

PROJECT No.: 11-01ND

# STANDARD GUARANTEED MAXIMUM PRICE SUBCONTRACT AGREEMENT LABOR AND MATERIALS

**IMPORTANT NOTICE**  
Appropriate rider(s)  
should be attached to  
this Subcontract where  
applicable.

THIS SUBCONTRACT, Made this \_\_\_\_\_ day \_\_\_\_\_ by and between Scott Builders, Inc. hereinafter called the Contractor and \_\_\_\_\_ hereinafter called the Subcontractor.

WHEREAS, The Contractor has heretofore entered into a contract dated \_\_\_\_\_ with \_\_\_\_\_ hereinafter called the Owner, to perform certain labor and furnish certain material, at \_\_\_\_\_ hereinafter called the Project, pursuant to plans, drawings and specifications prepared by \_\_\_\_\_ Architect or Engineer which contract consisting of the contract, the plans, drawings and specifications, the general conditions, the special conditions, the bond, if any, and any addenda or amendments Nos. by \_\_\_\_\_, and the (check any that apply) invitation to bidders ( ), the instruction to bidders ( ), the proposal ( ), are hereinafter collectively referred to as the General Contract; and

**WHEREAS**, The Contractor has made available to the Subcontractor all of the above documents, and the Subcontractor shall be responsible for obtaining copies pertinent to its work; and

**WHEREAS**, The above have been carefully examined by the Subcontractor; NOW THEREFORE

## THE SUBCONTRACTOR AGREES AS FOLLOWS:

1. To furnish all labor, material, skill and equipment necessary or required and to perform all the work necessary and understands that this is a guaranteed maximum price subcontract in accordance with owner contract for: (Here describe work covered by this Subcontract).

### ***Labor & Material***

***This contract includes all per diem & lodging cost for your crew  
Includes all normal general requirements***

2. To pay for all materials, skills, labor and equipment used in or in connection with the performance of this Subcontract, when and as bills or claims therefore become due, and to save and protect the Project, the Owner, and the Contractor from all claims and mechanics' liens on account thereof, and to furnish satisfactory evidence to the Contractor when and if requested, that it has complied with the above requirements. This provision shall not be construed as a waiver of the right of the Subcontractor to file and enforce a lien claim against the Owner in the event of the Contractor's failure to pay the Subcontractor.

3. To begin the work of this Subcontract as soon as the Project is ready for such work or, within Three calendar days after being notified in writing by the Contractor. To complete the work of this Subcontract as required by job progress or within the following time limits:

### ***Per Project Superintendent and/or Project Manager***

4.1. To proceed with the work in any orderly and reasonable sequence directed by the Contractor. To abide by the Contractor's decision as to the allotment of all storage and working space on the Project.

4.2. In the event the Subcontractor receives a direction from the Contractor or Owner that the Subcontractor believes will result in the work not being performed in a safe, satisfactory, timely or professional manner, the Subcontractor shall immediately contact Rick Scott, President/CEO of Contractor, and identify the direction at issue and the Subcontractor's concerns regarding the direction at issue. Subcontractor acknowledges that its failure to notify Rick Scott pursuant to this paragraph results in Subcontractor accepting full and complete professional responsibility for its work and waives any claim that any delay or defect in the work was the result of a direction received by the Contractor or Owner.

5. That no extension of time of performance of this Subcontract shall be recognized by the Contractor without the written consent of the Contractor. If, however, Subcontractor is delayed in the performance or completion of the Subcontract work for reasons beyond its control, then with timely notice the time of the performance or completion of said work shall be extended accordingly, provided the cause of the delay is of a type set forth in the General Contract which justifies an extension of time for completion of the General Contract.

6. To save harmless the Contractor and all other subcontractors from any and all losses or damage occasioned by the failure of the Subcontractor to carry out the provisions of this Subcontract, unless such failure results from causes beyond the control of the Subcontractor. Loss or damage shall include, without limiting the generality of the foregoing, legal fees and disbursements paid or incurred by the Contractor as part of the loss or damage or to enforce the provisions of this paragraph unless such failure results from causes beyond the control of the Subcontractor.

