

Aerial Force One LLC- Subcontractor Agreement



This agreement is between Aerial Force One LLC ("Contractor") and _____ ("Subcontractor")

Scope of Work

Subcontractor will perform the Scope of Work as Contractor's subcontractor under the Primary Contract at the Primary Contract Location.

1. Diligence in Performance:

Subcontractor will exercise diligence in the performance of the Work as is ordinarily exercised by other subcontractors in the industry, but in any event not less than is required of Contractor under the Primary Contract. In the event of deficiencies or defects in workmanship, Subcontractor will immediately repair or replace any defective Work or materials or equipment caused by Subcontractor without any additional compensation. All Work will be performed to the reasonable satisfaction of Contractor and Owner and such approval will not be unreasonably withheld. Subcontractor will cooperate and coordinate with all other contractors, subcontractors, and suppliers so as not to delay or hinder the performance of the Work under the Primary Contract.

2. Schedule

Contractor will provide Subcontractor with a schedule for completion of all or a portion of the Work, which schedule may be revised as the Work progresses. Timely completion of the Work in accordance with the schedule for completion is of the essence of this Agreement, and failure to comply with the schedule will be grounds for immediate termination of this Agreement by Contractor, without prejudice to Contractor's remedies under this Agreement or under law. The hours of work and the days upon which Subcontractor will perform the Work will be solely within the discretion of Subcontractor, consistent with the schedule of Work and this Agreement. Subcontractor will provide Contractor with such reports and other evidence of the progress of the Work as Contractor will reasonably request within two (2) days of such request.

3. Confidentiality

All Specifications, information, or materials regarding the Work supplied to Subcontractor is to be used for the sole purpose of completing the Work in accordance with the terms of this Agreement and will be considered confidential and may not be released to any person or entity without written consent. The obligations of confidentiality set forth shall survive the expiration or

termination of this Agreement. If a receiving party is required to provide information of a disclosing party to any court or government agency pursuant to a written court order, subpoena, regulatory demand, or process of law, the receiving party must, unless prohibited by applicable law, firm provide the disclosing party with prompt written notice of such requirement and reasonable cooperation to the disclosing party should it seek reasonable protective arrangements for the production of such information.

The receiving party will:

- (a) take reasonable steps to limit any such provision of information to the specific information required by such court or agency, and
- (b) continue to otherwise protect all information disclosed in response to such order, subpoena, regulation or process of law.

4. Subcontractor Provides

Subcontractor at its expense will supply all labor, tools, equipment, trailer, vehicles, fuel and other materials and services and will provide all transportation, storage and other facilities necessary to properly perform the Work, other than as specified in the Specifications. Any materials supplied by Subcontractor must meet the standards established by Contractor or Owner under the Primary Contract. Subcontractor will be responsible for the condition and safekeeping of any tools, equipment, vehicles, materials or other tangible assets ("Assets") provided to Subcontractor by Contractor in connection with the Work and will return such Assets to their rightful owner (to the extent not used in completing the Work) upon completion of the Work.

Subcontractor will maintain the Assets used in connection with the Work in good operating condition, repair, and appearance, and protect the same from deterioration, other than normal wear and tear, and will use the Assets in the regular course of business only within its normal capacity, without abuse, and in a manner contemplated and recommended by the manufacturer. Any Assets that are loaned or rented to Subcontractor will be the sole responsibility of Subcontractor, who will be responsible for adequately insuring said Assets in accordance with the requirements of this Agreement.

5. Safety, laws, rules, and regulations

Subcontractor and its employees and agents will observe and comply all safety, nondiscrimination, equal employment, drug and alcohol, and other rules and policies of Contractor and Owner and all applicable federal, state, county and local rules, for any jurisdiction applicable to Subcontractor's obligations hereunder, including without limitation all statutes, laws, ordinances, regulations and codes in performing the Work, including without limitation those relating to safety and health, the environment, and labor and employment (collectively "Requirements"). Subcontractor's obligation to comply with all laws includes procurement of permits, certificates, approvals, inspections and licenses when needed in the performance of this Agreement. If required by the Contractor's or

Owner's policies and procedures, Subcontractor will conduct drug or alcohol testing on Subcontractor's employees.

