**MASTER TRADE AGREEMENT**

THIS MASTER TRADE AGREEMENT ("Agreement") is made and entered into as of the date of signature below by and between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Subcontractor”)

for work to be performed (in each case, a “Project”). Subcontractor warrants that it is an experienced subcontractor, knowledgeable and experienced in performing the Work. Contractor desires to have an experienced and fully-qualified subcontractor perform certain services and provide labor and materials in accordance with Contractor's specifications and the terms and conditions stated herein. Contractor is developing and/or constructing improvements, generally for the end-use by subsequent owners on lots, in subdivisions and properties, in multiple locations. Subcontractor is knowledgeable of the requirements, rules and regulations of all governmental authorities regarding the Work. For the Contract Price and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Subcontractor and the Contractor additionally agree as follows:

1. Subcontract Price. For each Project, Subcontractor shall be paid (the “Contract Price”) for the Work performed by Subcontractor for each Project, which sum is the complete price, including but not limited to all, labor, rental of equipment, tools, permits, licenses, insurance, taxes, bonds, transportation, meals, lodging, overtime, profit, overhead, electric and water meters and supply lines. No other or additional amount shall be paid without a written change order signed by Contractor and Subcontractor. Change orders, signed by both parties, may also reduce the Contract Price. Any and all Work performed by Subcontractor that is to be considered a lump sum contract as defined by the Tex. Tax Code and its administrative provisions regardless of if same is designated on bids, master pricing schedules, purchase orders, etc. The subcontractor is to be considered the ultimate consumer of the materials and owes any and all sales and use taxes. This Agreement is not and open account; all pricing, billing, purchase orders, invoicing or otherwise shall be on a project-by-project basis.

2. Scope of Work. The Subcontract shall furnish, at its own expense, all tools, machinery, equipment, labor, management, and Project supervision for each Project for the proper and timely completion in accordance with the Contractor’s schedule of the agreed upon work (“the Work”). Contractor and Subcontractor hereby agree that additional terms and conditions for a particular Project, subdivision or as an ongoing basis may be incorporated herein as an Exhibit and/or Addendum to this Agreement, signed by both parties. Subcontractor guarantees the availability of all labor, equipment and materials necessary to complete the work in strict accordance with Contractor’s construction schedule.

3. Workmanship, Inspection and Investigation. Subcontractor shall perform the Work in a thorough, efficient, professional and workmanlike manner, promptly and with due diligence and care, and in accordance with the best practices of the profession, utilizing qualified personnel, equipment, and only new materials. Contractor shall perform the Work in strict accordance with (i) the plans and specifications, (ii) any applicable manufacturer's specifications, recommendations and/or requirements, (iii) applicable industry standards, building codes, rules, regulations, and legal requirements, and (iv) the requirements of Contractor’s schedule. Subcontractor shall fully and completely investigate and study (i) the Work site (ii) the plans and Specifications for the Work, (iii) any manufacturer’s specifications, and (iv) all other conditions that may affect the Work, and shall be solely responsible for verifying that it possesses the most current set of plans and specifications. By starting the Work, Subcontractor represents that it has noted no deficiencies or problems with the Jobsite, the plans and specifications, the manufacturer's specifications, or any other conditions which would impact its ability to perform the Work in accordance with the requirements of this Agreement. If Subcontractor subsequently discovers any discrepancies among the plans, Specifications, manufacturer's specifications, and physical conditions, or any errors and omissions in the plans or specifications or in the layout as given that might affect the Work, Subcontractor shall immediately notify Contractor in writing. Any Work performed by Subcontractor relating to such discrepancy, error or omission shall be done at Subcontractor’s sole expense and risk. Prior to ordering materials or performing the Work, Subcontractor shall verify (i) that the materials are adequate for the performance of the Work and in accordance with the Specifications, and (ii) that all measurements or conditions relevant to Subcontractor's Work are acceptable. No extra charge or compensation shall be allowed on account of differences between actual dimensions or conditions and the measurements and conditions indicated in the plans and specifications. Any soils and geology reports, investigations or borings available to Subcontractor were prepared by third parties and made only for the purpose of study and design. Contractor does not warrant or guarantee, either expressly or impliedly, (i) the sufficiency or accuracy of the reports or investigations or borings which have been made or (ii) any of the conditions that exist. Subcontractor agrees to undertake the Work subject to all site conditions as they now exist or may arise. Contractor, or its designated representatives, as well as any public authority, or private authority having inspection rights of and relating to the subject property, shall have the right to review, inspect, or observe Subcontractor’s Work at any time, and Subcontractor shall assist in and facilitate such reviews, inspections, or observations.

