**CONSTRUCTION CONTRACT – FIXED PRICE**

THIS AGREEMENT, executed on {today | long\_date}.

Between the Owner:

{job.owner.name.full}

{job.owner.address.street}

{job.owner.address.city}, {job.owner.address.state} {job.owner.address.zipcode}

{job.owner.email}

{job.owner.phoneNumber}

And the Contractor:

Brevard Construction Company

David Hicks, Vice President

1909 Cocoa Blvd.

Cocoa, FL 32922

Dhicks@brevardconstruction.com

Florida License Numbers RG291103905 & RC29027623

321-301-6000

For the Project:

{#job.description}{job.description}{/job.description}

See attached estimate and specifications for the specific scope of work.

Construction Lender:

N/A

**ARTICLE 1. CONTRACT DOCUMENTS**

**1.1.** The Contract Documents consist of this agreement, general conditions, estimate worksheet attached (Estimate), specifications attached (Specifications) and all Change Orders (if any) or modifications issued and agreed to by both parties. All documents noted herein shall be provided to the Owner by the Contractor. These Contract documents represent the entire agreement of both parties and supersede any prior oral or written agreement.

**ARTICLE 2. SCOPE OF WORK**

**2.1.** The Owner agrees to purchase and the Contractor agrees to construct the above-mentioned Project with fixtures attached thereto in {#job.project.address.city}{job.project.address.city}{/job.project.address.city}{^job.project.address.city}\_\_\_\_\_\_\_\_\_\_\_\_\_\_{/job.project.address.city}, County of Brevard and State of Florida, according to this Contract, the attached Estimate, attached Specifications and future agreed upon Change Orders as specified in Article 8.

**2.1.1** Construction Plans

|  |  |  |  |
| --- | --- | --- | --- |
| **Page Description** | **Consultant** | **Origination Date** | **Revision Date** |
| {#job.project.plans}{description} | {consultant} | {origination\_date | date} | {revision\_date | date}{/job.project.plans} |

**2.**1.2 Construction Estimate dated {#job.project.estimateDate}{job.project.estimateDate | long\_date}{/job.project.estimateDate}{^job.project.estimateDate}\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_{/job.project.estimateDate} attached hereto.

The scope of work in this contract is contained there-in.

**2.**1.3 Specifications dated {#job.project.specificationDate}{job.project.specificationDate | long\_date}{/job.project.specificationDate}{^job.project.specificationDate}\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_{/job.project.specificationDate} attached hereto.

The specifications for this contract are contained there-in.

**ARTICLE 3. TIME OF COMPLETION**

**3.1.** The approximate commencement date of the Project shall be {#job.project.commencementDate}{job.project.commencementDate | long\_date}{/job.project.commencementDate}{^job.project.commencementDate}\_\_\_\_\_\_\_\_\_\_\_\_\_\_{/job.project.commencementDate} or within seven days after the County issues a permit, whichever is later, and the project should take approximately {#job.project.approxWorkingDays}{job.project.approxWorkingDays | string\_and\_number}{/job.project.approxWorkingDays}{^job.project.approxWorkingDays}\_\_\_\_\_\_\_\_{/job.project.approxWorkingDays} working days to complete. Completion date is subject to: Change Orders; unusual weather may delay or otherwise affect the completion date; complications with material availability due to no fault of the Contractor; changes in scope of work as addressed in Article 8; Regulatory delays in permitting/inspections not through negligence of the Contractor; or Owner related delays.

**ARTICLE 4. THE CONTRACT PRICE**

**4.1.** The Contract price of the Project shall be set at the sum of {#job.project.price}{job.project.price | string\_and\_dollars}{/job.project.price}{^job.project.price}\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_{/job.project.price}, subject to additions and deductions pursuant to authorized Change Orders and allowances.

**4.2.** The Owner and the Contractor acknowledge that the Owner will pay {#job.project.downPayment.percentage}{job.project.downPayment.percentage}%{/job.project.downPayment.percentage}{^job.project.downPayment.percentage}\_\_\_%{/job.project.downPayment.percentage} of the Contract Price, a sum of {#job.project.price}{#job.project.downPayment.percentage}{job.project.downPayment.percentage / 100 \* job.project.price | string\_and\_dollars}{/job.project.downPayment.percentage}{^job.project.downPayment.percentage}\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_{/job.project.downPayment.percentage}{/job.project.price}{^job.project.price}\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_{/job.project.price}, upon signing of this Contract and before construction begins as a Deposit to be applied to construction of the Project.

**ARTICLE 5. PROGRESS PAYMENTS**

**5.1.** The Owner will pay the Contractor based on the following draw schedule:

**5.1.1** Draws will be produced approximately every two weeks based on materials ordered and work completed at the time of the draw.

