

Aquascape Designs, Inc.
SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement (“Agreement”) is signed this ____ day of _____, 20__, by and between Aquascape Designs, Inc., an Illinois corporation, (“Aquascape”) and _____, of _____, (“Subcontractor”).

WHEREAS, Aquascape is in the business of constructing water features at commercial and residential sites; and

WHEREAS, the Subcontractor is in the business of providing the services described in Paragraph 1 of this Subcontract; and

WHEREAS, Aquascape desires the Subcontractor to provide the services described in Paragraph 1 of this Subcontract at the project location on Exhibit A (Project Location or Project Site) as part of Aquascape’s direct contract with the Owner of the site or Owner’s general contractor (Owner); and

THEREFORE, the parties agree as follows:

1. Scope of Work: The Subcontractor shall perform the services, sometimes also referred to as the work, at the project site as set forth in “Exhibit A - Scope of Work” document, upon terms and conditions herein contained. A Scope of Work document must be filled out and signed by both parties for each project that the Subcontractor has been subcontracted to perform.
2. Plans and Specifications: The Subcontractor agrees that all work shall be completed in a workmanlike manner in accordance with all applicable governmental laws, codes and regulations, and shall conform to the plans and specifications, (“Plans and Specifications”). The Plans and Specifications are incorporated in this Subcontract by this reference. The Subcontractor acknowledges that prior to signing this Subcontract, that the Subcontractor has reviewed all Plans and Specifications for the Work, and that any questions the Subcontractor had about the Plans and Specifications for the Work have been answered to the Subcontractor’s satisfaction, and that the Work can be completed without any additional services or expenses to Aquascape.
3. Time Frame: The Subcontractor will commence performance of the services by the dates defined in the Scope of Work document.
4. Change Orders: If Property Owner requests or requires any change either expanding or limiting the work to be performed under the Original Contract, Subcontractor shall accept such change orders. Aquascape agrees to provide Subcontractor with written notice of any such change orders as soon as practical after Aquascape receives such notice. Any resulting increase or decrease in the subcontract price provided for on Exhibit A - Scope of Work, must be in writing, mutually agreed upon and signed by both parties to be valid and billable.

Aquascape's President, Vice President, Construction Manager, or Construction Coordinator shall be the only parties who may make modifications or change orders to this Subcontract.

5. Warranty: Subcontract agrees to honor all manufacturer warranties in their entirety for all materials purchased by Subcontractor. Subcontractor guarantees all workmanship for the period of one year from project completion. Subcontractor's materials and workmanship warranties shall be transferable to Property Owner.
6. Indemnity and Insurance: The Subcontractor shall be a Company in good standing, and can demonstrate to Aquascape that Subcontractor maintains worker's compensation and disability insurance to the extent and in the amount required under Illinois law.

Subcontractor shall provide certificates of insurance to Aquascape sufficient to cover the period from the date of this Agreement to the Completion of Services.

Subcontractor agrees to indemnify and hold harmless Aquascape from all claims, losses, expenses, fees including attorney fees, costs, settlements and judgments arising out the performance of the Services.

7. Safety: The Subcontractor shall comply with all specific safety requirements of the OSHA Act of 1970 and the Construction Safety Act of 1969. The Subcontractor shall be directly responsible for compliance of his agents and employees. The Subcontractor agrees to hold Aquascape Inc. harmless for the Subcontractor's failure to comply with terms of this paragraph.
8. Unforeseen Conditions and Acts of God:
 - A. Reasonable additional, unexpected costs directly related to an existing, concealed condition that may be revealed during construction, shall be the sole responsibility of Aquascape. Upon discovery of unforeseen conditions, Subcontractor shall halt work until a resolution can be reached between Aquascape and the Property Owner. Subcontractor shall not be held responsible for reasonable delays caused by such conditions.
 - B. This Agreement is subject to *force majeure*, including without limitation, accidents, fire, explosion, vandalism, storm, weather conditions, acts of God, or other delays beyond the reasonable control of the parties. Subcontractor shall not be held responsible for reasonable delays caused by such events, but shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance.

9. Invoicing requirements and payment terms for work performed:
 - Subcontractor shall provide a current W-9 to Aquascape each year.
 - Subcontractor shall provide a certificate of insurance to Aquascape each year.
 - Invoices must be submitted no later than 45 days after the satisfactory completion of work.
 - Invoice amounts that do not match written scope of work assignments, and or signed change orders will not be considered for payment.
 - Other payment terms agreed to and signed off in writing at time of Contract inspection will be honored by Aquascape Inc. after approval by Subcontractor.
 - Aquascape will issue Payment to the Subcontractor, less retention, within 10 business days after Aquascape receives payment from Property Owner. Aquascape will withhold no more retention from Subcontractor than is being withheld by Property Owner from Aquascape with respect to Subcontractor's work. The retained amount shall be paid by Aquascape within 10 business days after completion of the Services and acceptance of those Services by Property Owner or Property Owner's designated agent.
 - Subcontractor will, if requested, provide final lien waivers upon final payment of all sums due Subcontractor.

10. Use Tax Liability: Subcontractor agrees to accept all use tax liability incurred in connection with the material and labor costs incurred by Subcontractor in completing the Scope of Work agreed to herein.

11. Customer information: All customer information, including names, addresses, phone numbers and e-mail addresses, obtained while subcontracted by Aquascape to perform a project are the sole property of Aquascape Designs, Inc. The Subcontractor is prohibited from marketing their services or contacting the customer for any future work.

12. Relationship of the Parties: The provisions of this Agreement are not intended to create, nor shall be deemed or construed to create, any joint venture, partnership or other relationship between Aquascape and Subcontractor other than that of independent entities contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Neither of the parties to this Agreement, nor any of their respective employees, agents, or other representatives, shall be construed to be the agent, employee or representative of the other party. Neither party shall have the authority to bind the other party nor shall a party be responsible for the acts or omissions of the other party unless otherwise stated in this Agreement. Similarly Subcontractor expressly acknowledges that Subcontractor is not an agent, employee or representative of Property Owner and covenants to represent itself accordingly.

13. Remedies: Neither party to this agreement will seek remedy to defaults through the courts. Instead, both parties agree to mediation through an independent third party.

14. Entire Agreement: This Subcontract, including “Exhibit A - Scope of Work”, comprises the complete Agreement between Aquascape Inc. and the Subcontractor. It supersedes all prior Agreements or understandings.

Subcontractor: _____

Aquascape Inc.

By:

By:

Signature

Signature

Printed Name

Printed Name

Title

Title

EXHIBIT A
SCOPE OF WORK

1. Project Name & Location:

Name: _____
Address: _____
City, State, Zip: _____
Phone Number: _____

2. Work to be performed by Subcontractor:

3. Materials will be provided by:

4. Time Frame:

The Subcontractor will commence performance of the services either on:

- A. The ____ day of _____, 20__, or such later date as Aquascape designates;
or
- B. Within ten (10) days of the date Aquascape advises the Subcontractor that the Subcontractor's services are required.

Strike out A. or B., whichever is not applicable.

Except where delays are caused by weather, Aquascape, or other contractors or subcontractors on the same project, the work shall be completed within 3 days of the Commencement Date.

5. Contract Amount: Aquascape agrees to pay Subcontractor \$_____ for the performance of services as defined in this Agreement.

EXHIBIT A
SCOPE OF WORK (cont.)

Subcontractor: _____

Aquascape Inc.

By:

By:

Signature

Signature

Printed Name

Printed Name

Title

Title