

# 318 Construction,LLC

## INDEPENDENT CONTRACTOR AGREEMENT - RECONSTRUCTION

WHEREAS, "Client," 318 Construction, whose principal place of business is located at 825 Stone Avenue, Monroe, LA, 71201, intends to contract with "Independent Contractor," or "IC," \_\_\_\_\_ whose principal place of business is located at the following address:

\_\_\_\_\_ for the performance of certain tasks and services set forth herein ("Work");

WHEREAS, IC declares that IC is engaged in an independent business and has complied with all federal, state, and local laws and regulations regarding IC's business, and IC has obtained all permits and licenses of any kind that may be required to carry out the business and the Work to be performed by IC under this agreement;

WHEREAS, IC declares that IC is engaged in the same or similar activities for other clients and that Client is not IC's sole and only client or customer.

THEREFORE, IN CONSIDERATION OF THE FOREGOING REPRESENTATIONS AND THE FOLLOWING TERMS AND CONDITIONS, THE PARTIES AGREE:

### 1 Work to Be Performed

**1.1** Client engages IC to perform the Work as set forth in attached Exhibits. IC's Work shall be performed in accordance with or exceed generally accepted industry standards with due regard to the preservation of the Work site and the minimization of waste and delay.

**1.2** The work shall be performed to the satisfaction of the Client.

**1.3** Any defect in Work not discovered by Client prior to acceptance, but which was present at the time of delivery, shall be deemed a "latent" defect, without regard to prior acceptance or use. Within the 30 days after receipt of written notice of any latent or other defects or failures to conform that appear or are discovered either prior to final acceptance or within the warranty period (hereinafter defined), IC shall, at no cost to Client, commence and pursue diligently to complete the satisfactory replacement of any material and the correction of any workmanship found to be defective or otherwise not in conformity with the contract requirements and remedy any damage to other parts of the Work and the project of which the Work is a part resulting therefrom. If IC fails to make such replacement or correction, Client may do so after seven days' written notice to IC and charge to or otherwise recover from IC the cost thereof.

**1.4** IC shall not subcontract performance of all or any portion of the Work under this agreement without the prior written approval of the Client. IC guarantees that subcontractors of IC, for performance of the Work, will comply fully with the terms of this Agreement applicable to the portion of the Work performed by them and any proposals or bids. If requested by Client, IC shall furnish Client with a copy of the proposed subcontract for Client's review, and shall not execute such contract until Client has given notice of Client's approval. Failure of IC to comply with this section may be deemed to be a material breach of this agreement and grounds for IC to withhold payment therefor.

### 2 Terms of Payment

Subject to the performance by IC of all of its obligations hereunder, and as exclusive compensation for the IC's Work, Client shall make payments to IC according to the following terms and conditions (set forth here commission or fee arrangement, and the time for payment, etc.):

# 318 Construction, LLC

IC shall submit invoices to Client for the payments called for in this paragraph. IC understands that a fully executed lien waiver will be required to be submitted to Client prior to distribution of final payment. Upon request, IC will submit a notarized lien waiver.

## 3 IC's Representations and Warranties

IC represents and warrants as follows:

### 3.1 Licenses, Permits, Equipment, and Employees

IC has and will continue to have all licenses, permits, employees, and equipment necessary or advantageous for the efficient and safe performance of IC's Work. IC shall provide copies of all such licenses and permits to Client at Client's request. IC's equipment is and will remain in good working order, and its employees have and will continue to have such experience and skill as is necessary to competently perform such Work. IC agrees not to employ or subcontract to any individual to perform any portion of the Work who has been convicted of a felony involving dishonesty or breach of trust or any conviction for any type of physical assault, subject to applicable law. IC agrees to perform a third-party professional background check on all employees, including temporary employees, performing any of the Work. The background check must include misdemeanor convictions in the county in which the worker has lived the longest and where they currently reside.

### 3.2 Inspection of Project Area—Assumption of Risk

Client will provide IC with a scope of work. IC is responsible for determining if a visit to the work area is necessary. All site visits must be scheduled with the Client. IC understands that all bids are final whether work area visits were conducted or not. IC shall suspend operations whenever the continued performance of such Work would be hazardous or unlawful and shall notify Client immediately of such suspension, but shall not be entitled to any additional compensation by reason of such suspension and shall resume Work as soon as such risk has abated or been terminated.

### 3.3 Compliance with laws

IC, its employees and all agents, or independent third parties that IC may engage to assist in the performance of IC's Work have and will comply with all federal, state, and local laws, rules, and regulations affecting the Work. Without limiting the foregoing, IC, its employees and all such agents, or third parties shall and will, at all times when present within the Work site or otherwise performing IC's Work, comply with all such laws, rules, and regulations applicable to the Work.