**5.1.2** Upon final completion of the Project – the final balance is due and payable.

**5.1.3** Payment for Change Orders will be due when billed by Contractor.

**5.2.** The Owner will make payments to the Contractor for work completed and materials supplied to the Project. Owner shall make draw payments to Contractor within five businessdays after request by Contractor. Should the Owner fail to make payment, Contractor may charge a late fee penalty of 2.5 percent of the outstanding balance per month plus the costs of collection. In addition, 10% interest, compounded monthly, upon the outstanding balance will be due until paid in full. The number of draw payments requested within any calendar month will not exceed four (4).

**5.3.** If payment is not received by the Contractor within ten business days after delivery of a payment request for work completed and materials supplied, then Contractor may deem Owner “in default” of this Contract and below stated default provisions shall apply.

**ARTICLE 6. DUTIES OF THE CONTRACTOR**

**6.1.** All work shall be in accordance with this Contract, the Construction Drawings, the Estimate, the Specifications and all fully executed Change Orders. All systems installed or provided by Contractor shall be in working order prior to substantial completion of the Project.

**6.2.** All work shall be completed in a manner consistent with professional standards, and shall comply with all applicable national, state and local building codes and laws.

**6.3.** All work shall be performed by licensed individuals to perform their said work, as outlined by law.

**6.4.** Contractor shall obtain all permits (if necessary) for the work to be completed. The cost for assisting with permit applications as well as the costs of the permits shall be paid by Owner and are not included in this contract price.

**6.5.** Contractor shall remove all construction debris and leave the exterior of Project in a broom clean condition at the end of each work day.

**6.6.** Upon payment being made for any portion of the work performed, Contractor shall furnish a full and unconditional release from any claim or lien for or against that portion of the work for which payment has been made, if so requested by Owner.

**ARTICLE 7. OWNER**

**7.1.** The Owner shall direct all communication through the Contractor in writing and shall not communicate directly with any employee of Contractor, any subcontractor or any material suppliers. Contractor is not responsible for any communication not made in writing directly to the Contractor.

**7.2.** The Owner will not assume any liability or responsibility, nor have control over or charge

of construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Project, since these are solely the Contractor’s responsibility.

**ARTICLE 8. CHANGE ORDERS AND FINISH SCHEDULES**

**8.1.** A Change Order is any change to the original plans and/or specifications. All Change Orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, and must be signed by both the Owner and the Contractor. Additional time needed to complete each Change Order shall be taken into consideration in the Project Completion Date. No Change Order shall amend the terms of this Contract until said Change Order is fully executed by Owner and Contractor.

**8.2.** Completed Finish Selection Schedules shall be submitted to the Contractor as follows:

Not Applicable.

**8.3.** Any delays or changes in finish selection schedules will delay the Project Completion

Date.

**ARTICLE 9. INSURANCE**

**9.1.** The Owner will keep in force a Builder’s Risk Insurance Policy or Homeowners Insurance Policy on the Project to protect both Owner’s and Contractor’s interests until construction is completed. Or at Owner’s option, Contractor shall purchase and be reimbursed for said Builder’s Risk Insurance Policy.

**9.2.** The Owner will purchase and maintain property insurance to the full and insurable value of the Project, in case of a fire, vandalism, malicious mischief or other instances that may occur.

**9.3.** The Contractor shall purchase and maintain needed Workman’s Compensation and General Liability insurance coverage as required by law and deemed necessary for his own protection.

**ARTICLE 10. GENERAL PROVISIONS**

**10.1.** If conditions are encountered at the construction site which are subsurface or otherwise

concealed physical conditions or unknown physical conditions of an unusual nature, which differ naturally from those ordinarily found to exist and generally recognized as inherent in construction activities, the Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor’s cost of, and/or time required for, performance of any part of the work, will negotiate with the Contractor an equitable adjustment in the Contract sum, Contract time or both.

**ARTICLE 11. STATUTORY WARNINGS**

**11.1.** Lien Law

**11.1.1** According to Florida's construction lien law (sections 713.001 --713.37, Florida statutes), anyone who provides labor, materials and/or services and they are not paid in full, have a right to enforce their claim for payment against Owner’s property where the Project is located. This claim is known as a construction lien. If Contractor or a subcontractor of theirs fails to pay subcontractors, sub-subcontractors, material suppliers or service providers, those people who are owed money may file a construction lien against Owner’s property to secure payment. This can happen even if you have already paid Contractor in full. If Owner fails to pay Contractor, Contractor has a right to file a lien on Owner’s property. This means if a lien is filed, your property could be sold against your will to pay for labor, materials, or other services that Contractor or subcontractor may have failed to pay. To protect yourself, you should stipulate in this contract that before any payment is made, your contractor is required to provide you with a written release of lien from any person or company that has provided to you a "Notice to Owner." Florida's construction lien law is complex, and it is recommended that you consult an attorney.

**11.2** Chapter 558 Notice of Claim

**11.2.1** Any claims for construction defects are subject to the notice and cure provisions of chapter 558, Florida statutes.

