



## YEARLY SUBCONTRACTOR AGREEMENT

This Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ("Effective Date"), by and between **Sunset Builders & Maintenance, Inc.** (the "GENERAL CONTRACTOR"), having an address of **15271 McGregor Blvd, Unit 3, Fort Myers, FL 33908**, and \_\_\_\_\_ (the "SUBCONTRACTOR"), having an address of \_\_\_\_\_

WHEREAS, the General Contractor intends to pay the Subcontractor for Services provided, as of the Effective Date, the General Contractor and the Subcontractor agree that the recitals set forth hereinabove are true and correct and incorporated into the Agreement, and further agree as follows:

**SUBCONTRACTOR RESPONSIBILITIES.** The Subcontractor may be responsible for providing the following (as applicable) when performing the Services:

- Labor: Including, but not limited to, employees, subcontractors, and any other individuals or agents.
- Materials: As applicable, including, but not limited to, all supplies and products.
- Equipment: Including, but not limited to, machinery, accessories, or devices.
- Transportation: Including, but not limited to, transportation of personnel, materials, debris disposals.

**DOCUMENTS & FINANCIAL PROCEDURES.** The Subcontractor shall provide to General Contractor the following documents in the timelines stipulated hereinafter, and understands and agrees to the following payment terms:

- A completed and signed form W-9 prior to commencement of any work, including the correct mailing address for payments and the FEIN to be referenced on the annual 1099 form which shall be issued in January.
- Certificate(s) of insurance as outlined below, prior to the commencement of any work.
- Written cost and completion time estimates for each job, which will be binding and require the signatures of both parties to this agreement. This is applicable to both base contracts and any change orders.
- Pay draws must be submitted on a completion (not time frame) basis and submitted no earlier than 3 days prior to the completion of applicable milestones, and must include a full or partial (as applicable) release of lien.
- All payment requests must be invoiced and submitted to the General Contractor's Project Manager for approval.
- Once approved, all invoices will be paid on a net 15 basis, via U.S. mail unless otherwise stipulated.

**SUBCONTRACTOR INSURANCE REQUIREMENTS.** Subcontractor is to secure, pay for, and file with the General Contractor, prior to commencing any Work under this Agreement, all Certificates for Workers' Compensation, Commercial General Liability, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Agreement, the Subcontractor shall provide the minimum limits of liability insurance coverage as follows:

Minimum limits of insurance required of Subcontractor, which shall be provided by an insurance carrier with a minimum AM Best carrier rating of "A- VII":

1. **Commercial Automobile Liability** – Including Any Auto (or at a minimum: owned, hired, and non-owned automobile) bodily injury and property damage liability in an amount of at least \$1,000,000 combined single limit per accident. This coverage is not required but is recommended.

2. **Commercial General Liability** – Including Ongoing and Products & Completed Operations, without restriction or limitation of coverage for residential work; Personal & Advertising Injury; Contractual Liability; Damage to Work Performed by Subcontractors; or Underground, Collapse, and Explosion. Coverage shall be in an amount of at least \$1,000,000 per occurrence (Bodily Injury and Property Damage), \$1,000,000 per person or organization (Personal and Advertising Injury), \$2,000,000 per Project Aggregate, and \$2,000,000 Products and Completed Operations Aggregate. Policy shall be written on a standard ISO form or its equivalent.
3. **Workers' Compensation** – With statutory limits and Employers' Liability of at least \$1,000,000 each accident, \$1,000,000 each employee for disease, and \$1,000,000 per policy for disease, and in absence of any employees, on a minimum "if any" basis of payroll or subcontracts. If the Agreement requires working on or around a navigable waterway (such as fueling boats), if legally required to do so in order to be in compliance with federal statutes, the Subcontractor shall secure United States Longshore and Harbor Workers (USL&H) coverage and/or coverage for Jones Act and evidence of coverage must be clearly shown on the certificate of insurance. Where Subcontractor utilizes an employee leasing firm to provide workers' compensation coverage, the Subcontractor shall sign a leased employee agreement and certification and supply a roster of covered employees. If any additional employees are hired (and added to the coverage under the employee leasing company) after the Certificate is provided, the General Contractor shall be immediately notified and provided with an updated roster.

If Subcontractor utilizes Day Labor personnel from a Labor Pool Company, a roster of covered employees is required. A Certificate of Insurance must be provided from the Day Labor company as well as a list of employees' names and dates of work which shall be submitted no less than every 7 days beginning with the first day of use of Day Labor type personnel.

Any officers who are exempt from Workers' Compensation coverage must provide both a copy of their current Certificate of Election to be Exempt as well as a signed Workers' Compensation Exemption Release affirming their exempt status and releasing the General Contractor.

