

## INDEPENDENT CONTRACTOR AGREEMENT

Vendor Number: \_\_\_\_\_

NAME OF COMPANY: \_\_\_\_\_

TYPE OF ENTITY (check one) \_\_\_\_\_ Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Sole Proprietorship

Social Security No. or Tax ID Number: \_\_\_\_\_

Address for all Notices: \_\_\_\_\_ Telephone: (\_\_\_\_) \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Facsimile: (\_\_\_\_) \_\_\_\_\_

Name of Owner(s)/Officer(s): \_\_\_\_\_

Insurance Carrier(s) (including Worker's Compensation Carrier):  
\_\_\_\_\_

Policy Nos.: \_\_\_\_\_ Agency and Representative(s): \_\_\_\_\_

THIS INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement"), together with the Price List attached hereto, signed by the Parties, and any Purchase or Work Orders hereafter issued, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and prescribes conditions that affect the contract price, the payment schedule (if applicable) and a general description of the Work. The following terms and conditions shall apply without exception to all Work provided by Contractor who by executing this Agreement unconditionally and irrevocable accepts the Agreement. Terms contained in any other document issued by Contractor shall be of no force and effect unless specifically incorporated in writing by CAMILLO PROPERTIES LLC (CAMILLO). Any document that Contractor may issue shall be deemed to be for the administrative convenience of Contractor, unless specifically incorporated in writing by CAMILLO. The terms of this Agreement and any Price List, Purchase or Work Order or other scope of Work Order issued by CAMILLO shall supersede and take precedence over any of Contractor's terms and conditions that may be contained in any of Contractor's forms. The term "Work" shall mean the labor, services and/or materials, equipment, transportation, or facilities necessary to complete the construction related activities generally described below:

\_\_\_\_\_

\_\_\_\_\_

All Work shall be performed by the undersigned contractor (the "Contractor") in accordance with plans and specifications (the "Plans and Specifications") incorporated into this Agreement and/or from time to time detailed in writing by CAMILLO PROPERTIES LLC (CAMILLO) and governed by the following terms and conditions of this Agreement:

**1. Purchase/Work Orders are Individual Contracts.** In general and without limitation for purposes of Chapter 53 of the Texas Property Code, each Purchase and Work Order shall be deemed the Original Contract and is a separate Contract and Improvement unless a subsequent Purchase or Work Order is for the same physical address and location including for purposes of determining the rights and responsibilities of the parties under Chapter 53, including Contract Price, Work, Labor, Services and Materials and what Retainage or Funds are subject to being Withheld and when Completion occurs as those terms are utilized in Chapter 53. Contractor agrees that for purposes of determining what funds can be withheld and what Retainage is to be reserved, both amounts are limited to the specific Purchase or Work Order and do not extend to any other Purchase or Work Order unless the subsequent Purchase or Work Order is for the same physical address and location.

**2. Commencement of Work.** In furtherance of this Agreement, CAMILLO shall from time to time issue written instructions ("Purchase or Work Orders") to commence the Work to be performed at each specific job location. The Contractor shall have no authority to commence the Work at a job location until the Contractor has received the Purchase or Work Order for that job location from an authorized officer of CAMILLO. FIELD PERSONNEL, WHETHER EMPLOYED BY CAMILLO OR AN INDEPENDENT CONTRACTOR, SHALL HAVE NO AUTHORITY TO ISSUE WORK ORDERS AND CAMILLO WILL NOT RECOGNIZE ANY SUCH ORDERS FOR PAYMENT. All Purchase or Work Orders issued under this Agreement are nontransferable and non-assignable, and Contractor shall not subcontract all or part of the Work contemplated by this Agreement without providing ten (10) days' prior written notice to CAMILLO and receipt of approval in writing from CAMILLO. No assignment or subcontracting will diminish in any way the Contractor's obligations under this Agreement.

**3. *Performance of the Work.*** Contractor's commencement of the Work prescribed in a specific Purchase or Work Order shall be deemed as Contractor's: (i) agreement to complete the Work in accordance with the terms of this Agreement and (ii) acknowledgment that Contractor has inspected the job location and approves of all requirements set forth in the Purchase or Work Order. Contractor shall be thoroughly familiar with the Plans and Specifications as such affect the Contractor's Work and shall keep a copy of such plans on each job location while the Work is in progress. Contractor shall perform the Work designated in any Purchase or Work Order in a timely manner, that in no way delays, damages or compromises the work or activities of any others, and fully consistent with the Plans and Specifications and the requirements of this Agreement. In the event Contractor shall not so perform the Work or otherwise fails to comply with this Agreement, despite one or more requests by CAMILLO to remedy such deficiency, CAMILLO shall have the right to terminate the Work and declare Contractor in breach of this Agreement. Contractor shall coordinate with CAMILLO all Work scheduled under each Purchase or Work Order and cooperate with other contractors. Contractor shall be responsible for inspecting the job location and any work of another contractor that may affect the Contractor's own Work, and report in writing to CAMILLO all deficiencies or defects prior to commencement of any Work. Absent written notice to CAMILLO of any deficiencies, the Contractor shall be deemed to have accepted such work for inclusion into the Contractor's Work.

