

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement") is made and entered into effective as of _____, 201_ (the "Effective Date"), by and between **DIRT ON DEMAND, LLC**, a Florida limited liability company (the "Company"), and _____ (the "Contractor").

RECITALS

WHEREAS, the Company is the owner and operator of a business that purchases, handles and transports soil, sand, gravel, clay, fill, rock, dirt, and other earth materials ("Material") and desires to engage the Contractor to provide services to the Company upon the terms and conditions set forth in the Agreement; and

WHEREAS, the Contractor is knowledgeable in the trades or skills necessary to provides the services, and desires to provide services to the Company upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the parties hereto, intending to be legally bound, covenant and agree as follows:

1. **Engagement.** The Company hereby engages the Contractor to provide services to the Company, and the Contractor hereby accepts such engagement, upon the terms and conditions set forth in this Agreement. The services to be provided by the Contractor hereunder will be provided on an as-needed basis, as requested by the Company, in its discretion. The "Services" are defined on Exhibit A, which is incorporated herein. To the extent that the Company shall have any parent company, subsidiaries, affiliated corporations, limited liability companies, partnerships, or joint ventures (collectively, the "Related Entities"), the Contractor shall, on the same terms provided herein, perform the Services for these entities to the same extent as for the Company. The Contractor accepts this engagement and agrees that it will complete its work in accordance with the standards and policies established by the Company from time to time, while performing Services.

2. **Term.** Subject to the terms and conditions of this Agreement, the engagement of the Contractor under this Agreement shall commence on the Effective Date and shall continue until the Agreement is terminated by the Contractor or Company. The Agreement may terminated by either party, with or without cause, upon written notice to the other.

3. **Independent Contractor.** At all times during the Contractor's engagement, the Contractor will act as an independent contractor on an at-will basis. The Contractor will not be considered an employee of the Company for any purpose. Moreover, it is expressly agreed by the parties that no agency relationship is, or will be deemed to have been, created by this Agreement, and no party will by reason of this Agreement, have the power or authority to bind any other party contractually or otherwise. The Contractor will be solely responsible for the payment and reporting of any and all federal and state taxes and withholdings due on amounts paid hereunder, and Company will not withhold any amounts for federal, state or local income taxes or taxes, assessments or withholding liabilities, and the Contractor will indemnify and hold Company harmless from and against any costs, damages or liabilities relating to any such taxes, assessments or withholdings. In addition to the foregoing, nothing set forth in this Agreement shall be construed as creating a partnership or joint venture between the Contractor and the Company.

4. **Consideration; Cash Fee.** As compensation for the Contractor's Services and as consideration for the Contractor's covenants contained in this Agreement, the Company shall pay the Contractor a fee according to the terms set forth on Exhibit B, attached hereto and made a part hereof, which may be amended from time to time upon the mutual agreement of the parties, (the "Fee"). The Fee shall be paid by the Company within thirty (30) days of the presentation of an invoice for the Fees due. In the event that there is a delay in the receipt by the Company of payment for the work that gave rise to the Services, the Contractor acknowledge that at times the time for the Company to make the payment shall be reasonably extended to allow for the Company to first be paid by the principal which hired the Company to complete the work. The Contractor acknowledges that when required by law, the Contractor will receive IRS Form 1099s with respect to the Fee paid to the Contractor pursuant hereto, and the Contractor will be responsible for the payment of all taxes on such Fee.

5. **Representations and Warranties by the Contractor.** The Contractor represents and warrants to the Company that (A) the execution and delivery by the Contractor of this Agreement do not, and the performance by the Contractor of the Contractor's obligations hereunder will not, with or without the giving of notice or the passage of time, or both: (i) violate any judgment, writ, injunction, or order of any court, arbitrator, or governmental agency applicable to the Contractor, or (ii) conflict with, result in the breach of any provisions of or the termination of, or constitute a default under, any agreement to which the Contractor is a party or by which the Contractor is or may be bound, (B) the Contractor has any and all licenses, permits and/or approvals required and/or necessary to render the Services and contemplate the transactions contemplated by this Agreement. The Contractor agrees that, in performing services for the Company, the Contractor will not knowingly use any patented inventions, trade secrets, confidential information or proprietary information obtained from third parties, including any prior employer or any other organization or individual.

6. **Insurance Requirements.** The Contractor shall maintain insurance policies for automobile liability, and comprehensive public liability and property damage in amounts and with insurers acceptable to the Company which shall cover any act or failure to act by the Contractor in connection with the Services. Each policy shall include a minimum coverage of \$1,000,000 per incident and \$2,000,000 in the aggregate. The Contractor shall deliver certificates of coverage with respect to any policy as may be requested from time to time by Company.