4. **Umbrella Liability** – Including Products & Completed Operations, without restriction for limitation of coverage for residential work, and with minimum limits of \$1,000,000 per occurrence. This coverage is not required but is recommended.
5. **Additional Insured / Primary and Non-Contributory** – CONTRACTOR shall be named as an Additional Insured, on a Primary and Non-Contributory basis, on all policies, except Workers' Compensation. The General Liability policy shall name General Contractor as an Additional Insured utilizing an ISO standard endorsement at least as broad as 20 10 11 85 (policy or endorsement will include coverage for "your work" including ongoing operations as well as Products and Completed Operations).
6. **Waiver of Subrogation** – Prior to commencing any Work under this Agreement, Subcontractor shall furnish original Certificates of Insurance and copies of all applicable endorsements evidencing the aforementioned coverages to the General Contractor. Such Certificates shall include Waiver of Subrogation clauses in favor of General Contractor on all policies.

Insurance to be maintained as shown on the Certificate of Insurance during the entire duration of work being performed on behalf of General Contractor. Certificates are to provide a minimum of 30 days' notice of cancellation or alteration.

Subcontractor will maintain the aforementioned General Liability and Umbrella Liability insurance with coverage continuing in full force, including the Additional Insured status, for the duration of the Statute of Repose in the applicable state contracted herein. **General Contractor's insurance shall be excess over any coverage provided to them as an Additional Insured under said Subcontractor's Additional Insured Endorsement naming the General Contractor.**

Notwithstanding any other provision of this Agreement, the Subcontractor shall maintain complete workers' compensation coverage for each and every employee, principal, officer, representative, or agent of the Subcontractor who is performing any labor, services, or material under the Agreement.

**INJURY & DAMAGE PREVENTION & REPORTING.** The Subcontractor will comply with all safety regulations required by any agency or regulatory body including but not limited to OSHA. The Subcontractor will always maintain a safe and orderly work environment and notify the General Contractor immediately of any property damages or any accident or injury to anyone that occurs on the jobsite and is related to any of the work being performed by the Subcontractor.

**LABOR RELATIONS.** The Subcontractor shall maintain labor policies in conformity with the directions of the General Contractor and under all applicable state and federal laws.

**JOB SITE CONDUCT.** The Subcontractor is responsible for the conduct of their employees and other personnel they utilize in the performance of the Services; examples of unacceptable job site conduct include but are not limited to.

- Intoxication on the job site, the consumption of intoxicants either on the job site or prior to arrival.
- Offensive language, political discourse and acts of intolerant or discriminatory behavior.
- Any form of aggression, bullying, violence, or intimidation, including throwing or breaking things in anger.
- All acts of theft or handling another's property including others' tools, and homeowner's property.
- The creation of any unsafe condition which could result in injury or damages.
- Allowing non-employee visitors such as friends or family members on the job site, especially minor children.

**PROPERTY OWNER/CUSTOMER CONSIDERATION BY ALL SUBCONTRACTORS/EMPLOYEES.** Listed below are examples of ways we expect our Subcontractors to be considerate and to respect the customer, their personal property and be considerate of the environment which they are in at all times.

1. Place cardboard or tarp or equivalent below leaking vehicle engine and transmissions. You will be held responsible for cleanup.
2. Provide dust curtains as needed during construction.
3. Do not use the customer's tools or equipment, or any other items belonging to the client.
4. If you smoke or chew tobacco, smoke off the property or in a designated area and if you chew do not spit on the owner's floors, sidewalks or anywhere else not mentioned. Do not toss cigarette butts on the ground.
5. Ask permission to play any music. If permission is given, then you may play only music that is not offensive to the customer at a volume that is acceptable to the customer.
6. Protect all flowers, shrubberies, landscaping from damage.
7. Clean-up of your tools, etc. in an area permitted by the owners while protecting surfaces of property, such as floor covering, laminates, brick concrete, grass, etc. Never use harmful chemicals near personal property.
8. If we do not provide a port-a-potty, ask permission to use the customer's bathroom and clean up after each use. If a port-a-potty is provided, never use the customer's bathroom.
9. Maintain reasonably clean and livable conditions throughout the duration of the project. Leave the premises in a broom clean condition daily. No excuses.
10. Maintain permissible working hours, i.e., Monday through Friday, 8:00 AM to 5:00 PM. Additional days of the week and additional hours in the day must have General Contractor's authorization of owner's approval. Do not seek the owner's approval directly without the General Contractor's authorization. Only in emergency conditions will Sunday be an acceptable day to work at an occupied home or project, and then only with the General Contractor's permission.

