

RESIDENTIAL CONSTRUCTION CONTRACT

Explanation

This generic form is intended for contractors and homeowners in Utah residential construction projects. This form is optional. If you decide to use it, you may agree in writing to change or delete any provision, and it is recommended that the contractor and homeowner read, understand, complete, and sign each page.

Disclaimer & Waiver

This form is provided "as is" without any representations or warranties. The form is not designed or intended for use in the sale of real estate or commercial construction projects. This form is a generic document, not customized to specific needs. By providing this form, the Utah Division of Professional Licensing has no intention of furnishing legal or other professional advice to any contractor, homeowner, or anyone. If you use the form in any way, you waive any potential claims against the Utah Division of Professional Licensing for any reason for your or anyone else's rights. If you have questions about the contract or its effect, please consult an attorney for legal advice.

Table of Contents

Parties, Effective Date of Agreement, and Summary Description of Project.....	1
Scope of Work.....	2
Price and Payment.....	3
Schedule.....	5
Selections and Changes.....	6
Construction Standards and Inspections.....	6
Subcontractors, Employees, and Suppliers.....	7
Insurance.....	7
Contractor's Warranty.....	7
Safety.....	8
Indemnity.....	8
Termination.....	9
Negotiation, Mediation, Litigation.....	10
Owner's Representations.....	11
General.....	11
Fixed Price Addendum – Section 3.1.....	14
Cost Plus Addendum – Section 3.1.....	15
Exhibit "A" Plans.....	17
Exhibit "B" Change Order.....	18

RESIDENTIAL CONSTRUCTION CONTRACT

If signed by both parties, this is intended to be a legally binding contract between Contractor and Owner for construction work on a residence.

In its original form, the builder or "Contractor" and the resident or "Owner" may agree to change or delete this contract's provisions so long as the change or deletion is written.

The Contractor or Owner need not use this form and can elect to form a different agreement.

This form is not intended to be used for real estate sales or commercial construction projects.

If you have questions about the effect of signing this contract or for legal advice, please consult an attorney.

AGREEMENT:

This RESIDENTIAL CONSTRUCTION CONTRACT ("**Agreement**") is hereby entered into on the below Effective Date by and between Contractor and Owner for the residential construction work specified below ("**Project**") to be located at the Property. The Contractor and Owner agree to all the following provisions.

"Effective Date":_____

1 PARTIES AND PROPERTY

"Owner": _____

Mailing Address: _____

Email Address: _____

Phone: _____

"Contractor": _____

Mailing Address: _____

Email Address: _____

Phone: _____

Utah Contractor License Number: _____-5501

"Property" Address: _____

2 SCOPE OF WORK

2.1 Summary Description of Project. Owner must pay for and Contractor must construct the Project, summarily described below:

2.2 Scope of Work. The scope of work for the Project, and any specific exclusions therefrom, is described in detail on the plans and specifications (the "**Plans**") attached as Exhibit "A" and included as a part of this Agreement and are binding to the Contractor and the Owner as if it was included here.

2.3 Conflicts. If a conflict exists between any term of this Agreement and the Plans, the terms of this Agreement govern. If a conflict exists between the Plans and any specifications included within the Plans, the specifications govern.

2.4 Contractor's Duties.

2.4.1. Contractor must furnish the material, labor, equipment, tools, and supervision ("**Work**") necessary to construct and complete the Project in compliance with the Plans. The Plans, this Agreement, any addendum(s) to the Agreement, and all Change Orders after the signing of this document, are the "**Contract Documents**."

2.4.2. Contractor must immediately inform Owner in writing of any material
(a) discrepancies, errors, or omissions in the Plans and
(b) unanticipated changes in the conditions.

Contractor may not proceed with any work affected any material discrepancies, errors, omissions, or unanticipated changes in the conditions until Owner directs Contractor to do so.