### 3.4 Insurance

IC shall maintain continuously during the term of this Agreement at a minimum the following insurance policies issued by an insurance company reasonably acceptable to Client:

- a. Commercial General Liability Insurance including Products and Completed Operations coverage with limits not less than \$1,000,000 for each occurrence and \$1,000,000 Aggregate.
- b. If IC performs any pollution or hazardous material related services for Client, such as abatement or cleanup, IC shall also maintain a pollution liability policy (such as contractors pollution policy) having aggregate limits of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate specifically covering such services, either in the policy or through endorsement.
- c. Automobile Liability Insurance with limits of not less than \$1,000,000 each accident.
- d. Workers' Compensation and Employers Liability, with limits for each of not less than \$500,000 or any higher amount required by law.

The CGL and CPL policies (a. and b.) shall name Client and the following as additional insureds: Servpro Industries, Inc., Servpro Holding Company, Inc., Servpro Commercial, LLC, their affiliates, and each of their respective shareholders, officers, directors, employees, and agents. IC shall also furnish to Client a copy of the CG 20 38 Endorsements adding these additional insureds to their

# 318 Construction, LLC

policies. For work performed in the State of New York, IC shall provide the Client with a Certificate of Insurance that states their Commercial General Liability Policy does not contain an “employee exception” or “employee exclusion.” For work performed in other states that allow for an “employee exception” or “employee exclusion,” IC shall provide the Client with a Certificate of Insurance that states their Commercial General Liability Policy does not contain an “employee exception” or “employee exclusion.”

- Such policies shall further provide that the insurers waive all rights of subrogation against Client and the additional insureds.
- IC shall deliver Certificates of Insurance to Client confirming that such policies are in force prior to beginning IC’s Work and keep such certificates current.
- If an employee of IC or any approved subcontractor of IC suffers an occupational injury or disease as a result of the Work and such injury or disease is required by the Workers’ Compensation or Occupational Disease Laws to be reported to the proper authorities, a copy of such report shall be furnished promptly by IC to Client.

## 4 Instrumentalities

IC shall supply all personnel, equipment, tools, and supplies to accomplish the Work. Client may request that IC supply materials as well. This will be communicated in writing.

## 5 General Supervision

IC retains the sole right to control or direct the manner in which the Work is to be performed. Client has the right, but not the obligation, to inspect IC’s Work at all times during the project and to require that IC stop, change, or correct such Work whenever, in Client’s good faith reasonable discretion, such Work is not being performed in accordance with this Contract. The foregoing right may be exercised in addition to any other rights available to Client, at law or in equity, for breach by IC of this Contract. **Provided:** The failure by Client, following any such inspection or otherwise, to require that IC stop, change, or correct any of IC’s Work shall not be deemed an acceptance of such Work or a waiver by Client of any of its rights or remedies.

## 6 Termination

This Agreement shall continue for three years following the date signed by Client and shall renew for additional three-year periods unless either party gives notice of non-renewal prior to the expiration of the current term. Either party may terminate this agreement without cause upon 30 days’ notice. Upon a breach by either party, the other party may give 10 days’ notice to cure and may terminate the agreement if the default is not cured within that period upon written notice.

## 7 Attorney Fees

In the event Client retains an attorney to enforce any of its rights under any agreement it has with IC, IC agrees to reimburse, upon demand, Client for all reasonable legal fees and expenses incurred in connection with the enforcement of any right Client may have at law or under this Agreement.

## 8 Indemnification and Hold Harmless

IC shall indemnify, defend and hold Client, its franchisor, Servpro Industries, Inc., and their respective officers, directors, principals, employees, agents, and assigns harmless against and from any and all claims, demands, suits, liability, expense, or risk, including all attorneys’ fees and other costs of defense or investigation, sustained by Client and arising out of, relating to, or in any way connected with: (a) claims for personal injury or property damage caused or allegedly caused by the acts or omissions of IC; (b) claims for personal injury to IC’s employees or agents sustained during the performance of IC’s Work, whether or not covered or within the immunity conferred by any workers’ compensation law or regulation, even if caused or allegedly caused by the act or omission of Client; (c) claims for theft of, or for loss or damage for any other reason to, the project area if such claims arise from IC’s Work; (d) claims for money secured or enforceable by any lien or other encumbrance affecting the Work site if created or permitted by IC; and (e) any breach of any of the representations or warranties contained in Section 3. Upon the written request of Client, IC shall appear and defend Client, at IC’s sole cost and expense, against all such claims.

