

## Subcontract Agreement – Short Form

### Details Summary

**Name of Contractor:** Miller Pipeline LLC Miller Job Number \_\_\_\_\_

**Today's Date:** Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

**Name of Subcontractor:** \_\_\_\_\_

**Subcontractor's Address:**

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Scope of Work:**

**Jobsite Location:**

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Amount Contractor will pay Subcontractor:** (i.e. ten thousand twenty-one dollars OR twenty dollars per hour):

\_\_\_\_\_

**Amount Contractor will pay Subcontractor** (i.e. \$10,021 OR \$20/hr):

\$ \_\_\_\_\_

**Date work begins:** Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

**Projected completion date:** Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

**Designated Miller Pipeline LLC Representative:** \_\_\_\_\_

**Title of Designated Miller Pipeline LLC Representative:** \_\_\_\_\_



## Miller Pipeline Corp.

RE:

Dear

Please find enclosed a copy of our Subcontract Agreement for work to be performed on the above referenced project. Please sign the agreements and return to my attention along with your Certificate of Insurance naming Miller Pipeline Corporation as Additional Insured. Work cannot begin until the insurance has been received. An executed copy will be sent for your records.

Miller Pipeline Corporation looks forward to the opportunity of working with you. If you have any questions, please do not hesitate to contact us.

Respectfully submitted,

Contract Administrator

Enclosure

## SUBCONTRACT AGREEMENT

The undersigned, \_\_\_\_\_ ("Subcontractor") whose business address is \_\_\_\_\_, hereby agrees to the following terms with Miller Pipeline LLC ("Contractor"), made this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

In consideration of the mutual promises and covenants contained in this contract (the "Agreement"), the above parties agree to abide by all the terms of this Agreement.

A. Subcontractor agrees to supply all the materials and labor and pay all license fees and expenses for \_\_\_\_\_ for located at \_\_\_\_\_ (the "Site"), as more particularly described on Exhibit "A" and made a part of this Agreement (the "Work"). As full compensation for performance of this Agreement, Contractor agrees to pay Subcontractor \_\_\_\_\_ (\$ \_\_\_\_\_) for the performance of the Work subject to all applicable provisions of this Agreement.

B. Subcontractor, not Contractor, assumes all the risk involved in performing this Agreement, such as any injuries to Subcontractor, Subcontractor's workers, Facility employees and member of the public from the use or condition of tools and equipment the Subcontractor uses or from any other related causes.

C. Subcontractor will complete all work in a workmanlike and professional manner according to standard practices in the building trade, and in compliance with all building codes and other applicable laws. Subcontractor will warrant against defects in material and labor from the completion of work. If Subcontractor fails to perform under this Agreement, the party entitled to performance or the Contractor will have the right to hire other persons to correct the defective Work and hold Subcontractor liable for the costs thereof including costs, disbursements and reasonable attorneys' fees incurred in the enforcement of this provision.

D. All work will be done on a timely basis. The work to be performed under this contract shall be commenced by \_\_\_\_\_ and shall be substantially completed on or before \_\_\_\_\_. Time is of the essence.

E. Subcontractor shall at all times carry Worker's Compensation insurance covering all of his employees, public liability and property damage insurance in the amount stipulated on Exhibit "A" and made a part of this Agreement. Subcontractor shall provide evidence of such coverage to Contractor and shall name the Contractor and Manager as additional insured under such policies. Such policies may not be canceled without prior notice to the Contractor.

F. Subcontractor shall indemnify, defend and hold harmless Contractor from any loss to or claims against Contractor, including attorney fees, arising from the performance or nonperformance of this Agreement by Subcontractor, Subcontractor's principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors or anyone employed directly or indirectly by any of them agents or employees. This means that Subcontractor will pay any attorney's fees and expenses the Contractor pays to defend itself from any claims, and that Subcontractor will pay, on Contractor's behalf, any judgment rendered against Contractor or any that Contractor agrees to pay in settlement of any claims.

