

Home Foundation Subcontractor Services Agreement

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General Information

Home Foundation Subcontractor Services Agreement

This Home Foundation Subcontractor Services Agreement is between a Contractor and a Subcontractor who is hired to perform home foundation work. It is important that this agreement be set out in writing and clearly specify the foundation services the subcontractor will perform such as repairing the foundation or a chimney. This agreement sets out the specific terms of the arrangement including the scope of the work, the hours the Subcontractor may work and how the Subcontractor will be paid.

It is important that this type of services agreement be in writing rather than by oral agreement. A written Home Foundation Subcontractor Services Agreement will prove valuable in the event there are disagreements or misunderstandings as to the scope and extent of the services the Subcontractor will provide.

Instructions and Checklist

Home Foundation Subcontractor Services Agreement

- Both parties should read the agreement carefully.
- Insert all requested information in the spaces provided on the form.
- This form contains the basic terms and language that should be included in similar agreements.
- This form includes exhibits that should be attached and incorporated as part of this agreement.
- This agreement includes an arbitration provision. If you prefer to settle any disputes through the court system, simply remove this language from the “Dispute Resolution and Arbitration” provision and replace with applicable language.
- Both the Contractor and Subcontractor must sign the Agreement.
- Both parties should retain either an original or copy of the signed agreement.
- All legal documents should be kept in a safe location such as a fireproof safe or safe deposit box.

Step-by-Step Instructions

Home Foundation Subcontractor Services Agreement

The following instructions will walk you through each provision to help you fully understand the terms of your agreement. The numbers below correspond with the respective provision within the Agreement.

Heading: Fill in the date the Agreement is entered into and the name of each party (both the Contractor and Subcontractor).

Section 1: Scope of Work: Describe in detail the home foundation services the Subcontractor will provide for Contractor and the specific hours the work can be performed.

Section 2: Quality. Specify the quality of the foundation work and Subcontractor will guarantee that all materials and work are done according to industry standards and in a workmanlike manner. Subcontractor will also use experienced workmen to complete the work.

Section 3: Payment. Specify the exact amount of any advance payment to the Subcontractor and the payments to be made when the work is half finished and when completed.

Section 4: Insurance. Specify the type of insurance that both Contractor and Subcontractor must carry for the project.

Section 5: Warranty and Indemnity. Subcontractor warrants all materials and workmanship for a period of five years and any defects will be repaired or replaced at no cost to Contractor. Alter this provision if this is not the case.

Section 6: Term and Termination. Fill in the length of time for which the agreement is in effect and the events under which this agreement can be terminated.

Section 7: Expenses. Subcontractor agrees to bear all reasonable expenses and costs. Specify otherwise if this is not the case.

Section 8: Assignment. The Subcontractor may not assign any of its duties under this contract to another party without the prior written consent of the Contractor.

Section 9: Miscellaneous. Specific provisions related to waiver, notices, governing law, agreement content, severability and counterparts. Specify otherwise if any of these provisions are subject to change.

Section 10: Dispute Resolution and Arbitration. The parties agree to settle any disputes by arbitration according to the rules of the American Arbitration Association. If the parties desire to settle disputes through the court system, specify in writing.

Signature Blocks. Both Contractor and Subcontractor must sign this agreement.

Schedule 1/Property Description. Set out a detailed legal description of the property where the foundation work will be performed.

Schedule 2/Scope of Work. Set out a detailed description of the specific foundation work the Subcontractor agrees to perform including securing an independent engineer to conduct any necessary tests.

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HOME FOUNDATION SUBCONTRACTOR AGREEMENT

THIS HOME FOUNDATION SUBCONTRACTOR AGREEMENT (the "Agreement") is made as of this **[date]** day of **[month]**, 2011 (the "Agreement Date") by and among

[name], of **[address]** (the "Contractor"), and

[name], a **[address]** corporation (the "Subcontractor")

RECITALS

WHEREAS, Contractor has obtained contract from the Owner for foundation repair of the Property, whose description is stated in **Schedule 1-Property Description**; and

WHEREAS, Contractor desires certain foundation repair work to be carried out for the Property as per the **"Scope of Work"** specified in **Schedule 2** in the plans and specifications provided by the Contractor to the Subcontractor (the "Plans and Specifications") and Subcontractor has agreed to perform such work for the Property, on the terms and conditions mentioned herein below;