4. Legal Requirements. Subcontractor warrants and represents that it is familiar with, and covenants to comply with, all laws, regulations and rulings of all federal, state, county and municipal jurisdictions and agencies applicable to this Agreement and to the Work, including, without limitation, dust control laws, storm water pollution prevention requirements, OSHA, state occupational safety and health laws, workers' compensation and industrial insurance laws, minimum wage and overtime laws, employment discrimination laws, the Fair Credit Reporting Act, FHA rules, building codes and all regulations and rules promulgated thereunder (collectively, the "Legal Requirements"). Subcontractor shall maintain all records required for compliance with the Legal Requirements in a place accessible to Contractor and shall defend, indemnify and hold Contractor harmless from and against all claims, damages, fines or penalties which may be asserted against or suffered by Contractor (including attorneys’ fees and other costs incurred by Contractor) arising from or in connection with the breach or alleged breach of this section by Subcontractor and/or Subcontractor's subcontractors, employees, and agents. To the maximum extent permitted by law, Contractor may withhold from payment to Subcontractor the full amount of any fine, fee, damages or penalty assessed or threatened to be assessed against Contractor by local, state or federal authorities as well as a sum sufficient to cover any attorneys’ fees and costs that are incurred by Contractor as a result, and such withholding may be made on any and all Work regardless of the locale in which the breach or alleged breach occurred. When any such amounts are actually assessed and paid by Contractor, Contractor will release to Subcontractor any excess withheld. Either Subcontractor or Contractor may dispute responsibility for failure to comply with applicable Legal Requirements, and this Agreement shall not be considered a waiver of any right to dispute responsibility. Subcontractor shall reimburse Contractor up to the full amount of any legal costs and expenses that Contractor may incur to contest responsibility, which relates to the failure or alleged failure to comply with applicable Legal Requirements. SUBCONTRACTOR’S COMPLIANCE WITH APPLICABLE LEGAL REQUIREMENTS IS AN EXPRESS CONDITION OF ITS RIGHT TO PERFORM WORK UNDER THIS AGREEMENT.

A. SAFETY. Subcontractor and Subcontractor’s subcontractors, employees and agents shall be solely responsible, in the course of the Work, for initiating, maintaining, and supervising all safety precautions and programs against injury to persons and property as more fully described in the Job Rules Addendum. At all times, Subcontractor shall: (a) conduct, operate and maintain a safe, clean and healthful workplace and shall cause all of its agents and Contractors to do the same; and (b) provide to its employees the protective clothing, equipment, training and safety devices necessary to ensure compliance with relevant Legal Requirements. Subcontractor shall be responsible for protecting against damage, injury, or loss to:

i. all persons involved in the Work and all other persons who may be affected thereby;

ii. all the Work, along with all materials and equipment to be incorporated therein, whether in storage on or off the worksite, under the care, custody, or control of Subcontractor, any of its subcontractors or agents; and

iii. other property at or adjacent to the worksite, including trees, shrubs, lawns, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

Subcontractor shall promptly report to Contractor, in writing, any injury to any of Subcontractor’s subcontractors, employees and agents at the worksite.

B. ENVIRONMENTAL. It is acknowledged and understood that Subcontractor has inspected the job site, observed the environmental conditions of the Job site, and reviewed and complied with Contractor's plans and specifications and that Subcontractor has notice and knowledge of the environmental conditions of the job site. If, during the course of its performance of the Work, Subcontractor discovers a previously unidentified environmental condition, then Subcontractor shall immediately notify Contractor, both orally and in writing, and shall not proceed with any work that would disturb such environmental condition without Contractor's approval.

C. OSHA COMPLIANCE. Subcontractor will comply with all provisions of the 1970 Occupational Safety and Health Act (OSHA) and all other applicable OSHA rules and regulations. This includes, but is not limited to: (1) Compliance with OSHA’s Hazard Communication Standard; (2) Compliance with OSHA's Fall Protection in the Construction Industry; and (3) Immediately notifying Contractor orally and in writing of any job related injury to or death of any person employed by Subcontractor, or otherwise under the control of Subcontractor, in connection with the Work.

