

### SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement ("Agreement") is effective the last date written on the signature page, (the "Effective Date"), between XXX Constructions, LLC, a Texas limited liability company (the "Contractor"), and \_\_\_\_\_, an individual/company (the "Subcontractor").

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#### BACKGROUND

1. The Contractor has entered into a contract with \_\_\_\_\_, (the "Owner"), for the construction of a \_\_\_\_\_ located at \_\_\_\_\_ (the foregoing collectively known as the "Project").
2. This Agreement governs the terms and conditions by which the Contractor engages the Subcontractor as an independent contractor for the Project.

The parties agree as follows:

#### STATEMENTS OF WORK

1. Subcontractor's obligations to perform services under this Agreement ("Services") will be as set forth in one or more signed written statements of work (each, a "Statement of Work" or "SOW").
2. ~~Each SOW should contain~~ [YOU DON'T WANT TO SAY "SHALL CONTAIN" IN CASE THE PARTIES DO A SOW THAT DOESN'T CONTAIN THESE ITEMS] at least the following terms: (a) a description or specifications of the service to be performed; (b) a description of any deliverables to be delivered to Contractor (c) the amount and method of payment; (d) the effect of termination; (e) the time schedule for performance of the service and for delivery of any deliverables; (f) any completion and acceptance criteria for any deliverables; and (g) such other terms and conditions as may be mutually agreeable between the parties.
3. A SOW will become a part of this Agreement upon signature of that SOW by both parties.
4. [IT'S BEST NOT TO MIX TOPICS IN ONE PARAGRAPH] No change to a SOW — including, for example, to its specification of the scope, cost, or schedule of Services— will be binding unless set forth in a writing signed by the party sought to be bound; each party specifically agrees not to assert the contrary.
5. In the event of a conflict or other inconsistency between a SOW and this Agreement, this Agreement will take precedence.
6. Either party may terminate an SOW at any time by giving written notice to the other party.

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#### RESPONSIBILITIES

7. **Sub-subcontractors.** The Subcontractor shall disclose to Contractor information, including but not limited to names, addresses, and phone numbers, of all sub-subcontractors, vendors, or independent contractors (collectively,

“Sub-subcontractors”) that Subcontractor has hired, utilized, or intends to hire or utilize, to provide labor, material, rentals, or equipment for use on the Project.

- 8. **Licenses and Permits.** The Subcontractor shall cause all licenses and permits necessary to complete the Subcontractor’s Work, including those of its Sub-subcontractors, to be timely obtained and maintained.
- 9. **Protection of Work.** Subcontractor is to maintain a clean work area and each day remove any refuse produced by its activities, and keep its materials and equipment safely and neatly stored. Subcontractor shall effectively secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by the Contractor. Subcontractor shall repair or replace, at its expense, any property, surfaces, structures or conditions damaged as a result of, or arising out of Subcontractor’s work.

**COMPENSATION**

10. **Payment to Subcontractor.** The Contractor shall pay the Subcontractor a fee (“Fee”) in accordance with the payment schedule as set forth in the relevant SOW (“Payment Schedule”).

11. **Payment prerequisites.** The Contractor need not pay any Fee, in part or in whole, until Subcontractor has complied with its obligations in Section 9 of this Agreement. [CHECK WHETHER ANY TEXAS STATUTE RESTRICTS CONTRACTOR’S ABILITY TO WITHHOLD THE ENTIRE PAYMENT – SEE CH. 28 OF TEXAS PROPERTY CODE]

12. **Waiver and Release.** Upon request by the Contractor, the Subcontractor shall promptly execute a conditional or unconditional waiver and release, as provided by the Contractor, to release any mechanic’s lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute. Further, Subcontractor shall provide a conditional or unconditional waiver and release duly executed by each Sub-subcontractor upon Contractor’s request. [QUESTION: DO RELEASES HAVE TO BE NOTARIZED?]

13. **Payment to Sub-subcontractor.** Upon receipt of payment, the Subcontractor shall promptly pay all of Sub-subcontractor for all work, materials, equipment, or services provided in connection with the Project. If the Subcontractor fails to pay any Sub-subcontractor within seven (7) days after payment by the Contractor, the Contractor may, in its sole discretion, make future payments by check payable jointly to the Subcontractor and Sub-subcontractor.

Upon reasonable evidence that third party claims are likely to be filed due to the Subcontractor’s failure to pay Sub-subcontractor, the Contractor may adjust payment or withhold payment entirely as may be reasonably necessary to protect the Contractor, the Owner, or both, from loss or damage. [CHECK WHETHER ANY TEXAS STATUTE RESTRICTS CONTRACTOR’S ABILITY TO WITHHOLD PAYMENT]

[THIS SHOULD BE ITS OWN NUMBERED PARAGRAPH] Subcontractor shall file no liens, nor allow any liens, to be filed in connection with the work hereunder. Subcontractor shall submit satisfactory evidence of payment and release of all such claims.