G. No work shall be subcontracted or assigned by Subcontractor without the prior written approval of the Contractor.

H. Liens. To the fullest extent permitted by law, Subcontractor will at all times keep the Project, the Site and each part thereof free from any attachment, lien, claim of lien, or other encumbrance arising out of the Work and Subcontractor will indemnify, defend and hold Contractor harmless from and against all claims, losses, demands, causes of action or expenses (including attorneys' fees and other costs of defense incurred by Contractor in defending against the foregoing or in enforcing this indemnity and defense obligation) of whatever nature, arising by reason of any such lien, claim of lien, attachment or encumbrance. If any claim is filed to enforce any laborers, material men, mechanic's, or other similar lien arising out of or relating to the Work, Subcontractor will immediately cause such lien to be released and discharged and if Subcontractor fails to do so, then Contractor will have a right to pay all sums, including attorneys' fees and other costs and expenses incurred necessary to obtain such release and discharge, and hold Subcontractor liable for the amount thereof with the right to deduct all or a portion of such sum from accounts that may be due Subcontractor.

I. Default. In addition to the other remedies available under law: (a) if Subcontractor should fail or refuse, except in cases where extension of time is provided, to supply enough properly skilled workers or proper materials for the Work; or (b) if Subcontractor should fail to make payment to subcontractors for material or labor, or (c) if Subcontractor should fail to keep and comply with any of the terms and provisions of this Agreement, or (d) if Subcontractor should be adjudged bankrupt, file or suffer to be filed a petition for relief under the Bankruptcy Act, or make a general assignment for the benefit of the creditors; or (e) if a receiver should be appointed on account of Subcontractor's insolvency; then, in any such event, Contractor may without prejudice to any other right or remedy and after giving Subcontractor and its surety, if any, 3 days written notice, terminate its obligation to Subcontractor under this Agreement and take possession of the Site and all materials, tools and appliances thereon and complete (or cause to be completed) the Work by whatever method Contractor may deem expedient. In such case Subcontractor will not be entitled to receive any further payment until the Work is completed. Upon completion of the Work, Contractor will pay to Subcontractor an amount equal to (x) the unpaid portion of the Subcontract Amount attributable to the Work performed up to the termination less (y) the amount by which (i) the costs incurred by Contractor to complete the Work, including, without limitation, costs for architectural, managerial and administrative services and reasonable attorneys' fees, if legal counsel is employed, exceed (ii) the portion of the Subcontract Amount attributable to the balance of the Work yet to be performed at the time of termination. If the amount calculated under part (y) in the preceding sentence exceeds the amount owing under part (x), the Subcontractor will pay the difference to Contractor. If the amount in part (x) exceeds the amount in part (y), Contractor will pay the difference to Subcontractor; however, Contractor will have the right at its option to withhold such amount from Subcontractor until the expiration of one year from the date of the termination of this Agreement.

J. Subcontractor is an independent Subcontractor and is not an employee or agent of the Contractor and neither Subcontractor nor anyone employed by Subcontractor will be deemed for any purpose to be the agent, employee, servant or representative of Contractor in the performance of the Work. Subcontractor acknowledges and agrees that Contractor will have no direction or control over the means, methods, procedures or manner of the Work performed by Subcontractor or any of its subcontractors, or any of their employees, vendors or suppliers.

K. No changes shall be made in the work proposed or in the price unless those changes are agreed to in writing by both Subcontractor and Contractor. \_\_\_\_\_, \_\_\_\_\_, shall be the Contractor's designated on site agent.

L. Clean Up. Subcontractor will at all time keep the facility safe and free from the accumulation of waste materials or rubbish caused by its operations or related to the Work. Upon completion of the Work and each portion thereof, Subcontractor will remove all rubbish and waste produced by its operations or Work hereunder from the facility as well as all of its tools, equipment, machinery and surplus materials no longer needed and leave the facility in a "broom clean" or equivalent condition and safe for Subcontractor's employees and subsequent subcontractors to perform their work, unless otherwise specified in writing. If Subcontractor fails to clean up, Contractor may do so after written notice to Subcontractor and the cost thereof will be charged to Subcontractor.