D. HAZARDOUS SUBSTANCES LAWS.Subcontractor shall not, in connection with this Agreement or the Work, use, possess, handle, transport, emit, release or discharge any chemical, material or substance except as permitted by, and in strict compliance with, all applicable laws (collectively as "Hazardous Substances Laws"). Prior to commencing the Work, Subcontractor shall identify in writing all hazardous or toxic substances to be used in performing the Work by Subcontractor, and shall provide Material Safety Data Sheets (“MSDS”) to Contractor for those substances. Contractor may hold any payments otherwise due Subcontractor until such documentation is supplied. Additionally, Subcontractor shall immediately notify Contractor in writing of all hazardous or toxic substances discovered during the performance of the Work or otherwise brought to the job site which were omitted from any previous notification(s) and promptly provide the MSDS on those substances to Contractor. Subcontractor shall immediately notify Contractor of any known or potential spill, release or discharge of any chemical or hazardous or toxic substance. As to any spill, release or discharge of any chemical or hazardous toxic substance which is caused by Subcontractor or any of its employees, subcontractors, agents, material suppliers or invitees, Subcontractor shall, at its sole expense, immediately take all reasonable, necessary and legally required actions to (i) prevent the further spread of any spill, release or discharge, and (ii) properly cleanup said spill, release or discharge (including without limitation any soil or water contaminated by such spill, release or discharge) in full compliance with all applicable laws and regulations and any directions from Contractor.

5. Warranty Regarding Work. Subcontractor warrants its Work for a period of commensurate with the obligation of Contractor to Contractor’s buyer, end user or as otherwise provided by law against all defects in materials or workmanship. Subcontractor expressly warrants to Contractor, for the benefit of Contractor, Contractor's customers, or any subsequent owner of a structure constructed by Contractor (collectively "Warranty Beneficiaries") that its Work shall be performed in a good and workmanlike manner, free from defects in workmanship and materials, and in strict accordance with (i) the plans and applicable specifications, (ii) manufacturer's specifications, recommendations or requirements, and (iii) all industry standards, codes, and other rules, regulations and Legal Requirements applicable to the Work. Any portion of Subcontractor's Work not complying with the foregoing shall be considered defective; strict compliance is required not substantial compliance. Subcontractor shall also cause each of its subcontractors to give Contractor the same warranty set forth herein for the subcontractor’s work. Subcontractor shall, within two (2) working days of notification by Contractor, repair or replace any defective Work. In the event of an emergency (as determined by Contractor), the Subcontractor shall perform its warranty work within eight (8) hours. In addition, a seven (7) day-a-week and a twenty-four (24) hour on-call emergency service must be provided by Subcontractor and its subcontractors providing roofing, plumbing, electrical and/or HVAC work. Subcontractor is unconditionally obligated to all Warranty Beneficiaries for the warranty obligations herein and in the same manner and extent as required under Contractor’s warranty to the end user, third-party warranty and/or as provided by applicable law, code, administrative rule, industry standard and/or otherwise. Generally, Subcontractor’s warranty periods are for 1 year on workmanship, 2 years on systems, and 10 years on major structural components.

5.1 *Subcontractor’s Additional Warranty Obligations*. Subcontractor shall fully cooperate with Contractor in responding to any and all (1) owner and/or Contractor warranty claims, (2) right to cure statutes, (3) applicable law/administrative rules and procedures, (4) third-party warranty obligations, and (5) manufacturer associated claims. Subcontractor shall comply with Contractor rules, regulations and procedures for warranty claims and work. Additionally, all warranties made by Contractor to its homebuyer, whether under the Contractor builder/contractual warranty, third-party warranty and/or applicable law, are, to the extent applicable, deemed made by Subcontractor to Contractor in the same manner and in accordance with each and every term and condition. The current warranty may be changed from time to time and it is the obligation of the Subcontractor to continually make itself aware of the then-current warranty obligations. In all cases where Contractor is or may be obligated, ordered, held liable for or otherwise responsible for any warranty related claim or resulting damages arising from Work performed by Subcontractor, Subcontractor is and shall be liable for any and all such amounts whatsoever, including but not limited to associated attorney’s fees, costs, expenses, lost market value/diminution and interest. This warranty shall not limit the other obligations of Subcontractor under this Agreement or that arise as a matter of law. Contractor may assign this warranty and its right to compel the Subcontractor to perform its warranty obligations hereunder to any end user. Should Contractor perform any of Subcontractor's warranty work, Subcontractor shall reimburse Contractor for the cost of such performance.

