

**RATLIFF HARDSCAPE, LTD.**  
**VENDOR/SUBCONTRACTOR AGREEMENT**

This VENDOR/SUBCONTRACTOR AGREEMENT (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Ratliff Hardscape, Ltd. ("Contractor") and \_\_\_\_\_ ("Subcontractor" or "Vendor/Subcontractor"), and the parties agree to the following:

**Section 1. SCOPE OF WORK**

The labor, services, and/or equipment to be furnished by Subcontractor as set forth herein and in the Specific Requirements (as defined in Section 19 hereof), each Purchase Order (as defined in Section 19 hereof) and/or Plans and Specifications (as defined in Section 19 hereof) for the work to be performed (the "Work"). Any adjustments to the Work must be set forth in writing signed by both parties in a Change Order to this Agreement, specifying such changes, and shall be applicable only to jobs started after the execution of the Change Order.

**Section 2. REPRESENTATIONS AND WARRANTIES**

Subcontractor agrees to and represents and warrants that:

- (a) All Work will be performed in a good and workmanlike manner in accordance with standard industry practice and to the full satisfaction of Contractor.
- (b) All labor and material will meet or exceed, requirements of all plan specifications, municipal, governmental, FHA, VA and local building codes as required.
- (c) All labor and material will be free from defect for a period of at least one (1) year from the date of acceptance in writing of the Work, or applicable portion thereof, by the Contractor and the owner(s) (the "Owner(s)") of the property and/or project on which the Work, or portion thereof, will be completed.
- (d) In the event of any defect, Subcontractor shall remove and replace and/or repair at its own expense and at the convenience of Contractor any faulty, defective or improper Work, or applicable portion thereof, materials or equipment discovered at any time within one (1) year from the date of acceptance in writing of the Work, or applicable portion thereof, by the Contractor and the Owner(s).
- (e) Notwithstanding anything else herein to the contrary, with respect to any defect that is not readily visible by inspection, Subcontractor expressly agrees that all warranties and obligations set forth herein shall extend for a period of one (1) year from the date that the defect is discovered and readily visible without dismantling.
- (f) Subcontractor shall pay for all damages, direct and consequential, suffered by Contractor as a result of defects in the Work, any portions of the Work that are not in accordance with the approved Plans and Specifications and/or Specific Requirements, failure to perform in accordance with the terms of this Agreement, or breach of the warranties contained herein, and all costs and expenses necessary to correct, remove, replace and/or repair the Work and any other work or property which may be damaged in correcting, removing, replacing or repairing the Work.
- (g) All of the Work will be performed in accordance with applicable federal and state occupational safety and health requirements.

- (h) The job site(s) will be kept reasonably neat at all times, and the Subcontractor shall thoroughly clean the job site(s) upon completion of the Work, or applicable portion thereof, including, but not limited to, removing all related debris and refuse.
- (i) Subcontractor warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified in this Agreement.
- (j) **Compliance with law:** Subcontractor shall keep itself fully informed of all local, state, and national laws which in any manner affect those whom Subcontractor engages or employs in the Work, including but not limited to, The Fair Labor Standards Act, as amended, the Davis-Bacon Act and the Walsh-Healy Public Contracts Act. Subcontractor is solely responsible for compliance with all federal and state laws regarding non-discrimination in hiring practices and non-employment of illegal aliens.
- (k) **Flammable materials:** Subcontractor shall not burn any waste material on the job site, nor have more than the current day's supply of flammable materials and/or equipment inside any building(s) on the job site, nor store any such materials and/or equipment less than forty feet (40') from the outside walls of such building(s).
- (l) **Taxes:** Subcontractor shall pay any and all applicable federal, state, and/or local taxes arising out of this Agreement or any Purchase Order, including taxes measured by wages, salaries, or other remuneration's and sales tax.

Subcontractor is solely responsible for withholding social security and unemployment taxes for all personnel performing any portion of the Work for Subcontractor under this Agreement.

