

**SUBCONTRACT CONSTRUCTION AGREEMENT**

**THIS SUBCONTRACT CONSTRUCTION AGREEMENT**, made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between SHERWOOD CONSTRUCTION, INC (hereinafter referred to as "Contractor"), and \_\_\_\_\_(hereinafter referred to as "Subcontractor"), which parties, for good and valuable consideration from each to the other, the receipt and sufficiency of which is conclusively acknowledged, do hereby agree as follows:

**1. DESCRIPTION OF PROPERTY AND WORK TO BE PERFORMED.** Contractor has agreed to construct improvements on Owner's real property located at \_\_\_\_\_, in \_\_\_\_\_ County, Florida, in accordance with the plans and specifications signed and dated by Contractor and Owner on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, prepared by \_\_\_\_\_, dated or latest revision made on \_\_\_\_\_, and consisting of \_\_\_\_\_ pages. The legal description of the Subject Property is Lot(s) \_\_\_\_\_, Block \_\_\_\_\_, \_\_\_\_\_ subdivision (or, if a metes and bounds description, as attached hereto). Subcontractor hereby acknowledges receipt of such plans and specifications, and agrees to perform the work (furnish labor, services and materials) required for the \_\_\_\_\_ portion thereof.

**2. SUBCONTRACT PRICE.** Contractor agrees to pay Subcontractor the following Contract Price, together with adjustments, if any, for Change Orders as described in paragraph 8, and in accordance with the further provisions of this Contract, as follows (check and complete one):

- \_\_\_\_\_ **Fixed Price.** The sum of \$ \_\_\_\_\_.
- \_\_\_\_\_ **Cost Plus Fixed Fee.** All costs incurred by Subcontractor, plus the fixed sum of \$ \_\_\_\_\_.
- \_\_\_\_\_ **Cost Plus Percentage of Cost.** All costs incurred by Subcontractor, plus \_\_\_\_\_ % of all such costs).
- \_\_\_\_\_ **Cost Plus Percentage of Costs (Limited).** All costs incurred by Subcontractor plus \_\_\_\_\_% of all such costs, which total will not exceed \$ \_\_\_\_\_.
- \_\_\_\_\_ **Time Plus Materials.** All time incurred by Contractor and its employees, at the rate of \$ \_\_\_\_\_ per hour, together with all costs incurred by Contractor for materials and for subcontractors.
- \_\_\_\_\_ **Other.** (Describe) \_\_\_\_\_.

**3. DEFINITIONS** The term "cost," if applicable, means all costs and amounts paid or incurred to third persons by Subcontractor for labor, services, materials, licenses and permits directly related to this Subcontract. This term, except as it relates to time plus materials, shall also include the gross payments to all employees of Subcontractor for work performed by such employees pursuant to this Subcontract (including the income taxes and F.I.C.A. taxes withheld thereon). The term "days" means calendar days, including weekends and holidays, unless otherwise noted; "business days" means week days Monday through Friday, except legal state holidays. "Substantial completion" occurs when the Certificate of Occupancy has been issued, or has been delayed solely by act or omission of the owner. "Consequential damages" consists of costs or expenses which may arise from the special circumstances of either party hereto, including, but not limited to, such things as increases in living expenses, additional storage or interests costs, adverse or aggravated medical conditions or longer travel times and distances, which may be incurred or suffered as a result of, or arising from, a delay in any performance hereunder by either party.

**4. LICENSES AND PERMITS.** Subcontractor shall obtain and pay for all licenses, permits or related items required to perform the Subcontractor's work performance and obligations under this agreement, the costs for which are part of the Contract Price set forth above (or, the subject of an "allowance" if so noted in paragraph 11).