2.4.3 Before beginning Work on the Project, Contractor must timely obtain any governmental or community association approvals of the Plans and all permits for construction of the Project. Owner must pay the cost of the approvals and permits, as described in the *Fixed-Price Addendum* or *Cost-Plus Addendum*.

2.4.4. If the Plans or a public authority with jurisdiction over the Projects require tests or inspections, Contractor must procure the tests and inspections and Owner must pay all costs and fees associated with the tests and inspections.

3 PRICE AND PAYMENT

SELECT ONE:

THIS IS A FIXED-PRICE CONTRACT (fill out and sign only the *Fixed Price Addendum*)

3.1 Fixed Price Addendum. The Parties agree that the Contractor must complete the Project and furnish all necessary Work for a fixed price, and therefore the terms and conditions in the *Fixed-Price Addendum*, attached hereto, will apply and is part of this Agreement.

THIS IS A COST-PLUS CONTRACT (fill out and sign only the *Cost-Plus Addendum*)

3.1 Cost-Plus Addendum. The Parties agree that Contractor will furnish the Work to complete the Project on a cost-plus basis, and therefore the terms and conditions in the *Cost-Plus Addendum*, attached hereto, will apply and is part of this Agreement.

3.2 Initial Deposit. Owner must pay to Contractor an initial deposit ("**Deposit**") of \$_____. The Contractor must

(a) apply or use the Deposit only as permitted in this Agreement, and

(b) credit the amount of the Deposit as a payment toward the total amount owed by Owner.

Any part of the Deposit the Contractor does not use to further the Project must be refunded to Owner.

3.3 Progress Payments.

3.3.1. On the _____ **day of every** _____, Contractor must present to Owner an invoice based on the actual and verifiable costs incurred to that date, including the Contractor's Fee, if applicable, less previous payments (the "**Progress Invoice**").

3.3.2. Owner must pay the full amount in a Progress Invoice no later than _____ **calendar days** after the day of Owner's receipt of the Progress Invoice.

3.4 Verification and Challenge. Owner may request Contractor to provide documentation to support the costs and calculations in any Progress Invoice, including documentation of the invoices of subcontractors and suppliers. If requested, Contractor must provide that documentation. Even if

Owner paid all or any portion of a Progress Invoice, Owner may notify contractor of any discrepancies within 30 days of the day Contractor provides the requested documentation. Once notified of any discrepancy, Contractor must work promptly and diligently with Owner to resolve the discrepancies and any incorrect balance in the amounts owed.

3.5 Recordkeeping.

3.5.1. Contractor must keep full and detailed accounts and records as necessary for proper financial management. Contractor must preserve these accounts and records for at least three (3) years after the final payment or the Substantial Completion Date, whichever is later.

3.5.2. Upon written request, Owner has right to review Contractor's accounts and records relating directly the Project and this Agreement, including books, correspondence, instructions, drawings, receipts, vouchers, memoranda, documentation in support of costs and calculations of invoices, and similar data. Contractor must

- (a) comply with Owner's written request within thirty (30) days of the day Contractor receives the request, and
- (b) respond promptly and diligently to subsequent reasonable questions and requests for explanations and interpretations of the records.

3.6 Assurance of Ability to Pay. At any time before final payment is due, Contractor may request reasonable evidence of Owner's continuing financial ability to pay for the Work necessary to complete the Project. If requested, Owner must provide this type of evidence. If the Owner's evidence of its ability to pay involves a loan or other financing, and if Contractor further requests it, Owner must provide Contractor with information about the loan and lender. Owner must also authorize Contractor to contact the lender to obtain reasonable information regarding the status of the loan.

3.7 Failure of Payment. If Owner fails to pay Contractor any amount due as set forth in this Agreement, Contractor may, only after providing seven (7) days written notice to Owner, suspend the Work until the Contractor receives the amount due. If the failure of payment remains unpaid for fourteen (14) days after the first written notice, Contractor may terminate this Agreement.

