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**Project:** Standard Project Template

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## Standard Subagreement

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<b>DATE CREATED:</b>	04/20/2017	<b>CREATED BY:</b>	Jim Arneson (FoxArneson, Inc.) 5972 Executive Dr., Ste. 100 Madison, Wisconsin 53719
<b>CONTRACT COMPANY:</b>		<b>EXECUTED:</b>	No
<b>CONTRACT STATUS:</b>	Draft	<b>ESTIMATED COMPLETION DATE:</b>	
<b>START DATE:</b>		<b>ACTUAL COMPLETION DATE:</b>	
<b>SIGNED CONTRACT RECEIVED DATE:</b>			
<b>DEFAULT RETAINAGE:</b>	10.0%		

**DESCRIPTION:**

THIS SUBAGREEMENT is by and between FoxArneson, Inc. ("Design/Builder") and <<Insert Subcontractor>> ("Subcontractor").

Design/Builder and Subcontractor hereby agree as follows:

**ARTICLE 1 - THE WORK**

1.01. Subcontractor shall complete all Work in the <<Insert Description of Work (i.e., PLANT PRECAST STRUCTURAL CONCRETE)>> package as specified or indicated in the Subcontract Documents.

A. The Work is described in the "INCLUSIONS" section below.

**ARTICLE 2 – THE PROJECT**

2.01. The Project, of which the Work under the Subcontract Documents may be the whole or only a part, is generally described as follows:

<<Insert Description of the Project (i.e., Design and construction of an approximately 19.6 acre retail development for a new grocery store, a new gas station with convenience store and oil change facility, car wash, and outlots.)>>

**ARTICLE 3 – SUBCONTRACT TIMES**

3.01. *Time of the Essence*

A. All times and time limits stated for Substantial Completion, completion, and readiness for final payment and Milestones, if any are of the essence of this Subcontract.

3.02. *Compliance with Design/Builder's Schedule*

A. The Work will be pursued in compliance with the Design/Builder's schedule as set forth in the Subcontract Documents of this Subcontract and as it may from time to time be amended or changed by Design/Builder.

3.03. *Damages for Subcontractor Delay*

A. Design/Builder and Subcontractor recognize that time is of the essence as stated in Paragraph 3.01 and that Design/Builder will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02.A above, plus any extensions thereof allowed in accordance with Article 11.02 the General Conditions. Subcontractor shall pay to Design/Builder its actual damages, including those damages paid to Owner or others by Design/Builder attributable to Subcontractor's failure to timely perform.

**ARTICLE 4 – SUBCONTRACT PRICE**

4.01. Design/Builder shall pay Subcontractor for completion of the Work in accordance with the Subcontract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the following:

A. For all Work other than Unit Price Work, the Lump Sum indicated below.

All specific cash allowances are included in the above price and have been computed in accordance with the terms of the General Conditions.

**ARTICLE 5 – PAYMENT PROCEDURES**

5.01. Subcontractor shall submit Applications for Payment on or before the 25th day of each month during the performance of the Work and Design/Builder will process Applications for Payment in accordance with Article 13 of the General Conditions.

A. *Progress Payments; Retainage:* Design/Builder shall make progress payments on account of the Subcontract Price on the basis of Subcontractor's Applications for Payment as provided in Paragraphs 5.01.A.1.a and A.1.b below within 10 days of receiving payment from the Owner. All such payments will be measured by the Schedule of Values established in Paragraph 2.06.A.3 of the General Conditions or, in the case of Unit Price Work, by the number of units completed.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Design/Builder may withhold in accordance with Paragraph 13.03.B of the General Conditions:

a. 90 percent of Cost of the Work completed (with the balance being retainage). If 50 percent of the Work has been completed as determined by Design/Builder, and if the character and progress of the Work have been satisfactory to Design/Builder, then as long as the character and progress of the Work remain satisfactory, there will be no additional retainage on account of Work completed; and

b. 90 percent (with the balance being retainage) of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Design/Builder as provided in Paragraph 13.02.A of the General Conditions), with the balance being retainage.

2. Upon Substantial Completion, in an amount sufficient to increase total payments to Subcontractor to 95 percent of the Subcontract Price (with the balance being retainage), less such amounts as Design/Builder may withhold, in accordance with Paragraph 13.03.B of the General Conditions and less 110 percent of Design/Builder's estimate of the value of the Work under this Subcontract shown in the list of items to be completed or corrected that is attached to the certificate of Substantial Completion.

B. *Final Payment:* Upon final completion and acceptance of the Work in accordance with Paragraph 13.08 of the General Conditions, Design/Builder shall pay the remainder of the Subcontract Price.

5.02. Lien Waivers shall be required as follows:

A. Conditional lien waivers will be sent to Subcontractor by Design/Builder with a copy of each check and upon return of the signed conditional lien waiver by Subcontractor to Design/Builder, payment will be released.

B. Beginning with the second payment, along with the receipt of the conditional lien waiver from Subcontractor, unconditional lien waivers covering Work performed through the prior draw from Subcontractor's Suppliers and Subsubcontractors with contracts greater than \$1,000.00 will need to be sent to Design/Builder before payment will be made to Subcontractor.