M. This Agreement is the complete and final Agreement of the parties. It replaces any other prior written or oral agreement between the parties. This Agreement may be amended or supplemented only by written instrument duly executed by both parties hereto.

N. Assignment. Subcontractor shall not assign or subcontract this Agreement or any portion thereof or of any money due or which may become due hereunder without the prior written consent of Contractor. Notwithstanding anything to the contrary contained herein, Contractor may assign this Agreement without the consent of Subcontractor.

O. Confidentiality of Agreement. The Subcontractor agrees that all terms and conditions contained herein or in any other document(s) referencing the Project shall remain confidential. Said terms shall not be disclosed without the express written consent of the Contractor, which may be reasonably withheld.

P. Notice. Unless otherwise provided herein, any notice provided for herein will be in writing and delivered to the parties (a) in person, (b) by facsimile transmission (with the original and a copy of the facsimile confirmation following in the United States mail), (c) by overnight delivery service, or (d) by certified mail, return receipt requested. Notice will go to the address first shown herein for the respective party to whom notice is given or to such other address as may be designated by either party by written notice given pursuant hereto.

Q. Governing Law/Venue/Attorney Fees. This Agreement shall be construed and interpreted in accordance with the laws of the State of Indiana, including, without limitation, matters of construction, validity, enforcement, and interpretation. The parties agree that venue for any dispute under this Agreement shall be in the Superior or Circuit Court of Marion County, Indiana or the United States District Court for the Southern District of Indiana, Indianapolis Division. In the event any effort is initiated by Contractor against Subcontractor for default of this Agreement, Subcontractor shall be liable to Contractor for any and all costs of collection, including but not limited to, reasonable attorneys' and professional fees, court costs, traveling and lodging expenses, costs of investigation and defense, accrued interest, and any other reasonable expenses incurred by Contractor in initiating such efforts.

R. Partial Lien Waivers and Affidavits. As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Contractor and which is attached hereto as Exhibit "B", partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Work. Such waivers may be conditional upon payment. In no event shall Contractor require the Subcontractor to provide an unconditional waiver of lien or claim; either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

S. Severability of Agreement. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

T. Counterparts/Signatures. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of such counterparts shall together constitute one and the same instrument. The undersigned individuals have executed this Agreement and by doing so represent that they have been or are specifically authorized to do so on behalf of the entities they represent. The parties also agree that this Agreement, and any amendments to this Agreement, may be transmitted by facsimile or electronically. The parties intend and agree that electronic or facsimile signatures constitute original signatures and are binding on all parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first written above.

**CONTRACTOR:**

Miller Pipeline LLC

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

Printed: \_\_\_\_\_

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

**SUBCONTRACTOR:**

\_\_\_\_\_

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

Printed: \_\_\_\_\_

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

KD\_IM-945034\_2.DOC

## Exhibit A

### Subcontractor's Insurance

- A. Workers Compensation  
The statutory minimum required in the State where the Facility is located.
- B. Employer's Liability  
\$500,000 or such other higher limits imposed in accordance with the requirements, if any, of the laws of the State where the Facility is located
- C. Commercial General Liability  
\$1,000,000 per occurrence, \$2,000,000 general aggregate with Projects/Completed Operations coverage (with evidence of Products/Completed Operations Coverage shown for a minimum of two years following completion of the work described in the contract).
- D. Business Auto Liability  
Including hired and non-owned auto coverage - \$1,000,000 combined single limit.
- E. Umbrella/Excess  
\$2,000,000 or more as deemed appropriate.

This insurance will be primary and noncontributory with respect to the insurance described in A. through E. above. Subcontractor shall insure that Contractor is named as additional insured on the Subcontractor's Commercial General Liability insurance. The Subcontractor's respective insurance carriers shall waive all rights of subrogation with respect to losses payable under such policies. Subcontractor shall obtain and keep on file a Certificate of Insurance, which shows that the Subcontractor is so insured. Subcontractor must obtain Contractor's permission to waive any of the above requirements. Higher amounts may be required if the work to be performed is hazardous.