3.8 Final Punch List. After Contractor notifies Owner that the Work has reached the stage when Owner has legal occupancy and full use of the Project, with only minor incidental work or correction or repair remaining to be performed by Contractor ("**Substantially Complete**"), Owner may inspect the Work with Contractor. Within ten (10) days of the Contractor's above notification, Owner must provide to Contractor a complete and exhaustive list of items to be completed or corrected (the "**Punch List**") before the Owner will agree that the Project and all necessary work is complete. The Contractor must finish the Punch List and all other Work within twenty-one (21) days of receiving the Punch List.

3.9 Final Payment. Final Payment is due _____ **calendar days** after Contractor

- (a) completes all the Work, including the Punch List, in accordance with the Contract Documents,
- (b) provides Owner with completed releases of lien upon final payment for encumbrances associated with the Project in accordance with Utah Code, title 38, chapters 1a and 2 and other laws, and
- (c) makes available all records supporting the final cost of the Work if Owner requests to review under section 3.5, above.

3.10 Subcontractor Payment. Contractor must timely pay subcontractor(s) as required by Utah Code section 58-55-603 and other laws. If Contractor deems any subcontractor work as unsatisfactory or incomplete, Contractor must determine a reasonable amount of payment to be withheld from subcontractor payment until the Contractor deems the Work is satisfactory and complete. The amount Contractor may withhold must correspond proportionately to the amount of work remaining to be satisfied. Contractor must pay any subcontractor(s) withheld amount within ten (10) days after the work is completed or satisfied.

4 SCHEDULE

4.1 Commencement of the Work. Contractor must commence the Work **on or before the later of**

(a) _____; or

(b) within fifteen (15) calendar days after receipt of all building permit or other needed permits or approvals in accordance with section 2.4.3, above.

4.2 Substantial Completion Date. Contractor and Owner estimate that the Project is expected to be Substantially Complete on _____, 20____ ("**Substantial Completion Date**").

4.3 Disclosure of Schedule. With its first Progress Invoice, Contractor must provide Owner with a written estimated schedule for the Work needed to complete the Project, including any proposed subcontractors' activity, deadlines for Owner's decisions, milestones for delivery of materials, and estimated Substantial Completion Date. This schedule is expected to be a reasonable and general outline and will not be strictly binding on the Contractor.

4.4 Delay. If the Project is delayed by Owner or for any other reason beyond Contractor's reasonable control, then the Substantial Completion Date will be extended for a period reasonably equivalent to the time lost. Within a reasonable time after the Contractor knows, or by using reasonable diligence should know, of a delay, Contractor must notify Owner of the extension of time resulting from the justified delay. The extension of time must be based upon Contractor's reasonable determination of the delay period.

5 SELECTIONS AND CHANGES

5.1 Selections. If applicable in the Exhibit "A" Plans, Owner is entitled to make selections relating to the items listed in the Plans. If Owner's selection exceeds the allowance or estimate for an item, Owner will pay Contractor, without a Change Order, the extra cost associated with these selections. At Contractor's option, Contractor may require the Owner to pay the extra amount before or immediately upon completion of the Work related to the selections.

5.2 Changes. If Owner or Contractor requests, or one of the parties believes that a change to the Plans, Project, or this Agreement is necessary ("**Change**"), then the parties must comply with the following procedure to reflect a Change in the Work:

- (a) the Party requesting or noting the Change must provide the other party with a written description of the Change,
- (b) before proceeding with the Change, unless excused by an emergency involving safety or property damage, Contractor must provide Owner with a written estimate of the cost and time impact of the requested Change, and
- (c) if the Change is agreeable to both Parties, Owner and Contractor will execute a **Change Order** in the form attached to this Agreement as Exhibit "B", memorializing their agreement with (1) the Change, (2) any additional cost, and (3) any extension of the Substantial Completion Date.

6 CONSTRUCTION STANDARDS AND INSPECTIONS.

6.1 Standards for Construction: Contractor must construct the Project in compliance with government codes, regulations, and ordinances, in substantial compliance with the Plans, and in substantial compliance with any warranty. Contractor must also perform the Work in a good and workmanlike manner, and in a quality consistent with industry standards ("**Construction Standards**").