Now, therefore, the Parties agree as follows:

1. SCOPE OF WORK

- 1.1 Subcontractor will perform the work as per specifications mention in **Schedule 2-Scope of Work**.
- 1.2 Subcontractor will provide the service during normal business hours Monday thru Friday ___ am to ___ pm.
- 1.3 **Remedies for Breach of Contract.** The Parties are entitled to the following notification and opportunity to cure any impermissible act/omission that would constitute a material breach of this Agreement, and agree to the mutual limitations of certain claims and damages as outlined below:
 - a. If Subcontractor materially breaches this Agreement or abandons all activities on the Property for a period of ten (10) consecutive work days for any reason except any delays excused by Contractor, and Subcontractor fails to cure the breach or resume work within seven (7) days after receipt of written notice from Contractor (time being of the essence in this regard) specifying the Contractor's intention to terminate this Agreement by reason of the Subcontractor's breach or abandonment as detailed in such notice, Contractor shall have the right to terminate this Agreement and to have the foundation repair completed by another Subcontractor selected by Contractor. In the event of a termination of this Agreement by Contractor, Subcontractor shall be entitled to be paid that portion of the cost fairly attributable to the foundation repair performed in accordance with the Plans and Specifications and any changes approved by Contractor. The foregoing shall not

limit any rights and remedies of Contractor under applicable law, which may be pursued at Contractor's option upon default by Subcontractor.

2. **QUALITY**

- 2.1 Subcontractor shall use trained and experienced workmen having all necessary skills needed to satisfactorily complete the work. Subcontractor shall finish the work on schedule.
- 2.2 Subcontractor shall guarantee all material to be as specified.
- 2.3 Subcontractor shall perform the work in a workmanlike manner according to industry standard practices. Any deviation from agreed specifications, involving extra costs, will be executed only after written confirmation of Contractor is obtained in advance.

3. **PAYMENT**

- 3.1 Contractor shall pay an advance payment of \$ ____ to Subcontractor ____ weeks prior to the commencement of the work. Another payment of \$ ____ will be paid, upon completion of 50% of the work. The balance of \$ ____ will be paid upon full and satisfactory completion of the work.
- 3.2 Any pre-approved additional cost will be paid as per agreement between the Parties.

4. **INSURANCE**

- 4.1 Subcontractor shall keep in force during progress of the foundation repair, and shall furnish to Contractor, upon Contractor's request, copies of the following insurance policies:
 - a. Subcontractor's Risk Insurance in the amount of the Contract Price (including any costs incurred due to change in Scope of Work), naming Contractor as loss payee;
 - b. Statutory Worker's Compensation Insurance for Subcontractor's employees; and
 - c. Comprehensive General Liability Insurance with limits of \$ _____ per person, per occurrence for personal injury, (\$ _____ aggregate), with \$ _____ coverage for completed operations.

5. **WARRANTY & INDEMNITY**

- 5.1 Subcontractor warrants the quality of all materials and workmanship for a period of five years. Any defects in the materials or workmanship will be repaired or replaced at no cost to Contractor.
- 5.2 Subcontractor shall defend, indemnify and hold harmless Contractor against all claims, liabilities, expenses, costs, loss or damage of whatsoever nature (including legal costs on a full indemnity basis incurred by Contractor) brought against, suffered or incurred by Contractor, and defend any suit brought against Owner, arising out of or in connection with

this Agreement, including without prejudice to the generality of the foregoing:

- a. Any breach of the terms and conditions of this Agreement by the Subcontractor;
- b. Any act, omission, fraud and negligence or default whatsoever of Subcontractor, employees or agents employed by Subcontractor to perform its obligations hereunder;
- c. Any wrongful, incorrect, dishonest, criminal, fraudulent or negligent work, misfeasance, bad faith, disregard of its duties and obligations hereunder, service, act or omission of /by Subcontractor or any of its personnel.