7.1. To obtain, maintain and pay for such insurance as may be required by the General Contract or by law, to include without limitation, workers compensation, commercial general liability insurance, comprehensive automobile liability insurance, and if specified below, builder's risk insurance, protecting the Subcontractor against claims for bodily injury or death or for damage to property occurring upon, in or about the Project arising out of the Subcontractor's work, with limits in amounts at least equal to those specified below or, if none is specified below, those specified in the General Contract:

**TYPE OF INSURANCE LIMITS OF LIABILITY**

a. Commercial General Liability: to include, without limitation, comprehensive form; premises-operations; underground, explosion & collapse hazard; products-completed operations; contractual; independent contractors; broad form property damage; and personal injury.

	Each Occurrence	Aggregate
Bodily Injury & Property Damage combined	<u>\$ 1,000,000</u>	<u>\$ 2,000,000</u>
Personal Injury	xxxxxxxxxxxxxxxxxxxxxx	<u>\$ 2,000,000</u>

b. Automobile Liability: to include all owned autos (private passenger & other than private passenger), hired & nonowned auto.

	Each Occurrence	Aggregate
Bodily Injury & Property Damage combined	<u>\$ 1,000,000</u>	xxxxxxxxxxxxxxxxxxxxxx

c. **Excess Liability. (Umbrella)** \$ 1,000,000

	Each Occurrence	Aggregate
Bodily Injury & Property Damage combined	\$ _____	\$ _____

d. Workers' Compensation: to include coverage A-statutory (which may be satisfied by self-insurance program meeting the requirements of State law).

Coverage B	<u>\$ 100,000</u>	Each Accident
	<u>\$ 500,000</u>	Disease-Policy Limit
	<u>\$ 100,000</u>	Disease-Each Employee

e. Builder's Risk: per the general and special conditions, to be provided by (check one):  
 \_\_\_\_\_ Owner      \_\_\_\_\_ Contractor      \_\_\_\_\_ Subcontractor. If Builder's Risk coverage is provided by the General Contractor, Subcontractor shall be named as an additional insured under said policy.

f. Other **Scott Builders, Inc. & Hess Corporation are to be named as additional insured on all subcontractors general liability policy.**

Said insurance to be issued by a financially responsible company or companies and which has an A. M. Best Rating of A- or better, and contractor may waive this requirement in case a Subcontractor is self-insured. Before beginning any work under this subcontract, subcontractor will provide insurance certificates showing compliance with these insurance requirements and indicating the coverage's and limits cannot be materially changed or cancelled without at least thirty (30) days prior written notice to the contractor.

7.2. The Subcontractor agrees to assume entire responsibility and liability, to the fullest extent permitted by law, for all damages or injury to all persons, whether employees or otherwise, and to all property, arising out of it, resulting from or in any manner connected with, the execution of the work provided for in this Subcontract or occurring or resulting from the use by the Subcontractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Contractor, the Subcontractor or third parties. Further the Subcontractor, to the fullest extent permitted by law, agrees to indemnify and save harmless the Contractor, its agents and employees from all such claims including, without limiting the generality of the foregoing, claims for which the Contractor may be or may be claimed to be, liable and legal fees and disbursements paid or incurred to enforce the provisions of this paragraph. The Subcontractor further agrees to obtain, maintain and pay for such Commercial General Liability insurance coverage and endorsements as will insure the provisions of this paragraph.

8. To accept responsibility for all damage caused by the Subcontractor, to clean all surfaces soiled by the Subcontractor and to protect the work performed by the Subcontractor, it being understood that the standards of protection shall not be less than those specified in the General Contract or required by law, and to be responsible for any defective or improper work or material caused by its failure so to do. If any dispute arises between the Subcontractor and another subcontractor as to which is responsible for any item of damage, the dispute shall be submitted to the Contractor for decision and its determination as to responsibility.

9. The Subcontractor and its subcontractors shall take all safety precautions with respect to its work, shall comply with all safety measures required by the General Contract and with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority for the safety of persons or property.

10. Not to assign or sub-let this Subcontract or any part thereof, and not to assign any money due or to become due hereunder, without first obtaining the written consent of the Contractor.

11. To be bound to the Contractor by the terms of the General Contract, to conform to and to comply with the provisions of the General Contract, and to assume toward the Contractor all the obligations and responsibilities that the Contractor assumes in and by the General Contract toward the Owner, insofar as they are applicable to this Subcontract. Where any provision of the General Contract between the Owner and the Contractor is inconsistent with any provision of this Subcontract, this Subcontract shall govern.

12. To employ no person whose employment on or in connection with this Subcontract may be objectionable to the Contractor and to remove any such person when objected to by the Contractor; all upon reasonable grounds.