6.2 Compliance with the Plans. Contractor has no liability for

- (a) errors or omissions attributable to its compliance with the Plans prepared by Owner or an Owner's agent, or
- (b) for following instructions, directions, or rules of the Owner, an Owner's agent, or any community association or related entity, or a governmental entity or official.

6.3 Inspection Rights: Owner, at its expense, has the right to inspect the Project at reasonable times during normal business hours. While engaging in such an inspection, Owner may not interfere with the Work. Owner will indemnify Contractor from claims arising out of or relating to Owner's inspections. If Owner becomes aware of any material problem during any inspection, Owner will promptly notify Contractor.

7 SUBCONTRACTORS, EMPLOYEES AND SUPPLIERS.

- 7.1 Subcontractors. Contractor is entitled to select the subcontractors, employees, and suppliers who will work on or provide materials to the Project. Unless the parties agree otherwise in writing, Owner may not have any work performed on the Project by itself, its subcontractors, employees, suppliers, or agents until Contractor has completed all of its Work on the Project or this Agreement has been terminated.
- 7.2 Interference. Owner may not direct, supervise, or control the subcontractors, employees, or suppliers of Contractor and may not interfere with their Work.

8 INSURANCE

- 8.1 Insurance Coverage. Before commencing Work, and as a condition of payment, Contractor must have **general liability insurance** or **public liability insurance**, and any required **workers' compensation insurance**, with coverages that meet or exceed the requirements of Utah law including Utah Code section 58-55-302(2)(b) and Utah Administrative Code R156-55a-302d. This coverage must protect Contractor from bodily-injury or property-damage claims arising out of operations under this Agreement, whether the operations are by Contractor, Contractor's consultants or subcontractors, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
- 8.2 Owner Coverage. Contractor and Owner agree that Contractor **[] SHALL [] SHALL NOT** include Owner as an additional insured under the liability insurance policy. If Owner must be included an additional insured, then before starting Work, Contractor must provide a copy of the actual additional insured endorsement or blanket additional insured policy wording to the liability insurance policy that documents the Owner's additional insured status.
- 8.3 Proof of Insurance. Before commencing Work, and then at any time upon Owner's request, Contractor must provide Owner proof of Contractor's current insurance coverage that is required under this Agreement, such as a certificate of insurance with a list of the coverages that are in place and the limits of each policy.

9 CONTRACTOR'S WARRANTY

- 9.1 Contractor's Warranty. Contractor warrants that the Work will be in accordance with the Contract Documents and free from material structural defects. Contractor must return and repair any Work not in accordance with the Contract Documents for a period of one (1) year from the Substantial Completion Date ("**Warranty Period**"). All product warranties, if any, are deemed assigned from Contractor to Owner.
- 9.2 Cure of Defect. If a defect is discovered within the Warranty Period, then Owner must promptly notify Contractor in writing following the discovery of that defect, and must provide Contractor

with an opportunity to inspect and an opportunity to either cure the defect in a manner customary in the industry or to pay to Owner the cost of repair or replacement of the defect as estimated by Contractor.

10 SAFETY

- 10.1 Compliance with Safety Regulations. Contractor and its subcontractors must take all reasonably necessary safety precautions, including compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, or local.
- 10.2 Contractor Responsibility. Contractor is responsible for providing a safe job site and for the work performance and safety of all employees, personnel, equipment, and materials within the control of Contractor or its subcontractors. Contractor and its subcontractors must furnish all required safety equipment and ensure all of its employees and subcontractors' employees have and wear personal protective equipment in compliance with applicable safety requirements. Contractor must promptly provide Owner with written notice of safety hazard(s) or violation(s) found on the job site or of any injury to any person incurred on the job site.