5.2 *Manufacturer’s Warranties*. Prior to the earlier of completion of Work, Subcontractor shall provide Contractor with any and all manufacturer's warranties on equipment, materials or appliances, and same shall be automatically assigned without any additional documentation required unless so requested by Contractor of Subcontractor. Subcontractor shall fully cooperate with Contractor in making any claim on any manufacturer's warranty.

6. Time of Commencement; Completion. Subcontractor shall, unless otherwise advised in writing by Contractor, commence its Work on each Project as agreed ("Commencement Date"), and complete the Work, including final inspection by agents of governing authorities, within an agreed upon period ("Completion Date").

7. Independent Contractor. Subcontractor is an independent contractor and not an employee of Contractor. Subcontractor shall provide any and all applicable and completed Texas Department of Insurance (“TDI”), Division of Workers’ Compensation (“DWC”) forms upon execution of the Agreement to verify and affirm the joint agreement of the independent relationship for certain building and construction workers. Subcontractor is an independent contractor as defined by the Texas Workers’ Compensation Act, Tex. Labor Code and any other law. Subcontractor shall execute the appropriate DWC form(s) annually, or payments will be withheld by Contractor until all such forms are filed by Subcontractor with DWC and returned to Contractor; those forms include DWC FORM-85 and/or 83 or equivalent. Subcontractor shall, also, obtain signed DWC FORM-85 and/or 83, as applicable, from all of its own subcontractors, workers, helpers and non-employees. Pursuant to Sec. 417.004, Tex. Labor Code and any other law, in an action for damages brought by an injured employee, a legal beneficiary, or an insurance carrier against Contractor and/or Indemnitee(s) (as defined by the Agreement) to pay damages for the injury or death under the Tex. Labor Code and/or any other law that results in a judgment or settlement against Contractor and/or Indemnitee(s), the Subcontractor is liable to Contractor and/or Indemnitee(s) for reimbursement and/or damages based on the judgment or settlement and Subcontractor assumes the liability. This provision is not a limitation on the indemnification in the Agreement, said indemnification is applicable to this provision as if fully set forth herein.

8. Insurance Requirements. Before starting Work, Subcontractor shall procure and maintain at Subcontractor’s own expense the insurance set forth herein. Subcontractor shall require all of its subcontractors to carry the same insurance coverages with the same policy endorsements as set forth in this Agreement. The insurance requirements may be amended from time to time in Contractor’s sole and exclusive discretion. Same of similar policies must be renewed and kept in force ten (10) years after completion of the Work. Prior to starting the Work, Subcontractor shall deliver to Contractor an original ACORD Certificate of Insurance acceptable to Contractor, which evidences the coverage and endorsements required herein and states that the coverage afforded under the policies will not be cancelled, terminated or modified unless at least thirty (30) days written notice is given to Contractor. If Subcontractor subcontracts any portion of the Work, Subcontractor shall deliver to Contractor for each of Subcontractor’s subcontractors an ACORD Certificate of Insurance which evidences the same coverage and endorsements required herein.