**5. TIME OF PAYMENT; INTEREST DUE.** Contractor agrees to pay Subcontractor the Contract Price specified in paragraph 2, in accordance with the draw schedule attached hereto or in accordance with the lender's required draw schedule, if any. However, payment to Subcontractor of the Contract Price, or any portion thereof, is expressly conditioned upon Contractor receiving payment from the Owner for Subcontractor's portion of the work hereunder, and none of the Contract Price shall be due and payable to Subcontractor except to the extent Contractor has received payment from the Owner for Subcontractor's portion of the work hereunder.

**6. DRAW REQUESTS.** As each specified contract draw becomes due to the Subcontractor, a written request for same shall be submitted by the Subcontractor to the Contractor; Subcontractor shall utilize any form which may be provided by the Contractor for this purpose. All such draw requests will be due and payable within \_\_\_\_\_ days (or, if blank, 10 days) of the date submitted by Subcontractor to Contractor, except to the extent Contractor objects to any such request in a writing setting forth the reason(s) for any such objection(s). As requested by Contractor, Subcontractor shall provide Contractor, Owner and Owner's Lender with a construction lien release from each person who has served a Notice to Owner prior to or at the time of each such draw request as a result of work performed under this agreement.

**7. TIME AND MANNER OF PERFORMANCE BY SUBCONTRACTOR.** Subcontractor shall promptly apply for all building permits required to perform the work under this agreement, and commence such work immediately upon the issuance of such permits and the oral instructions of Contractor. Subcontractor shall diligently pursue and substantially complete all work to be performed under this agreement within a reasonable period of time, taking into consideration delays that are beyond the control of the Subcontractor, including, but not limited to, weather conditions, delays in selection or delivery of materials, and change orders.

**8. CHANGE ORDERS.** All changes to the plans, specifications or selection of finished materials may be requested by Owner, subject to Contractor's approval, or by Contractor. Unless otherwise set forth in each written Change Order, Contractor shall pay Subcontractor for any increase(s) in the Contract Price set forth therein at the time final payment is due to the Contractor from the Owner.

**9. FINAL INSPECTION/PUNCH LIST.** Upon notification by Subcontractor that all work to be performed hereunder is substantially complete, Contractor shall conduct a final inspection of same and prepare a punch list, which shall be signed and dated by both parties. Subcontractor shall be responsible for completion of all items on the punch list, and Contractor may withhold a sufficient amount of the Contract Price to assure that Subcontractor does so in a timely and proper manner.

**10. OWNER'S USE OF CONTRACTOR'S EMPLOYEES, AGENTS, SUBCONTRACTORS, OR MATERIAL SUPPLIERS.** Owner and Owner's family members or agents are PROHIBITED from utilizing or unreasonably interfering, communicating, or contracting with Contractor's employees, subcontractors, subcontractor's employees or agents, or material suppliers, and from performing or permitting any work on the Subject Property, without the prior written approval of the Contractor, which approval may be withheld in the Contractor's unrestricted discretion. Subcontractor agrees to likewise abide by this prohibition on the Owner, and that any failure to do so may, at Contractor's option, be deemed by Contractor to be a breach of this agreement by the Subcontractor.

**11. ALLOWANCES AND SELECTION OF FINISH MATERIALS.** In establishing the Contract Price or estimating the costs to be incurred in the performance of this agreement, Subcontractor has made monetary allowances for each of the following described items (if any), which allowances \_\_\_\_\_ includes or \_\_\_\_\_ does not include (**check one**) any costs incurred for installation:

(a) Permits/licenses (if any)	\$ _____	(c) _____	\$ _____
(b) _____	\$ _____	(d) _____	\$ _____

**12. CONFLICTS IN PLANS AND SPECIFICATIONS.** In the event of any conflict between the plans and specifications, the specifications shall control.

