

SELF-EMPLOYED LABORER CONTRACT

(to be used by the General Contractor and Subcontractors at any tier that hires or contracts with a Self-Employed Laborer as defined in the LMHA Labor and Contracting Requirements Chart)

PROJECT: Beecher Terrace Phase IV

HIRING ENTITY: _____

CONTRACT AMOUNT: _____

CONTRACT TERM: _____

SCOPE OF WORK: The Self-Employed Laborer listed below agrees to provide the following labor and/or materials at the direction of _____ :
(General or Subcontractor)

The parties confirm that [name of self-employed laborer] is an independent contractor and not an employee under Kentucky and/or federal law.

(Hiring Entity)

[Self-Employed Laborer]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

A Self-Employed Laborer cannot hire any employees or subcontract for any work covered by this agreement. If the Self-Employed Laborer does hire or subcontract for any work called for under this agreement, the requirements applicable to Subcontractors will apply, which means that the Self-Employed Laborer will be reclassified as a Subcontractor and will be subject to the CNI Construction Contract Rider and the LMHA Section 3, MBE, WBE, DBE Requirements exhibit.

¹ See attached Simplified Labor and Contracting Requirements Chart.
HO126:191061:1580235:1:LOUISVILLE

**Louisville Metro Housing Authority – CNI/RAD Project – Beecher 4
Employment and Contracting Requirements Chart & Definitions**

Required Documentation	General Contractor¹	Subcontractor² (Includes subcontractors in all tiers including working subcontractors)	Self-Employed Laborer³ (Could be any classification of laborer or mechanic under 29 CFR Part 5)
Contract/Employment Agreement	Required.	Required.	Required.
Certificate(s) of Insurance	Required.	Required.	Must be covered by the general contractor’s or hiring entity’s insurance. Proof of coverage will be required.
Demographics	Required.	Required.	To be included in in the reporting from the hiring entity (General Contractor or Subcontractor).
HUD 5282	Required.	Required.	Not required from the Self-Employed Laborer directly. Issues related to documentation for the Self-Employed Laborer are directed to the hiring entity.
Certified Payrolls	Required.	Required.	Not required from the Self-Employed Laborer directly. However, must be included in in the reporting from the hiring entity (General Contractor or Subcontractor).
Section 3 Compliance	Required.	Required.	Not required from the Self-Employed Laborer directly. However, the Self-Employed Laborer must be included in in the reporting from the hiring entity (General Contractor or Subcontractor). The Self-Employed Laborer should be included in the reported compliance information for employment and not in the compliance information for contracting.
MWDBE Compliance	Required.	Required.	Not required from the Self-Employed Laborer directly. Not considered a “Subcontractor” or “Contractor” and cannot be relied on as a MWDBE toward MWDBE compliance per LMHA’s MBE Requirements.

¹ See definition page for the definition of General Contractor, Subcontractor and Self-Employed Laborer.

² See definition page for the definition of General Contractor, Subcontractor and Self-Employed Laborer.

³ See definition page for the definition of General Contractor, Subcontractor and Self-Employed Laborer.

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Definitions

General Contractor – The company that has contracted with the owner to complete a construction project under a contract that allows the General Contractor to subcontract with others to complete specific tasks on the Project.

Subcontractor – A specialty contractor hired to complete a specific task on a construction project such as framing, plumbing, or electrical wiring. For purposes of HUD and DOL and related compliance monitoring, “Subcontractor” includes:

- *Sub-Subcontractor or Lower Tier Subcontractor* – For large construction projects, subcontractors may hire a sub-subcontractor to complete certain specialized tasks or to augment capacity to perform the work. Further, that sub-contractor could also subcontract, which would make the 1st subcontractor hired by the General Contractor a “First-Tier Subcontractor” and the 2nd subcontractor hired by the First Tier Subcontractor a “Second Tier Subcontractor” and so on.
- *Independent Contractors* (as defined below) who are “Self-Employed Laborers” (as defined below) who have at least one employee or that contract or subcontract with other Self-Employed Laborers to perform work under a subcontract or contract.
- *Working Subcontractors* (as defined below).

Independent Contractor – A person who is hired to perform work on a construction site and is not an employee of the Owner or the General Contractor or a Subcontractor to work on a construction project and meets the definition of “independent contractor” under rules and guidance issued by the State of Kentucky, Internal Revenue Service and HUD (as described in more detail below in Determining Whether a Person is an Independent Contractor or an Employee). Independent contractors include “Self-Employed Laborers.” Self-Employed Laborers who have at least one employee or who contract with another Self-Employed Laborer to complete assigned work on a construction project are “Subcontractors.”

Working Subcontractor – A person who owns a business that has been hired by the General Contractor or a Subcontractor (as each is defined above) and works alongside his/her/their employees and/or Self-Employed Laborers (as defined below) to complete work on a project.

Self-Employed Laborer – An individual person who is an Independent Contractor (as defined above) and has no employees working for him/her/them and no subcontracts with other Self-Employed Laborers to complete assigned work on a construction project with duties that are physical or manual in nature. For purposes of this definition and to align with regulations implementing Federal Labor Standards at 29 CFR Part 5, a self-employed laborer includes workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. Accordingly, a self-employed laborer may be classified, by way of example, as an electrician, plumber, bricklayer, or laborer. Self-employed laborers are sometimes referred to as “Non-Payroll Employees” or “1099 Workers.”

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Determining Whether a Person is an Independent Contractor or an Employee.

Internal Revenue Service Guidance⁴. For federal employment tax purposes, the usual common law rules are applicable to determine if a worker is an independent contractor or an employee. Under the common law, you must examine the relationship between the worker and the business. You should consider all evidence of the degree of control and independence in this relationship. The facts that provide this evidence fall into three categories – Behavioral Control, Financial Control, and Relationship of the Parties.

Behavioral Control covers facts that show if the business has a right to direct and control what work is accomplished and how the work is done, through instructions, training, or other means.

Financial Control covers facts that show if the business has a right to direct or control the financial and business aspects of the worker's job. This includes:

- ☐ The extent to which the worker has unreimbursed business expenses
- ☐ The extent of the worker's investment in the facilities or tools used in performing services
- ☐ The extent to which the worker makes his or her services available to the relevant market
- ☐ How the business pays the worker, and
- ☐ The extent to which the worker can realize a profit or incur a loss

Relationship of the Parties covers facts that show the type of relationship the parties had. This includes:

- ☐ Written contracts or oral agreements describing the relationship the parties intended to create
 - Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay
- ☐ The permanency of the relationship, and
 - The extent to which services performed by the worker are a key aspect of the regular business of the company

Note that hiring entities and workers can file an IRS Form SS-8 to request a determination of worker status from the IRS.

State of Kentucky (KY.gov) – an Independent Contractor is someone who:

- ☐ Performs a job that is not similar to your business.

⁴ Lifted directly from IRS website

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- ☐ Whose work you have no direction or control over.
- ☐ See: https://kewes.ky.gov/Employertax/Misc_info.aspx

According to the United States Department of Labor (DOL)⁵ – an independent contractor is someone who has:

- Economic independence and, as a matter of economic reality, is in business for himself/herself/themselves. “Economic Dependence” is evaluated taking into consideration:
 - The nature and degree of control the person has over the work
 - The individual’s opportunity for profit or loss
- The amount of skill required for the work.
- The degree of permanence of the working relationship.
- Whether the work is part of an integrated unit of production

⁵The US Department of Labor’s regulations are in the process of revision and were the subject of litigation. Note that the current regulations were published in the Federal Register on January 7, 2021, 88 FR 1168.