1. *Workers Compensation Insurance:* Contractor shall be responsible for satisfying any statutory requirements related to worker's compensation as required by the State of Texas. Contractor is required by law to give notice lo the Texas Workers' Compensation Commission and its employees stating whether Contractor has elected to carry workers' compensation. Builder is not responsible for obtaining workers' compensation coverage for Contractor. Contractor will provide a Waiver of Subrogation from its insurance carrier, in favor of Builder, its agents and employees for all damages covered by insurance. The minimum required Employers Liability limits are $1,000,000.
2. *Commercial General Liability.* Subcontractor shall provide Commercial General Liability (“CGL”) insurance covering the legal liability (including liability assumed contractually, whether incidental or not) of the Subcontractor who may be engaged in the services, for claims for personal injuries (including death) and property damage resulting therefrom arising out of the services to be performed by the Subcontractor, in an amount not less than $500,000 for any one occurrence, $1,000,000 general aggregate (subject to a per project general aggregate provision), $1,000,000 Products/Completed Operations aggregate limit. Additional requirements of CGL insurance under this Agreement are as follows:
	1. Commercial General Liability insurance shall be obtained and shall include: products/completed operations, cross liability, severability of interest and property damage (if required), and Contractor as well as its directors, officers and employees shall be named as an additional insureds on such Commercial General Liability policy regarding liability arising out of operations performed under this Agreement.
	2. Any additional insured form must provide coverage for Products/Completed Operations, which must be shown on the certificate of insurance or its equivalent. An example is Form CG 20 37.
	3. Any additional insured form must provide coverage for ongoing operations, which must be shown on the certificate of insurance or its equivalent. An example is Form CG 20 10.
	4. A waiver of subrogation form or its equivalent language must be shown on the certificate of insurance. An example is Form CG 24 04.
	5. Form CG 22 94 or its equivalent language shall not be used.
	6. Claims made coverage is not acceptable.
	7. Uninsured or underinsured contractors will be charged an administrative fee equal to 10% of payments otherwise due to the Subcontractor for being uninsured or deemed not in compliance with this Agreement; said administrative fee is not to be confused with insurance premium; there is no coverage provided under Contractor’s policy.
3. *Automobile Liability Insurance*. Subcontractor shall provide automobile liability insurance covering the legal liability (including liability assumed contractually, whether incidental or not) of the Subcontractor who may be engaged in the services, for claims for personal injuries and death resulting therefrom and for property belonging to other than the Subcontractor caused by vehicles licensed for public road use used by the Subcontractor in an amount not less than: $300,000 combined single limit. Automobile Liability insurance shall provide coverage for owned, hired or non-owned automobile or other automotive equipment.
4. *Professional Liability / Errors & Omissions Insurance*. If Subcontractor is performing any geotechnical services, structural design, foundation design, site planning, civil engineering, plats, surveys, drawings, professional construction services and/or any professional service that could be insured as part of the Work, Subcontractor shall also obtain professional liability errors and omissions (“E&O”) coverage with a minimum of $1,000,000 and a maximum deductible of $25,000. E&O insurance shall be maintained for ten (10) years after the last Work performed.

As to all insurance required herein, the following additional requirements are material terms to this Agreement:

1. The Subcontractor’s insurance coverage shall be primary and non-contributory, as respects work on this project for Contractor, its directors, officers, and employees.
2. Any insurance or self-insurance maintained by Contractor shall be excess of the Subcontractor’s insurance.
3. Notwithstanding any other provision in this Agreement, Subcontractor hereby waives and relinquishes any right of subrogation against Contractor and its agents, representatives, employees, carriers and affiliates that Subcontractor or any other party in contractual privity with Subcontractor might possess for any reason, regardless or cause, including but not limited to any policy of insurance provided or required under this Agreement or under any State or Federal Workers’ Compensation or Employer’s Liability Act.
4. The policies shall not contain any provision, definition or endorsement that would serve to eliminate third-party action over claims coverage.  These exclusions/limitations (or their equivalent(s)) are prohibited: (i) Contractual Liability Limitation CG 21 39; (ii) Amendment of Insured Contract Definition CG 24 26; (iii) Limitation of Coverage to Designated Premises or Work, CG 21 44; (iv) Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95; (v) any endorsement modifying or deleting the exception to the Employer’s Liability exclusion; (vi) any endorsement that limits the general aggregate limit shown in the declarations page of the policy; (vii) any endorsement modifying or deleting Explosion, Collapse or Underground coverage; (viii) any “Insured vs. Insured” exclusion except for claims made between insured within the same economic family; (ix) any Punitive, Exemplary or Multiplied Damages exclusion; or (x) any Subsidence, soil movement and/or its equivalent exclusion.
5. Coverage shall include all residential, attached and unattached projects/buildings.
6. To the extent that the Subcontractor utilizes deductibles in conjunction with the insurance required by this Agreement, all deductible expenses shall be assumed by the Subcontractor.
7. Insurance shall be placed with insurers with an A.M. Best rating of A-/VIII or better.

9. Licensing, Registration and Bonding. Subcontractor warrants and represents that Subcontractor and all persons and entities acting at the direction of or under Subcontractor and the Work hereunder (i) have obtained all legally required licenses necessary to perform their portions of the Work, (ii) are licensed, registered, and in good standing under the laws of the state in which the Work is to be performed, and (iii) covenants to maintain such licensing, registration in good standing throughout the term of the Agreement any shall fully comply with the applicable statutes at all times during the Term of the Agreement.. Subcontractor shall maintain, at its sole cost and expense, all performance, labor and material payment bonds required by law with a surety acceptable to Contractor and all permits and licenses in good standing at all times, and available to Contractor upon request.