13.1. That the Contractor or its authorized representative shall have the right to order in writing changes to this Subcontract as made to the General Contract by the Architect and/or Owner; that fair adjustments shall be made in the Subcontract price for such change; and that no change shall be allowed, or made by the Subcontractor, or paid for by the Contractor unless and until authorized by the Contractor or its authorized representative in writing before the change has begun.

13.2. To give written notice to the Contractor of all claims for extras, for extensions of time and for damage for delays or otherwise in accordance with the General Contract, allowing the Contractor to give timely notice to the Owner. Timely notice shall mean three (3) working days prior to the expiration of the relevant notice period in the General Contract.

14. To obtain and furnish to the Contractor and maintain in effect during the life of this Subcontract, if requested so to do in the space provided below, a surety bond in form and with sureties acceptable to the Contractor, in an amount equal to the Subcontract price, conditioned upon and covering the faithful performance of and compliance with all the terms, provisions and conditions of this Subcontract, the premium therefore to be paid by \_\_\_\_\_

Bond requested ( ) (Check only if Bond is requested). Unless the General Contract requires it, nothing herein shall give the Contractor the right to designate that the Bond be executed by a specific surety or procured from a specific agent.

15. To guarantee the Subcontract to the same extent that the Contractor is obligated to guarantee its work under the General Contract, but in any event to guarantee its work against all defects in material or workmanship for a period of one (1) year from the date of acceptance of the Project, or a portion of the Subcontractors' work, by the Owner.

16. That in case the Subcontractor shall fail when and if required by the Contractor, to correct, replace and/or re-execute faulty or defective work done and/or materials furnished under this Subcontract, or repeatedly and persistently to complete or proceed with this Subcontract within the schedule agreed to by the parties or the time herein provided for, or make payment when due to subcontractors or suppliers for labor or materials in accordance with the respective agreements between the Subcontractor and its subcontractors and suppliers or to comply with any substantial term of this Subcontract, then the Contractor may give the Subcontractor a written notice to cure the Subcontractor's default. If the Subcontractor fails within three (3) working days after receipt of the notice of default to commence and continue satisfactory correction of such default with diligence and promptness, then the Subcontractor shall be in default of this Subcontract and the Contractor upon an additional three (3) calendar days notice in writing to the Subcontractor shall have the right to terminate this Subcontract and finish the Subcontractor's work, replace and/or re-execute such faulty or defective work, or materials, either through its own employees or through a contractor or subcontractor of its choice, and to charge the cost thereof to the Subcontractor, together with any liquidated or actual damages caused by a delay in the performance of this Subcontract.

17. That in case of default on the part of the Subcontractor under the terms of this Subcontract, the material, supplies, tools and construction equipment of the Subcontractor shall be left on the job for the use of the Contractor in completing the work covered by this Subcontract.

18. To comply with all Federal and State laws, codes, and regulations and all municipal ordinances and regulations effective where the work under this Subcontract is to be performed, and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also pay all taxes imposed by any State or Federal law for any employment insurance, pensions, old age retirement funds or any similar purpose and to furnish all necessary reports and information to the appropriate federal, state and municipal agencies, with respect to all of the foregoing the same as though the Subcontractor was in fact the Contractor, and to hold the Contractor, each other subcontractor and the Owner harmless from any and all losses or damage occasioned by the failure of the Subcontractor to comply with the terms of this paragraph.

19. To pay all royalties and license fees; to defend all suits or claims for infringement of any patent rights involved in the work of the Subcontractor under this Subcontract; and to save the Contractor and other subcontractors harmless from loss, cost or expense on account of such use or infringement by the Subcontractor.

20. If any part of the Subcontractor's work depends for proper execution or results upon the work of the Contractor, any other subcontractor or any other separate contractor on the Project, the Subcontractor shall inspect and promptly report to the Contractor any apparent discrepancies or defects in such work that renders it unsuitable for such proper execution and results. Failure of the Subcontractor to so inspect and report shall constitute an acceptance of the work of the Contractor, other subcontractors or other separate contractors as fit and proper to receive its work.

21. The clean up and removal of all debris left on jobsite due to the completion of this Subcontract is the responsibility of the Subcontractor, and will be completed within three (3) working days of written notification by the Contractor, after which the clean up will be done by the Contractor, with the cost of the cleanup charged to the Subcontractor.

**THE CONTRACTOR AGREES AS FOLLOWS:**

A. To employ, and does hereby employ the Subcontractor to do the work described in paragraph 1 hereof, subject to the provisions of this Subcontract.