7. **Confidential Information.**

(a) The Contractor has acquired and will acquire information and knowledge respecting the intimate and confidential affairs of the Company, which for this purpose includes all subsidiaries and affiliates, including without limitation, confidential information with respect to the Company's lists of clients (which includes potential clients that have expressed interest in the Company's products or services, or which the Company has specifically targeted the offer of its products or services), suppliers, licensors, licensees, partners, investors, affiliates or others, training methods and materials, financial information, client lists, inventions, object or source code, software, formulas, designs, drawings, engineering, hardware configuration information, business methodology, processes, production methods and techniques, promotional materials and information, marketing information, trade secrets or know-how, and any other scientific, technical, trade or business data or secret or similar matters treated by the Company as confidential or proprietary (the "Confidential Information"). Accordingly, the Contractor covenants and agrees that during the Contractor's engagement by the Company (whether during the Term hereof or otherwise) and at any time thereafter, the Contractor shall not, without the prior written consent of the Company, disclose to any person, other than a person to whom disclosure is reasonably necessary or required by this Agreement in connection with the performance by the Contractor of the Contractor's duties hereunder, any Confidential Information obtained by the Contractor while engaged by the Company.

(b) The Contractor agrees that all memoranda, notes, records, papers or other documents and all copies thereof relating to the Company's operations or business, some of which may be prepared by the Contractor, and all objects associated therewith in any way obtained by the Contractor shall be the Company's property. This shall include, but is not limited to, documents and objects concerning any client lists, contracts, price lists, manuals, mailing lists, advertising materials, and all other materials and records of any kind that may be in the Contractor's possession or under the Contractor's control. The Contractor shall not, except for the Company's use, copy or duplicate any of the aforementioned documents or objects (except for the purpose of performing Contractor's duties) nor remove them from the Company's facilities, nor use any information concerning them except for the Company's benefit, either during the Contractor's engagement or thereafter. The Contractor covenants and agrees that the Contractor will deliver all of the aforementioned documents and objects, if any, that may be in the Contractor's possession to the Company upon termination of the Contractor's engagement, or at any other time at the Company's request.

8. **Covenant Not to Compete.**

(a) The Contractor covenants and agrees that during the Contractor's engagement by the Company (whether during the Term hereof or otherwise), and thereafter for a period of two (2) years following the expiration of this Agreement or the termination of the Contractor's engagement with the Company, the Contractor will not:

(i) directly or indirectly engage in, continue in or carry on the business of any corporation, partnership, firm or other business organization which is now, becomes or may become a competitor of the Company or any business substantially similar thereto, including owning or controlling any financial interest in, any corporation, partnership, firm or other form of business organization which competes with or is engaged in or carries on any aspect of such business or any business substantially similar thereto; or

(ii) consult with, advise or assist in any way, whether or not for consideration, any corporation, partnership, firm or other business organization which is now, becomes or may become a competitor of the Company in any aspect of the Company's business during the Contractor's engagement with the Company, including, but not limited to: advertising or otherwise endorsing the products of any such competitor; soliciting clients or otherwise serving as an intermediary for any such competitor; or loaning money or rendering any other form of financial assistance to or engaging in any form of business transaction whether or not on an arms' length basis with any such competitor; or

(iii) solicit business of the same or similar type being carried on by the Company, from a client of the Company, whether or not the Contractor had personal contact with such person during and by reason of the Contractor's engagement with the Company; or

(iv) solicit, employ, offer to employ, or otherwise engage as an Contractor, independent contractor, or otherwise, any person who is or was an Contractor of the Company at any time during the Term, or in any manner induce or attempt to induce any Contractor of the Company to terminate the Contractor's engagement with the Company; or

(v) engage in any practice the purpose of which is to evade the provisions of this Agreement or to commit any act which is detrimental to the successful continuation of, or which adversely affects, the business or the Company.

(b) In the event a court of competent jurisdiction determines that the provisions of this covenant not to compete are excessively broad as to duration, geographic scope, prohibited activities or otherwise, the parties agree that this covenant shall be reduced or curtailed to the extent necessary to render it enforceable.

(c) For the purposes of this Section 7, the term "Company" shall be deemed to include the Company, as well as its subsidiaries and affiliates.

9. **Essential and Independent Covenants.** The Contractor's covenants in Sections 7 and 8 of this Agreement are independent covenants, and the existence of any claim by the Contractor against the Company under this Agreement or otherwise will not excuse the Contractor's breach of any covenant in Sections 7 and 8.

10. **Enforcement and Remedies.** In the event of any breach of any of the covenants set forth in Sections 7 and 8, the Contractor recognizes that the remedies at law will be inadequate and that in addition to any relief at law which may be available to the Company for such violation or breach and regardless of any other provision contained in this Agreement, the Company shall be entitled to equitable remedies (including an injunction) and such other relief as a court may grant after considering the intent of Sections 7 and 8. Additionally, the period of time applicable to any covenant set forth in Sections 5 and 6 will be extended by the duration of any violation by the Contractor of such covenant. In the event a court of competent jurisdiction determines that any of the covenants set forth in Sections 7 and 8 are excessively broad as to duration, geographic scope, prohibited activities or otherwise, the parties agree that the covenant shall be reduced or curtailed to the extent, but only to the extent, necessary to render it enforceable.