**4. *Contract Price.*** The prices and payment schedules set forth in a Purchase or Work Order are applicable to Work performed under that specific Purchase or Work Order. If terms relating to pricing, quantities or other specifications are set forth in the attached Price List which is part of this Agreement, those requirements shall remain in effect unless modified by any specific CAMILLO issued Purchase or Work Orders. Approved Amendments to the Price List shall be applicable only to new jobs started after the date of such CAMILLO issued Amended Price List. Notwithstanding the foregoing, CAMILLO shall have no obligation to issue any Purchase or Work Orders. Future Purchase or Work Orders may be terminated or discounted at any time.

**5. *Payment/Liens.*** If the Work is to be performed in stages, the price shall include progress payments for each stage as prescribed in the Work Order. At all times during the performance of this Agreement, CAMILLO shall be entitled to hold, for all Work in progress, statutory retainage in accordance with the laws of Texas. If CAMILLO is apprized that any payments remain due to Contractor's sub-tier suppliers or contractors after any payments are made by CAMILLO, the Contractor shall (i) procure a bond to indemnify CAMILLO against such claims or related liens in accordance with Chapter 53, Subchapter H of the Texas Property Code, or (ii) refund to CAMILLO all monies (including necessary and reasonable attorney's fees and court costs) required by CAMILLO to discharge the claim or any related lien. Failure to satisfy the foregoing requirement will authorize CAMILLO to withhold or off-set funds otherwise payable to Contractor under any Purchase or Work Order, in addition to any other remedy afforded CAMILLO hereunder or at law.

**6. *Right of offset.*** CAMILLO shall have the right to offset any costs incurred or potentially to be incurred to remedy any deficiency and the amount offset shall not be considered as available payments or funds belonging or payable to Contractor.

**7. *Independent Contractor Status.*** Contractor shall perform the Work as an independent contractor, having the sole right to control the details of and manner for performance of the Work save and except that the same must be performed in accordance with the plans and specifications. Contractor acknowledges that this and all Purchase Orders and Work Orders are Lump Sum Contracts and that Contractor shall be solely responsible for withholding taxes, social security taxes, and state unemployment taxes for Contractor's employees, agents or subcontractors, as well as all applicable sales taxes or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work. No Taxes will be collected or paid by CAMILLO under this Agreement.

**8. *Warranties.*** Contractor shall perform the work in a good and workmanlike manner. The end result of Contractor's Work shall substantially comply with the Plans and Specifications, any applicable codes and statutory warranty standards that CAMILLO must meet. Contractor further warrants to CAMILLO and the prospective purchaser (and subsequent owners) of the residence to which the Work relates (herein collectively referred to as the "Homeowner") that all labor performed and materials furnished by Contractor shall be free of defect for a period of at least one (1) year, with an extended warranty of two (2) years for plumbing, electrical, heating, cooling, ventilating systems (exclusive of appliances and equipment warranted by the manufacturer), and a further extended warranty of ten (10) years on all foundation systems, beams, girders, lintels, columns, walls, partitions, floor systems, roof framing systems and other load bearing systems and components from the date that CAMILLO conveys the residence in which the Work has been incorporated (herein referred to as the "Warranty Period"). Contractor agrees to make all repairs and correct such defects under the foregoing warranty within eight (8) hours of notice of such defect in an emergency and within forty-eight (48) hours of notice of such defect on a non-emergency basis. If Contractor fails to perform warranty service as required herein, CAMILLO, at its sole discretion, may undertake the repair of defects in or replace warranted Work through its own employees or through the employees of a third party and Contractor shall reimburse CAMILLO for all costs and expenses incurred in repairing or replacing warranted Work upon demand. The performance/fulfillment of any warranty repair responsibilities by CAMILLO or any other third party will not affect,

minimize or in any way obviate the Contractor's warranty obligations, the Contractor's indemnity provided for herein, or the right of CAMILLO to request the Contractor to perform warranty services in the future. Contractor shall furnish all warranties and/or guarantees by manufacturers on appliances and equipment and shall further furnish all certificates required by any municipality and/or VA and/or FHA.