**13. INSURANCE.** Subcontractor shall, at Subcontractor's expense, maintain all insurance coverages required by law, including General Liability and Worker's Compensation, together with Waivers of Subrogation in favor of Contractor in connection with the work to be performed under this agreement, and shall provide Contractor with certifications of such coverages. Subcontractor shall cause Contractor to be named as "Additional Insured" on the Subcontractor's General Liability Policy. Subcontractor shall carry standard ISO General Liability coverage, written on an occurrence basis - including Completed Operations. The coverage must be endorsed to name SHERWOOD CONSTRUCTION, INC. as an "additional insured" (Form CG2010 11/85 or equivalent -meaning the additional insured coverage form to include work in progress -i.e. all acts or omissions or any other liability of additional insured arising out of subcontractor's work performed for additional insureds or subcontractors us of premises, equipment and facilities of additional insureds - i.e. ongoing operations and completed work -i.e. Completed Operations) and include the Owner, Architect and others as "additional insureds" as required in the contract documents. The "Additional Insured" form shall state that this insurance shall be primary without right of contribution from any other insurance available to the "additional insureds" and the amount of the company's liability under this policy shall not be reduced by the existence of such other insurance. Copy of the additional insured endorsement form is to be attached to the Certificate of Insurance. A waiver of subrogation will be provided.

Subcontractors of SHERWOOD CONSTRUCTION, INC. shall purchase and maintain during the entire project and during the warranty period, insurance with the minimum limits and coverage shown below or, if greater - the requirements set forth in the Contract Documents, from insurance companies acceptable to SHERWOOD CONSTRUCTION, INC.

**14. SUBCONTRACTOR'S FULL COOPERATION AND INDEMNIFICATION IN THE EVENT OF CONTRACTOR'S RIGHT-TO-CURE.** In the event Contractor is entitled to rely upon Chapter 558, Florida Statutes, regarding any alleged construction defects (as defined in such law) Subcontractor shall fully cooperate with Contractor by promptly and faithfully following all instructions by Contractor or Contractor's designated agent with regard to notification and testing of any products, process or the application or installation techniques supplied, utilized or furnished by Subcontractor in the performance of work pursuant to this agreement. In addition, Subcontractor shall INDEMNIFY AND HOLD CONTRACTOR HARMLESS as a result of any such defects arising out of or in connection with the performance of the subcontractor's work performed pursuant to the agreement, including, but not limited to, all costs incurred by Contractor for testing, as well as for labor, services and materials required to repair, remedy or replace, at Contractor's sole option, any such defect(s). To the fullest extent permitted by law, the **Subcontractor expressly agrees to indemnify** and hold harmless **the Contractor**, the project owner, the architect, and the engineer and their respective officers, directors, agents, and employees herein called the "indemnitees" **from** any and all liability for **damages**, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, **to persons or property caused in whole or in part by any act**, omission, or default by the **Subcontractor** or its sub-subcontractors, materialmen, or agents of any tier or their employees, **arising out of this Agreement** or its performance, including c1) **any such damages caused in whole or in part by any act**, omission, or default **of any indemnitee, but**

specifically **excluding** any claims of, or **damages against an indemnitee resulting from such indemnitee's gross negligence**, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Sub-contractor or its sub-subcontractors, materialmen, or agents of any tier or their respective employees.

**Provided** however that any **claim** for indemnification **for damages** caused in whole or in part by any act, omission or default by indemnitee(s) **shall be limited to the amount of Sub-contractor's insurance or \$1 million per occurrence whichever is greater**. The parties acknowledge that the amount of the indemnity required hereunder bears a reasonable commercial relationship to this Agreement and it part of the project specifications or the bid documents.

The indemnification obligations under this Agreement shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Sub-contractor under workers' compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Sub-contractor or of any third party to whom Sub-contractor may subcontract a part or all of the Work.

The GL shall include such coverage, but not limited to, premises/operations, employees as insureds, explosion, collapse and underground (XCU), broad form contractual (including personal injury), products/completed operations, independent contractors, broad form property damage and personal injury. The CGL must be written on an occurrence basis, with minimum limits of:

General Aggregate - Per Project	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Fire Damage	\$100,000
Medical Payments	\$10,000

**COMPREHENSIVE AUTOMOBILE LIABILITY** on occurrence basis covering all Owned, Non-Owned and Hired Vehicles for limits of liability equal to \$1,000,000 Combined Single Limit.