5.3 **Indemnification For Losses Sustained During Construction.** Because of potential safety and health hazards present during foundation repair of the Property that may arise from repair activities, the Parties agree as follows:

- a. **Personal Safety.** To ensure and to protect the personal health and safety of Contractor and Contractor's licensees and invitees, Contractor shall restrict entry by the Contractor and Contractor's licensees and invitees onto the Property to a minimum. When Contractor chooses to enter the Property, and irrespective of Subcontractor's presence on the Property at such time, Contractor agrees to release and/or indemnify and hold Subcontractor harmless from and against any and all claims, demands or causes of action arising in favor of Contractor or Contractor's licensees and invitees on account of bodily injury, death or damage to or loss of property in any way occurring or incident to the condition of the property.
- b. **Losses And Damage Related To The Foundation Repair.** During the foundation repair of the Property, Subcontractor shall indemnify the Contractor as provided herein from losses and damages that may occur incident to or affect the foundation repair, but not as to any such loss or damage caused in whole or in part by the negligence of those employed by or contracting with the Contractor. Subcontractor agrees, during the progress of the foundation repair of the Property to indemnify and save Contractor harmless from (i) any and all liens, contract damages, suits, claims and causes of action related to foundation repair of the Property; and (ii) any suits, claims and causes of action for damages to property or personal injury to or death of Subcontractor's employees, agents, representatives and independent contractors (and their employees) associated with performance of the foundation repair of the Property by the Subcontractor.

6. **TERM & TERMINATION**

6.1 **Term.** This Agreement shall commence from the Commencement Date specified in Schedule 1, and continue for a period of ___ years, unless terminated earlier by the Contractor.

6.2 **Termination.** Contractor shall have the option to terminate this Agreement,

- a. in the event that the Subcontractor fails to complete any part of the work on the

- deadlines agreed with Contractor, and as agreed in Schedule 1;
- b. in the event that the Subcontractor is in material breach of any of its covenants under this Agreement and where capable of remedy, fails to remedy such breach within fifteen (15) days of being notified by Contractor to remedy the breach.

6.3 Without prejudice to any other rights or remedies it may have, Contractor shall have the right at any time to terminate the Agreement forthwith by serving a written notice of termination on Subcontractor:

- a. Subcontractor becomes insolvent or ceases to trade or enters into any composition with its creditors; or
- b. A bankruptcy order is made against Subcontractor; or
- c. A Receiver or an Administrative Receiver is appointed in respect of any of Subcontractor 's assets; or
- d. An order to wind up Subcontractor's business is made or a Liquidator is appointed in respect of Subcontractor (otherwise than for the purposes of reconstruction or amalgamation).
- e. If Subcontractor is prevented from providing the services by any court, other judicial, quasi-judicial, governmental orders, for any reasons attributable to Subcontractor.

6.4 **Effect of Termination.** Notwithstanding any other rights and remedies provided elsewhere in the Agreement, on termination of this Agreement with effect from the effective date of termination and thereafter:

- a. Neither Party will represent the other Party in any of its dealings.
- b. The expiration or termination of this Agreement for any reason whatsoever shall not affect any obligation of either Party having accrued under the Agreement prior to the expiration or termination of this Agreement and such expiration or termination shall be without prejudice to any liabilities of either Party to the other Party existing at the date of expiration or termination of this Agreement.

7. EXPENSES

7.1 Subcontractor agrees to bear all reasonable out-of-pocket expenses and costs (including reasonable attorney and other professional fees and expenses) incurred in connection with the transactions contemplated by Agreement.

8. ASSIGNMENT

- 8.1 This Agreement may not be assigned by Subcontractor without the prior written consent of the Contractor. Subject to the foregoing, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of the parties. Any attempted assignment of this Agreement by the Subcontractor in violation of this section shall be null and void.

