Construction Contract Example

PURPOSE OF A CONSTRUCTION CONTRACT

Construction contracts (i.e., subcontractor or subcontract agreements) are designed in part to ensure financial costs associated with job site losses rest with those who have fault – the agreement insulates owners and general contractors against assuming liability for losses that do not result from their negligence. Also, the contract ensures subcontractors are accepting responsibility only for damages resulting from their work and their negligence.

Without construction contracts, contractors are leaving any job site dispute resolution up to the courts, which is a lengthy and very expensive legal proposition.

The two key provisions from a liability and insurance standpoint are the:

- Indemnity agreement (see paragraph 7, page 2 of 6) and
- Insurance requirements (see paragraph 8, page 2 of 6)

Indemnity agreements describe the extent of risk and types of damages that are being assumed by the parties to the subcontract agreement. In an indemnity agreement, one party (usually a subcontractor) agrees to make another party whole again in the event of a job site loss, such as property damage or injury. Within the indemnity agreement, the subcontractor is often required to "hold harmless" the general contractor, which essentially means that the lower tier contractor (often a subcontractor) will make payments owed and will not seek recovery for payments from a higher tier party (owner or general contractor).

The other key provision of construction agreements is usually titled "Insurance" or "Insurance and Bonds." This section is also highly important as it will describe specific insurance requirements, such as limits, waivers of subrogation, primary and noncontributory obligations, and may even specify specific versions of additional insured endorsements.

KEY ELEMENTS OF A CONSTRUCTION CONTRACT

- **Location and Scope of Work:** Location and scope of work is defined for all contractors involved in the project
- **Scheduling:** Schedule and completion of work are clearly defined
- **Payment:** Payment conditions and terms are clearly defined
- **Authority:** Authority is clearly defined for decisions on the job site (change orders, supplements, cost changes, terms of notifications)
- **Liability-Indemnification Agreements:** Liability for property damage or injury (both ongoing operations and completed operations) is placed on the appropriate parties
- **Insurance:** Insurance responsibilities are clearly defined and rest with the appropriate parties: limits, additional insured obligations, waivers of subrogation, primary and noncontributory requirements
- **Workmanship:** Guarantee of workmanship and obligations when faulty work is performed
- **Penalties**: Ramifications for breaching contract terms are clearly defined

Statement of Purpose: The attached subcontract agreement is provided to you as an example of a contract that provides these key contractual provisions. It is intended as an example for illustrative purposes only.

STANDARD SUBCONTRACT AGREEMENT

Labor and Materials

This Subcontract is made this _____ day of _____, 20_____ by and between _____ ("Contractor") and _____("Subcontractor").

Contractor has entered into a contract with _____ ("Owner") to furnish services, labor, material, and equipment for the construction of _____ ("Project") on the property located at _____ ("Project Site"), pursuant to plans, drawings, and specifications prepared by _____ ("Architect" or "Engineer"), which contract consists of the contract, plans, drawings, specifications, general conditions, supplemental conditions, special conditions, any addenda or amendments # _____, the bond (if any), the invitation to bidders (if any), the instructions to bidders (if any), and the proposal (if any) (collectively the "General Contract").

The Contractor has made available to the Subcontractor all of the above documents, and the Subcontractor is responsible for obtaining copies of any documents pertinent to its work, and the above has been carefully examined by the Subcontractor.

THE SUBCONTRACTOR AGREES AS FOLLOWS:

1. To furnish all labor, material, skill, and equipment necessary or required and to perform all the work necessary for:

   (Scope of Work)

2. To pay for all materials, labor, and equipment used in or in connection with the performance of this Subcontract, when and as bills or claims become due, and to save and protect the Project, the Owner, and the Contractor from all claims and mechanics' liens on account thereof, and to furnish satisfactory evidence to the Contractor, when and if requested, that it has complied with the above requirements. This provision shall not be construed as a waiver of the right of the Subcontractor to file and enforce a lien claim against the Owner in the event of the Contractor's failure to pay the Subcontractor.

3. To begin the work of this Subcontract as soon as the Project is ready for such work or, within __ calendar days after being notified in writing by the Contractor. To complete the work of this Subcontract as required by job progress or within the following time limits:

   (Specific dates that need to be met)

4. To proceed with the work in any orderly and reasonable sequence directed by the Contractor. To abide by the Contractor's decision as to the allotment of all storage and working space on the Project.

5. No extension of time for performance of this Subcontract shall be recognized by the Contractor without the written consent of the Contractor. If, however, Subcontractor is delayed in the performance or completion of the Subcontract work for reasons beyond its control, then, with timely notice, the time of the performance or completion of said work shall be extended accordingly, provided the cause of the delay is of a type set forth in the General Contract which justifies an extension of time for completion of the General Contract.