**WORKER'S COMPENSATION** including Occupations Disease insurance meeting the statutory requirements of the State in which work is to be performed together with a Broad Form All States Endorsement and containing **Employer's Liability** insurance in an amount of at least \$500,000 Each Accident / \$500,000 Disease – Policy Limit / \$500,000 Disease – Each Employee. Workers Compensation shall waive the rights of subrogation in favor of all additional insureds.

A certificate of insurance form must be filed with **Contractor** prior to the commencement of any work and must state coverage will not be altered, cancelled or allowed to expire without thirty (30) days written notice by certified mail to **Contractor**. If any of the above coverages are subject to or are in excess of any deductibles or self-retention, these amounts must be stated on the certificate, and said deductibles and self-retention will be the sole responsibility of Subcontractor.

It is understood and agreed that the insurance coverage and limits, required above, shall not limit the extent of Subcontractor's responsibilities and liabilities specified within Contract Documents or by law.

It is understood and agreed that authorization is hereby granted to refuse entry to job site and to withhold payments to Subcontractor until a properly executed Certificate of Insurance is received by **Contractor**.

Subcontractor's Insurance Requirements set forth herein shall become and be part of any purchase order or contract issued by **Contractor** to Subcontractor as though fully set forth in said purchase order or contract.

Should Subcontractor fail or neglect to provide the required insurance, **Contractor** shall have the right, but not the duty, to provide such insurance and deduct from any money that may be due or become due to Subcontractor for any and all premium or costs **Contractor** incurs. Equivalent insurance coverage must be obtained from each Sub-subcontractor and Supplier, if any, before permitting them on the site of the project. Otherwise, such insurance for Sub-subcontractors and Suppliers must be included within Subcontractor's insurance policies.

**15. DEFAULT/NOTICE OF DEFAULT.** Subcontractor shall be in default under this Contract if Subcontractor abandons any of the work to be performed pursuant to this agreement, or otherwise refuses or fails to carry out any of Subcontractor's obligations under this Contract (unless such abandonment, refusal or failure is based upon a prior default by Contractor which Contractor has failed or refused to cure after written notice thereof). Subcontractor shall be deemed to have abandoned work if Subcontractor shall fail to perform or cause any work to be performed on the Subject Property for thirty (30)

consecutive days, unless such failure is the result of any event beyond the control of the Subcontractor and the event giving rise thereto has been reported in writing by Subcontractor to Contractor in advance of such event. Contractor shall be in default under this Contract if Contractor refuses to permit Subcontractor to complete performance, fails to pay any amounts when due, or otherwise refuses to carry out any of Contractor's obligations under this Contract (unless such refusal nonpayment or refusal is based upon a prior default by Subcontractor which Subcontractor has failed to cure after written notice thereof). In the event of default, the defaulting party shall be entitled to receive written notice, by certified mail return receipt requested or by hand delivery to the address shown below, which specifies the event(s) of default. The defaulting party shall have ten (10) days from the receipt of the notice in which to begin the curing of any default, which actions shall be continuously pursued and completed within a reasonable time in light of the nature of the default; provided, however, the cure of any default in payment must be completed within ten (10) days from the date of notice of default. If any default is timely cured, each party agrees that this Contract shall remain in full force and effect and neither party may assert any claims as the result of such default. All notices shall be to the respective addresses of the parties as set forth herein, or as otherwise set forth by a written notice to the other party.

**16. REMEDIES AFTER DEFAULT:**

**(A) BY CONTRACTOR.** In the event of default by Contractor which is not cured within the time specified, the Subcontractor may, at Subcontractor's option, declare the Contract terminated and seek damages only for the reasonable and necessary costs incurred to the date of the default, less draws paid to Subcontractor prior thereto, and excluding any other damages whatsoever, such as: damages for delay, or for any consequential damages.