11. **Indemnification.** For and in consideration of the Company's agreements contained herein, the Contractor hereby agrees to indemnify each of the Company, the Related Entities, and their respective partners, members, managers, affiliates, directors, officers, employees, representatives and agents (each being an "Indemnified Party"), from, and agrees to defend and hold such Indemnified Party harmless against, any and all losses, liabilities, charges, damages, expenses and fees which may be asserted against such Indemnified Party arising out of, resulting from, or related in any way to a breach of any representation, warranty, covenant or agreement of

the Contractor contained in or made pursuant to this Agreement, any facts or circumstances constituting such a breach, or arising out of the Contractor conduct while performing the Services.

12. **Notices.** For purposes of this Agreement, notices and all other communications provided for herein shall be in writing and shall be deemed to have been duly given when hand-delivered, sent by facsimile transmission (as long as receipt is acknowledged), or mailed by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the address or facsimile number for each party set forth on the signature page hereto, or to such other address or facsimile number as either party may have furnished to the other in writing in accordance herewith, except that a notice of change of address shall be effective only upon receipt.

13. **Miscellaneous.** No provision of this Agreement may be modified or waived unless such waiver or modification is agreed to in writing signed by both of the parties hereto. No waiver by any party hereto of any breach by any other party hereto shall be deemed a waiver of any similar or dissimilar term or condition at the same or at any prior or subsequent time. This Agreement is the entire agreement between the parties hereto with respect to the Contractor's engagement by the Company, and there are no agreements or representations, oral or otherwise, expressed or implied, with respect to or related to the engagement of the Contractor which are not set forth in this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the Company, its successors and assigns, and the Contractor and the Contractor's heirs, executors, administrators and legal representatives. The duties and covenants of the Contractor under this Agreement, being personal, may not be delegated or assigned by the Contractor without the prior written consent of the Company, and any attempted delegation or assignment without such prior written consent shall be null and void and without legal effect. The parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative, the Agreement shall be construed with the invalid or inoperative provision deleted and the rights and obligations of the parties shall be construed and enforced accordingly.

14. **Counterparts; Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. **Governing Law; Resolution of Disputes.** The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of Florida, without regard to principles of choice of law or conflicts of law thereunder. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against either of the parties in the courts of the State of Florida, Hillsborough County, or, if it has or can acquire jurisdiction, in the United States District Court located in Hillsborough County, Florida, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on either party anywhere in the world. In the event it shall become necessary for either party to take action of any type whatsoever to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all attorneys' fees, costs, and expenses, including all out of pocket expenses that are not taxable as costs, incurred in connection with any such action, including any negotiations, mediation, arbitration, litigation, and appeals.

16. **Construction.** Notwithstanding the fact that this Agreement has been drafted or prepared by one of the parties, each of the parties confirms that both it and its counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the parties. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

17. **Waiver of Jury Trial.** **THE CONTRACTOR AND THE COMPANY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT TO A JURY TRIAL IN ANY LAWSUIT BETWEEN THEM THAT ARISES AT ANY TIME OUT OF THIS AGREEMENT OR THE CONTRACTOR'S ASSOCIATION OR ENGAGEMENT WITH THE COMPANY, WHETHER AT LAW OR IN EQUITY, WHETHER BASED ON A CLAIM OR COUNTERCLAIM ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM OR COUNTERCLAIM, AND INCLUDING CLAIMS UNDER TORT, CONTRACT, CORPORATE, AND OTHER LAWS.**

[Signatures on following page.]

[SIGNATURE PAGE TO INDEPENDENT CONTRACTOR AGREEMENT]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the day and year first above written.

The Company:

DIRT ON DEMAND, LLC, a Florida limited liability company

By: _____
Daniel J. Bergin, P.E.
President

Address: 3802 Ehrlich Road Ste. 110
Tampa, FL 33624

Contractor:

By: _____
Name: _____
Title: _____

Address: _____

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EXHIBIT A

Description of Services

Job Number	Load Location	Dump Location	Description of Material	Quantity of Material	Special Instructions	Other Instructions
1						
2						
3						
4						

The Company:

DIRT ON DEMAND, LLC, a Florida limited liability company

By: _____
Daniel Bergin
Manager

Address: 13711 Springer Land
Tampa, FL 33625

Contractor:

By: _____
Name: _____
Title: _____

Address: _____

EXHIBIT B

Fee

<u>Description</u>	<u>Amount</u>
Rate earned for each mile driven	\$ __. __
Rate earned for each ton of material transported	\$ __. __
Rate earned for each yard of material transported	\$ __. __

The Company:

DIRT ON DEMAND, LLC, a Florida limited liability company

By: _____
Daniel Bergin
President

Address: 3802 Ehrlich Road Ste. 110
Tampa, FL 33624

Contractor:

By: _____
Name: _____
Title: _____

Address: _____
