has received and reviews the full set of plans.

4. The construction of the project, as described on page one of this Agreement, in accordance with the Contract Documents, including, but not limited to, the drawings and specifications described as follows:

Drawings Dated: **N/A**

Specification or Project Manual Dated: **N/A**

### **ARTICLE THREE - TIME**

1. The Subcontractor shall commence the work promptly upon receipt of a Project Schedule or Notice to Proceed from the Contractor. Work shall completed as soon as good practice and due diligence will permit, but in no event later than Calendar Days from the date of this contract, such period of time being here in after referred to as the "Contract time".
2. There will be no approved requests for overtime due to not properly staffing the jobsite and peak times in performing the work in accordance with the Project Schedule.
3. No extension of time will be allowed without the Contractor's written consent and Time is of the essence of this Agreement.

### **ARTICLE FOUR - THE CONTRACT SUM**

1. The Subcontractor shall strictly and completely perform all of its obligations under the Contract Documents, subject only to additions and deductions by written Change Order. The Contractor shall pay the Subcontractor, at the times and in installments as described in Article 5, hereinafter specified the sum of:

Such sum here in after being called the Contract Sum.

2. In the event of additional work, The following maximum unit prices shall be used to calculate costs:

Tradesman:	Per Man Hour
Apprentice:	Per Man Hour
Materials:	<b>cost plus 10%</b>

3. The Contract Sum may be increased only by written Change Order signed by both parties with the same formality as the signatures below. Under no circumstances should additional work proceed without a signed change order. The contract sum is intended to include all increases, including, without limiting the generality of the foregoing, all taxes, labor, materials, and transportation costs, which are the sole responsibility of the Subcontractor.

4. No payment by the Contractor to the Subcontractor shall be construed as an approval or acceptance of the Work. The Contractor shall have the right to withhold an amount equal to (2) times the estimated cost of all incomplete, defective Work, or disputed claims until such time as the incomplete or defective Work is corrected and accepted by the Contractor or the claims are resolved to the Contractors satisfaction.

### **ARTICLE 5 - PAYMENT**

1. Depending on the length of the Contract Time, Applications for Payments shall be submitted as follows:

1.1. If the Contract Time is less than (30) days, the Subcontractor shall submit only one Application for Payment upon substantial completion.

1.2. If the Contract Time is greater than (30) days, the Subcontractor shall submit progress Applications for Payment on or about the 1st of each month. Requests received after the 1st day of the month will be may be re-dated to the 1st of the following month.

2. The Contractor may request the Subcontractor to use a specific payment form. All payments request shall be accompanied by a conditional and/or "Waiver of Lien Release" form. Forms shall be made available to the Subcontractor.

3. The Contractor will make all payments within 30 days of receipt of an Application for Payment from the Subcontractor with ten percent (10.00%) retainage being held from each payment, which retainage may include an amount to insure payment of Subcontractors tax obligations. Failure to make payments when due by either party under this Subcontract shall bear interest as allowed by law in the State for which the jobsite is located.

4. The Contractor shall make final payment to the Subcontractor within (30) days after acceptance of the Work by the owner and or the architect, and upon submission of all forms, lien waivers, warranties, and as-built drawings. Subcontractor must submit final invoice for payment and retainage, including extra's, within 30 days of certificate of occupancy. Final invoices received after 30 days may be returned for non-payment.

5. Requests for accelerated payments (Net 10 Days) shall be subject to a 2% discount and shall be clearly noted on the Application for Payment. Accelerated payments are at the discretion of the Contractor.

5. The contractor may withhold payment in an amount to insure payment of material suppliers used by the subcontractor and subcontractors hired by the subcontractor.

## **ARTICLE 6 - REPRESENTATIONS & WARRANTIES**

1. The Subcontractor hereby represents and warrants that:

1.1. Subcontractor is duly licensed to observe and perform the terms, covenants, conditions, and other provisions on its part to be observed or performed hereunder; and

1.2. Subcontractor is experienced and skilled in the construction and Work of the type required by the Contract Documents; and

1.3. All equipment and materials in connection with the Work shall be new (except otherwise required by the Specifications) and the equipment, materials, and the Work shall be of the best quality, free from faults and defects and shall conform with the Drawings and Specifications; and

1.4. The Subcontractor examined the jobsite (if applicable) and general area in which the jobsite is located, without limitation, its climatic conditions, the availability and cost of labor and materials, tools, and equipment.