**(B) BY SUBCONTRACTOR.** In the event of default by Subcontractor which is not cured within the time specified, the Contractor, at Contractor's option, shall be entitled to all costs incurred by Contractor to complete or have completed all of the Subcontractor's then remaining work to be performed hereunder, together with a profit in the amount of fifteen (15%) percent thereof, and excluding any other damages whatsoever, such as: damages for delay, or for any consequential damages. The parties have agreed to this amount of profit due to the difficulties and uncertainties associated with the calculation of actual damages for lost profits which Contractor is likely to incur as the result of a default by Subcontractor.

**17. WARRANTIES.** Subcontractor warrants the labor and materials supplied or used by Subcontractor in performing this contract have been: in accordance with all applicable building code requirements; installed in accordance with good workmanship and with all manufacturers' specifications, conditions and requirements; and, shall be free of defects. Any warranty supplied by manufacturers shall be in addition to these warranties, and shall inure to the benefit of the Owner of the Property.

**18. ARBITRATION.** Except for claims which are governed solely by the "right-to-cure" law, the parties agree that any other action to enforce this Contract shall be exclusively by arbitration proceedings as described herein, to be held in the county in which the real property described herein is located, and both parties agree to be bound by the decision rendered in such proceedings. Within thirty (30) days of a written request for arbitration, each party shall select an arbitrator. If either party fails to select an arbitrator within this time frame, the first arbitrator selected may select the second arbitrator. Within ten (10) days thereafter the two arbitrators shall select a third arbitrator. All arbitrators shall be persons with experience in the construction industry. The arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes); provided, however, the final hearing shall be held not more than ninety (90) days after the receipt of the request for arbitration and the final decision shall be rendered not more than thirty (30) days after the conclusion of the final hearing.

**19. ATTORNEY FEES.** In the event of any disputes arising out of or in connection with this contract, the prevailing party therein shall be entitled to recover reasonable attorney fees and costs, whether same were incurred prior to or during any judicial proceedings, including, but not limited to, any trial or appellate proceedings, as well as prior to or during any of the alternative dispute resolution mechanisms, whether described herein or otherwise ordered by a court of competent jurisdiction.

**20. GOVERNING LAW, ASSIGNMENT AND RECORDING.** This Contract shall be construed and enforced in accordance with the laws of the State of Florida, and may not be assigned or recorded except with the prior approval of both parties, which approval may be withheld for any reason whatsoever. Notwithstanding any such approval, however, the assigning party shall remain liable for any breach or default hereunder.

**21. INTEGRATION CLAUSE.** This Contract and the additional contract documents attached hereto, as indicated in the following paragraph, constitute the complete agreement between the parties and may not be modified except in writing signed by all parties hereto.

**22. ADDITIONAL CONTRACT DOCUMENTS.** If marked, the following additional documents are a part hereof and each party acknowledges receipt of a copy thereof:

<input type="checkbox"/> Metes & Bounds description	<input type="checkbox"/> Draw Schedule)	<input type="checkbox"/> Other (_____)
<input type="checkbox"/> Other Allowances	<input type="checkbox"/> Other Specifications	<input type="checkbox"/> Other (_____)

**23. CONTROLLING PROVISIONS AND HEADINGS.** All handwritten or typewritten provisions herein shall control over any printed provisions in conflict therewith, unless otherwise provided. The headings on each paragraph are for the sole convenience of the parties and shall not be construed to be a part of this Contract

**24. SPECIAL CLAUSES** (If "none," leave blank):

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**WITNESSES (as to Contractor)**

**SHERWOOD CONSTRUCTION, INC.**  
**License #: CBC059718**

1. \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

2. \_\_\_\_\_

**WITNESSES (as to Subcontractor)**

\_\_\_\_\_  
**Print Subcontractor's Name**  
**License #** \_\_\_\_\_

1. \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

2. \_\_\_\_\_