



W. L. FRENCH EXCAVATING CORPORATION

COMMERCIAL SITE DEVELOPMENT • CONTRACT TRUCKING • ENVIRONMENTAL MANAGEMENT

Dear Subcontractors and Vendors:

W. L. French Excavating Corporation relies heavily upon our business relations with you and other associates who provide services over the course of each year. A large part of our success is attributed to these valued relationships, which we intend to continue.

The best interests of both parties can be further preserved and protected by establishing guidelines annually. Toward that goal, the following 2010 Annual Service Agreement and Trucking Policy clearly states objectives and responsibilities expected from all Hired Trucking Firms and / or Subcontractors. ***Please note there have been changes made to this agreement from our prior 2009 Annual Service Agreement.***

The purpose of this agreement is to set terms and conditions under which any and all firms that provide services and furnish materials to W.L. French Excavating Corporation, except where project specific terms and conditions are established by individual Subcontracts or Purchase Orders.

Please thoroughly read this agreement, including *Exhibit "A" W. L. French Excavating Corporation Insurance Requirements.*

Initial the bottom of each page of this agreement acknowledging you have read and understand the terms of documents herein. Please execute the document and return all initialed pages to our main office along with all other necessary paperwork enclosed that is to be completed.

This agreement shall be renewed on an annual basis.

Should there be any questions regarding this agreement please direct all inquiries via email to: prequal@wlfrench.com .

Thank you in advance for your time and cooperation as we continue to establish and work towards mutually beneficial relationships.

William L. French Jr.
President
W.L. French Excavating Corporation

Subcontractor

W.L. French



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SUBCONTRACTOR AND VENDOR REQUIREMENTS

Please Review This Checklist Prior To Returning The Executed Agreement. Please be sure to supply all items on the checklist to ensure your Agreement is complete.

- Executed Annual Agreement including all initial pages of the document

- Completed IRS W-9 Form [*Please Note – IRS Form 1099 will only be issued to non-incorporated trucking firms. If your firm is incorporated and would like to request an IRS Form 1099 for tax filing purposes you must make that request in writing at the end of this policy*]

- Certificate of Insurance as required in Exhibit “A” W. L. French Excavating Insurance Requirements.

- An Extra Copy of Exhibit “A” has been provided for your firm for providing to your Insurance Agent. The Exhibit “A” enclosed in this Agreement **must** be returned as part of the Initialed Documents in this Agreement.

***** ALL PAYMENTS WILL BE SUSPENDED AS OF JANUARY 5, 2010 IF THESE ITEMS ARE NOT RECEIVED OR POSTMARKED BY JANUARY 1, 2010******

Subcontractor

W.L. French



W. L. FRENCH EXCAVATING CORPORATION

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ANNUAL SERVICES AGREEMENT NO. _____

BETWEEN W. L. FRENCH EXCAVATING CORPORATION

AND _____

Effective Dates: 01/01/10 thru 12/31/10

1. Unless superseded by a job-specific Subcontract, Services Purchase Order or Materials Purchase Order, this document shall serve to set the terms and conditions under which Subcontractor / Vendor agrees to perform work or provide services or furnish materials to W. L. French Excavating Corporation throughout the duration of this Agreement.
2. This Agreement, including all conditions stated herein and all Exhibits attached hereto, constitutes the entire agreement between W. L. French Excavating Corporation and Subcontractor and/or Vendor.
3. Subcontractor / Vendor agrees to provide services or materials to W. L. French Excavating Corporation on an as-needed basis, when requested by W. L. French Excavating Corporation, at unit price, T&M or at other such terms as may be agreed upon between Subcontractor / Vendor and W. L. French Excavating Corporation. All work so performed or materials provided shall be documented on a daily basis by work slips or delivery slips signed by W. L. French Excavating Corporation project superintendent or by his authorized designee.
4. Subcontractor / Vendor shall invoice W. L. French Excavating Corporation on a weekly basis, by project, for work performed. W. L. French Excavating Corporation shall endeavor to make payment to Subcontractor / Vendor within thirty [30] days following receipt of properly submitted invoices. Retainage shall not be withheld from Subcontractor / Vendor's payment unless such withholding has been previously agreed to by Subcontractor / Vendor on an individual project basis.
5. To the fullest extent permitted by law, Subcontractor hereby acknowledges and agrees that it shall indemnify, hold harmless and defend W. L. French

Subcontractor

W. L. French



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Excavating Corporation and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners from and against all claims, damages, judgments, settlements, losses and expenses, including but not limited to, attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work and/or arising out of or resulting from any act or omission of the Subcontractor, its employees, agents or subcontractors.