11 INDEMNITY

- 11.1 General Indemnity. Contractor agrees to defend, indemnify, and hold harmless Owner and its agents from and against claims, damages, losses, injuries, liabilities, and expenses, including attorneys' fees and costs and expenses, arising out of or resulting directly or indirectly from any person's relation to the Work or this Agreement; provided, however, that Contractor owes no indemnity duty if the harm was caused by or results from the negligence of the Owner or its agents.
- 11.2 **NOTICE: Owner's Legal Protection Against Liens and Civil Actions.** An owner or subsequent owner who has fully paid their construction contract may be **protected from a lien** against their owner-occupied residence, and **protected from a civil action (lawsuit)** to recover money owed for qualified services a third party provided to the residence (for example, labor provided by a subcontractor, or construction materials provided by a supplier).
 Visit <https://dopl.utah.gov/residence-lien-recovery-fund/forms/> for information about this **legal protection** under Utah Code Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.
- 11.3 OSHA. Contractor must defend, indemnify, and hold Owner harmless from all Utah Occupational Safety and Health Division or other related claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Contractor's failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder.
- 11.4 Hazardous Materials. Owner represents that it is not aware of any hazardous materials or substances on the Property, including asbestos or polychlorinated biphenyl (PCB). If Contractor

encounters or in good faith believes that it has encountered hazardous materials or substances, Contractor may stop work and remove its employees from affected area(s) until the nature of the materials or substances has been determined, and, if necessary, removed or rendered harmless. Contractor has no duty to investigate or discover hazardous materials and is not responsible for hazardous materials unless brought onto the Property by Contractor. Owner must indemnify Contractor and its employees, officers, members, partners, agents, and representatives from any claims arising from or relating to hazardous materials or substances on the Property that were not caused by Contractor.

12 TERMINATION

12.1 Termination by Owner for Cause.

12.1.1. Owner may terminate this Agreement for cause if Contractor violates any material provision of the Contract Documents, or if Contractor:

- (a) refuses or fails to supply enough properly skilled workers or proper materials,
- (b) fails to pay subcontractors for materials or labor in accordance with the agreements between Contractor and the subcontractors,
- (c) persistently disregards laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction, or
- (d) fails to provide Owner, upon request, reasonable evidence that the Work will be completed by the Substantial Completion Date.

12.1.2. Before terminating for cause under this section 12.1, Owner must first provide Contractor seven (7) days written notice of the alleged cause and a reasonable opportunity to cure the alleged cause. If Contractor fails to commence and diligently continue with cure efforts, Owner may terminate this Agreement.

12.1.3. If termination based on any reason in this section 12.1 occurs, Owner may, without prejudice to any other rights or remedies,

- (a) take possession of the Property,
- (b) accept assignment of subcontracts,
- (c) finish the Work using reasonable methods, and
- (d) charge Contractor the costs Owner incurs in finishing the Work needed to complete the Project, in addition to the amounts due to Contractor.

Upon Contractor's request, Owner must furnish to Contractor a detailed accounting of the costs Owner incurs in finishing the Work needed to complete the Project.

12.2 Termination by Contractor for Cause.

12.2.1. Contractor may terminate this Agreement for cause if Owner breaches any material provision of the Contract Documents.

12.2.2. Before terminating for cause under this section 12.2, Contractor must first provide Owner seven (7) days written notice of the alleged breach. If Owner fails to cure the breach within seven (7) days receiving this notice, or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within seven (7) days, Contractor may terminate this Agreement.

12.3 Termination by Parties for Convenience. The parties may agree in writing to terminate this Agreement for convenience.

12.3.1. Before termination for convenience under this section 12.3, Contractor must

- (a) take actions necessary, or that Owner may direct, for the protection and preservation of the Work and Property, and
- (b) perform Work directed to be performed before the effective date of termination,; and
- (d) be entitled to receive payment for Work executed to the effective date of termination, including actual costs and fees, plus those costs necessary to satisfy the obligations incurred by Contractor as a result of the Work.