C. Prior to reduction or payment in full of retention, Subcontractor must submit final, unconditional lien waivers from Subcontractor's Suppliers and Subsubcontractors, unless Subcontractor requests and receives written approval of alternative payment procedures from Design Builder.

**ARTICLE 6 – INTEREST**

6.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of 5 percent per annum.

**ARTICLE 7 – SUBCONTRACTOR'S REPRESENTATIONS**

7.01. Subcontractor makes the following representations:

A. Subcontractor has examined and carefully studied the Subcontract Documents and the other related data identified in the Request for Proposals.

B. Subcontractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Subcontractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Subcontractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in the Subcontract Documents and (2) reports and drawings of a Hazardous Environmental Conditions, if any, at the Site that have been identified or made available by Design/Builder.

E. Subcontractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Subcontractor, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Subcontract Documents to be employed by Subcontractor, and safety precautions and programs incident thereto.

F. Subcontractor is aware of the general nature of work to be performed by Design/Builder and others at the Site that relates to the Work as indicated in

the Subcontract Documents.

G. Subcontractor has considered the information known to Subcontractor; information commonly known to trade contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Subcontractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Subcontract Documents; and (3) Subcontractor's safety precautions and programs.

H. Based on the information and observations referred to above, Subcontractor does not believe that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Subcontract for the performance of the Work at the Subcontract Price, within the Contract Times, and in accordance with the other terms and conditions of the Subcontract Documents.

I. Subcontractor has given Design/Builder written notice of all conflicts, errors, ambiguities, or discrepancies that Subcontractor has discovered in the Subcontract Documents, and the written resolution thereof by Design/Builder is acceptable to Subcontractor. Subcontractor acknowledges that it has an ongoing duty to provide Design/Builder with written notice of any conflicts, errors, ambiguities or discrepancies that may be discovered by Subcontractor in the Subcontract Documents, and Subcontractor will promptly give Design/Builder such notice upon discovery of such conditions.

J. The Subcontract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

#### **ARTICLE 8 – SUBCONTRACT DOCUMENTS**

8.01. The Subcontract Documents which comprise the entire agreement between Design/Builder and Subcontractor concerning the Work consist of the following:

A. This Construction Subagreement.

B. Standard General Conditions of the Subcontract between Design/Builder and Subcontractor with modifications. (Incorporated by Reference)

C. Design/Builder's schedule. (Incorporated by Reference)

D. Geotechnical Report (*<<Insert prepared by and date>>*). (Incorporated by Reference)

E. Specifications bearing the title (*<<Insert Title and Date>>*) and consisting of divisions, as listed in table of contents thereof. (Incorporated by Reference)

F. Drawings consisting of a cover sheet with each sheet bearing the following general title (Incorporated by Reference): (*<<Insert title and date>>*)

(*<<Insert drawing sheet numbers with revision dates.>>*)

G. Design/Builder's standard Bid Form (completed by Subcontractor).

H. Addenda numbers (*<<Insert Number>>*) to (*<<Insert Number>>*), inclusive.

I. Exhibits to this Subagreement, if any (*<<List Exhibits>>*)

J. The following which may be delivered or issued after the Effective Date of the Subcontract and are not attached hereto:

Notice to Proceed  
Subcontractor Payment Application Checklist  
Subcontractor Insurance Requirements  
Change Orders  
Work Change Directives

8.02. The documents listed in Paragraph 8.01 above are attached to this Subcontract (except as expressly noted otherwise above).

8.03. There are no Subcontract Documents other than those listed above in this Article 8. The Subcontract Documents may only be amended, modified or supplemented as provided in Paragraph 3.04 of the General Conditions.

#### **ARTICLE 9 – MISCELLANEOUS**

9.01. The Standard General Conditions of the Subcontract between Design/Builder and Subcontractor are referred to herein as the General Conditions.

9.02. Terms used in this Subcontract which are defined in Article 1 of the General Conditions will have the meanings indicated therein.

9.03. No assignment by a party hereto of any rights under or interests in the Subcontract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Subcontract Documents.

9.04. Design/Builder and Subcontractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Subcontract Documents.

9.05. Subcontractor binds itself to Design/Builder under this Subcontract in the same manner as the Design/Builder is bound to Owner under the Owner-Design/Builder Contract Documents. Design/Builder has made relevant portions of the Owner-Design/Builder Contract Documents available to Subcontractor.

9.06. Any provision or part of the Subcontract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Design/Builder and Subcontractor, who agree that the Subcontract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Design/Builder and Subcontractor have signed this Subagreement in duplicate. One counterpart each has been delivered to Design/Builder and Subcontractor. All portions of the Subcontract Documents have been signed, initialed or identified by Design/Builder and Subcontractor.

The Effective Date of this Subcontract will be the "DATE CREATED" at the top of page 1.

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**INCLUSIONS:**

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**EXCLUSIONS:**

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**ATTACHMENTS:**

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SAMPLE