To the fullest extent permitted by law, the Subcontractor / Vendor hereby agrees to fully defend W. L. French Excavating Corporation and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners, [1] from any complaint against any of them for injury or damage that is alleged in the complaint to arise, in whole or in part, out of the subcontractor's work, or out of any act or omission of the Subcontractor / Vendor, its employees, agents or subcontractors and/or [2] from any complaint against any of them alleging injury or damage to an employee of the subcontractor. The party defended hereunder shall have the right to choose its own counsel to be paid for by the subcontractor.

6. Subcontractor / Vendor shall, at Subcontractor / Vendor's expense, purchase and maintain insurance and provide W. L. French Excavating Corporation with a Certificate of Insurance in accordance with Exhibit 'A' – W. L. French Excavating Corporation Insurance Requirements. Certificate of Insurance shall provide for cancellations of not less than thirty [30] days written notice. Certificate holder shall be W. L. French Excavating Corporation.
7. All work shall be performed in compliance with all local, state and federal codes and legal requirements. It shall be Subcontractor / Vendor's responsibility to see that any required permits and license are in place. Subcontractor / Vendor shall inform W. L. French Excavating Corporation of any conflicts, errors, or omissions contained in the Contracts Documents.
8. Subcontractor / Vendor shall be responsible for payment of all sales, use and personal property taxes imposed in connection with any materials being provided or work being done hereunder.
9. Subcontractor / Vendor acknowledges that it will abide by W. L. French Excavating Corporation general conditions, specifications, and safety program, if applicable.

Subcontractor

W. L. French



W. L. FRENCH EXCAVATING CORPORATION

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10. Subcontractor / Vendor shall supply a warranty on all materials and workmanship for one [1] year or such longer period as may be specified by the Contract Documents. This warranty period shall be measured starting from final acceptance of work done under this contract. The Subcontractor / Vendor shall adhere to W. L. French Excavating Corporation callback requirements and schedule.
11. W. L. French Excavating Corporation reserves the right to terminate this Agreement at any time if W. L. French Excavating Corporation is not satisfied with Subcontractor / Vendor's work or performance and Subcontractor / Vendor fails to cure same within three [3] business days after receiving written notice of W. L. French Excavating Corporation's dissatisfaction. In the event of such termination, Subcontractor / Vendor will be paid only for work done and materials installed prior to the date of termination, less any costs incurred as a result of Subcontractor / Vendor's breach or defective work or failure to perform.
12. W. L. French Excavating Corporation may terminate this order for convenience in whole or in part. During performance of any work under this Agreement, Subcontractor / Vendor shall not discriminate against any employee or applicant for employment because of race, color, creed, gender, age or national origin. Subcontractor / Vendor shall comply with any equal opportunity or affirmative action requirements or plans as may be required by the individual project for which Subcontractor / Vendor may be called upon to provide services.
13. Any cost incurred as a result of Subcontractor / Vendor's failure to perform or breach of any provisions hereof shall be charged to and paid by Subcontractor / Vendor.
14. The Subcontractor / Vendor shall assume toward W. L. French Excavating Corporation all obligations and responsibilities that W. L. French Excavating Corporation assumes toward the buyer or the owner under general contract, and W. L. French Excavating Corporation shall have the same rights and privileges against the Subcontractor / Vendor as the buyer or owner in the general contract has against W. L. French Excavating Corporation insofar as these obligations, responsibilities, rights, and privileges pertain to the Subcontractor / Vendor's work.