6. Subcontractor relationship and Non-compete

Subcontractor is engaged as an independent contractor and is not an agent or employee of Contractor.

Subcontractor has full control and supervision of the performance of the Work. Subcontractor shall not attempt to solicit or engage directly or indirectly Contractor's current customer(s) to whom Subcontractor is providing the Work under this Agreement for the purpose of providing or offering to provide the same and/or similar services or products. This non-solicitation agreement will stay in effect for eighteen (18) months after the termination of this agreement.

7. Site Visit

Subcontractor is responsible for any damage to property caused by Subcontractor.

8. Payment/Terms

Contractor agrees to pay Subcontractor for the Work at the prices agreed upon in writing between Subcontractor and Contractor (President or General Manager). Contractor will pay Subcontractor net 2 week terms. A 10% Retainer will be held for the term of the project. Upon completion of final

project and completed restoration, the balance of the retainer shall be paid within 30 days of each payment or check issued.

Subcontractor agrees to provide all field paperwork in the format required and to do so in a timely manner. All work will be based on compiling completed service code tasks. Subcontractor can only invoice on fully completed tickets that are approved by the onsite Project Manager. No duplicate codes will be paid twice on the same ticket. Any payment will constitute full and complete payment for all Work performed by Subcontractor and identified in Subcontractor's invoice, but will not constitute acceptance of any defective work or materials. Contractor may offset or withhold any money owed to Subcontractor after termination of this contract, due to quality inspections, job acceptance, completion of job, or loss of any tools or damages to equipment or property, etc. Once these items have been reviewed and have been accepted then full release of payment will follow.

9. Insurance

Subcontractor will provide and maintain at own expense the insurance coverage's, as follows:

Commercial General Liability covering Subcontractor with minimum limits of \$1,000,000 each occurrence and \$2,000,000 aggregate for bodily injury and property damage. The policy shall include blanket contractual liability, personal injury liability and broad form property damage liability.

Workers Compensation Insurance as required by State law

Automobile liability insurance as required by State law

All insurance required under this Agreement must be on an "occurrence" basis and not on a "claims made" basis. Subcontractor will provide Contractor with certificates of insurance evidencing coverage and Contractor is named as primary additional insured under the insurance policies required by this Agreement. Additional insured coverage includes both work in progress and completed work. Subcontractor shall maintain policy for 90 days past the completion of last work performed for Contractor. Subcontractor shall provide 30 days written notice if the Subcontractor's policy is cancelled. The maintenance of the insurance required by this Agreement will not relieve Subcontractor of any liability to Contractor under this Agreement.

11. Indemnification

Subcontractor will indemnify, defend and hold harmless Contractor and its respective officers, directors, affiliates, employees, and agents (collectively, the "Indemnities") from and against all claims, damages, losses, actions, suits, demands or liability of any character whatsoever, brought or asserted for injuries to or death of any person or persons, damages to property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, resulting from any negligent or willful act or omission of its employees or subcontractors, breach of this Agreement or other breach of legal duty arising from performance of its obligations herein specified. Subcontractor shall notify Contractor promptly in writing of any claim, demand, suit, cause of action or legal proceeding that may give rise to an indemnification obligation hereunder. Contractor and Subcontractor shall cooperate in the defense of any such claim. Contractor shall have the right to control the defense and settlement of such a claim, but if the settlement of a claim may have an adverse effect on Contractor than Subcontractor shall not settle such claim without the prior written consent of Contractor and Contractor shall not unreasonably withhold or delay its consent.

12. Termination of Primary Contract

If the Primary Contract to which this Agreement refers is terminated, suspended or delayed for any reason, this Agreement will be terminated, suspended or delayed on the same basis and upon the same effective date as the termination, suspension or delay of the Primary Contract. Upon receipt of notice of such a termination or delay of this Agreement, Subcontractor will only be entitled to recover from Owner or Contractor such amounts as are payable to Contractor for the portion of the Work completed by Subcontractor. Upon notice of suspension of work, Subcontractor will immediately discontinue work on the date and to the extent specified in the notice, and place no further orders or subcontracts for material, services or facilities with respect to suspended work other than to the extent required in the notice.

13. Termination of Agreement

Either party may terminate this Agreement upon fourteen (14) days written notice, with or without fault.