B. To pay the Subcontractor for the full and prompt performance of this Subcontract, subject to the terms and conditions hereof, the sum of \_\_\_\_\_ Dollars. "Subject to the terms of the Associated General Contractors of Minnesota Standard Deferred Payment Rider." (\$\_\_\_\_\_). This is a maximum guaranteed price.

**Price includes all federal, state, & local sales and use taxes.  
Proposal must state all taxes included.**

C.1. To include in the Contractor's monthly estimate to the Owner, the value of all work, labor and materials of the Subcontractor properly incorporated into the Project, in accordance with the provisions of this Subcontract for which estimates have been furnished by the Subcontractor and approved by the Contractor. Upon learning that the amount certified due for the Subcontractor is different from the amount requested by the Subcontractor, the Contractor shall immediately so advise the Subcontractor and furnish such information as the Contractor may have for the difference, and so long as the Subcontractor is not in default hereunder, to pay the Subcontractor, within seven (7) calendar days upon receipt thereof from the Owner, the amount received by the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein; "subject to the terms of the Associated General Contractors of Minnesota Standard Deferred Payment Rider."

C.2. That if allowed by the General Contract, payment shall be made on account of inventory, materials, or equipment not incorporated in the Project but delivered and suitably stored at the site or at some other location agreed upon in writing; such payments to be made in accordance with the terms and conditions of the General Contract; "subject to the terms of the Associated General Contractors of Minnesota Standard Deferred Payment Rider."

C.3. Estimates to be paid by within 7 days of receipt from owner for payment request received by 25<sup>th</sup> of each month (date). Subject to the terms of the Associated General Contractors of Minnesota Standard Deferred Payment Rider.

C.4 Subcontractor agrees that if the Owner has not paid Contractor on account of Subcontractor's Work for reasons not caused by Subcontractor or Contractor, then Contractor shall not be obligated to pay Subcontractor any progress or final payment for Subcontractor's Work until the Contractor has completed all efforts (including appeals) to obtain a final judgment against the Owner for amounts unpaid on account of the Subcontractor's Work.

C.5 Contractor agrees to initiate and diligently prosecute a claim against the Owner for unpaid payments on account of Subcontractor's Work for reasons not caused by Subcontractor or Contractor within thirty (30) calendar days of receiving a written request to do so from Subcontractor. Subcontractor agrees to pay proportionate share of Contractor's costs, including attorneys' fees incurred, and to cooperate with Contractor, in prosecuting such claims.

D. Final payment of the balance due of the Subcontract Price shall be made to the Subcontractor within seven (7) calendar days after receipt by the Contractor of final payment from the Owner for such Subcontract work.

E. If alternative dispute resolution, including, without limitation, arbitration or mediation, is provided for in the General Contract, any dispute arising between the Contractor and the Subcontractor under this Subcontract, including the breach thereof, shall be settled by such alternative dispute resolution procedures in the manner provided for in the General Contract.

F. If notification of any claims have been made against the Subcontractor or the Contractor arising out of labor or materials furnished the Project, or otherwise on account of any actions or failures to act by the Subcontractor in the performance of this Subcontract, the Contractor may, at its discretion, withhold from such amounts otherwise due or to become due hereunder a sum adequate to covers and claims and any costs or expenses arising or to arise in connection therewith, but not to exceed one hundred fifty (1 50) percent of the sum of the claims, costs or expenses, pending legal settlement thereof. This right of the Contractor shall not be exclusive of any other rights of the Contractor herein or by law provided.

G. The failure of the Contractor to make payments as and when herein provided shall, in addition to all other rights, entitle the Subcontractor to suspend all work and shipments during the continuance of such default on the part of the Contractor, and shall further entitle the Subcontractor to an extension of time for the performance of the work covered by this Subcontract.

H. Except in an emergency or to enforce safety requirements, not to issue or give any instructions, orders or directions to any employee or worker of the Subcontractor, other than the people the Subcontractor has designated as having supervisory responsibility for the Subcontract work. However, neither this authority of the Contractor nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Contractor to the Subcontractor, its material and equipment suppliers, its agents or employees, or other persons performing portions of the Subcontractor's work.

I. To give written notice to the Subcontractor of all known claims within a reasonable period, but not more than thirty (30) calendar days, after knowledge of the claim.

J. This Subcontract, together with riders, A. B, (attached hereto or enclosed herewith) and made a part hereof, constitutes the entire understanding of the parties and supersedes any prior quotations, proposals or agreements.