Subcontractor

W. L. French



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15. In the event that any terms and conditions are declared void or unenforceable under law that shall not serve to abrogate the entire instrument and the remainder of the terms and conditions shall continue to be in full force and effect.
16. If requested by W. L. French Excavating Corporation, Subcontractor / Vendor shall execute and deliver to W. L. French Excavating Corporation lien releases in form satisfactory to W. L. French Excavating Corporation at the time payment is made on each invoice. Subcontractor / Vendor shall furnish Subcontractor / Vendor's Taxpayer Identification Number [or Social Security Number, if applicable] prior to submitting invoices for payment. Final payment shall be paid after all work is properly completed and provided that Subcontractor / Vendor have furnished evidence that no liens will or can be placed on the premises in connection with work performed or materials furnished hereunder.
17. This Agreement and all contracts hereunder shall be governed and interpreted under the laws of the State of Massachusetts, and venue shall be maintainable in Middlesex County, Massachusetts.

The parties have executed this agreement on this _____ day of _____, _____.

Subcontractor / Vendor Name

Address

City, State & Zip

Signature & Title

W. L. French Excavating Corporation
Purchasing Name

3 Survey Circle
Address
North Billerica, MA 01862
City, State & Zip

Signature & Title



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EXHIBIT "A"

W.L. FRENCH EXCAVATING CORPORATION INSURANCE REQUIREMENTS

COPY FOR INSURANCE COMPANY PURPOSES PLEASE FAX THIS COPY TO YOUR INSURANCE AGENT

The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

1. **Commercial General Liability (CGL)** with limits of Insurance no less than: \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
 - a) If the CGL coverage contains a General Aggregate shall apply separately to each project.
 - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 (10 93) or a substitute form providing equivalent coverage and shall cover liability arising from premises operation, independent contractors, products-completed operations, and personal and advertising injury.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as insured's on the CGL using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 20 10 (10 93) **AND** CG 20 37 (10 01) or CG 20 33 (10 01) **AND** CG 20 37 (10 01) and endorsement providing equivalent coverage to the additional insured's. This insurance for the additional insured's shall be broad as the coverage provided for the name insured subcontractor. It shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - d) Subcontractor shall maintain CGL coverage for itself and all additional insured's for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.

2. **Automobile Liability**
 - a) Business Auto Liability with limits of at least \$1,000,000 each accident.
 - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.



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EXHIBIT "A" [Continued]

- c) General Contractor, Owner and all other parties required of the General Contractor shall be included as insureds on the auto policy.
- d) Business Auto to include MCS-90 filing as well as Broadened Pollution Endorsement Form MM9955 or CA9948.

3. **Commercial Umbrella**

- a) Umbrella limits must be at least \$5,000,000.
- b) Umbrella coverage must include insured's as entities that are additional insured's on the CGL.

4. **Workers Compensation and Employers Liability**

- a) Employers Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.
- b) Where applicable, U.S. Longshore and Harborworks Compensation Act Endorsement shall be attached to the policy.
- c) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.

5. **Endorsement**

Attached to each Certificate of Insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. Subcontractor is required to submit a Certificate of Insurance. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to Contractor.

6. **Waiver of Subrogation**

To the fullest extent permitted by law, Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above.



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[Insurance Company's Copy] EXHIBIT "A"

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 - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 (10 93) or a substitute form providing equivalent coverage and shall cover liability arising from premises operation, independent contractors, products-completed operations, and personal and advertising injury.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as insured's on the CGL using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 20 10 (10 93) **AND** CG 20 37 (10 01) or CG 20 33 (10 01) **AND** CG 20 37 (10 01) and endorsement providing equivalent coverage to the additional insured's. This insurance for the additional insured's shall be broad as the coverage provided for the name insured subcontractor. It shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - d) Subcontractor shall maintain CGL coverage for itself and all additional insured's for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.

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 - c) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
- 5. **Endorsement**

Attached to each Certificate of Insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. Subcontractor is required to submit a Certificate of Insurance. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to Contractor.
- 6. **Waiver of Subrogation**

To the fullest extent permitted by law, Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above.