

CONSTRUCTION CONTRACT AGREEMENT

This Construction Contract Agreement (this "Agreement") is made as of the ____ day of _____ by and between _____, an individual located at _____ ("Owner") and _____, an individual located at _____ ("Contractor"). Owner and Contractor may each be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

WHEREAS, Contractor is a duly licensed general contractor in good standing, with contractor's license number _____; and

WHEREAS, Owner owns the property located at _____ (the "Property") and desires to have certain work performed by Contractor at the Property.

NOW THEREFORE, in consideration of the mutual promises and for other good and valuable consideration exchanged by the Parties as set forth in this Agreement, the Parties, intending to be legally bound, hereby mutually agrees as follows:

1. Description of Work. Contractor shall perform the work described in Exhibit A (the "Work"), in accordance with Owner's contract plans and specifications, attached as Exhibit B, this Agreement and any Change Order, as defined herein, (collectively, the "Contract Documents") at the Property.

2. Contract Price and Payments. Owner agrees to pay Contractor for the Work the total amount of \$_____ (the "Contract Price"). Payment of this amount is subject to additions or deductions in accordance with any mutually agreed to changes and/or modifications in the Work, and the other documents to which this Agreement is subject. Payment for the Work will be by cash, according to the following schedule:

- (a) \$_____ deposit, due upon the execution of this Agreement.
- (b) \$_____ due every week from the date of this Agreement.
- (c) \$_____ due upon _____.
- (d) \$_____ due upon _____.
- (e) \$_____ balance due upon completion of the Work.

3. Certificate of Completion. Upon completion of the Work, Contractor shall notify Owner that the Work is ready for final inspection and acceptance. When Owner finds the Work acceptable and this Agreement fully performed, Contractor shall issue Owner a "Certificate of Completion" stating that the Work has been completed in accordance with the Contract Documents and the entire balance of the Contract Price is due and payable. Owner shall make the final payment within ____ days after receiving a Certificate of Completion. Owner by making final payment waives all claims except those rising out of: (a) any faulty Work appearing after completion; (b) any Work that does not comply with the Contract Documents; and (c) outstanding claims or liens. Contractor, by accepting final payment, waives all claims except those previously made in writing, and which remain unsettled at the time of acceptance.

4. Materials and Labor. Contractor shall provide and pay for all labor and equipment, including tools, construction equipment, machinery, transportation and all other facilities and services, and all materials as described in Exhibit C necessary for the completion of the Work. All materials shall be good quality and new, unless the Contract Documents require or permit otherwise. Contractor may substitute materials only with the prior written approval of Owner.

5. Starting and Completion Dates. The Work under this Agreement shall begin on _____, and shall be completed by _____.

6. Instructions. Owner shall give all instructions to Contractor, and shall furnish all necessary surveys for the Work. Unless otherwise provided in the Contract Documents, Owner shall secure and pay for all necessary easements, assessments or other approvals necessary for permanent structures or permanent changes in existing structures or facilities which are necessary to complete the Work.

7. Licenses and Permits. Contractor shall obtain all licenses and permits necessary for proper completion of the Work. Contractor is responsible for the cost of any necessary permits or licenses.

8. Laws and Regulations. Contractor shall perform the Work in a workmanlike manner. Contractor shall comply with all applicable federal, state, and local laws, regulations and ordinances, and any safety requirements of Owner (the "Applicable Laws") in the performance of the Work. Contractor shall promptly notify Owner upon discovery of any variance between the Applicable Laws and the Construction Documents.

9. Supervision of Construction. Contractor shall be solely responsible for and shall supervise and direct all construction under this Agreement. Contractor shall provide competent and suitable personnel to perform the Work and shall at all times maintain good discipline and order at the Property. Contractor will at all times take all reasonable precautions for the safety of its employees and the public at the Property. Contractor agrees to assume full responsibility for the acts, negligence, and/or omissions of its employees and any subcontractors and their employees.

10. Record Documents. Contractor shall maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, and the like in good order and annotated to show all changes made during construction, which will be delivered to Owner upon completion of the Work.

11. Utilities. Contractor shall pay for all permanent electric, water, phone, cable, sewer and gas service as needed to perform the Work. Contractor shall pay for the installation, connection and removal of all temporary utilities on the Property during the performance of the Work. All temporary utilities shall conform and adhere to the Applicable Laws.

12. Hazardous Materials. Except as otherwise provided in the Contract Documents, Contractor shall be responsible for all Hazardous Materials brought to the Property by Contractor. Hazardous Materials shall include radioactive materials, asbestos, polychlorinated biphenyls, petroleum products, crude oil, flammable materials, chemicals or solvents known to cause cancer or reproductive toxicity, pollutants, contaminants and toxic substances which are restricted, prohibited or regulated by any agency of government in its manufacture, use, maintenance, storage, ownership or handling. If Contractor discovers any Hazardous Materials on the Property, Contractor shall immediately notify Owner and may cease working until the material or substance has been rendered harmless. Owner shall defend, indemnify and hold harmless Contractor, any subcontractors, and their respective agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from contact with the Hazardous Substance in performance of the Work resulting in bodily injury, illness or death, or injury or property damage, *provided* such claim, damage, loss or expense is not the result of any negligent act or omission by the party seeking such indemnity.

13. Warranty. Contractor warrants that the Work shall be in accordance with the Contract Documents and free from material structural defects. Contractor shall redo or repair any Work not in accordance with the Contract Documents or any defects caused by faulty materials, equipment or workmanship for a period of ____ (__) year(s) from the date of completion of the Work.