**RESPONSIBILITIES**

14. **Insurance.** The Subcontractor shall maintain insurance on all of its operations, which include but are not limited to commercial general liability, employer liability, workers’ compensation, and property damage insurance, as acceptable to Contractor at its sole direction. [DON’T WANT “DIRECTION” – IMPLIES THAT CONTRACTOR

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IS AN EMPLOYER]. Subcontractor shall furnish the Contractor with proof of insurance. [ALSO WANT CONTRACTOR AND OWNER TO BE AN "ADDITIONAL INSURED" – READ THE "ON CONTRACTS" INSURANCE DISCUSSIONS AT <http://www.oncontracts.com/notebook/insurance-provisions/>]

15. **INDEMNIFICATION.** THE SUBCONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, THEIR RESPECTIVE AFFILIATES, AND THE OFFICERS, AGENTS AND EMPLOYEES OF EACH OF THEM, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, EXPENSES (INCLUDING ATTORNEY’S FEES), JUDGMENTS OR LIABILITIES ARISING OUT OF THE SUBCONTRACTOR’S OR SUB-SUBCONTRACTOR’S PERFORMANCE OR ATTEMPTED PERFORMANCE OF THE AGREEMENT. THIS INCLUDES LIABILITIES ARISING OUT OF INJURY OR DEATH SUFFERED BY ANY OF THE SUBCONTRACTOR’S OR SUB-SUBCONTRACTOR’S EMPLOYEES, OFFICERS, AGENTS, AND BUSINESS INVITEES, INCLUDING, BUT NOT LIMITED TO, THIRD-PARTY ACTIONS FOR INJURY OR DEATH OTHERWISE COVERED UNDER APPLICABLE WORKERS’ COMPENSATION LAWS, AND REGARDLESS [TEXAS LAW RESTRICTS THIS TYPE OF INDEMNITY OBLIGATION – SEE CH. 151 OF THE TEXAS INSURANCE CODE] OF THE SOLE OR CONCURRING NEGLIGENCE OF THE CONTRACTOR.

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16. **Warranty.** The Subcontractor warrants that all work under this Agreement shall be done in a workmanlike manner, and in conformance with the Contract Documents.

The phrase "Contract Documents" is defined to mean (a) this Agreement and the relevant Statement of Work, (b) the plans, drawings, specifications, and all written modifications thereto made in accordance with this Agreement, (c) any work, purchase or change orders issued during the course of the work, (d) all exhibits, attachments, addenda or other documents incorporated into this Agreement or the relevant Statement of Work; and (e) any written modifications or supplements to this Agreement or the Statement of Work executed by the parties.

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The foregoing warranty will survive both completion of the work and termination of this Agreement or the Statement of Work.

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**TERMINATION AND BREACH**

17. [DON'T NEED A "TERM OF AGREEMENT" CLAUSE] **Termination for Convenience.** The Contractor may terminate this Agreement at any time and for any reason with ten days’ written notice.

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Upon receipt of such notice, Subcontractor shall, unless the written notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

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Upon such termination, Subcontractor shall be entitled to payment in accordance with Payment Schedule only for the actual cost of the work completed in conformity with this Agreement.

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In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion.

Subcontractor shall not be entitled to any claim of lien against Contractor for any additional compensation or damages in the event of such termination and payment.

18. **Breach; Remedies.** [PLEASE REWRITE TO BE MORE STRAIGHTFORWARD – SEE THE COMMON DRAFT TERMINATION PROVISIONS FOR AN EXAMPLE] In the event Subcontractor breaches any of its obligations outlined herein, Contractor may terminate this Agreement without further compensation to

Subcontractor and seek all remedies available to the Contractor under this Agreement and under the Governing Law as defined below, provided that the Contractor gives Subcontractor thirty (30) days' prior notice, except that any such notice will not result in termination if Subcontractor cures that breach before the thirty-day period elapses.

The various rights and remedies of the Contractor under this Agreement or otherwise are cumulative and are not exclusive of each other or any other remedy allowed by law.