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6. To save harmless the Contractor and all other subcontractors from any and all losses or damage occasioned by the failure of the Subcontractor to carry out the provisions of this Subcontract, unless such failure results from causes beyond the control of the Subcontractor. Loss or damage shall include, without limiting the generality of the foregoing, legal fees, and disbursements paid or incurred by the Contractor as part of the loss or damage or to enforce the provisions of this paragraph.

7. **Indemnification**
Licensee hereby agrees to indemnify, defend, and hold harmless Licensor and the Owner, and their respective officials, officers, directors, agents, employees, successors and assigns from and against any and all claims, damages, expenses, costs (Including, without limitation, reasonable attorneys' fees) and liabilities (collectively, "Claims") arising or alleged to arise from (ii) any breach of this Agreement by Licensee, (ii) any alleged or actual violation or infringement by Licensee or its employees, agents or contractors of any copyright or other Intellectual property right of a third party in connection with the Event or activates occurring at the Event, (iii) the use of occupancy of the Fairgrounds by Licensee, its employees, agents, contractors, exhibitors, invitees, guests or patrons, and (iv) the acts or omissions, or violation of any applicable law, rule, regulation or order, of or by Licensee or any of its employees, agents, contactors, exhibitors, invitees, guests or patrons. Notwithstanding the foregoing, the obligations of Licensee in this paragraph shall not apply to the extent the Claims or Costs arise out of the gross negligence or intentional misconduct of Licensor or its employees or agents.

8. To obtain, maintain, and pay for such insurance as may be required by the General Contract, by the provisions of this Subcontract, or by law, to include without limitation, workers' compensation, commercial general liability, commercial automobile liability, and if specified in the General Contract or this Subcontract, builder's risk insurance, protecting the Contractor and Subcontractor against claims for bodily injury or death or for damage to property occurring upon, in, or about the Project arising out of the Subcontractor's work, whether such claims arise during Subcontractor performance or subsequent to completion of operations under this Subcontract, with limits in amounts at least equal to those specified below or, if none are specified, those specified in the General Contract. Such insurance coverage shall include, but is not limited to: premises-operations, products-completed operations, and blanket contractual to insure the indemnification obligations contained in paragraph 7.

    a. **Commercial General Liability.** The Subcontractor's Commercial General Liability policy must name the Contractor, the Owner, and others as required in the General Contract, as ADDITIONAL INSUREDS, with ongoing operations and completed operations coverage equivalent to that provided by ISO Forms CG 20 10 04 13 and CG 20 37 04 13. The insurance policy to which this Additional Insured endorsement is added shall apply on a primary basis, and the Additional Insured's own insurance policies, if any, shall be noncontributory. General aggregate limit is provided on a per project basis.

        i. LIMITS
            1. General Aggregate $2,000,000
            2. Products/Completed Operations Aggregate $2,000,000
            3. Personal and Advertising Injury $1,000,000
            4. Each Occurrence $1,000,000

    b. **Automobile** (including coverage for any automobile, all owned automobiles, hired automobiles, and non-owned automobiles).

i. LIMITS
1. Bodily Injury (Per Person) $1,000,000
2. Bodily Injury (Per Accident) $1,000,000
3. Property Damage $1,000,000
Or
1. Bodily Injury/Property Damage (Combined Single Limit) $1,000,000

c. Excess Liability

i. $1,000,000 per Occurrence, $1,000,000 Annual Aggregate

d. Workers' Compensation and Employers Liability (must extend to every employee, including owners) at statutory limits.

Such insurance is to be issued by a financially stable company or companies licensed to do business in the state where the Project is located, with an A.M. Best Rating of A- or better. Before beginning any work under this Subcontract, Subcontractor will provide insurance certificates showing compliance with these insurance requirements and indicating the coverages and limits cannot be materially changed or cancelled without at least thirty (30) days prior written notice to the Contractor.

Subcontractor agrees to waive all rights of subrogation against the Contractor, Owner, and Architect, and shall cause each of its subcontractors to waive all rights of subrogation against the Contractor, Owner, and Architect, their agents and employees, as respects loss, damage, claims, suits, or demands, howsoever caused:

a. To real or personal property, vehicles, equipment, tools, etc. owned, leased, or used by Subcontractor or Subcontractor's employees, agents, or sub-subcontractors; and

b. To the extent such loss, damage, claims, suits, or demands are, or should be, afforded coverage by the Subcontractor's required or any other insurance maintained by the Subcontractor. This waiver shall apply to all first-party property, equipment, vehicle, and workers' compensation claims (unless prohibited under applicable state statutes), and all third-party liability claims. This waiver shall apply to all deductibles, retentions, or self-insured layers applicable to the required or any other insurance maintained by the Subcontractor. If necessary, Subcontractor agrees to endorse the required insurance policies to permit waivers of subrogation in favor of Contractor, Owner, and Architect as required hereunder. Subcontractor further agrees to hold harmless and indemnify Contractor, Owner, and Architect for any loss or expense incurred as a result of Subcontractor's failure to obtain such waivers of subrogation from the insurers.

