

## MASTER SERVICE AGREEMENT

### MEADOWPARK HOMEOWNERS ASSOCIATION, INC.

This Master Service Agreement (“Agreement”) is made and entered into to be effective as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between Meadowpark Homeowners Association, Inc. (the “Association”), a Texas nonprofit corporation, with an address of 4800 Spring Meadow Drive, Midland, Texas 79705, and \_\_\_\_\_ (“Contractor”), a \_\_\_\_\_, with an address of \_\_\_\_\_.

The Association and Contractor are each a “Party” and collective are the “Parties.”

**1. Services, Goods and Work.** The Association may request that Contractor perform certain services (the “Services”) or provide for the sale or lease to the Association of certain equipment, materials and tools (the “Goods”). Together, Services and Goods are collectively referred to as “Work.”

**2. Scope of Agreement.** This Agreement does not obligate the Association to order any Work from Contractor, nor does it obligate Contractor to accept any Work requested by the Association. Any Work requested by the Association and accepted by Contractor shall be specifically defined by a written or verbal separate work or purchase order (“Work Order”). As to any Work, the rights, obligations and liabilities of the Parties shall be established by this Agreement and the specific Work Order relating to such Work. In the event there is a conflict between the terms or provisions of this Agreement and any Work Order, certificate, price list, invoice, bid, or any other document passed between the Parties, the terms of this Agreement shall control and, to the extent a Work Order, certificate, price list, invoice, bid or other document passed between the Parties conflicts with or is in any manner contrary to the terms or provisions hereof, such conflicting terms or provisions in the Work Order, price list, invoice, bid or other document shall be null and void.

**3. Relationship of Parties.** Contractor shall be an independent contractor with respect to all Work performed hereunder. The Association shall have no power or authority to direct, supervise, or control Contractor or Contractor’s employees, subcontractors, or other agents. Neither Contractor nor Contractor’s employees, subcontractors, or representatives shall be employees or borrowed servants of the Association. It is agreed that the Association is solely interested in the final results specified in the Work Order.

**4. Performance.** If Contractor agrees to undertake the Work, it shall do so in the time specified in the Work Order. Time is expressly of the essence under this Agreement. Contractor warrants that (a) all Work shall be performed by Contractor in strict conformity with the Work Order; (b) Contractor shall use all possible skill and diligence to ensure that the Work is performed in a skillful and workmanlike manner; and (c) that all Work shall be performed in compliance with all applicable laws, rules, regulations, permits, orders and safety codes. If the Association so requests, Contractor shall change the personnel performing the Work. Contractor shall not subcontract any Work under this Agreement without the prior written consent of the Association. Any portion of the Work found to be defective, unsuitable, or otherwise not in conformity with a Work Order shall be promptly removed, replaced, or corrected by Contractor at Contractor’s sole expense.

**5. Payment Terms.** Contractor shall provide the Association with an invoice at the Association’s address at the end of each month during the course of the Work. The Association shall make payment within thirty (30) days of its receipt of Contractor’s invoice. Payment of an invoice, including disputed portions thereof, shall not constitute a waiver of the Association’s right to subsequently challenge the amount or correctness of such invoice and to seek reimbursement. Unless the applicable Work Order places responsibility for sales and use taxes on Contractor, each invoice shall itemize any sales taxes on all Goods sold by Contractor to the Association and all use taxes on Services performed by Contractor for the

Association that are assessed by any governmental authority or are otherwise payable under applicable law, which taxes the Association will then pay to Contractor. Contractor warrants that it will timely remit to the appropriate governmental authority all sales and use taxes paid by the Association to Contractor.