10. Termination of Agreement. Contractor may also terminate this Agreement and dismiss Subcontractor from the job site at any time, in Contractor’s sole and exclusive discretion, without cause, by providing Subcontractor with written notice of such termination. Such termination shall be effective as of the time and date stated in such written notice.

11. Contractor’s Equipment. Should Subcontractor or any subcontractor of Subcontractor use equipment, scaffolding or other facilities of Contractor and/or any third-party, it is understood and agreed that (i) Subcontractor and Subcontractor’s subcontractor shall fully inspect and become familiar with the proper and safe use of such equipment, scaffolding or facilities, (ii) Subcontractor and Subcontractor’s subcontractor shall properly train and supervise their employees, subcontractors and suppliers in the proper and safe use of such equipment, scaffolding and facilities, and (iii) Subcontractor’s or its subcontractor’s use of such equipment, scaffolding or facilities shall be at their sole risk, and without regard to the fitness of same. Subcontractor and its subcontractor’s or any of their respective employees waive all claims and liability of any type or nature against Contractor and the owners or lessors of such equipment, scaffolding or other facilities, assume the full risk of the operation thereof, and assume full responsibility for any and all loss, cost, expense, attorney’s fees, damage, or injury arising therefrom, and Subcontractor shall defend and indemnify Contractor from and against any and all of such claims and damages whatsoever.

12. Labor and Supervision. Subcontractor shall maintain competent and sufficient supervision and employees on site during all times that Subcontractor is performing its Work. Subcontractor shall enforce strict discipline and good order among its employees and Contractors, and shall not employ an unfit or unskilled person. Subcontractor shall immediately remove and replace any person deemed unfit or unskilled by Contractor. Subcontractor shall maintain a list of all persons performing its Work on the job site and shall produce such list to Contractor upon request. Subcontractor shall perform criminal background checks of any person that will perform any portion of its Work which shall be immediately provided to Contractor upon request. Subcontractor shall not allow any registered sex offender or any person convicted of a felony or a misdemeanor involving a crime of moral turpitude to work at the Work site.