**IN WITNESS WHEREOF**, the Contractor and the Subcontractor have executed this Subcontract the day and year first written above.

\_\_\_\_\_  
SUBCONTRACTOR

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Federal Tax # \_\_\_\_\_

State Tax # \_\_\_\_\_

Scott Builders, Inc  
\_\_\_\_\_  
CONTRACTOR

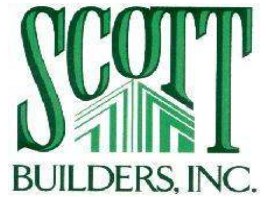
By \_\_\_\_\_

Title President/CEO

Date \_\_\_\_\_

Federal Tax:# 41-1885913

State Tax: # 3395534



## RIDER "A"

All subcontractors, suppliers, and their employees will adhere to the following:

- Safety. As part of its obligations under Paragraph 9 of the Subcontract, Subcontractor agrees:
  - Before mobilizing to the site of the Work, Subcontractor shall have its safety program audited and verified by IS Network and/or PEC Premier as complying with all safety and regulatory standards; or, in the alternative, shall be trained in Scott Builders' safety program.
  - Subcontractor is an independent contractor and shall be **solely responsible** for ensuring that its Work is performed in a safe manner. Nothing in the Subcontract shall be deemed to be an exercise of control by Scott Builders, Owner, architect, or engineer of Subcontractor's safety obligations.
  - Every employee of Subcontractor must have OSHA 10 training & H2S certification.
  - Guardrails will be installed on all scaffolds, including bakers.
  - GFI cords will be used at all times.
  - All equipment must at all times be operational and have guards & alarms in place.
  - Each Subcontractor employee and visitor must at all-time wear hard hats, hard-toed boots, gloves, and safety glasses/goggles with side shields.
  - A minimum of one person with each subcontractor **MUST** be certified in CPR & First Aid.
  - Subcontractor will hold safety meetings weekly. A record of who attended and the items of discussion will be turned in to Scott Builders superintendent within 2 working days of each meeting.
  - Subcontractor shall notify Scott Builders, both orally and in writing, of all injuries to Subcontractor's employees within eight (8) hours of the injury.
  - If Subcontractor and/or Scott Builders are fined by OSHA for Subcontractor's failure to adhere to regulations and rules, subcontractor will be responsible for all costs incurred by Scott Builders attributable to the fines, including but not limited to the fine, including accelerations, legal fees, etc.
  - If in the opinion of Scott Builders the health and safety of any person or persons is endangered, or if appropriate safety measures are not being implemented, Scott Builders may (but is not required to) take any action it deems appropriate, including without limitation: (i) stop Subcontractor's Work or require Subcontractor to remedy the condition immediately at Subcontractor's sole expense; (ii) shut the Project or job site down, in whole or in part, until the condition is remedied; (iii) remedy the condition at Subcontractor's sole expense; and/or (iv) terminate this Subcontract and hold Subcontractor fully liable for any losses incurred by Builder as a result of the termination.
- T-shirts with short sleeves (minimum) will be worn at all times.
- No foul or obscene language or gestures on clothing.
- All lunch garbage will be disposed of properly every day.
- No harassing of pedestrian traffic on or passing the site.
- Parking in approved areas only.
- No use of tools from other subs is allowed without written permission from each sub.
- Clean-up is the responsibility of each subcontractor.
- No overtime unless authorized by job superintendent. If overtime is approved, there must be at least 2 personnel with a cell phone onsite at all times.
- All subcontractors/supplier personnel will be subject to and agree to take any and all drug/alcohol testing that Scott Builders or its clients order. This must be adhered to immediately upon request and paid by the subcontractors. All subcontractors must provide proof of employee drug testing within the last six months.
- No weapons of any type are allowed in vehicles or any persons while on project site.
- Some clients will demand vehicle searches. All subcontractors/supplier employees must allow the search at time and point of demand. All contraband (drug, alcohol, weapons) will be seized with no guarantee of return. Illegal substances will be turned over to the lawful authority for further actions.

- Every subcontractor's employees must attend mandatory orientation meeting before starting any work.
- No smoking allowed on site 100% of the time.

Failure to adhere to these policies will be grounds for ejection from our sites for personnel and subcontractors that do not comply.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company

Date: \_\_\_\_\_



**RIDER "B"**

Contract documents your contract is based on are as follows:

Number

Title \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company

Date \_\_\_\_\_