### **Section 3. MATERIALS/INSPECTIONS**

All material furnished shall comply with all local, state and federal laws and regulations. If Subcontractor supplies materials that are not in compliance with all local, state, and federal laws and regulations, or do not meet the specifications of the Specific Requirements, Purchase Order or Plans and Specifications, then such materials shall be returnable to Subcontractor at Subcontractor's sole expense and Subcontractor shall replace such unsatisfactory materials with materials which meet the above detailed criteria. If Subcontractor misuses, wastes or destroys any materials not supplied or included in Subcontractor's contract price during the performance of the Work, Contractor shall have the right to charge such loss against any amounts still owing to Subcontractor. Notwithstanding anything contained herein to the contrary, Subcontractor shall be responsible for removing all materials and/or debris from the job site(s) upon the completion of the Work, or applicable portion thereof, or as otherwise required by this Agreement. **In this regard, Subcontractor shall indemnify, defend and hold harmless Contractor, its successors, assigns and customers from any and all claims, suits and any liabilities whatsoever related to any materials and/or debris used, stored, left at or removed from the job site(s), including, but not limited to, any under, or related in any way to, the Comprehensive Environmental Response, Compensation, and Liability Act, or any so-called "Superfund" or "Superlien" law.**

### **Section 4. JOB PROGRESS AND COORDINATION**

Subcontractor shall commence the Work pursuant to Contractor's project schedule and shall complete the Work as rapidly as job conditions permit. Contractor shall not be liable to Subcontractor for any delay

caused by Contractor, or any other subcontractor or any other causes whatsoever. Subcontractor shall at all times employ a sufficient workforce and supply a sufficient quantity of material to keep pace and proper order with the progress of the project and in accordance with the time schedule established by Contractor. Should Subcontractor fail to fully comply with all the provisions of this Section 4, the provisions of Section 15, and any other applicable provisions hereof, may be invoked by Contractor.

### **Section 5. PAYMENT**

From time to time, Subcontractor may submit a request for payment ("Payment Application") specifying the amount of Work done by it and the amount of monies due it. Each Payment Application must be accompanied by:

- (a) A sworn statement or invoice as to subcontract laborers and material men, together with the amount due or to become due to each, and
- (b) Executed waivers of lien, including partial waivers from its subcontractors and material men and any other data required by Contractor.

Contractor shall have the right to issue a two-party check to Subcontractor and its subcontractors, material suppliers, or equipment suppliers, or to pay such subcontractors and suppliers directly, if Subcontractor fails to provide lien waivers or partial lien waivers as required herein.

Payments shall be subject to 10% retainage, the amount of which being a part of the Specific Requirements, and shall be paid to Subcontractor pursuant to acceptance and approval of the Work, or applicable portion thereof, by Contractor's project superintendent and Contractor's payment schedule as described in this Agreement, Purchase Order and/or Specific Requirements. Contractor reserves the right to order a change in Work, the contract sum being increased or decreased accordingly. Subcontractor shall have no claim for extra work unless an order in writing is first secured from Contractor setting forth the basis of the cost to be allowed for the extra work and authorizing performance of the same.

Notwithstanding anything contained in this Agreement to the contrary, in no event shall Contractor be obligated to pay Subcontractor any amount due hereunder unless Contractor has received a corresponding amount for the Work, or applicable portion thereof, from the Owner(s).

### **Section 6. WITHHOLDING OF PAYMENT**

Subcontractor expressly agrees that payments may be withheld and all cost incurred by Contractor shall be charged against all monies due Subcontractor under this Agreement or any other agreement with Contractor if:

- (c) The Work, or any portion thereof, is found defective and not remedied immediately;
- (d) Another vendor or subcontractor is damaged by an act for which the Subcontractor is responsible;
- (e) Subcontractor fails to perform warranty service under this Agreement or any other prior to contemporaneous agreement with Contractor; or
- (f) Contractor is otherwise damaged by Subcontractor's breach of any provision of this Agreement.

## **Section 7. INSPECTION BY SUBCONTRACTOR**

The Subcontractor shall be responsible for inspecting any work of another subcontractor that may affect his own Work, and shall report in writing to Contractor any defects of such work upon discovery of the defect prior to commencing Work, or he shall be deemed to have accepted such work as correct and fit to be accommodated into his own Work.