12.3.2. Upon the effective date of a termination for convenience under section 12.3, Contractor must

- (a) cease operations as agreed by the parties, and
- (b) terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

12.3.3. Contractor will be entitled to receive payment for Work executed to up to the effective date of termination, including

- (a) actual costs and fees,
- (b) costs necessary to satisfy the Contractor's obligations incurred as a result of the Work, and
- (c) costs necessary to satisfy the Contractor's obligations under this section 12.3

13 NEGOTIATION, MEDIATION, LITIGATION.

13.1 Negotiation Before Litigation. The parties must first attempt to resolve any dispute through good faith negotiation before commencing litigation, except when commencing litigation is necessary to preserve a lien or similar rights.

- 13.2 No Limitation of Rights. If a party waives or forgives another Party for a breach of this Agreement, it will not later constitute a waiver or a future breach.
- 13.3 Mediation Before Litigation. If sincere negotiation efforts are unsuccessful, then before commencing any legal action, other than to enforce this section 13, the parties **[I MUST I MAY** engage in non-binding mediation conducted by a jointly selected mediator in accordance with the Utah Uniform Mediation Act under Utah Code, title 78B, chapter 10. The Parties agree to use their best efforts to conduct the mediation within sixty (60) days of a mediation notice. The Parties will share the cost of mediation equally.

14 OWNER’S REPRESENTATIONS.

- 14.1 Authority to Contract. Owner warrants and represents that:
 - (a) it is currently the sole holder of legal and equitable title to the Property;
 - (b) there are currently no leases, restrictions, easements, covenants, rules, or regulations or other encumbrances on the Property that would prevent or inhibit construction of the Project on the Property as contemplated in the Plans;
 - (c) the Property complies with all zoning, planning, environmental, community association, and other building requirements; and
 - (d) all utilities necessary for completion of the Project are available at the Property and no easements are required to bring them to the Property.
- 14.2 Documentation Regarding Property. If Contractor requests in writing before Contractor’s duty to start construction, Owner must provide to Contractor:
 - (a) a copy of an owner’s title insurance policy demonstrating the accuracy of Owner’s Representations; and
 - (b) an updated survey showing all boundary lines, building lines, utility locations, easements, other encumbrances and improvements, if any, on the Property.

15 GENERAL

- 15.1 Time of Essence. Time is of the essence in this Agreement. Any extension must be agreed to in the form of a Change Order in accordance with section 5.2. Performance dates and times are not binding on inspectors, lenders, and others who are not parties to this Agreement, except as otherwise agreed to in writing by the non-party. Unless otherwise explicitly stated in this Agreement:
 - (a) performance under each part of this Agreement that references a day or date is required by 11:59 p.m. on the stated day or date;
 - (b) the term "days" or "calendar days" means calendar days, and a period stated in days or a longer unit of time shall be counted as follows:

- (i) exclude the day of the event that triggers the period (for example, receipt of a permit);
- (ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

15.2 Survival. If any clause or provision of this Agreement is held invalid, then the remaining clauses and provisions will remain in full force and effect.

15.3 Entire Agreement. The Contract Documents contain the entire agreement between the parties with respect to construction of the Project. All other agreements, oral or written, are hereby merged into and superseded by this Agreement. There are no other agreements that modify or affect the terms of this Agreement other than the documents included or referenced above. No amendment to this Agreement will be binding unless the amendment is in writing and signed by both parties. No verbal or other agreements modify or affect this Agreement.

15.4 Binding Effect. This Agreement is binding upon the parties and their heirs, successors, executors, administrators, and assigns.

15.5 Assignment. Neither party may assign or transfer this Agreement or any rights under this Agreement without the prior written consent of the other party.

15.6 Notices. All notices that may be required under this Agreement are to be in writing and delivered to the party: (a) in person; or (b) by email to the party's Email Address on the first page; or (c) mailed by certified mail, postage prepaid, to the party's Mailing Address on the first page. All notices will be deemed served upon delivery, successful transmission, or two (2) days following deposit of the notice in the U.S.P.S. mail.