**11.3** Florida Homeowners' Construction Recovery Fund.

**11.3.1** Payment, up to a limited amount, may be available from the Florida Homeowners' Construction Recovery Fund if Owner loses money on a project performed under contract, where the loss results from specified violations of Florida law by a Florida licensed contractor. For information about the recovery fund and filing a claim, contact the Florida construction industry licensing board at the following telephone number and address: (850) 487-1395, 1940 n. Monroe St., Tallahassee, FL 32399-0783, or at [www.myfloridalicense.com](http://www.myfloridalicense.com/).

**ARTICLE 12. HAZARDOUS MATERIALS, WASTE AND ASBESTOS**

**12.1.** Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, unless the scope of this agreement includes the specific handling, disturbance, removal or transportation of hazardous materials, waste or asbestos, upon discovery of such hazardous materials the Contractor shall notify the Owner immediately and allow the Owner, or Contractor with specific Owner written approval, to Contract with a properly licensed and qualified hazardous material Contractor. Any such work shall be treated as a Change Order resulting in additional costs and time considerations.

**ARTICLE 13. ARBITRATION OF DISPUTES**

**13.1.** If a dispute arises from or relates to this Contract or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures before resorting to arbitration. The parties further agree that any unresolved controversy or claim arising out of or relating to this

Contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**ARTICLE 14. WARRANTY**

**14.1.** Contractor shall warrant the Project for one yearagainst defects in workmanship. The material warranties are specifically limited to those provided by the manufacturers and the Owner is responsible for all costs coordination issues associated with enforcing said material warranties. Contractor may help Owner with enforcing material warranties but is not contractually required to do so. Contractor will transfer all applicable warranties to the Owner upon fulfillment of the duties of the Owner within this Contract. No legal action of any kind relating to the Project, Project performance or this Contract shall be initiated by either party against the other party after one yearbeyond the completion date of the Project or cessation of work.

**14.2.** Contractor shall warrant the roofing system installed by Contractor against water intrusion for a period of 8 years. This roofing system warranty specifically excludes damage due to Acts of God, abuse, improper maintenance, negligence, structural faults, severe weather (lightning, windstorms, tornadoes, or hurricanes) or other conditions not related to improper workmanship by Contractor.

**ARTICLE 15. TERMINATION OF THE CONTRACT**

**15.1.1.** If the Owner or the Contractor shall default on the Contract, the non-defaulting party may declare the Contract is in default and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of Contract, including a reasonable attorney’s fee, cost of arbitration, cost of mediation or cost of litigation. In the case of a defaulting Owner, the deposit herein mentioned shall be applied to the legally ascertained damages.

**15.1.2.** In the event of a default by the Owner or Contractor, the non-defaulting party may state his intention to comply with the Contract and proceed for specific performance.

**15.1.3.** In the case of a defaulting Owner, the Contractor may make claim to the Owner for all work executed and for proven loss with respect to labor, materials, material order cancelation fees, subcontractor expenses, subcontract termination fees, rented or leased equipment expenses, tools, construction equipment and machinery, including \_\_\_\_\_% of the remaining Contract price, including all Change Orders, to cover overhead, profit and damages applicable to the Project.

**ARTICLE 16. ATTORNEY FEES**

**16.1.** In the event of any arbitration or litigation relating to the Project, Project performance or

this Contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

**ARTICLE 17. ACCEPTANCE AND OCCUPANCY**

**17.1.** Upon completion, the Project shall be inspected by the Owner and the Contractor, and any repairs necessary to comply with the Contract documents shall be made by the Contractor.

**17.2.** If the Project is for new construction of a structure, construction of an addition or substantial remodel of a structure, Owner shall not occupy the Project until final payment has been received by the Contractor and a Certificate of Occupancy has been obtained (if a Certificate of Occupancy is applicable).

**17.3.** If the Project is being occupied by the Owner during construction of the Project, with the approval of the Contractor ( \_\_\_\_\_ initials of Contractor for approval of occupancy), Contractor is only responsible for damage caused by the Contractor, his employees, sub-contractors or material suppliers. Likewise, any loss of materials while Contractor, his employees or sub-contractors are not physically on the Project site are the responsibility of the Owner.

**17.4.** Occupancy of the Project by the Owner in violation of Article 17.2 when not pre-approved by Contractor in Article 17.3, shall constitute unconditional acceptance of the Project and a waiver of any defects or claims for uncompleted work.

**WITNESS** our hand and seal on this {today | day\_of\_month\_and\_year}.

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| --- | --- |
| **Contractor:** | **Owner:** |
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| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| David Hicks, VP | {job.owner.name.full} |
| Brevard Construction Company | {job.owner.address.street} |
| 1909 North Cocoa Blvd. | {job.owner.address.city}, {job.owner.address.state} {job.owner.address.zipcode} |
| Cocoa, FL 32922 | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
|  | [Category] |
|  | [Company Address] |
|  | [Company] |