**6. Indemnity Agreement.**

**A. CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE ASSOCIATION, AND THE ASSOCIATION'S DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES, AGENTS, AFFILIATES, AND CONTRACTORS (OTHER THAN CONTRACTOR), DIRECT AND REMOTE (COLLECTIVELY, "ASSOCIATION GROUP") FROM AND AGAINST ALL CLAIMS, DEMANDS, CAUSES OF ACTION AND LIABILITY OF EVERY KIND AND CHARACTER (INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES) (COLLECTIVELY, "CLAIMS") ARISING OUT OF, RESULTING FROM, OR IN ANY WAY INCIDENTAL TO, DIRECTLY OR INDIRECTLY, THE WORK OR THIS AGREEMENT INsofar AS THE SAME ARE NOT CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR BREACH OF CONTRACT OF ANY MEMBER OF ASSOCIATION GROUP OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE ASSOCIATION, OTHER THAN CONTRACTOR OR CONTRACTOR'S AGENTS, EMPLOYEES, SUBCONTRACTORS, OR ASSIGNED INDIVIDUALS OF ANY TIER (COLLECTIVELY, "CONTRACTOR GROUP").**

**B. NOTWITHSTANDING SECTION 6(A) ABOVE, CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS EACH MEMBER OF ASSOCIATION GROUP FROM AND AGAINST ALL CLAIMS ON ACCOUNT OF BODILY INJURY OR DEATH THAT MAY BE MADE OR ASSERTED BY ANY MEMBER OF CONTRACTOR GROUP, ARISING OUT OF, RESULTING FROM, OR IN ANY WAY INCIDENTAL TO, DIRECTLY OR INDIRECTLY, THE WORK OR THIS AGREEMENT; THE FOREGOING INDEMNIFICATION, RELEASE, AND OTHER OBLIGATIONS SET FORTH IN THIS SECTION 6(B) SHALL APPLY WHETHER OR NOT SUCH CLAIMS ARISE OUT OF OR ARE BASED UPON: (I) THE NEGLIGENCE (INCLUDING SOLE NEGLIGENCE, SINGLE NEGLIGENCE, CONCURRENT NEGLIGENCE, ACTIVE OR PASSIVE NEGLIGENCE) OF ONE OR MORE OF THE MEMBERS OF ASSOCIATION GROUP; OR (II) STRICT LIABILITY. CONTRACTOR ACKNOWLEDGES THAT IT IS INDEMNIFYING ASSOCIATION GROUP FOR ITS OWN SOLE AND PARTIAL NEGLIGENCE.**

**C. CONTRACTOR AGREES TO AND SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS ASSOCIATION GROUP FROM AND AGAINST ANY AND ALL CLAIMS FOR ALLEGED UNPAID WAGES, OVERTIME, DAMAGES, ATTORNEYS' FEES, AND COSTS UNDER THE FAIR LABOR STANDARDS ACT AND/OR ANY APPLICABLE FEDERAL OR STATE WAGE LAW, AND/OR ANY DISCRIMINATION, HARASSMENT, OR BENEFITS CLAIMS UNDER FEDERAL OR STATE LAW, AGAINST ASSOCIATION GROUP INCLUDING, BUT NOT LIMITED TO, (I) FAILURE TO PAY FEES OR MONIES FOR SERVICES PROVIDED TO CONTRACTOR GROUP IN ACCORDANCE WITH THE REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT AND APPLICABLE FEDERAL OR STATE LAW, AND/OR (II) CLAIMS RELATING TO DISCRIMINATION HARASSMENT AND/OR BENEFITS.**

**7. Insurance and Defense.** Contractor shall provide the Association with a written accident report within twenty-four (24) hours of any accident that occurs while in performance of the Work. In the event that any person files a claim against the Association and such claim arises in whole or in part from

the Work furnished by Contractor hereunder, whether or not such claim or action is covered by the Association's insurance with respect to the Work, Contractor shall cooperate with and assist the Association, to the fullest extent requested by the Association or permitted by law, at Contractor's sole expense, in prosecuting or defending any such claim or action. Contractor shall, prior to the commencement of the Work hereunder, furnish the Association with satisfactory certificates of insurance and an additional insured form complying with the above requirements, naming the Association as an additional insured and providing that no cancellation or other material change in the terms of the policy may be made without thirty (30) days prior written notice to the Association. Failure by Contractor to acquire and/or maintain the insurance coverage and limits set forth in this Agreement shall not act, nor shall it be construed, as relieving Contractor from its obligations and responsibilities under this Agreement, including without limitation, Contractor's indemnification obligations hereunder. In the event Contractor fails to obtain any of the required insurance, Contractor shall itself be liable to the Association as an insurer to the same extent as if such insurance had been obtained. Before commencing the Work as contemplated herein, Contractor shall procure and maintain at its sole cost and expense, until completion and a final acceptance of the Work, the following minimum insurance coverages:

A. *Commercial General Liability Insurance:* Commercial general liability insurance for not less than \$1 million for each occurrence, and \$2 million general aggregate.