# 318 Construction, LLC

## 9 Warranty

**9.1** IC warrants that the materials/chemicals used pursuant to this Agreement are covered by the manufacturers' warranties. At the request of Client, IC shall provide all appropriate information necessary for Client to claim the benefit of all manufacturers' warranties. These warranties shall inure to the benefit of Client and/or its customers, their successors, and assigns.

**9.2** For a period of five years from the date of the Completion of the Work, IC warrants that all workmanship will: (i) be performed in accordance with the estimate of IC and this Agreement, and (ii) will be of good quality and free from any fault or defect. This warranty excludes damage caused by normal wear, tear, improper maintenance, and/or abuse.

**9.3** IC also warrants for a period of one year from the date of completion of the Work that all materials, equipment, or other building components furnished by IC will be new, of good quality, and free of defect.

**9.4** IC agrees to resolve and correct any warranty issues within 90 days of the receipt of the written notification from Client. IC further agrees to reimburse Client for the dollar value cost for any warranty issue not corrected within the 90-day period.

## 10 "Force Majeure Condition"

The term "Force Majeure Condition" means any "act of God," strike, lockout, civil strife, or other event or condition that (a) occurs without the fault or negligence of the party affected thereby and is beyond the reasonable control of such party; and (b) materially hinders, delays, or increases the cost of performance of this Contract by such party. Within one day after becoming aware of any force majeure condition, the party affected thereby shall notify the other party, in person or by telephone, of the existence, cause, and expected duration thereof. The personal or telephonic notice shall be followed, as soon as practical, by notice in writing or other tangible form such as electronic mail that shall describe such condition in reasonable detail. The party affected by such condition shall, to the extent and during the period so affected, be excused from performing this Contract.

## 11 IC's Independent Status

No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to IC. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal personal income tax, self-employment, state personal income tax, state disability insurance tax, and state unemployment insurance tax. IC understands that a 1099 will be provided at year end. If IC fails to provide taxpayer identification information, Client may withhold and pay amounts to the Internal Revenue Service under the "Backup Withholding Rules."

IC is an independent contractor and not an agent, employee, or partner of Client. IC shall report and pay all taxes arising from its performance of IC's Work under its own tax identification numbers. IC shall defend, indemnify, and hold Client harmless against and from all liability respecting IC's employees arising under Labor and Industry, Workers' Compensation, Unemployment Compensation or similar laws. IC is and shall remain registered under the following business and tax identification numbers:

IRS Tax ID Number: \_\_\_\_\_  
State Contractors License Number: \_\_\_\_\_

# 318 Construction, LLC

## 12 Miscellaneous Provisions

### 12.1 Prohibition of Assignment or Delegation

No right under this Contract may be assigned and no duty hereunder may be delegated, in whole or in part, by operation of law or otherwise, by either party except upon written consent of the other party.

### 12.2 Captions and Headings

The headings and captions in this Contract are for convenience only and shall neither add to, nor detract from, the substantive provisions set forth in this Contract.

### 12.3 Controlling Law

This Contract shall be construed and enforced according to the laws of the state in which IC's Work was performed.

### 12.4 No Waiver of Default

No waiver by either party of a breach of this Contract shall be deemed a waiver of any subsequent breach.

### 12.5 Integration - Modification - Successors

This Contract contains the final written expression of the complete agreement of the parties respecting the project. It may not be modified, amended, or rescinded except by a written document executed by the party to be charged with any such modification, amendment, or rescission. This Contract shall be binding on the heirs, successors, representatives, and assigns of the parties.

### 12.6 Time for Performance

Time is of the essence of this Contract. The parties shall perform their obligations when due hereunder subject only to those provisions hereof permitting the suspension or excused delay of such performance.

**13 Background Checks.** Independent Contractor agrees to conduct background checks on all owners and employees at least annually. Independent Contractor agrees not to permit anyone on the jobsite with a conviction for or has pled guilty to a felony involving dishonesty or breach of trust, theft, or any type of violence against a person, subject to applicable law.

## 14 Survival

In the event of expiration or termination of this Agreement, Sections 3, 7, 8, 9, 11, and 12 will survive.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, at

\_\_\_\_\_, State of \_\_\_\_\_.