2. The Subcontractor shall supervise and direct the Work, using best skill and judgment and to cooperate with the Contractor in furthering the interests of the Contractor. It agrees to furnish efficient business administration and superintendence and to use its best efforts to furnish at all time an adequate supply of workmen, equipment, tools, and materials. Subcontractor agrees to perform the Work in the way and most expeditious and economical manner, consistent with the best interest of the Contractor.

3. The Subcontractor shall leave his work area "broom clean" on a daily basis. The Contractor will provide and maintain a trash dumpster for the use of the Subcontractor's debris.

4. The Subcontractor shall, at all times, enforce strict discipline and good order among his employees, and shall not employ on the Work any unfit person or anyone not skilled in the work assigned to him. The Subcontractor shall also protect the Contractor and the Owner's property from injury or loss arising in connection with these Contract Documents. He shall adequately protect adjacent property, as provided by law, and shall provide guard fences, lights, and other facilities or personal protection required by public authority or local conditions.

5. The Subcontractor shall obey all OSHA requirements and agrees to reimburse the Contractor for all fines and penalties imposed due to negligence of the Subcontractor relating to these matters.

6. There shall no manifestations on the project of any dispute between any labor organization and any GC, Tenant or Landlord contractor or subcontractor, including but not limited to, any area standards picketing against said contractor or sub-contractor. Should there be any manifestation of a labor dispute between any GC, Tenant or Landlord contractor or sub-contractor and any union, which results in a stoppage of work on the part of said contractor or sub-contractors employees or employees of any other employer or supplier on the project, which in the sole judgement of the GC, Tenant or Landlord will cause, or is likely to cause, unreasonable delay in the progress of construction, then upon written notice from GC, Tenant or Landlord, the GC, Tenant or Landlord shall have the obligation and the right to declare the contractor or sub-contractor in default of his contract, and upon such notice, the GC, Tenant or Landlord shall have the right to take such steps as are necessary to finish the uncompleted portion of the work to be performed by the contractor or subcontractor in accordance with article 11.3 of this subcontract.

### **ARTICLE 7 - INTERPRETATION**

1. The Contract Documents shall be construed and interpreted in accordance with the laws of the State of location of the Jobsite, and shall constitute the sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications.

2. Both parties must agree to any changes made to this Agreement or to the Contract Documents in writing.

### **ARTICLE 8 - GUARANTEE**

1. The Subcontractor hereby guarantees and warrants to the Contractor and the Owner that all items furnished and installed under this Contract are free from defects in material and workmanship, for a period of one (1) year, from date of certificate of occupancy. The Subcontractor shall repair or replace any materials developing such defects, together with any adjacent structures or facilities displaced or damaged by so doing or that may have been damaged as a result of such defects, upon notification by the Contractor or the Owner.

2. All repairs and/or replacements shall be performed in accordance with the Contract Documents at no cost to the Contractor or the Owner. In the event that the guarantee work is critical to the operation of the Owner, the Subcontractor is required to perform such guarantee work within four (4) hours. In the event that the guarantee work is non-critical to the operation of the Owner, the Subcontractor is requested to perform such guarantee work within seven (7) calendar days.

3. In the event that the Subcontractor does not perform the guarantee work in the time frame stated above, the Contractor or the Owner may, at its option, cause such corrective Work to be done by others and charge the Subcontractor with the reasonable cost thereof.

### **ARTICLE NINE - INSURANCE**

1. Prior to starting the work, the subcontractor shall obtain the required insurance from a reasonable insurer, and shall furnish satisfactory evidence to the Contractor that the Subcontractor has complied with this requirement. The Contractor has the right to hold payment, or deduct such sums as would be required by the Contractor's insurance carrier, until such time as the Subcontractor has complied with the insurance requirement. The Subcontractor agrees that if it does not submit the required insurance documents, and if a claim is filed, then the Sub-contractor agrees to assume liability as if the insurance coverage were in force.