## **Section 8. INSURANCE**

- (g) It is expressly understood and agreed that the insurance coverage required herein:
  - (i) Represents Contractor's minimum requirements and are not to be construed to void or limit Subcontractor's indemnity obligations as contained in this Agreement,
  - (ii) Does not represent in any manner a determination of the insurance coverage Subcontractor should or should not maintain for its own protection.
  
- (h) Conditions affecting all insurance required herein:
  - (i) Maintenance of Insurance – All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement.
  - (ii) Status and Rating of Insurance Company- All insurance coverage shall be written through insurance companies admitted to do business in the State of Texas and rated no less than A-: VIII in the most current edition of A.M. Best's Key Rating Guide or by exception at the sole discretion of Contractor.
  - (iii) Restrictive, Limiting, or Exclusionary Endorsement- All insurance coverage shall be provided in compliance with the requirements herein and shall contain no endorsement that restrict, limit, or exclude coverage in any manner with out the prior expressed written approval of Contractor.
  - (iv) Waiver of Subrogation- All insurance coverage carried by Subcontractor required herein shall provide a waiver of subrogation in favor of Contractor.
  - (v) Notice of Cancellation, Non-Renewal, or Material Change in Coverage- All insurance coverage carried by Subcontractor required herein, shall contain a provision to provide thirty (30) day written notice to the Contractor in the even of Cancellation, Non-renewal, or Material Change in Coverage.
  - (vi) Evidence of Insurance- Evidence of insurance is required to be maintained by Subcontractor, represented by certificates of insurance, evidence of insurance, and endorsements issued by the insurance company or its legal agent, and must be furnished to Contractor prior to the termination date of the current certificates of insurance, evidence of insurance, and endorsements.
  
- (i) Coverage and Limits required herein:

(i) Commercial General Liability Insurance

(A) Coverage shall be provided by an unmodified Commercial General Liability Coverage for CG 00 01 (1204) or its equivalent.

(B) Coverage shall include the following endorsements:

- (1) Additional insured status provided on a primary non-contributory basis using form CG 20 10 (1185) or its equivalent.
- (2) Aggregate Limit of Insurance pre project endorsement
- (3) Notice of Cancellation, Non-renewal, or Material Change in coverage, as required in Section 8(b)(v) above

(C) Limits of Insurance: Coverage shall be provided with limits not less than:

- |                                  |             |
|----------------------------------|-------------|
| (1) Each Occurrence Limit        | \$1,000,000 |
| (2) General Aggregate Limit      | \$1,000,000 |
| (3) Product Completed Operations | \$1,000,000 |

(ii) Commercial Auto Liability Insurance

(A) Insurance shall provide coverage for liability arising out of any auto (including owned, hired, and non-owned)

(B) Coverage shall include the following endorsements:

- (1) Additional Insured status provided on primary non-contributory basis.
- (2) Notice of Cancellation, Non-renewal, or Material Change in Coverage, as required in Section 8(b)(v), above
- (3) Waiver of Subrogation, as required in Section 8(b)(iv), above.

(C) Limits of Insurance Coverage shall be provided with limits not less than \$1,000,000.

(iii) Worker's Compensation/Employer's Liability Insurance

(A) Coverage shall be provided for liability arising out of Subcontractor's employment of workers and anyone for whom Subcontractor may be liable for worker's compensation claims.

(B) Coverage shall include the following endorsements:

- (1) Notice of Cancellation, Non-renewal, or Material Change in coverage as required in Section 8(b)(v) above.

(2) Waiver of Subrogation, as required in Section 8(b)(iv) above.