### CLIENT:

By: \_\_\_\_\_  
Name and Title

### INDEPENDENT CONTRACTOR:

By: \_\_\_\_\_  
Name and Title

\_\_\_\_\_  
SS# or Federal Tax ID#

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Phone Number

Current Mailing Address:  
\_\_\_\_\_



# 318 Construction,LLC

## INDEPENDENT CONTRACTOR PAYMENT POLICY

All purchase orders/invoices for work performed must be turned into Client, 318 Construction, LLC at the following address: 825 Stone Ave. in Monroe.

It is the responsibility of the Independent Contractor (IC) to turn in any invoice/purchase order for which you are expecting payment in a timely manner. **All bills turned into the office will be verified and approved before being paid. Client will not pay for incomplete or substandard work.**

**All purchase orders turned in by Wednesday at 3:00 pm (for work 100% complete) will be paid Friday of the same week.** Invoices must be received by the following deadlines for payment to be processed through our office. **If these dates are not met, payment will be delayed.** Again, it is the responsibility of the client to make certain that purchase orders and invoices are turned in on time.

Payment will be delayed if you have not provided evidence of insurance and signed the *Independent Contractor Agreement*. It is the sole responsibility of the IC to obtain an approved amount before the work is started. All requests for payment must be accompanied by an invoice/purchase order. If a purchase order is issued, the invoice must reference the purchase order number, property address, and the legal name you do business under. All invoices must include the property address where work is being performed.

Thank you for your assistance. These steps will help us to process payables quickly and accurately.

I have read this exhibit and understand all contents herein.

Independent Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

**RECONSTRUCTION TERMS AND CONDITIONS**

1. **PROJECT:** Various projects as stated in purchase orders as may be entered into between the parties from time to time.  
**LOCATION:** Generally the area which includes, but is not limited to: \_\_\_\_\_  
\_\_\_\_\_
2. All work shall be performed in a competent manner and **only pursuant to an issued and signed purchase order**. Any materials purchased are to be authorized only by our project manager or superintendent, unless directed otherwise. **No work or materials will be paid for without a purchase order.**
3. **Any changes to or for work not covered in issued purchase orders must be approved in writing and additional purchase orders or change orders signed.** Time is of the essence on all of our projects, so a continuing relationship will depend on your prompt attention to our projects and your high quality workmanship. All price quotes shall be good for any project/property contracted by Client. Any price increases must be given to Client in writing and will not take effect until 60 days after such price increases are approved by Client. Any approved price increase will not apply to projects in progress at the acceptance of such price increase. All subcontractors are to be paid according to the standard pay schedule. A copy of this schedule may be obtained upon request.
4. IC agrees that it shall furnish necessary labor, materials, supplies, place of work, equipment, and instrumentalities. The IC agrees to satisfactorily complete each job offered by the Client and further agrees it shall accept the sums shown on the purchase order for each such job accepted. This sum is to be designated as the "job cost."
5. IC acknowledges that it is responsible for all necessary insurance coverage for its vehicles, equipment, and personnel. IC further acknowledges that these costs are budgeted into the amount assigned to IC on each purchase order. Therefore, IC agrees that Client may deduct from the payments due on any purchase order any insurance cost incurred by Client as a result of IC's status, change of status as an insured or uninsured subcontractor, failure to acquire coverage, or lapse of coverage. Client has this option, but not this responsibility.
6. Upon payment, IC does hereby waive, release, and relinquish any and all rights to lien for all work, labor, materials, machinery, or other goods, equipment, or services done, performed, or furnished for the construction located at the sites covered by this Agreement. The IC further warrants and represents that any and all valid labor and/or material and equipment bills, now due and payable, will be paid in full. It is further certified that all sales, use, and other taxes of every kind applicable to the IC's performance have been or will be paid in full by IC upon receipt of payments.
7. IC agrees to defend, indemnify, and hold harmless Client against any liens, including reasonable attorney's fees and other costs incurred in connection therewith that may hereafter be filed against Client and/or Owner and that arose directly or indirectly under said subcontract.
8. IC expressly agrees that the payments made hereunder do not constitute an acceptance by Client of defective or improper materials or workmanship, nor shall it be deemed to constitute an acceptance of any work of IC under said subcontract that is not in conformity with the specifications, terms, and conditions of the Agreement, this Exhibit B, and any purchase order.
9. A copy of the purchase order will act as the invoice. **No other invoices will be accepted.** If IC notices any discrepancies in the purchase order, IC should call Client before IC starts work. Once IC starts the work, IC will have agreed with the contents of the purchase order. **It is the sole responsibility of the IC to obtain a purchase order from the Client before any work is performed, regardless of who authorized the work.** Commencement of the work constitutes acceptance of the purchase order terms, conditions, and pricing.