9. MISCELLANEOUS

- 9.1 **Waiver.** Any term or provision of this Agreement may be waived at any time by the party entitled to the benefit thereof by a written instrument executed by such party.
- 9.2 **Notices.** Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given only if delivered personally (to the attention of the person identified) to the address of such person maintained on the book and records of the party sending the notice, or sent by telecopy, telegram or by certified mail, postage prepaid, or to such other address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered or telegraphed or, if mailed, three business days after the date so mailed.
- 9.3 **Governing Law.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the substantive laws of the State of _____.
- 9.4 **No Benefit to Others.** The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto and their executors, legal representatives, successors and assigns, and they shall not be construed as conferring and are not intended to confer any rights on any other persons.
- 9.5 **Contents of Agreement.** This Agreement together with any documents referred to herein set forth the entire agreement of the parties hereto and supersede any prior agreement or understanding of the parties with respect to the transactions contemplated hereby. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto, and no claimed amendment, modification, termination or waiver shall be binding unless in writing and signed by the party against whom or which such claimed amendment, modification, termination or waiver is sought to be enforced.
- 9.6 **Severability.** Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 9.7 **Counterparts.** This Agreement may be executed in any number of counterparts, which

when taken together, shall constitute but one and the same instrument. Any and all counterparts may be executed by facsimile.

10. DISPUTE RESOLUTION AND ARBITRATION

- 10.1 The Parties agree to negotiate in good faith to resolve any dispute between them arising out of, under or in connection with this Agreement. In the event the negotiations do not resolve the dispute to the reasonable satisfaction of the Parties, then each Party shall nominate a person of respectable professional standing and unimpeachable conduct as its representative. These representatives shall, within thirty (30) days of a written request by any Party to call such a meeting, meet in person and shall attempt in good faith to resolve the dispute.
- 10.2 Upon the Parties being unable to appoint the representatives as aforesaid, or if the disputes cannot be resolved by such representatives in such meeting as aforesaid, then in such an event, the disputes or differences shall be submitted to final and binding arbitration at the request of either Party upon written notice to that effect to the other Party. In the event of such arbitration:
- a. Such arbitration shall be in accordance with the rules of American Arbitration Association (or any amendment thereof) (which are deemed to be incorporated in this Agreement by reference). All proceedings of such arbitration shall be in the English language. The venue of arbitration shall be _____.
 - b. The arbitration panel shall consist of three arbitrators, one arbitrator to be appointed by each of the Parties and the third arbitrator to be appointed by two arbitrators so appointed.
 - c. Arbitration awards rendered shall be final and binding and. The losing Party, as determined by arbitrators, shall pay all reasonable out-of-pocket expenses (including, without limitation, reasonable attorneys' fees) incurred by the prevailing Party, as determined by the arbitrators, in connection with any dispute unless the arbitrators direct otherwise.
 - d. Nothing shall preclude a Party from seeking interim or permanent equitable or injunctive relief, or both, from any court having jurisdiction to grant the same. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the Parties to pursue any remedy for actual monetary damages through the arbitration described in this Section.

IN WITNESS WHEREOF, each Party hereto has signed, or caused to be signed by its officer thereunto duly authorized, this Agreement as of the date first above written.

Contractor

Name: _____
Title: _____

Subcontractor

Name: _____
Title: _____

SCHEDULE 1
PROPERTY DESCRIPTION

SCHEDULE 2 SCOPE OF WORK

Subcontractor agrees to furnish certain labor, services, equipment, materials, and other related activities for conducting the foundation repair of Property.

Unless otherwise specified, materials used by the Subcontractor in the foundation repair of Property shall be as prescribed in the Plans and Specifications agreed with Contractor. In the event specified materials are not reasonably available, or if the procurement of such item would cause undue delay in the progress of the foundation repair, Subcontractor may substitute materials of comparable grade and quality. The foundation repair of Property is also subject to any changes in the Plans and Specifications as may be required by federal, state or local governmental authorities. Contractor acknowledges that any substitution or change to the foundation repair may occur during construction and agrees that so long as the Property is substantially in compliance with the Plans and Specifications, acceptance of any such minor deviations will not be unreasonably withheld.

Subcontractor shall secure one or more independent professional engineers (the "Engineer") to conduct soils testing and prepare an engineered foundation plan and a structural framing plan that will supplement and be part of the Plans and Specifications. The cost of soils testing, preparation of an engineered foundation and structural framing plan, any pad compaction testing, and foundation and framing inspections, as deemed necessary by the Engineer shall be borne by Contractor (irrespective of whether these sums are included within the Contract Price and/or paid directly to the Engineer by Subcontractor or Contractor). Subcontractor shall be responsible for the raising, shifting, heaving or settling of the soil or the Property, and any consequential damage to the Property or its contents.