(C) Limits of Insurance: Coverage shall be provided with limits not less than:

- |                           |                  |
|---------------------------|------------------|
| (1) Worker's Compensation | Statutory Limits |
| (2) Employer's Liability  | \$1,000,000      |

These minimum limits and coverages are subject to higher limits and coverage as required by the Contractor from time to time. Contractor's receipt of satisfactory insurance certificates, or insurance policies (if requested by Contractor) complying with the above requirements shall be a prerequisite to payment under this Agreement or any particular order. Should Subcontractor fail to procure or maintain at least the minimum coverage shown above, Contractor shall have the right, but in no way be obligated to procure and maintain the insurance for and in the name of the Subcontractor, at Subcontractor's sole cost and expense and with Subcontractor's cooperation. Failure of Subcontractor to obtain coverage in accordance with the terms hereof shall be an event of default under this Agreement and Contractor shall have the right to terminate this Agreement. No action or omission by Contractor shall constitute a waiver of the requirements of this section. Subcontractor shall, prior to the commencement of the Work hereunder, furnish Contractor with a certificate of insurance, or, at Contractor's option, an endorsement, naming Contractor as an additional insured and provide that no cancellation or other material change in the terms of the policy may be made without thirty (30) days notice to Contractor. Subcontractor shall not commence its scheduled Work on the project nor shall Subcontractor be paid until such time as Subcontractor evidences adequate insurance coverage as required herein by returning to Contractor properly executed certificate(s) of insurance or, upon the request of Contractor, copies of all applicable insurance policies.

#### **Section 9. CORRECTIONS FOR DEFECTIVE WORK**

Prior to the commencement of the warranty period (as referenced in Section 2), if Contractor notifies the Subcontractor (orally or in writing) that part of the Work is incorrect and does not conform to the terms of the Specific Requirements, Purchase Order, and/or plans or specifications, Subcontractor shall within forty-eight (48) hours correct such defective Work and shall bear the cost of doing so, including the costs incurred by the disturbance of work completed by other subcontractors. Failure by the Subcontractor to correct such Work within forty-eight (48) hours shall cause an automatic breach of this Agreement, and the provisions of Section 15, and any other applicable provisions hereof, may be invoked by Contractor.

#### **Section 10. PATENTS**

**Subcontractor hereby covenants and agrees to indemnify, defend and hold harmless Contractor, its successors, assigns, and customers from any and all manner of claims, or suits for patent infringement or violation of patent, copyright, trademark, and/or trade secret rights, including all costs Contractor may incur in defending any such actions. Subcontractor shall pay all applicable royalties and license fees.**

#### **Section 11. ENCUMBRANCES**

Subcontractor shall turn over said Work in good condition and free and clear of all claims, encumbrances or liens and shall protect Contractor and Owner(s) from all claims, encumbrances or fines arising out of Subcontractor's performance of the Work. Subcontractor shall, at its own cost and expense (including attorney's fee) defend all suits to establish such claims and pay any claims or liens established. Subcontractor

further agrees to cause the effect of any such suit or lien to be removed from the premises within five (5) days after Contractor's written demand, and should Subcontractor fail to do so, Contractor may do so at Subcontractor's expense, which costs shall be immediately due Contractor.

### **Section 12. LABOR DISPUTES/WORK STOPPAGE**

Subcontractor shall not be relieved of his obligations hereunder due to any labor dispute or work stoppage involving its employees directly or indirectly. If Subcontractor's progress is impaired thereby, Subcontractor shall, upon twenty-four (24) hours oral or written notice from Contractor, turn all remaining incomplete Work over to Contractor including releasing any necessary permits, licenses, royalties, etc. for completion by substitute means. In such case, Subcontractor shall not be relieved of its full financial responsibility and liability of the Work. Contractor shall have the right to employ a third party contractor to complete. Contractor will notify Subcontractor of any cost increase to Contractor due to such dispute or stoppage, and such increase shall be chargeable to Subcontractor upon final completion of the Work.

### **Section 13. ASSIGNMENT**

Subcontractor may not assign or transfer any interest under this Agreement or any Purchase Order, including assignment of monies due without Contractor's prior written consent. If Contractor consents to any assignment or transfer of any interest under this Agreement, Subcontractor shall be responsible to Contractor for all acts or omissions of Subcontractor's assignees, subcontractors, or transferees.