# 318 Construction,LLC

10. In the event the IC leaves his/her job incomplete and in the event a IC pulls off of "Work in Progress" without the expressed, written approval of the Client, any and all money left payable to said IC shall be forfeited to Client. This will also include any equipment and/or tools located on Client's property. If for any reason, Client incurs any legal or legal-related expenses to enforce or defend this contract, the IC shall reimburse Client for all reasonable fees and expenses.
11. In return for the Client not holding any reserve funds and/or retainage fees for the entire warranty period, the IC agrees to give the Client the right to "back-charge" the IC for any defective work that is not corrected by the IC as directed by the Client **(within three business days for emergencies and seven business days for all else)** or for work required to correct damaged areas caused by the IC's defective work. All subcontractors' warranties shall cover a period of five years from the date the Client completes the project as evidenced by a signed *Certificate of Completion* from the owner of the property.
12. In no way is the correction of the problem by Client and any charge against future amounts due to IC to be considered a waiver by Client of a breach of this Agreement by IC.

In any event where, as a result of poor or incomplete work, the property is subject to additional damage, the Client may, at its sole option, elect to correct such damages itself, and all cost will be the responsibility of the IC.

IC shall be liable for any and all damages suffered by Client that may arise from IC unilaterally ceasing work on a job prior to completion of its responsibilities under an assigned and accepted purchase order for that job.

13. **IC agrees to adhere to all applicable OSHA guidelines and local building codes. Any fines assessed the Client for subcontractors' failure to follow such guidelines and codes will be charged to the IC.**
14. The IC agrees that it shall not discuss prices, cost, expenses, additional work, or the terms of this agreement with anyone other than the salesperson of Client and further agrees to notify Client immediately of leads or inquiries concerning additional work whenever these leads or inquiries arise from jobs assigned by Client.
15. The Client desires that all of its tradespeople be aware of and adhere to good safety procedures and practices. IC shall sign for receipt and understanding of the Safety Rules attached to each purchase order.

I have read this exhibit and understand all contents herein.

Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

# 318 Construction,LLC

## JOBSITE POLICIES

1. No alcohol or drug use prior to or during work hours.
2. Whenever anyone on-site is involved in any accident that results in personal injury or damage to property, no matter how small, the accident must be immediately reported to this office. Get first aid promptly.
3. Report immediately any condition or practice that might cause injury or damage to persons, equipment, or property.
4. Do not operate any equipment that is deemed to be in unsafe condition.
5. Personal protection equipment must be used when required and maintained in a safe working condition.
6. Obey all common rules, governmental regulations, signs, markings, and instructions. Be particularly familiar with those that apply directly to your trade.
7. When lifting, use the approved lifting technique (i.e., bend at the knees, grasp the load firmly, then raise the load, keeping the back as straight as possible). Get help for heavy loads.
8. Always use the right tools and equipment for the job. Use them safely and only in the manner for which they were intended.
9. Lead by "good example," performing work in a safe, efficient way.
10. Inspect ladders, scaffolds, and stools before use. Set ladders on firm footing and secure them. Face the ladder when going up or down and keep hands free of tools and materials. Keep scaffold platforms clear of unnecessary material and scrap and do not overload.
11. Employees are requested to attend all safety meetings held by this office, as the purpose of these meetings is to help reduce the cost of job-related insurance.
12. No swearing or abusive language.
13. No radio or earphone use at the jobsite (safety issue).
14. No tobacco use at the jobsite.
15. No bullying, aggressive behavior, or horseplay on the jobsite.
16. All vehicles driven to the jobsite should be in good repair. The independent contractor is responsible for shielding the customer's property from any possible soiling and damage by the vehicles. Any soiling or damage as a result will be the responsibility of the independent contractor to clean up and repair.
17. It is the responsibility of the independent contractor to protect any of the customer's property that could be damaged during the performance of their scope of work from preparation to cleanup.
18. If a portable toilet is not provided, a restroom in the customer's home may be designated only with permission of the customer. Clean up after each use.
19. Leave the work area in broom-clean condition daily. Do not leave excess materials in the work area. dumpster is located on the jobsite; debris is to be placed directly into the dumpster. All boxes need to be broken down to optimize the capacity of dumpsters.

# 318 Construction,LLC

- 20. Maintain the work hours established on the work order schedule. If exceptions are required, communicate them to the project manager/superintendent who will seek the customer's approval.
- 21. All communication with the customer must be carried out through the project manager/superintendent.
- 22. Provide one skilled responsible craftsman as a lead man and adequate skilled labor to perform the scope of work.

**ACCEPTED BY:**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Client

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Email

\_\_\_\_\_  
Phone Number