Contractor may terminate this Agreement immediately at the request of the Prime Contractor, Owner, or Contractors who are a party to the Prime Contract. Upon termination of the contract, the Subcontractor shall cease all work and vacate the job site.

14. Notice given

Each party giving or making any notice, consent, request, demand or other communication (each a "Notice") pursuant to this Agreement must give the notice in writing. Any notice required by this Agreement will be effective and deemed delivered (a) three (3) business days after posting with the United States Postal Service when mailed by certified mail, return receipt requested, properly addressed and with the correct postage, (b) one (1) business day after pickup by the courier service when sent by overnight courier, properly addressed and prepaid or (c) one (1) business day after the date of the sender's electronic confirmation of receipt when sent by facsimile transmission. Each party giving Notice shall address the Notice to the designated person at the address listed below for Subcontractor and address listed on page 5 for Contractor:

Aerial Force One, LLC
Attn: Randy Hafler

15. Binding agreement

This Agreement insures to the benefit of and is binding upon the parties and their respective successors and permitted assigns. Neither party may assign this Agreement without the written agreement of the other. This Agreement contains the entire agreement of the parties and supersedes any earlier or contemporaneous understanding or agreement; may not be amended except by a writing signed by each of the parties; may not be modified or waived unless in writing, and signed by a duly authorized representative of each party; and is governed by the laws of the state of Indiana.

16. Legal Fees and Costs

If any legal proceeding is brought to enforce or interpret this Agreement or any provision thereof, the prevailing party in any such proceeding will be entitled to recover from the other party its reasonable attorneys' and paralegal fees and court costs, before and at trial and at all appellate levels. Waiver of Jury trial: Contractor and Subcontractor knowingly, voluntarily, irrevocably, unconditionally and intentionally waive the right to a trial by jury in respect of any litigation based

Subcontractor Guidelines

Listed below please find several items that must be done to make our projects run smoothly and maintain a good working relationship with your company. This will also allow us to invoice our customer on a regular basis and help us process your invoicing in a timely and expedient manner.

1. Payment will stop if your insurance expires and an updated certificate cannot be obtained.
2. If your insurance expires you will be asked to leave our projects immediately and no billing sheets will be processed during the time in which your insurance has expired.
3. You are working for and representing Aerial Force One, LLC and all work completed, or placed must be authorized by our representative.
4. No verbal agreements between your company and our company can change the written and agreed upon terms of our contract.
5. Subcontractor is responsible for turning in work completed as complying with all owner and governing entities specifications, conditions, policies and procedures as they appear in our contract with our Customer.
6. Subcontractor is responsible for maintaining all vehicles and equipment in a good and safe operating manner.
7. Any Overruns or additional work not covered under the letters of authorization will require an Onsite Project Manager's written consent before the work is done by your company.
8. Any material that is lost, stolen or damaged that is assigned to you must be replaced or will be deducted from your monies due and/or retainage. Any personal property or personal injury occurrence will be the total responsibility of you and your insurance company.

UNDERGROUND UTILITY DAMAGE PREVENTION POLICY

To prevent injury to employees, the general public and/or property the following steps must always be taken on each and every project, whether it is for trenching, manhole excavation, boring operations or pits. No excavations can begin until all underground utilities have marked their lines or given all-clears. When beginning excavation, you do so with reasonable care by the use of detection equipment, pot holing and hand exposing utilities located by owners of underground utilities. A copy of the locate ticket must be readily available at the job site.

- a) Locating a utility means actually seeing the utility, not just finding it with an electronic locator or probe rod.
- b) Continually locate existing cables when paralleling and spot at least every 50 feet to verify the cable was placed consistently straight and at the proper depth.
- c) If utility markings become erased, you must stop work and call your supervisor and the One-Call center for remarking the lines.
- d) Do not use a machine within ten (10) feet of a cross connection box, repeater, manhole, load point or power transformer. Hand trenching must be done in these areas.
- e) When directional boring, expose utilities and watch the reamer pass across. Make sure it is clear.
- f) If a line has been damaged or bumped by excavation equipment, your supervisor must be contacted immediately.
- g) Always have a crew leader or a contractor supervisor present when crossing or paralleling a fiber optic cable.
- h) You must always support and/or protect exposed utility lines.