### **Section 14. SAFETY**

Subcontractor shall conduct its Work in a safe manner, in accordance with the latest revised edition of the Manual of Accident Prevention in Construction of the Associated General Contractors of America Inc. and the Occupational Safety and Health Act of 1970, as amended, and Subcontractor agrees to indemnify, defend and hold Contractor harmless against any and all liability or loss Contractor may incur for Subcontractor's noncompliance therewith. Subcontractor shall abide by all other applicable federal, state, and local safety laws, ordinances, regulations, standards, and rules. Subcontractor shall require all its subcontractors to so comply and shall be solely responsible for the protection and safety of its workers. It is hereby understood and agreed that the Subcontractor is solely responsible for the supervision of its employees and Subcontractor hereby agrees that it shall not look to any Contractor employee to do so.

### **Section 15. TERMINATION**

In the event Subcontractor shall default in any respect in the full, faithful, and punctual performance of any of its obligations hereunder and such default shall continue for twenty-four (24) hours after written or oral notice thereof to Subcontractor, or Subcontractor shall become insolvent or shall make an assignment for the benefit of creditors, or shall file or become involved in any reorganization or other proceeding in bankruptcy, or shall fail to adequately man the job, or to perform any portion of the Work in a satisfactory manner, then in any such event, Contractor shall have the right to terminate this Agreement, in whole or in part. Upon termination of this Agreement, Contractor shall have the right to take possession of the Work to be performed by Subcontractor hereunder and of all materials, tools, equipment, and appliances of Subcontractor, and Subcontractor shall not be entitled to receive any further payments, this remedy is in addition to, and not in lieu of, any and all other remedies at law available to Contractor. Contractor shall have the right to terminate this Agreement or limit the Subcontractor to certain jobs at its sole option.

## Section 16. INDEMNIFICATION

**TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR EXPRESSLY AGREES TO DEFEND (AT SUBCONTRACTOR'S EXPENSE AND WITH COUNSEL ACCEPTABLE TO THE CONTRACTOR IN ITS SOLE DISCRETION), INDEMNIFY, AND HOLD HARMLESS ALL OWNER(S), CONTRACTOR, ARCHITECTS, ARCHITECTS' CONSULTANTS, ENGINEERS, CONSTRUCTION MANAGERS, LENDERS AND ANY OTHER PARTIES WHOM CONTRACTOR HAS AGREED TO INDEMNIFY, AS NAMED OR REFERENCED IN ANY PROJECT CONTRACT DOCUMENTS ATTACHED TO AND MADE A PART OF THIS AGREEMENT, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS, AFFILIATES, AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, BREACHES, DAMAGES, LIABILITIES, FINES, PENALTIES, AND EXPENSES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION ARBITRATION OR COURT COSTS AND ATTORNEY'S FEES, AND SUCH LEGAL EXPENSES INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS SECTION, ARISING OUT OF OR IN CONNECTION WITH SICKNESS, BODILY OR PERSONAL INJURY TO OR THE DEATH OF ANY PERSON, OR ANY AND ALL DAMAGES TO PROPERTY INCLUDING LOSS OF USE: (1) FROM OR IN ANY MANNER CONNECTED WITH THE WORK PERFORMED BY OR FOR THE SUBCONTRACTOR UNDER THIS AGREEMENT; (2) CAUSED IN WHOLE OR IN PART BY THE PRESENCE OF THE PERSON OR PROPERTY OR THE NEGLIGENCE, WHETHER BY ACTS OR OMISSIONS, OF THE SUBCONTRACTOR OR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUB-SUBCONTRACTORS, OR SUPPLIERS OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE; AND (3) CAUSED BY ANY LIENS FILED OR CLAIM MADE AGAINST ANY INDEMNIFIED PARTY BY SUBCONTRACTOR OR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUB-SUBCONTRACTORS OR SUPPLIERS. TO THE EXTENT ALLOWED BY LAW, INDEMNITY OBLIGATION OF SUBCONTRACTOR IN THIS SECTION AS WELL AS IN SECTIONS 3, 10 AND 17 EXTEND TO ALL CLAIMS, DAMAGE, LOSS OR EXPENSE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF, WHETHER BY ACTS OR OMISSIONS OF AN INDEMNIFIED PARTY, BREACH OF CONTRACT OR THE PRESENCE OF THE PERSON OR PROPERTY OF A PARTY INDEMNIFIED HEREUNDER, EVEN IF SUCH CLAIM, DAMAGE, LOSS OR EXPENSE ARISES OUT OF A NON-DELEGABLE DUTY OF AN INDEMNIFIED PARTY. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST TO A PARTY OR PERSON DESCRIBED IN THIS SECTION.**