**9. Subdivision Rules.** Contractor shall comply fully with all rules, regulations and restrictive covenants governing the subdivision in which the Work is performed, including, but not limited to, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed, (ii) governing storage and safeguarding of materials on the job location, and (iii) regulating trash pick-up, waste collection and environmental remediation at the job location. Contractor is responsible for any fines and/or penalties assessed by any subdivision's governing entity and/or any municipality related to violations of the foregoing and/or any government code or requirement.

**10. Governmental Requirements and Workplace Safety.** Contractor acknowledges its obligation to comply with all applicable federal, state, local and county ordinances, regulations, codes and standards, including but not limited to the immigration laws and regulations as well as the requirements of the Williams-Steiger Occupational Safety and Health Act of 1970, as amended, as well as the training and record keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., or similar laws or regulations. The Contractor also agrees to implement a workplace safety program. CAMILLO is providing a copy of its Safety Standards as a guidance tool for Contractor's own safety program to ensure that CAMILLO's safety standards are met. However, Contractor acknowledges that CAMILLO shall not be responsible for the implementation or monitoring of any safety program for or by the Contractor, it being Contractor's legal and contractual obligation to perform the Work in a safe manner so as not to endanger any of Contractor's employees, CAMILLO's employees or any third parties. **CONTRACTOR FURTHER AGREES TO INDEMNIFY, DEFEND (WITH COUNSEL ACCEPTABLE TO CAMILLO) AND HOLD CAMILLO HARMLESS FROM THE PAYMENT OF ANY PENALTY IMPOSED UPON OR DAMAGES SUFFERED BY CAMILLO AS A RESULT OF CONTRACTOR'S FAILURE TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS.**

**11. Reporting Requirements.** Contractor shall notify CAMILLO of all warnings, fines, notices or other alleged infractions imposed by any applicable federal, state, local and/or county ordinances, regulations, codes and standards within 24 hours of Contractor's receipt of same unless said notice requires remedy or compliance within a shorter time period under which circumstance CAMILLO shall be notified within 4 hours or the time period allotted for compliance, whichever is shorter. Contractor shall notify CAMILLO of any injuries that occur on CAMILLO's work site immediately. Contractor shall provide copies of any citations, incident reports or other documentation upon CAMILLO's request. Contractor agrees to willingly participate in any work site investigation and will forward any and all information that is relevant to the alleged incident or investigation upon CAMILLO's request. Contractor agrees to notify CAMILLO immediately of any inspections by any governing agency with sufficient time for CAMILLO to participate in the inspection should it deem the same necessary. In addition, upon execution of this Agreement, Contractor shall inform CAMILLO of any, fines, penalties, notices, warnings or other alleged infractions imposed by any federal, state, local and/or county ordinances, regulations, codes and standards within the last three (3) years. Failure to abide by the conditions set forth herein, may lead to termination of Contractor's work for CAMILLO.

**12. CONTRACTOR'S RELEASE/INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY RELEASES AND FURTHER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD CAMILLO, ITS CORPORATE AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE HOMEOWNER (HEREIN COLLECTIVELY REFERRED TO AS THE "INDEMNITEE") FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTIONS, SUITS OR OTHER LITIGATION (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES) OF EVERY KIND AND CHARACTER INCLUDING THOSE BY THE HOMEOWNER, THE CONTRACTOR OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO, PERSONNEL FURNISHED BY THE CONTRACTOR OR ITS LICENSEES) ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY (HEREIN COLLECTIVELY REFERRED TO AS THE "LOSS") IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH (i) A BREACH OF THE WARRANTIES PROVIDED HEREIN BY THE CONTRACTOR; (ii) THE WORK PERFORMED OR TO BE PERFORMED BY THE CONTRACTOR AND CONTRACTOR'S PERSONNEL, SUBCONTRACTORS, AGENTS, AND LICENSEES; OR (iii) ANY NEGLIGENT ACTION AND/OR OMISSION OF THE INDEMNITEE RELATED IN ANY WAY TO THE WORK, WHETHER THE INDEMNITEE IS NEGLIGENT IN WHOLE OR IN PART, AND EVEN WHEN THE LOSS IS CAUSED BY THE SOLE FAULT OR NEGLIGENCE (INCLUDING ACTS OR OMISSIONS THAT ARE CHARACTERIZED AS NEGLIGENCE PER SE, NEGLIGENCE PREMISED ON STRICT LIABILITY, OR OTHERWISE) OF THE INDEMNITEE. ANY PAYMENTS BY CONTRACTOR UNDER THIS PARAGRAPH ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. IN NO EVENT SHALL THE SCOPE OF THIS INDEMNITY BE LIMITED BY THE AVAILABILITY OF OR COVERAGE BY CONTRACTOR'S INSURANCE.**