13. INDEMNITY/WAIVER OF SUBROGATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND IN CONSIDERATION OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH SUCH TERMS AND CONDITIONS ARE AGREED AND DEEMED SUFFICIENT CONSIDERATION ALONG WITH THE OTHER TERMS AND CONDITIONS HEREIN, THE ADEQUACY AND RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CONTRACTOR, ITS PARENT, AFFILIATES, SUBSIDIARIES, PARTNERS, JOINT VENTURERS, OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, EMPLOYEES, INSURERS, SURETIES, AND/OR ANY OF THEM (COLLECTIVELY "INDEMNITEES") AGAINST ANY AND ALL CIVIL OR CRIMINAL LIABILITIES, COSTS, EXPENSES, CLAIMS, DEMANDS, CAUSES OF ACTION, LIEN CLAIMS, THREATS OF LIENS, STOP NOTICES, FUND TRAPPING NOTICES, BOND CLAIMS, PENALTIES, FINES, CITATIONS, LOSSES, AND DAMAGES (INCLUDING COURT COSTS, ATTORNEYS' FEES, EXPERT WITNESS FEES, MEDIATION AND ARBITRATION FEES AND EXPENSES AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND, OR DESCRIPTION, ARISING OUT OF, IN CONNECTION WITH, CAUSED BY, ALLEGED TO HAVE BEEN CAUSED BY, OR RESULTING FROM, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART (1) THE WORK, LABOR, MATERIALS, EQUIPMENT OR SERVICES PERFORMED OR SUPPLIED OR ALLEGED TO HAVE BEEN PERFORMED OR SUPPLIED BY SUBCONTRACTOR OR ANY OTHER PARTY OF WHICH SUBCONTRACTOR IS IN CONTRACTUAL PRIVITY AND/OR SUBCONTRACTOR’S SUPPLIERS, (2) ANY ACT, ERROR OR OMISSION OF SUBCONTRACTOR OR ANY OTHER PARTY OF WHICH SUBCONTRACTOR IS IN CONTRACTUAL PRIVITY AND/OR SUBCONTRACTOR’S SUPPLIERS, (3) THE ENTRY OF SUBCONTRACTOR OR ANY OF ITS SUBCONTRACTORS AND/OR SUPPLIERS UPON LAND OWNED BY CONTRACTOR OR ANY OF THE OTHER INDEMNITEES, AND/OR (4) ARISING OUT OF OR RESULTING FROM THIS AGREEMENT (COLLECTIVELY "LIABILITIES"). THE OBLIGATIONS OF SUBCONTRACTOR UNDER THIS INDEMNIFICATION SHALL APPLY TO LIABILITIES, EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE. NOTWITHSTANDING THE FOREGOING, SUBCONTRACTOR SHALL NOT BE OBLIGATED UNDER THIS AGREEMENT TO INDEMNIFY THE INDEMNITEES TO THE EXTENT SUCH LIABILITIES RESULT FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. SUBCONTRACTOR SHALL, AT ITS EXPENSE, ASSUME THE DEFENSE OF THE INDEMNITEES, OR ANY OF THEM, AND SHALL CONDUCT SUCH DEFENSE WITH DUE DILIGENCE AND IN GOOD FAITH WITH COUNSEL SATISFACTORY TO CONTRACTOR. SHOULD SUBCONTRACTOR BREACH ITS DEFENSE AND INDEMNITY OBLIGATIONS, CONTRACTOR MAY, AND WITHOUT RELIEVING SUBCONTRACTOR OF ITS INDEMNITY OBLIGATIONS, ASSUME ANY DEFENSE OBLIGATION AND TRY OR SETTLE SUCH CLAIM, AND SUBCONTRACTOR (1) SHALL REIMBURSE CONTRACTOR FOR ALL COSTS AND EXPENSES INCURRED OR PAID BY ANY INDEMNITEE IN THE DEFENSE, SETTLEMENT, TRIAL OR ARBITRATION, AND (2) PAY ANY JUDGMENT, AWARD OR ANY OTHER AMOUNT OF MONEY THE INDEMNITEES OR ANY OF THEM BECOME LEGALLY OBLIGATED TO PAY IN CONNECTION THEREWITH. NEITHER THE INDEMNITY OBLIGATIONS UNDER THIS SECTION, NOR ANY COMMON LAW AND/OR STATUTORY CONTRIBUTION RIGHTS OR OTHER RIGHTS OF CONTRACTOR OR ANY INDEMNITEE, SHALL BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGE, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE SUBCONTRACTOR OR CONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACT. THIS PROVISION IS SEPARATE AND DISTINCT FROM, AND IN ADDITION TO, ANY OTHER PROVISION OR SECTION IN THIS AGREEMENT, INCLUDING ANY PROVISION OR SECTION CONCERNING INDEMNIFICATION AND PROCUREMENT OF INSURANCE. IT IS SPECIFICALLY AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION, THAT SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE INDEMNIFICATION OBLIGATION AND SHALL OPERATE TO AMEND THE INDEMNIFICATION OBLIGATION TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE INDEMNIFICATION OBLIGATION SHALL CONTINUE IN FULL FORCE AND EFFECT, EVEN AFTER COMPLETION OF THE WORK OR TERMINATION OF THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE, IT IS THE SPECIFIC INTENT OF THIS INDEMNITY THAT THE SUBCONTRACTOR IS INDEMNIFYING THE INDEMNITEES FROM ACTS OF NEGLIGENCE OF INDEMNITEES. Subcontractor expressly waives any right of subrogation that it or its insurers may have against the Indemnitees or any of them; the indemnity in this paragraph applies to any claim by any person or entity claiming a right of subrogation against one or more of the indemnitees.

14. Term. This Agreement is an open-ended term contract with no stated expiration date and is applicable to all Work, modifications, supplements, and amendments until such time as Contractor terminates Subcontractor and/or cancels this Agreement with Subcontractor, and in any such event the Subcontractor’s obligations hereunder shall continue in full force and effect for Work performed by Subcontractor notwithstanding such termination or cancellation.