15.7 Force Majeure. A party will not be considered in breach of or in default under this Agreement on account of, and will not be liable to the other party for, any delay or failure to perform its obligations by reason of fire, earthquake, storm, flood, explosion, riot, war, terrorism, legally declared pandemic, or similar event beyond that party's reasonable control (a "Force Majeure Event"); provided, however, if a Force Majeure Event occurs, the affected party must, as soon as practicable: (a) notify the other party of the Force Majeure Event and its impact on performance under this Agreement; and (b) use reasonable efforts to resolve any issues resulting from the Force Majeure Event and perform its obligations under this Agreement.

15.8 Attorney's Fees. If legal proceedings are brought or commenced to interpret or enforce the terms of this Agreement, and if it is so ordered by the court, the prevailing party will be entitled to recover from the other party all costs and expenses of those proceedings, including reasonable attorneys' fees.

15.9 Governing Law, Venue. The performance and interpretation of this Agreement will be governed in accordance with the laws of the State of Utah. Any litigation arising out of or in connection with this Agreement will be conducted in the County where the Property is located or where the defendant is located.

15.10 Authority to Execute. Each individual executing this Agreement on behalf of or as representative for an entity represents and warrants that the individual is duly authorized to sign and deliver this Agreement on behalf of the entity and bind the entity with its terms.

IN WITNESS WHEREOF Contractor and Owner hereby sign this Agreement, on their own behalf or through their duly authorized representative:

CONTRACTOR:

OWNER:

By: _____

Date: _____

Date: _____

Fixed-Price Addendum - Section 3.1

Use this Addendum if the Parties agree that Owner will pay on a Fixed Price basis

In a fixed-price contract, the Owner pays nothing more than a fixed price for the Project, to which the Owner and Contractor agree in advance. Any changes to a fixed price contract must be detailed through the completion of a Change Order, as outlined in Section 5.2 of this contract).

A. PROJECT COST. The price for all the Work up to and through the completion of the Project will be fixed at \$_____ ("**Contract Price**"), plus the costs associated with any Changes in the scope of the work as may be agreed to in writing in advance through Change Orders signed by the Owner and Contractor.

B. INCLUDED COSTS. All of Contractor's costs in performing the Work, including Contractor's payment to subcontractors, wages, supplies, equipment, insurance, cost of any building permits and other necessary permits, and all other costs will not be added onto the Contract Price.

CONTRACTOR:

OWNER:

By: _____

Date: _____

Date: _____

Cost-Plus Addendum - Section 3.1

Use this Addendum if the Parties agree that Owner will pay on a Cost-Plus basis

In a cost-plus contract, the initial agreed-upon price is only an estimate. The Owner pays: (1) the Contractors' actual costs of the Work for the Project (the "Actual Project Costs"); and (2) an extra payment for the Contractor's overhead and profit (the "Contractor's Fee").