**13. General Liability Insurance.** In order to assist in the fulfillment of the foregoing indemnification provisions, Contractor agrees to carry Commercial General Liability Insurance on an Occurrence Basis Form containing a per occurrence limit of no less than \$1,000,000, and an aggregate limit of no less than \$2,000,000 protecting against bodily injury, property damage (Broad Form) and personal injury claims arising from the exposures of including but not limited to (i) premises operations; (ii) products and completed operations including materials designed, furnished and/or modified in any way by Contractor; (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) property damage resulting from explosion, collapse, or underground (x, c, u) exposures. Such coverage shall otherwise be on such forms and with such companies as CAMILLO may require, will be carried continuously during the term of this Agreement with insurance companies licensed to do business in the State of Texas and such insurance policy shall reflect that CAMILLO is an additional insured for all purposes to include, but not limited to, the Work. This insurance shall provide for a waiver of subrogation and contain an endorsement specifying that the insurance provided by the Contractor shall be considered primary, and any insurance carried by CAMILLO shall be considered excess, as may be applicable to claims arising out of this Agreement. The Contractor shall provide evidence that such insurance is in force by furnishing CAMILLO with a policy certificate of insurance outlining the requirements and a copy of the specific Waiver of Subrogation. The policy shall contain a clause to the effect that the policy shall not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to CAMILLO. The foregoing amounts and types of insurance are minimum requirements, and Contractor should make an independent determination of the amounts and types of insurance which it deems reasonably necessary in connection with performing the Work. Failure of the Contractor to obtain liability coverage as set forth herein, shall result in CAMILLO's placement of Contractor on Inactive Status. Inactive Status shall mean that the Contractor will not be allowed to access a CAMILLO worksite or collect any money for work in progress or performed until proof of insurance is presented to CAMILLO's management. Contractor, at all times, remains solely responsible for providing its own general liability insurance, or any other insurance, under this Agreement.

**14. Workers Compensation Insurance.** CAMILLO does not provide Workers Compensation Insurance or Workers Compensation benefits for Contractor or its employees. If requested, Contractor will furnish CAMILLO with Certificates of Insurance showing Contractor to be covered by Workers' Compensation Insurance in such amounts and types of coverage as CAMILLO may specify. It is Contractor's sole responsibility to: (1) Assume all expenses for any job injury or illness occurring to Contractor or any of his employees; (2) provide safe working procedures for Contractor's employees; and (3) comply with the requirements of the Occupational Safety and Health Act of 1970 (OSHA).

**15. Subcontractors.** Contractor's employment of a subcontractor to perform any of the Work must be approved in advance, and in writing, by CAMILLO. Contractor agrees and shall ensure that any such subcontractor shall indemnify, defend and hold CAMILLO harmless in the same manner as Contractor and meet all insurance requirements imposed on Contractor. Prior to the subcontractor's commencement of the Work, Contractor shall obtain a signed agreement from the subcontractor agreeing to indemnify, defend and hold CAMILLO harmless, commensurate with the degree of coverage and indemnification required above between CAMILLO and Contractor, and provide CAMILLO with evidence of satisfactory insurance.

**16. Clean Job Site.** Contractor shall ensure that the job location is kept clean and orderly, with all materials and equipment properly and safely stored and secured when not in use. All refuse shall be disposed of safely, properly and in accordance with this Agreement.

**17. Remedies.** Contractor expressly agrees that payments otherwise due Contractor from CAMILLO may be withheld and all costs incurred by CAMILLO shall be charged against all monies due Contractor under any and all Work Orders issued pursuant to this Agreement if:

(a) To remedy any work performed by the Contractor pursuant to this Agreement that is determined by CAMILLO to be defective or incomplete and is not remedied as soon as practicable;

(b) If CAMILLO determines that Contractor failed to pay for any labor, materials or equipment furnished to Contractor by its employees, subcontractors or other third parties;

(c) Another contractor's work is damaged by an act for which CAMILLO determines the Contractor, his employees, agents or subcontractors are responsible;

(d) Claims or liens are filed against the job location which reference or relate to Contractor;

(e) Contractor fails to timely perform, or to pay the costs and expenses of warranty service that CAMILLO determines is an obligation of the Contractor; or

(f) CAMILLO determines that Contractor failed to keep the job location clean and orderly, or failed to comply with any other provision of this Agreement.