15. General Contractual Terms & Conditions:

Venue. The exclusive venue relating to this Agreement shall be in the State where each Project is located. Any claim and/or cause of action between the Parties shall only be initiated and maintained in this exclusive venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

Attorneys’ Fees. In the event of any dispute between Contractor and Subcontractor, the prevailing party in any litigation related thereto shall be entitled to recover its attorneys’ fees and costs, whether incurred before trial, at trial and upon all appellate levels and in any administrative or bankruptcy proceedings.

Assignable / Agreement not Exclusive. This Agreement is fully assignable by Contractor to any entity of Contractor’s choosing but is not assignable by Subcontractor. Subcontractor understands that Contractor is not required to use Subcontractor for all jobs and/or Work under this Agreement for the trade in which Subcontractor is engaged; this is not an exclusivity contract, and to the extent that Contractor gives written permission for Subcontractor to assign all or part of Subcontractor’s obligations under this Agreement, Subcontractor shall not represent to any third-party that this Agreement obligates Contractor to use Subcontractor for any Work.

Liens. To the full extent permitted by law, Subcontractor waives all of Subcontractor’s rights to file, claim, enforce or otherwise assert any lien under the applicable statutory provisions, in equity and/or under any constitutional provision.

Dispute Resolution Procedures / Arbitration / Waiver of Jury Trial. Any and all claims by and between the parties hereto shall first be submitted to mediation and if not resolved in mediation then to binding arbitration pursuant to the rules and procedures of the Construction Dispute Resolution Services or American Arbitration Association, as determined by the party to file first; provided that if different rules or procedures are required by the terms of any applicable third-party warranty at issue in such proceeding, then such other rules and procedures shall apply to the extent of any claims arising under or related to the applicable third-party warranty(s). CONTRACTOR AND SUBCONTRACTOR SPECIFICALLY AGREE THAT THIS AGREEMENT INVOLVES INTERSTATE COMMERCE, AND THAT ANY ARBITRATION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT. If Contractor is a party to any mediation and/or arbitration brought by any third-party, including but not limited to an owner of the property the subject of Subcontractor’s Work, Contractor and/or said third-party may make Subcontractor a party to that mediation and/or arbitration.

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, AND AFTER CONSULTING WITH LEGAL COUNSEL OF THEIR OWN CHOOSING, SUBCONTRACTOR AND CONTRACTOR, ON BEHALF OF THEMSELVES AND ANY PERSON OR ENTITY ACTING BY, THROUGH OR UNDER THEM, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION OR JUDICIAL PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT. CONTRACTOR AND SUBCONTRACTOR ACKNOWLEDGE THAT SEPARATE AND GOOD AND VALUABLE CONSIDERATION HAS BEEN PROVIDED BY EACH FOR THIS WAIVER.

IF CONTRACTOR IS A PARTY TO A LAWSUIT AND IS REQUIRED BY LAW TO TRY THE DISPUTE BEFORE A JURY, AND BELIEVES THAT SUBCONTRACTOR IS LIABLE, IN WHOLE OR IN PART, FOR THE CLAIMS BEING MADE IN THE LAWSUIT, THEN THIS WAIVER OF JURY TRIAL SHALL NOT APPLY, AND SUBCONTRACTOR MAY BE MADE A PARTY TO THAT LAWSUIT.

Severability. Should any part or parts of this Agreement be invalid, it is mutually agreed that such parts or part of this Agreement shall not invalidate the remaining part or parts thereof.

Headings. Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

Entire Agreement. This Agreement has been fully negotiated between the parties at arm's length and neither party has been coerced to execute it. This Agreement constitutes the entire agreement between the parties relating to the provision of the Work and supersedes any and all prior agreements, whether written or oral, that may exist between the parties. This Agreement may be amended only by a written instrument signed by each party.

 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated herein.

**SUBCONTRACTOR: CONTRACTOR:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Subcontractor corporate entity name] [Contractor corporate entity name]

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

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

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

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

**SUBCONTRACTOR: CONTRACTOR:**

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fax No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Main Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Telephone \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Principal Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Field Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Federal Tax ID: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State Tax ID: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**The Principal Owner, without reservation or limitation, personally guarantees the performance of the terms and conditions of this Agreement.**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Principal Owner of Subcontractor

Telephone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**This sample agreement is for informational purposes only and should not be considered legal advice. Builders Insurance (A Mutual Captive Company), National Builders Insurance Company and American Builders Insurance Company accept no responsibility for the correctness or completeness of this material.**

**We recommend that you consult with your legal counsel and agent regarding your individual circumstances.**