2. The Subcontractor shall maintain worker's compensation, general liability, automobile, and umbrella insurance for the minimum amount required by the general contract that this subcontract applies to or as outlined below, whichever limits and coverages are higher. Insurance certificates shall be provided. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. These certificates and the insurance policies shall contain a provision that coverage is afforded under the policies will not be cancelled or allowed to expire until 30 days prior written notice has been given to Cornerstone Design/Build Services, Inc. The Owner, Landlord, and **Cornerstone Design/Build Services shall be named as an additional insured** on a primary and non-contributory basis on all liability and excess policies. Coverage for Cornerstone Design/Build Services, Inc. shall include completed operations coverage.

3. Minimum required insurance limits (coverage on an occurrence basis):

3.1. Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.

3.1a. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

3.1b. CGL coverage shall be written on ISO Occurrence form CG 00 01 (10 93) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.

3.1c. "Contractor", General Contractor, Owner and all other parties required of the "Contractor", shall be included as insured's on the CGL. This insurance for the additional insured's shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.

3.1d. Subcontractor shall maintain CGL coverage for itself and all additional insured's for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.

3.2. Business Auto Liability with limits of at least \$1,000,000 each accident.

3.2a. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

3.2b. "Contractor", General Contractor, Owner and all other parties required of the "Contractor", shall be included as insured's on the auto policy.

3.3. Commercial Umbrella with limits of at least \$5,000,000.

3.3a. Umbrella coverage must include as insured's all entities that are additional insured's on the CGL.

3.4. Workers Compensation and Employers Liability Insurance limits of at least \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for injury by disease.

4. Waiver of Subrogation - The Subcontractor waives all rights against the General Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above.

**ARTICLE TEN - INDEMNIFICATION**

1. To the fullest extent permitted by law, the Subcontractor hereby acknowledges and agrees that it shall indemnify, hold harmless and defend the General Contractor and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners from and against all claims, damages, judgments, settlements, losses and expenses, including but not limited to, attorney’s fees, arising out of or resulting from the performance of the Subcontractor’s Work and/or arising out of or resulting from any act or omission of the Subcontractor, its employees, agents or subcontractors.

2. To the fullest extent permitted by law, the Subcontractor hereby agrees to fully defend the General Contractor and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners, (1) from any complaint against any of them for injury or damage that is alleged in the complaint to arise, in whole or in part, out of the subcontractor’s work, or out of any act or omission of the Subcontractor, its employees, agents or subcontractors and/or (2) from any complaint against any of them alleging injury or damage to an employee of the Subcontractor. The party defended hereunder shall have the right to choose its own counsel to be paid for by the Subcontractor.

**ARTICLE 11 - TERMINATION OF THE CONTRACT**

1. The Subcontractor may terminate the contract if the Contractor fails to make payment when due or substantially breaches any other obligation of this contract following seven days written notice to the Contractor and recover payment for work executed and for proven loss with respect to materials and labor.

2. The Contractor may terminate the contract following seven days written notice to the Subcontractor if the Subcontractor:

2.1. persistently or repeatedly refuses or fails to supply enough skilled workers or proper materials;

2.2. fails to make payments to their Subcontractors or suppliers for labor and materials in accordance with their respective agreements;

2.3. persistently disregards laws, ordinances, codes, or rules, regulations or orders of public authority having jurisdiction; or

2.4. is other wise guilty of substantial breach of a provision of the contract documents.

3. If the unpaid balance of the contract sum exceeds costs of finishing the work, such excess shall be paid to the Subcontractor. If such costs exceed the unpaid balance, the Subcontractor shall pay the difference to the Contractor. This obligation for payment shall survive termination of the contract.

**ARTICLE TWELVE - OTHER PROVISIONS**

1. Each party acknowledges that each party is of equal bargaining strength; and has participated in the drafting and negotiating of the Agreement; and Has had the opportunity to consult with an attorney or advisor relative to entering into this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

Contractor:  
**Cornerstone Design/Build Services, Inc.**

Subcontractor:  
\_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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