**IN CONSIDERATION OF TEN DOLLARS (\$10) AND OTHER GOOD AND VALUABLE CONSIDERATION EXCHANGED EACH WITH THE OTHER AND ACKNOWLEDGED BY THE SIGNING OF THIS AGREEMENT FOR THE COMPLETION OF THE WORK, BOTH THE CONTRACTOR AND THE SUBCONTRACTOR HAVE WITH FULL KNOWLEDGE AND CAREFUL CONSIDERATION OF THE RESPONSIBILITIES ESTABLISHED AGREED TO THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT. THESE DEFENSE AND INDEMNIFICATION OBLIGATIONS SHALL NOT BE RESTRICTED IN ANY WAY BY ANY LIMITATIONS ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFITS ACTS, AND SHALL EXTEND TO AND INCLUDE ANY ACTIONS BROUGHT BY OR IN THE NAME OF ANY EMPLOYEE OF THE SUBCONTRACTOR OR OF ANY THIRD PARTY TO WHOM SUBCONTRACTOR MAY SUBCONTRACT A PART OR ALL OF THE WORK.**

**THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT ARE NOT INTENDED TO AND SHALL NOT REQUIRE THE SUBCONTRACTOR OR OTHERS TO INDEMNIFY OR HOLD HARMLESS A REGISTERED ARCHITECT, LICENSED ENGINEER OR AN AGENT, SERVANT OR EMPLOYEE OF A REGISTERED ARCHITECT OR LICENSED ENGINEER FROM LIABILITY FOR DAMAGE THAT IS (1) CAUSED BY OR RESULTS FROM: (A) DEFECTS IN PLANS, DESIGNS OR SPECIFICATIONS PREPARED, APPROVED OR USED BY THE ARCHITECT OR ENGINEER; OR (B) THE NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (2) ARISES FROM PERSONAL INJURY OR DEATH, PROPERTY INJURY, OR ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH OR PROPERTY INJURY.**

#### **Section 17. LIENS AND CLAIMS**

Subcontractor shall fully protect, indemnify, defend and save harmless Contractor from and against any and all liens and/or claims of Subcontractor's laborers, mechanics, material men, subcontractors and suppliers. In the event that any such lien shall be filed or claim asserted, Subcontractor shall promptly remove or discharge such lien or claim. If Subcontractor shall fail to do so remove or discharge the same within five (5) days after notice from Contractor, Contractor shall have the right to remove or discharge the same by bonding, payments or otherwise. The amount of any payment, costs and/or expenses made or incurred by Contractor in connection with the removal or discharge of any such lien or claim may be deducted by Contractor from any payments or amounts then due or thereafter to become due to Subcontractor, whether under this Agreement or from any other source.

#### **Section 18. MISCELLANEOUS PROVISIONS**

- (j) **Parties bound:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, devisees, administrators, executors and legal representatives; **provided, however,** that nothing in this section shall be construed to authorize the Subcontractor to make an assignment or transfer prohibited by this Agreement.
- (k) **Paragraph headings:** The paragraph titles are for convenience only in locating information and in no way alter or limit the text of the provisions of this Agreement.
- (l) **No third party beneficiary:** No provision contained in this Agreement shall create or give to third party any claim of right of action against Contractor or Subcontractor beyond such as may legally exist in the absence of such provisions.
- (m) **Texas Law: This Agreement shall be construed under the laws of the State of Texas and venue in any suit involving this Agreement shall be exclusively in Denton County, Texas.**
- (n) **Notice:** Any notice or communication must be in writing and given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, or by delivering the same in person or by facsimile. Such notice shall be deemed received on the date on which it is hand delivered or faxed on the third business day following the date on which it is so mailed. For purposes of notice, the addresses of the parties shall be:

If to Contractor:                    Attn: Erica Cansino  
Fax: #: (972) 221-9905

If to Subcontractor:                Attn: \_\_\_\_\_  
Fax #: \_\_\_\_\_

Any party may change its address for notice by written notice given to the other parties.