In the event that CAMILLO shall become entitled to retain any sums due Contractor under any Work Order, CAMILLO, at its sole discretion, shall be entitled to cause the Work to be performed by others, and may apply any sums then due Contractor against such costs of completion related costs and damages which costs shall include legal fees and expenses. **In the case of any breach of this Agreement or other Dispute (as defined below), the prevailing party**

shall be entitled to recover its damages, costs of Court, expert witness fees and any necessary and reasonable attorney's fees.

**18. Mediation-Arbitration.** Contractor and CAMILLO agree that all disputes, controversies or claims arising out of or relating to the Work, any warranties (express or implied) relating thereto, or any issues or matters arising out of or related to this Agreement, or questions as to its interpretation including any breach thereof (herein referred to collectively as a "Dispute") may be submitted to non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association where the parties will endeavor to settle the Dispute in an amicable manner. IN THE EVENT THE CONTRACTOR AND CAMILLO ARE UNWILLING OR UNABLE TO RESOLVE THE DISPUTE BY MEDIATION, THE DISPUTE SHALL BE SUBMITTED TO BINDING ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATION SHALL BE GOVERNED BY TEXAS LAW AND THE U.S. ARBITRATION ACT, 9 U.S.C. §§ 1-16, TO THE EXCLUSION OF ANY PROVISIONS OF STATE LAW THAT ARE INCONSISTENT WITH APPLICATION OF THE FEDERAL ACT. THE SUBMISSION TO MEDIATION OR ARBITRATION OF ANY DISPUTE ARISING DURING CONSTRUCTION SHALL NOT DELAY OR OTHERWISE AFFECT THE CONTINUING PERFORMANCE OF THE WORK. ARBITRATION HEARINGS SHALL BE HELD IN HOUSTON, TEXAS. CONTRACTOR SHALL INCLUDE THE REQUIREMENT OF THIS PROVISION IN ALL SUB-CONTRACTS IT MAY ENTER INTO FOR ANY PORTION OF THE SUBLET WORK.

**19. Scope of Agreement/Miscellaneous.** This Agreement and any attached Addenda and the Plans and Specifications provided by CAMILLO herein and/or in the individual Purchase or Work Orders issued shall constitute the entire understanding between Contractor and CAMILLO and shall prevail over any conflicting provisions contained in proposals, invoices or releases presented by Contractor. There are no other agreements, oral or written, by and between the parties. This Agreement shall remain in effect until terminated in writing, irrespective of time intervals when no Work is being performed by Contractor under a current Purchase or Work Order. Any failure of CAMILLO to enforce any of the terms and provisions of this Agreement shall not constitute a waiver of such required performance or any future performance by Contractor under this Agreement. The parties hereto have participated fully in the negotiation and preparation of this Agreement and, accordingly, this Agreement shall not be more strictly construed against either Contractor or CAMILLO. The terms and provisions of this Agreement are intended solely for the benefit of CAMILLO, Contractor and the Homeowner, and shall not inure to the benefit of any other third person or entity not a signatory to this Agreement. Time is of the essence with respect to performance of Contractor's and CAMILLO's obligations under this Agreement.

**20. Notices.** All notices to be sent to Contractor shall be sent to the address shown above. All notices to be sent to CAMILLO shall be sent to the address shown below. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given if delivered by hand, sent by recognized overnight courier (such as Federal Express), transmitted via facsimile transmission or mailed by certified or registered mail, return receipt requested, in a postage pre-paid envelope. Notices personally delivered or sent by overnight courier shall be deemed given on the date of receipt, notices sent via facsimile transmission shall be deemed given upon transmission and confirmation of receipt and notices sent via certified mail in accordance with the foregoing shall be deemed given when delivered (whether accepted or refused) as established by the U.S. Postal Service return receipt.

I CERTIFY THAT I HAVE READ AND UNDERSTAND THIS INDEPENDENT CONTRACTOR AGREEMENT, AND THAT THERE ARE NO OTHER AGREEMENTS EITHER ORAL OR WRITTEN.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date").

CAMILLO PROPERTIES LLC

**CONTRACTOR**

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

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

Name/Title: \_\_\_\_\_

**Name/Title:** \_\_\_\_\_

CAMILLO NOTICE ADDRESS:  
Camillo Properties LLC  
Attn: Legal Department  
13141 Northwest Fwy.  
Houston, TX. 77040