B. *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 will provide a Waiver of Subrogation from its workers' compensation insurance carrier, in favor of the Association Group for all damages covered by insurance. The minimum required Employers Liability limits are \$1,000,000.

C. *Motor Vehicle Insurance:* Automobile and motor vehicle insurance written for not less than \$1,000,000 combined single limit for bodily injury and property damage or loss.

**8. No Consequential Damages. IN NO EVENT WILL THE ASSOCIATION BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE OF ASSETS, OR LOSS OF PRODUCT OR FACILITIES DOWNTIME, FOR ANY REASON.**

**9. Term; Termination.** This Agreement is effective as of the Effective Date and shall continue from month-to-month thereafter. Either Party may terminate this Agreement or any Work Order for any reason upon delivering at least 24 hours prior written notice of termination to the other Party. The representations and warranties by Contractor and the indemnities in this Agreement shall survive completion of any Work performed hereunder and the termination of this Agreement or any Work Order.

**10. Attorneys' Fees.** In the event any suit is brought by either Party against the other to enforce any term or provision of this Agreement, the prevailing Party in such suit shall be entitled to court costs, expert witness fees, and attorneys' fees.

**11. Notices.** Each Party provides the other Party its notice address as set forth in the preamble to this Agreement. Either Party may change its address by advising the other Party in writing of the change. Any notices required to be given or otherwise delivered in connection with this Agreement shall be given in writing and delivered personally or sent by registered or certified mail, return receipt requested.

**12. Choice of Law.** This Agreement, together with any Work Order, including, without limitation, its validity, interpretation, construction, performance, and enforcement (together with all of the transactions it contemplates) shall be governed and interpreted in accordance with the substantive laws of

the State of Texas, without regard to any principles of conflicts of law that would result in the application of the laws of any other jurisdiction. This Agreement was negotiated, made, executed, and will be performed (in whole or in part) in Midland County, Texas. Each Party hereby fully, personally, and voluntarily consents to the jurisdiction of the courts of the State of Texas (State or Federal) for any and all disputes, conflicts, or claims related to or arising under or from this Agreement and/or performance of the Parties or under the Agreement. Therefore, the Parties agree that the State or Federal courts of Texas shall have exclusive jurisdiction over any and all disputes, conflicts, or claims related to or arising under or from this Agreement and/or the performance of either Party under the Agreement. Each Party further agrees that the State or Federal courts of Midland County will be the exclusive venue for any and all disputes, conflicts, or claims related to or arising from or under this Agreement and/or the Parties' performance of or under the Agreement, and all objections to venue therein based on convenience of the parties, witnesses, or otherwise are hereby expressly waived.

**13. Entire Agreement; Severability.** This Agreement, together with any Work Orders entered into in connection herewith, constitutes the entire agreement and understanding between the Parties, and supersedes all prior agreements, understandings, and representations relating to the subject matter of this Agreement. This Agreement and any Work Orders may not be modified or amended except by a writing signed by an authorized representative of each Party. No amendment to this Agreement shall be effective unless contained in an instrument that specifically references this Agreement, is in writing, and is executed by both Parties. If any term of this Agreement is held by a court or agency of competent jurisdiction to be inconsistent with or contrary to any applicable law, rule, regulation or order, said term shall be deemed to be modified to the extent required to comply with said law, rule, regulation or order, and as so modified, said term and this Agreement shall continue in full force and effect.

**14. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

**AGREED:**

**ASSOCIATION:**

MEADOWPARK HOMEOWNERS ASSOCIATION, INC.

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

**CONTRACTOR:**

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