(o)     Severability: If any provision of the Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provisions or by its severance here from. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(p)     Amendments: This Agreement may only be amended by an instrument in writing executed by both Contractor and Subcontractor.

(q)     Independent Contractor: The parties agree that Subcontractor and its employees are not employees of Contractor, but is an Independent Contractor for Contractor. Contractor will have no control, direction, or dominion over Subcontractor or the way in which Subcontractor performs the Work. The Independent Contractors' employees shall not be entitled to workers' compensation coverage from Contractor.

(r)     Authority: Subcontractor has no independent authority to act for or on behalf of Contractor except as provided herein. No other power, authority, or use is granted or implied. Subcontractor represents and warrants that the person signing this Agreement has the authority to enter into this Agreement on behalf of Subcontractor.

(s)     Entire Agreement: This Agreement represents the entire agreement by and between the parties, and it may not be changed except by written agreement duly executed by all parties.

(t)     No waiver: The failure or delay in the enforcement of the rights detailed in this Agreement by Contractor shall not constitute a waiver of those rights or be deemed a basis for estoppels.

(u)     Assignment: This Agreement may not be assigned by Subcontractor without the prior, written consent of Contractor, which Contractor may withhold in its sole discretion.

(v)     Addenda/Exhibits: All addenda and exhibits to this Agreement, whether or not specifically referenced herein, are fully incorporated herein by this reference.

**Section 19. TERMS**

(w)     "Specific Requirements" - an addendum to this Agreement which lists the type, price, and other specifics of the Work to be performed and materials to be supplied.

(x)     "Purchase Order" - each time Subcontractor performs Work on a different project, a corresponding purchase order shall be submitted to Contractor. The amount of such purchase order shall

correspond to the agreed price as shown in the Specific Requirements of Subcontractor's most recent bid sheet. The absence of a purchase order does not void this Agreement.

(y) "Plans and Specifications" – the plans and specifications prepared by a certified architect and/or engineer detailing the Work or portion thereof which have been delivered by Contractor to Subcontractor.

#### **Section 20. TIME SCHEDULE**

The Work to be completed by Subcontractor under this Agreement shall be completed within the timeframe as specified in the applicable Purchase Order and/or Specific Requirements. Failure to complete the Work within the applicable timeframe shall be grounds for termination of the Agreement at the Contractor's sole option.

#### **Section 21. SPECIAL PROVISIONS**

Invoices must be submitted for payment to Ratliff Hardscape, Ltd., prior to the expiration of Sixty (60) days after services are performed. Invoices must be dated and submitted after all work is completed. Any invoices that exceed Sixty (60) days after work is complete WILL NOT be paid.

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Executed this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR**

RATLIFF HARDSCAPE, LTD.,  
a Texas limited partnership

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

Name: Bryan A. Robertson  
\_\_\_\_\_

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

**VENDOR/SUBCONTRACTOR**

\_\_\_\_\_,  
a  
\_\_\_\_\_

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

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

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

**VENDOR/SUBCONTRACTOR INFO.**

Individual or Company Name: \_\_\_\_\_

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

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

Fax: \_\_\_\_\_

Mobile: \_\_\_\_\_

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

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

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Social Security if Individual  
or Company Tax ID No. : \_\_\_\_\_

- Type of Ownership:
- Corporation
  - Limited Partnership
  - LLC
  - Individual
  - Other \_\_\_\_\_

Type of Service Performed: \_\_\_\_\_

- Attach Certificate of Insurance:
- General Liability
  - DWC-83
  - Workers Comp.
  - Automobile

- Check Distribution:
- Mail
- OR
- Pickup