**REQUIRED LICENSES.** All parties of this Agreement, including, but not limited to, the Contractor, the Subcontractor, other subcontractors, and all parties' direct or indirect employees and agents shall be licensed in accordance with Florida state laws; all individuals under this Agreement shall be regulated by their respective licensing board which has jurisdiction to investigate complaints made by any third parties.

**SUBCONTRACTING.** The Subcontractor shall have no right to subcontract, either in part or in whole, the Services authorized under this Agreement to any other party.

**INSPECTION OF SERVICES.** The Subcontractor shall make the Services accessible at all reasonable times for inspection by the General Contractor. The Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's Services and give prompt notice of any defect therein. The Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the General Contractor or any authorized third party.

**INDEMNIFICATION.** To the fullest extent permitted by law, the Subcontractor expressly agrees to indemnify, defend, and hold harmless the General Contractor, Project Owner, Architect, 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 as 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, materialmen, or agents of any tier or their employees, arising out of this Agreement or its performance, including 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 Subcontractor, 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 Subcontractor's insurance or \$2,000,000 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 is part of the project specifications or the bid documents, if any.

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 Subcontractor 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 Subcontractor or of any third party to whom Subcontractor may subcontract a part or all of the Work. This indemnification shall continue beyond the date of completion of the work.

**WARRANTY.** The Subcontractor warrants to the General Contractor and its clients that all materials and equipment furnished shall be new with manufacturer warranties provided unless otherwise specified and that all Services provided under this Agreement will be performed, at a minimum, in accordance with industry standards and guaranteed for up to (1) year. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Prime Contract. Any callbacks will be managed through the General Contractor, including the scheduling of service and disputes between the Customer and Subcontractor.

**TERMINATION.** During the course of this Agreement, either party can terminate this Agreement at any time with 5 days written notice to the other party.

**SEVERABILITY.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

**INDEPENDENT CONTRACTOR.** No term, covenant, condition, or provision of this Agreement shall be considered to create an employer and employee relationship or principal and agent relationship between the Parties, their employees or the Client. All parties to this Agreement attest that the relationship shall be recognized as the Subcontractor acting as an independent contractor.

**GOVERNING LAW.** This Agreement shall be governed under the laws in the State of Florida and Lee County, Florida.

**INJUNCTIVE RELIEF.** The Subcontractor acknowledges it would be difficult to fully compensate the Client and/or General Contractor for damages resulting from any breach of this Agreement. Accordingly, in the event of any breach of this Agreement, the Client and/or General Contractor shall be entitled to temporary and/or permanent injunctive relief to enforce such provisions.

**RESOLUTION OF DISPUTES.** If a dispute arises concerning the provisions of this Agreement or the performance of any of the parties mentioned, the parties hereby agree to settle the dispute by equally paying for mediation as regulated under the laws of Florida. The parties agree to enter negotiations in good faith, and through a neutral mediator to attempt to resolve the dispute. If a resolution cannot be made by mediation, the parties agree to enter into binding arbitration.

If the parties have a dispute, the General Contractor may, before, during, or after any mediation, take any steps required by law to preserve or secure any lien on the property to enforce payment of monies due. Specifically, the General Contractor may record one or more lien certificates with the appropriate clerk of courts and may commence legal action to enforce and preserve any lien as provided under Florida law.

Completion, as determined under this Section, may be changed if the Services cannot begin or end due to circumstances beyond the control of the General Contractor including, but not limited to, lack of readiness of the Location, unavailability of building materials, or any other issues considered outside the control of the parties in this Agreement.

**FORCE MAJEURE.** Neither party shall be liable for any failure to perform under this Agreement when such failure is due to causes beyond that party's reasonable control including, but not limited to, acts of State or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood earthquakes, accident, and prolonged shortage of energy or other necessary resources. In the event of such delay, any date stated herein shall be extended by a period of time necessary by both parties. If the delay remains in effect for more than thirty (30) days, the General Contractor has the right to terminate this Agreement upon written notice to the Subcontractor.

**NOTICES.** All notices under this Agreement shall be in writing and sent to the address of the recipient specified herein. Notices will be deemed received immediately if delivered by hand, 24 hours after delivery by courier, the date verified on a certified mailing's return receipt, or three business days after mailing via first class mail.

**ENTIRE AGREEMENT.** This Agreement plus any subsequent proposals or exhibits represent the entire agreement between the parties and supersedes any prior written or oral representations. The Subcontractor and its subcontractors, suppliers, and materialmen are bound to the General Contractor by the Prime Contract and any contract documents incorporated therein to the same extent as the General Contractor is bound to the Client insofar as they are related in any way, directly or indirectly, to the Services provided and covered in this Agreement.

**In witness whereof,** the General Contractor and the Subcontractor have executed this Agreement on the date first above written.

**GENERAL CONTRACTOR:**

**SUBCONTRACTOR:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name