**GENERAL PROVISIONS**

- 19. **Entire Agreement.** This Agreement represents the entire agreement between the parties; it supersedes all prior arrangements and understandings, whether written or oral, relating to the subject matter of this Agreement.
- 20. **Amendment.** To reduce the business risk of future uncertainty, the parties expressly agree that no amendment to this Agreement is to be given effect unless the putative amendment is set forth in a writing that (i) is signed by each party and (ii) expressly states that this Agreement is being amended and the terms of the amendment.
- 21. **Assignment.** The Subcontractor shall not assign this Agreement nor delegate any part of the Work under this Agreement either in whole or in part without the Contractor's written consent. All contracts between the Subcontractor and Sub-subcontractor will be subject to the terms and conditions of this Agreement [HOW IS THAT GOING TO HAPPEN?], but any Sub-subcontractor is not a third party beneficiary of this Agreement.
- 22. **Severability.** If any provision of this Agreement is declared invalid or unenforceable, in whole or in part, such invalidity or unenforceability does not affect the remaining provisions of this Agreement, which will remain in full force and effect.
- 23. **Governing Law.** This Agreement and any disputes or controversies arising out of or relating to this Agreement are to be governed by the laws of the State of Texas, excluding any conflicts-of-laws rule or principle that might refer the governance or the construction of this Agreement to the laws of another jurisdiction.
- 24. **Headings.** The headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.
- 25. **Notices.** All notices required to be given by this Agreement will be in writing and will be effective when actually delivered or refused. [SEE THE NOTES TO THE COMMON DRAFT NOTICE PROVISIONS].
- 26. **Arbitration.** All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in Harris County, Texas, unless another location is mutually agreeable to the parties. [ARBITRATION ISN'T FREE – MAYBE THE WAIVER OF JURY TRIAL WOULD BE BETTER; LET'S DISCUSS] The arbitration will be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. An arbitration award may be confirmed and/or enforced in any court of competent jurisdiction.
- 27. **Waiver of Jury Trial.** [THIS COULD WIPE OUT THE ARBITRATION CLAUSE] [SEE THE COMMON DRAFT JURY TRIAL WAIVER PROVISIONS AND ACCOMPANYING NOTES] No party to this Agreement nor its assignee, successor, heir or personal representative will seek a jury trial in any lawsuit, proceeding, counter-claim, or any other litigation procedure based upon or arising out of this Agreement. No party will seek to consolidate any such action, in which a jury trial has been waived, with any other action in which a jury trial cannot or has not been waived. The provisions of this paragraph have been fully discussed by the parties to this

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Agreement, and these provisions will be subject to no exceptions. No party to this Agreement has in any way agreed with or represented to any other party to this Agreement that the provisions of this paragraph will not be fully enforced in all instances.

To evidence the parties' agreement to this Agreement, they have executed and delivered it on the date set forth in the preamble.

XXX CONSTRUCTIONS, LLC

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

Name: \_\_\_\_\_, Member

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

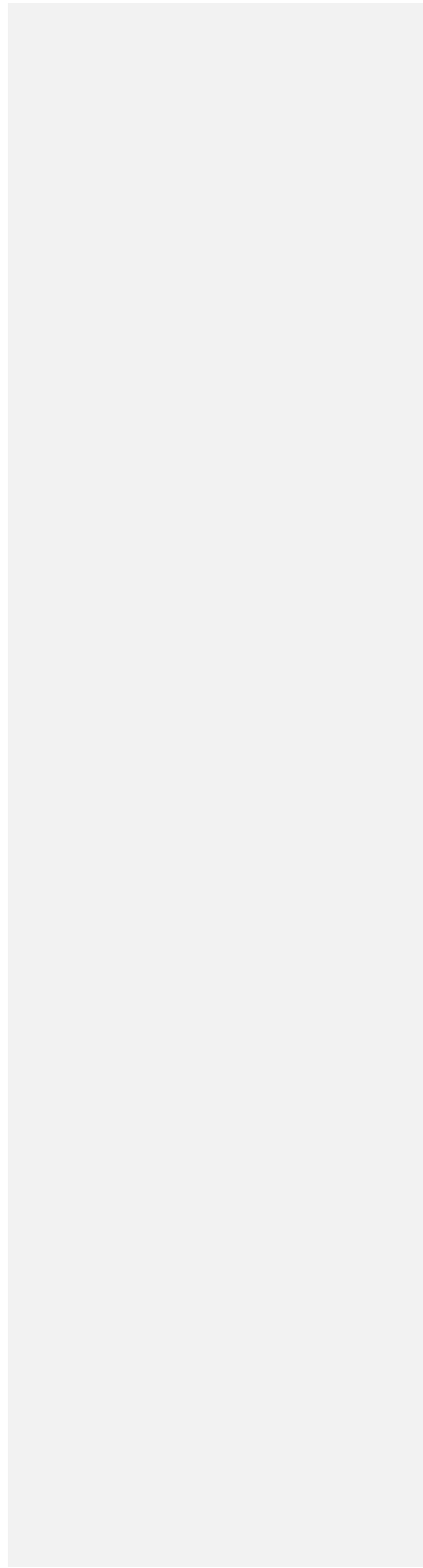
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Date: \_\_\_\_\_

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**Schedule of Work #1**

**Scope of Work.** The Subcontractor shall furnish the following materials, supplies, and equipment, and perform the following work (collectively, the "Work"):

- labor only
- all materials, supplies, equipment, services, supervision, and administration as needed in connection with

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**Time for Performance.** The Subcontractor shall commence Work on \_\_\_\_\_, and shall complete all Work no later than \_\_\_\_\_.

The Subcontractor shall maintain sufficient labor and materials on the job to perform the Work without unnecessary delay. Further, the Subcontractor shall cooperate with the Contractor and its staff in the scheduling and performance of its Work to avoid disruptions, interference, delays, conflicts, or other disturbances with respect to the Contractor's work on the Project.

**Fee.** The Contractor shall pay the Subcontractor a total amount of \_\_\_\_\_ in accordance with the following payment schedule ("Payment Schedule"):

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XXX CONSTRUCTIONS, LLC

By: \_\_\_\_\_  
 Name: \_\_\_\_\_, Member  
 Date: \_\_\_\_\_

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