The Contractor does not represent that any builder's risk or property insurance applicable to the Subcontract Work, if any, is adequate to protect the interests of the Subcontractor. It shall be the obligation of the Subcontractor to determine whether such insurance is in effect and provides adequate protection for its insurable interests, or whether the Subcontractor should purchase and maintain supplementary insurance that it deems necessary to protect its interests in the Subcontract Work.

9. To accept responsibility for all damage caused by the Subcontractor, to clean all surfaces soiled by the Subcontractor, and to protect the work performed by the Subcontractor, it being understood that the standards of protection shall not be less than those specified in the General Contract or required by law, and to be responsible for any defective or improper work or material caused by its failure so to do. If any dispute arises between the Subcontractor and another subcontractor as to which is responsible for any item of damage, the dispute shall be submitted to the Contractor for decision and determination as to responsibility.

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10. The Subcontractor and its subcontractors shall take all safety precautions with respect to the work, shall comply with all safety measures required by the General Contract and with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority for the safety of persons or property.

11. Not to assign or sub-let this Subcontract or any part thereof, and not to assign any money due or to become due hereunder, without first obtaining the written consent of the Contractor.

12. To be bound to the Contractor by the terms of the General Contract, to conform to and to comply with the provisions of the General Contract, and to assume toward the Contractor all the obligations and responsibilities that the Contractor assumes in and by the General Contract toward the Owner, insofar as they are applicable to this Subcontract. Where any provision of the General Contract between the Owner and the Contractor is inconsistent with any provision of this Subcontract, this Subcontract shall govern.

13. To employ no person whose employment on or in connection with this Subcontract may be objectionable to the Contractor and to remove any such person when objected to by the Contractor; all upon reasonable grounds.

14. That the Contractor or its authorized representative shall have the right to order in writing changes to this Subcontract as made to the General Contract by the Architect, Engineer, and/or Owner; that fair adjustments shall be made in the Subcontract price for such change; and that no change shall be allowed,or made by the Subcontractor, or paid for by the Contractor unless and until authorized by the Contractor or its authorized representative in writing before the change has begun.

15. To give written notice to the Contractor of all claims for extras, for extensions of time, and for damage for delays or otherwise in accordance with the General Contract, allowing the Contractor to give timely notice to the Owner. Timely notice shall mean three (3) working days prior to the expiration of the relevant notice period in the General Contract.

16. To guarantee the Subcontract to the same extent that the Contractor is obligated to guarantee its work under the General Contract.

17. In case the Subcontractor shall fail when and if required by the Contractor, to correct, replace, and/or re-execute faulty or defective work done and/or materials furnished under this Subcontract, or repeatedly and persistently to complete or proceed with this Subcontract within the schedule agreed to by the parties or the time herein provided for, or to make payment when due to subcontractors or suppliers for labor or materials in accordance with the respective agreements between the Subcontractor and its subcontractors and suppliers, or to comply with any substantial term of this Subcontract, then the Contractor may give the Subcontractor a written notice to cure the Subcontractor's default. If the Subcontractor fails within three (3) working days after receipt of the notice of default to commence and continue satisfactory correction of such default with diligence and promptness, then the Subcontractor shall be in default of this Subcontract and the Contractor upon an additional three (3) calendar days notice in writing to the Subcontractor shall have the right to terminate this Subcontract and finish the Subcontractor's work, replace and/or re-execute such faulty or defective work or materials, either through its own employees or through a contractor or subcontractor of its choice, and to charge the cost thereof to the Subcontractor, together with any liquidated or actual damages caused by a delay in the performance of this Subcontract.

18. In case of default on the part of the Subcontractor under the terms of this Subcontract, the material, supplies, tools, and construction equipment of the Subcontractor shall be left on the job for the use of the Contractor in completing the work covered by this Subcontract.

19. To comply with all federal and state laws, codes, and regulations and all municipal ordinances and regulations effective where the work under this Subcontract is to be performed, and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also to pay all taxes imposed by any state or federal law for any employment insurance, pensions, old age retirement funds, or any similar purpose, and to furnish all necessary reports and information to the appropriate federal, state, and municipal agencies, with respect to all of the foregoing, the same as though the Subcontractor was in fact the Contractor, and to hold the Contractor, each other subcontractor, and the Owner harmless from any and all losses or damage occasioned by the failure of the Subcontractor to comply with the terms of this paragraph.