14. Condition of the Property. Contractor agrees to keep the Property and adjoining driveways free and clear of waste material and rubbish. Contractor shall confine the storage of materials and equipment and the operations of employees to the Property, and shall not unreasonably encumber the Property with materials or equipment. Contractor shall be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the Property as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the Property clean and ready for occupancy by Owner.

15. Inspection. Owner shall have a right to inspect the Work at any time and request that Contractor promptly correct any Work that is defective or does not conform to the Contract Documents. If required, the Work shall be inspected and certified by the appropriate state or local agency or health officer at each necessary stage.

16. Right to Stop Work. If Contractor fails to correct any defective Work or repeatedly fails to perform the Work in accordance with the Contract Documents, Owner shall have the right to order Contractor to stop performing the Work, or any portion thereof, until the cause for such order is eliminated.

17. Subcontracts. Contractor shall furnish to Owner a list of names of subcontractors proposed to perform principal portions of the Work. Contractor shall not employ any subcontractor to whom Owner reasonably objects. A subcontractor, for the purposes of this Agreement, shall be a person with whom Contractor has a direct contract for work at the Property. All contracts between Contractor and subcontractor shall be in accordance with the terms of this Agreement and the Contract Documents.

18. Work Changes. Owner reserves the right to order changes to the Work in the nature of additions, deletions or modifications, without invalidating this Agreement, and agrees to make corresponding adjustments in the Contract Price and time of termination if applicable. All changes will be authorized in a written "Change Order" signed by Owner and Contractor, which shall be incorporated by reference herein.

19. Other Contractors. Owner reserves the right to enter into other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work shall not be impeded, and shall give them access to the Property as necessary to perform their contracts.

20. Indemnification. Contractor agrees to defend, indemnify and hold harmless Owner and its agents and employees, from and against all claims, actions, liabilities, suits, demands, injuries, obligations, damages, losses, settlements, judgments, fines, penalties, costs and expenses, including reasonable attorneys' fees, arising out of any negligent act or omission by Contractor, a subcontractor or anyone directly or indirectly employed by them in the performance of the Work resulting in bodily injury, illness or death, or for property damage, including loss of use, unless caused by the sole negligence or willful misconduct of Owner.

21. Contractor's Insurance. Contractor agrees to maintain at its own expense during the entire period of construction at the Property:

A. General Liability Insurance. Such general liability insurance as will protect Contractor from claims for property damage and bodily injury, with limits of liability not less than \$_____ [minimum amount of general liability insurance] for each occurrence.

B. Workers' Compensation Insurance. Such workers' compensation and employee insurance as required by law.

C. Automobile Liability Insurance. Such automobile liability insurance with limits of liability not less than \$ _____

Contractor shall name Owner as an additional insured. Proof of such insurance shall be filed by Contractor with Owner within a reasonable time after execution of this Agreement.

22. Time of Essence. All times stated in this Agreement or in the Contract Documents are of the essence. Contractor agrees that such times are reasonable for performing and completing the Work.

23. Liquidated Damages. In the event the Work is not completed by the date set forth in Section 5 of this Agreement, plus any extensions thereof as allowed in this Agreement, Owner shall suffer damages uncertain in amount and difficult to measure and prove accurately. Owner and Contractor agree that in lieu of actual damages, and not as a penalty, for delay in the performance of the Work, Contractor shall pay Owner the sum of \$_____ for each calendar day completion of the Work is delayed. Contractor agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages. Owner shall have the right to deduct any liquidated damages from any amount due or that may become due to Contractor. Liquidated damages shall be the sole and exclusive remedy for Owner for delay in completion of the work past the agreed upon date.

24. Extension of Time. The times stated in this Agreement may be extended for such reasonable time as Contractor may determine when performance of the Work by Contractor is delayed by a Change Order, labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions, unavoidable casualties, or other causes beyond Contractor's control or which justify the delay.

25. Early Termination for Breach of Contract.

A. Contractor's Termination. Contractor may, on ____ days' written notice to Owner, terminate this Agreement before the completion of the Work when for a period of ____ days after a progress payment is due, through no fault of Contractor, Owner fails to make the payment. On such termination Contractor may recover from Owner payment for all Work completed and for any loss sustained by Contractor for materials, equipment, tools or machinery to the extent of actual loss thereon, plus loss of a reasonable profit.

B. Owner's Termination. Owner may, on ____ days' notice to Contractor, terminate this Agreement before the completion of the Work, and without prejudice to any other remedy Owner may have when Contractor defaults in the performance of any provision of this Agreement, or fails to carry out performance of the Work in accordance with the provisions of the Contract Documents.

26. Disputes. Any dispute arising from this Agreement shall be resolved in the courts of the State of _____.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together, shall constitute one and the same document.

28. Headings. The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision of this Agreement.

29. Notices. Any notice or communication given or made to any Party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service or sent by certified or registered mail, return receipt requested, to the address stated above or to another address as that Party may subsequently designate by notice and shall be deemed given on the date of delivery.

30. Assignment. No Party hereto shall have the right to assign its rights or delegate its duties hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld.

31. Binding Effect. This Agreement shall be binding and enure to the benefit of the Parties and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.

32. Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of _____, without regard to its conflicts of laws provisions.

33. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable part had not been included in this Agreement.

34. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements.

35. Amendments. This Agreement may not be amended or modified except by a written agreement signed by the all of the Parties.

36. Waiver. No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by any Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other subsequent breach or violation.

37. Other.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Owner Full Name

Owner Representative Signature

Owner Representative Name and Title

Owner Signature

Owner Full Name

Contractor Full Name

Contractor Representative Signature

Contractor Representative Name and Title

Contractor Signature

Contractor Full Name

Exhibit A

Exhibit B

Exhibit C

Exhibit D