**Exhibit B**

**Partial Waiver of Lien and Release of Claims**

State of \_\_\_\_\_

County of \_\_\_\_\_

WHEREAS, the undersigned company (“Subcontractor”) provided labor and/or materials under its contract with Miller Pipeline LLC (“Contractor”) for the construction or repair of improvements upon real estate owned by \_\_\_\_\_ (“Owner”) and located at \_\_\_\_\_ (the “Property”) [legal description]; and

WHEREAS, a total of \$\_\_\_\_\_ is due and payable to Subcontractor from Contractor for the time period ending on \_\_\_\_\_ (the “End Date”).

NOW, THEREFORE, in consideration of \$\_\_\_\_\_ paid this date, Subcontractor does hereby waive, release and relinquish any demand, claim cause of action, statutory or constitutional material men’s or mechanic’s lien or right to lien, or charge of any type or nature whatsoever, which Subcontractor has or may have for labor and/or materials supplied under its contract with Contractor or otherwise for the improvement of the Property through the End Date. Subcontractor warrants and represents that such payment is payment in full for all services, labor and materials supplied through the End Date, and that no other claims remain unpaid.

Further, Subcontractor warrants that all laborers, suppliers, and subcontractors providing labor or material by, through or under Subcontractor to the Property have been or will be, from the proceeds of this payment, paid in full before any other uses are made of these proceeds. Subcontractor acknowledges that Contractor’s payment constitutes trust funds for the benefit of Subcontractor’s laborers, suppliers and subcontractors. Subcontractor shall indemnify Contractor and the Property from any liens or claims by any laborer, supplier or subcontractor claiming by, through or under Subcontractor and will pay any attorneys’ fees and expenses that the Contractor pays to defend itself from any claims.

Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
[Typed Name of Subcontractor]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

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

The foregoing instrument was acknowledged and sworn to before me as being true and correct by \_\_\_\_\_ as \_\_\_\_\_ of Subcontractor for the reasons set forth herein.

My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

**Final Waiver of Lien and Release of Claims**

State of \_\_\_\_\_

County of \_\_\_\_\_

WHEREAS, the undersigned company ("Subcontractor") provided labor and/or materials under its contract with Miller Pipeline LLC ("Contractor") for the construction or repair of improvements upon real estate owned by \_\_\_\_\_ ("Owner") and located at \_\_\_\_\_ (the "Property") [legal description]; and

WHEREAS, a total of \$\_\_\_\_\_ is due and payable to Subcontractor from Contractor as payment in full for all labor and/or materials provided by Subcontractor under its contract with Contractor or otherwise for the improvement of the Property.

NOW, THEREFORE, in consideration of \$\_\_\_\_\_ paid this date, Subcontractor does hereby fully and finally waive, release and relinquish any demand, claim, cause of action, statutory or constitutional materialmen's or mechanic's lien or right to lien, or charge of any type or nature whatsoever, including any previously filed materialmen's or mechanic's lien, which Subcontractor has or may have for labor and/or materials supplied under its contract with Contractor or otherwise for the improvement of the Property, and hereby releases Contractor from any other obligations under the contract with Subcontractor. Subcontractor warrants and represents that such payment is payment in full for all services, labor and materials and that no other claims remain unpaid by Contractor.

Further, Subcontractor warrants that all laborers, suppliers, and subcontractors providing labor or material by, through or under Subcontractor to the Property have been or will be, from the proceeds of this payment, paid in full before any other uses are made of these proceeds, that such proceeds are trust funds, and that there are no chattel mortgage, conditional sale, retention of title agreement or other security agreement connected with or affecting the materials installed by Subcontractor at the Property or the proceeds of this payment. Subcontractor shall indemnify Contractor and the Property from any liens or claims by any laborer, supplier, subcontractor or lender claiming by, through or under Subcontractor, and will pay any attorneys' fees and expenses that the Contractor pays to defend itself from any claims..

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Typed Name of Subcontractor]

Address:  
\_\_\_\_\_  
\_\_\_\_\_

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

The foregoing instrument was acknowledged and sworn to before me as being true and correct by \_\_\_\_\_ as \_\_\_\_\_ of Subcontractor for the reasons set forth herein.

My commission expires: \_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_