- A. Estimated Project Cost. Contractor estimates the total cost of the Work to complete the Project to be \$_____. This "**Estimated Project Cost**" is only an estimate and is based upon the Plans. The total amount owed to Contractor for the Work may be higher or lower than the Estimated Project Cost in accordance with Contractor's actual and provable expenses.
- B. Payment of Actual Project Costs. Owner must pay Contractor "**Actual Project Costs**" incurred by the Contractor for the performance of the Work. A list of typical items included in the Contractor's Actual Project Costs are listed in Paragraph F below.
- C. Payment of Contractor's Fee. In addition to the Actual Project Costs, Owner must pay contractor a "**Contractor's Fee**" of _____% of the Actual Project Costs, for the Contractor's overhead and profit.
- D. Prices. Contractor must use reasonable efforts to obtain fair prices for labor and materials, in accord with typical competitive industry rates, subject to quality of work and materials considerations, availability, and market uncertainties. Any rebates or discounts received by Contractor will be passed on to Owner and be reflected in the Actual Project Costs.
- E. Guaranteed Maximum Contract Price.The Contract Price will not exceed \$_____ ("**Guaranteed Maximum Contract Price**"), subject to additions per Change Orders or as otherwise provided by this Agreement. Costs that cause the Guaranteed Maximum Contract Price to be exceeded will, subject to these additions, be paid by Contractor without reimbursement by Owner. The Guaranteed Maximum Contract Price is based on the Exhibit "A" Plans included in this Agreement.
- F. Definition of Actual Project Costs. The term "Actual Project Costs" means costs or expenses actually and reasonably incurred by Contractor, or for which Contractor actually and reasonably becomes obligated to pay, in connection with the construction or design of the Project, including,
 - a. Costs of all materials and supplies incorporated into the Project, including transportation and storage expenses;
 - b. Wages for labor in the direct employ of Contractor in the performance of work on or relating to the Project;
 - c. Salaries of Contractor's employees for the time that they spend in connection with the Project, whether on or off site;
 - d. Payments to subcontractors for work relating to the Project;

- e. Fees and expenses incurred for architectural, engineering, or consulting services relating to the construction or design of the Project;
- f. Costs of all employee benefits and taxes for items such as unemployment compensation, social security, or other benefits for the labor and employees;
- g. Costs, including transportation and maintenance, of equipment and hand tools not owned by workers employed by Contractor, which are employed in the construction of the Project;
- h. Payments for rental charges for machinery, equipment, facilities, or tools used in connection with construction of the Project, and payments for installations, repairs, replacements, dismantling, removal, lubrication, transportation, or delivery of those rental items;
- i. Other transportation costs incurred in connection with the construction of the Project;
- j. That portion attributable to this Agreement of premiums for insurance that is required by this Agreement or by law to be obtained or maintained by Contractor;
- k. Sales, use, gross receipts, or other taxes related to the Project, imposed by any governmental authority, to the extent that Contractor is responsible for such taxes;
- l. Permit fees, licenses, or tests that Contractor is required to obtain or reasonably obtains to design or construct the Project;
- m. Costs of corrective work on the Project to the extent not caused by Contractor or those for whom Contractor is responsible;
- n. Costs of electronic data transmission, internet wifi services, data processing services, or postage relating to work on the Project;
- o. Costs of removal of debris from the Project or Property;
- p. Costs associated with any Change Order or change as to which Contractor is entitled to payment under this Agreement;
- q. Legal Costs reasonably incurred in connection with the prosecution of the work required by this Agreement;
- r. Costs incurred in connection with selections permitted under this Agreement; and,
- s. Losses and expenses, not compensated by insurance, sustained by Contractor in connection with the work under this Agreement, provided they resulted from causes other than the fault or neglect of Contractor or those for whom Contractor is responsible.

CONTRACTOR:

By: _____

Date: _____

OWNER:

Date: _____

Exhibit “A” to Construction Contract

PLANS

Exhibit "B" to Construction Contract

CHANGE ORDER

Change Order # _____ Dated: _____

This is a Change Order to the **CONSTRUCTION CONTRACT with an Effective Date of**

_____ between _____ ("**Contractor**")

and _____ ("**Owner**").

1. Work: Describe the Change in the Work to be performed by Contractor:

(attach additional pages if appropriate).

2. Price: The **Contract Price** is [] **INCREASED** [] **DECREASED** by \$_____ as a result of this Change Order.

3. Payment: Any increase in the Contract Price relating to this Change Order will be paid as follows (see Sections 3.3 and 3.9, and payment Addendum):

4. Substantial Completion Date Adjustment: Because of this Change Order, the new estimated **Substantial Completion Date** (Section 4.2) is modified to :

_____, 20_____.

5. Other Terms: All other terms of the Agreement, including those relating to Change Orders and Warranties, apply to this Change Order and remain in full force and effect.

CONTRACTOR:

OWNER:

By: _____

Date: _____

Date: _____