20. If any part of the Subcontractor's work depends for proper execution or results upon the work of the Contractor, any other subcontractor or any other separate contractor on the Project, the Subcontractor shall inspect and promptly report to the Contractor any apparent discrepancies or defects in such work that renders it unsuitable for such proper execution and results. Failure of the Subcontractor to so inspect and report shall constitute an acceptance of the work of the Contractor, other subcontractors, or other separate contractors, as fit and proper to receive its work.

21. The cleanup and removal of all debris left on jobsite upon completion of this Subcontract is the responsibility of the Subcontractor, and will be completed within three (3) working days of written notification by the Contractor, after which the cleanup will be done by the Contractor, with the cost of the cleanup charged to the Subcontractor.

THE CONTRACTOR AGREES AS FOLLOWS:

1. To employ, and does hereby employ the Subcontractor to do the work described in paragraph 1 hereof, subject to the provisions of this Subcontract.

2. To pay the Subcontractor for the full and prompt performance of this Subcontract, subject to the terms and conditions hereof, the sum of _____ ($ XXX,XXX).

3. To include in the Contractor's monthly estimate to the Owner, the value of all work, labor and materials of the Subcontractor properly incorporated into the Project, in accordance with the provisions of this Subcontract for which estimates have been furnished by the Subcontractor and approved by the Contractor. Upon learning that the amount certified due for the Subcontractor is different from the amount requested by the Subcontractor, the Contractor shall immediately so advise the Subcontractor and furnish such information as the Contractor may have for the difference, and so long as the Subcontractor is not in default hereunder, to pay the Subcontractor, within seven (7) days upon receipt thereof from the Owner, the amount received by the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein. A retainage of ___ % will be held on all invoices.

   If allowed by the General Contract, payment shall be made on account of inventory, materials, or equipment not incorporated in the Project but delivered and suitably stored at the site or at some other location agreed upon in writing; such payments to be made in accordance with the terms and conditions of the Contract Documents.

4. Final payment including all retention becomes due and payable within 30 days after Architect’s certification of final payment, subject to the terms of the deferred payment clause below. At all times the Subcontractor shall be paid to the extent that the Contractor has been paid on the Subcontractor's account.

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5. Subcontractor agrees that if the Owner has not paid Contractor on account of Subcontractor's Work for reasons not caused by Subcontractor or Contractor, then Contractor shall not be obligated to pay Subcontractor any progress or final payment for Subcontractor's Work until the Contractor has completed all efforts (including appeals) to obtain a final judgment against the Owner for amounts unpaid on account of the Subcontractor's Work. Contractor agrees to initiate and diligently prosecute a claim against the Owner for unpaid payments on account of the Subcontractor's Work for reasons not caused by Subcontractor or Contractor within thirty (30) calendar days of receiving a written request to do so from Subcontractor. Subcontractor agrees to pay a proportionate share of Contractor's costs, including attorneys' fees incurred, and to cooperate with Contractor in prosecuting such claims.

6. If arbitration of disputes is provided for in the General Contract, any dispute arising between the Contractor and the Subcontractor under this Subcontract, including the breach thereof, shall be settled by arbitration in the manner provided for in the General Contract.

7. If notification of any claims has been made against the Subcontractor or the Contractor arising out of labor or materials furnished for the Project or otherwise on account of any actions or failures to act by the Subcontractor in the performance of this Subcontract, the Contractor may, at his discretion, withhold from such amounts otherwise due or to become due hereunder a sum adequate to cover said claims and any costs or expenses arising or to arise in connection therewith pending legal resolution thereof. This right of the Contractor shall not be exclusive of any other rights of the Contractor herein or by law provided.

8. The failure of the Contractor to make payments as and when herein provided shall, in addition to all other rights, entitle the Subcontractor to suspend all work and shipments during the continuance of such default on the part of the Contractor, and shall further entitle the Subcontractor to an extension of time for the performance of the work covered by this Subcontract.

9. Except in an emergency or to enforce safety requirements, not to issue or give any instructions, orders, or directions to any employee or workman of the Subcontractor other than persons Subcontractor has designated as the persons at the work site having supervisory responsibility for the Subcontract work.

10. This Subcontract, together with riders _____ (attached hereto or enclosed herewith) and made a part hereof, constitutes the entire understanding of the parties and supersedes any prior proposals or agreements.

IN WITNESS WHEREOF, the Contractor and the Subcontractor have executed this Subcontract the day and year first written above.

Subcontractor	Contractor
Signature: _____	Signature:_____
Title: _____	Title: _____
Date: _____	Date: _____

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