

## Commercial Construction Agreement—

### Fixed Price Between Owner & General Contractor

***Purpose of the Form.*** This is a full version of an Agreement between a general contractor and owner. Special provisions have been inserted to favor the general contractor, as opposed to the owner. It can be used for any commercial project. It covers the situation of a lump sum or fixed-price contract.

***How to Fill-Out.*** All needed clauses are already included. Simply add the personal information as prompted in the blank spaces or lines.

Sample

# CONSTRUCTION AGREEMENT

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This Construction Agreement ("Agreement") is entered into on the date given below by the following:

**General Contractor:** (Company Name): \_\_\_\_\_  
(Address): \_\_\_\_\_  
Phone(s): \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Business is a:  
\_\_\_\_ Sole Proprietorship; \_\_\_\_ Partnership; \_\_\_\_ Corporation

Federal Tax I.D.# or S.S.# \_\_\_\_\_

and

**Owner:** (Name): \_\_\_\_\_  
(Address): \_\_\_\_\_  
Phone(s): \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

## RECITALS

WHEREAS the general contractor ("hereinafter "contractor") has agreed to perform construction services for the owner, specifically as to the project located at:

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and,

WHEREAS the parties wish to memorialize in writing their understandings pursuant thereto;

NOW, THEREFORE, in consideration of the mutual covenants set forth, and intending to be legally bound, it is agreed as follows:

1. **General scope.** Contractor agrees in conformity with the contract documents and the latest addition of all applicable building codes to perform, supply, furnish and pay for all labor, supervision, administration, material, equipment, drawings, transportation, fuel, energy, light, water, telephone service, tools, and other facilities, utilities, services, supplies and things necessary to fully and safely perform all work, or as may be directed by change order.
2. **Contract documents.** Contractor will perform its work in accordance with all contract documents, which are identified as follows:
  - (a) This Agreement
  - (b) Plans identified as:
  - (c) Specifications identified as:
  - (d) Schedule of Values/Cost Breakdown Sheet
  - (e) Addenda
  - (f) Other identified as:
  - (g) Other identified as:

If there is a conflict between the plans, specifications, or this Agreement, this Agreement is controlling. Contractor will faithfully comply with the contract documents, but is not responsible for errors or ambiguities in drawings prepared by others.

3. **Scope of work.** Contractor agrees to perform the following work:

The work will be performed under the general direction of the owner and his/her representatives. Unless otherwise agreed in writing, contractor's work shall include any customary and reasonable cleaning, finishing, and preparation work.

#### CLARIFICATIONS:

- a) **Grading & Excavation:** All excess soil to be left onsite; off-hauling of any soil to be billed on a time and material basis.
- b) **Drywall:** Drywall texture to be specified by Owners and price adjusted accordingly (i.e., smooth or light texture).
- c) **Cabinets:** Cabinets to be specified by Owners. Contract price to be adjusted accordingly when final design is determined.
- d) **Owners Option to Purchase:** The Owners have the option to supply the following items:

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e) Other:

f) Other:

These items shall be removed from the contract's overhead and profit and excluded from the contractor's warranty. Other contract line items shall only be removed from overhead and profit upon the mutual consent of both the owners and contractor.

**EXCLUSIONS:** Labor, material, and equipment for the following work is not included:

- a) Building permit fees.
- b) Local fees and taxes.
- c) Utility hook-up fees.
- d) Any bonds and/or assessments.
- e) Soil offhaul.
- f) Intercom system.
- g) Survey, testing, and/or engineering work/reports.
- h) Utility fees resulting from any unplanned upgrades mandated by any utility
- i) Any plan changes generated by the permit issuing agency during plan check.
- j) Additional requirements as a result of building inspections
- k) Custom millwork.
- l) Removal of filled ground or rock not removal by ordinary hand tools, unless heavy equipment is specified.

- m) Correction of out-of-plumb or out-of-level existing conditions.
- n) Correction of concealed substandard conditions or framing.

\_\_\_\_ Additional work description attached.

#### **ALLOWANCES:**

Attached as Exhibit \_\_\_\_ is an itemization of contract allowances. Allowances shall be adjusted up or down, and will either increase or decrease the contract price, without the need for a separate written and signed change order, based on the actual cost of construction. The allowances are estimated budgets only, and no representations or guarantees are made as to whether the actual price will be within that estimate.

**4. Price.** Contractor shall perform the work for the following price:

\$\_\_\_\_\_ based on the contract documents, plans, and specs, including allowances.

Note that a 5% contract contingency has been included in this contract price.

**5. Commencement.** Contractor shall commence, at such times and places as owner may designate.

**6. Plans, specifications, and permits.** This project will be constructed according to plans and specifications which have been examined and approved by owner. Contractor will obtain necessary building permits, but owner will be responsible for any assessments and charges required by public bodies and utility companies. In case of conflict, the specifications shall control over the plans, and the provisions of this contract shall control both. Additions to the plans and specifications resulting from revisions after commencement of construction shall result in extra compensation to Contractor. Additional costs occasioned by incomplete or ambiguous plans shall be the responsibility of owner.

**7. Payment.** Subject to the requirements of the owner's lender with respect to the timing of progress payments and the lender's draw request requirements, contractor shall every two weeks (the 1st and the 15th of each month) provide a progress payment draw request on a percentages of completion basis. Owner shall sign a written approval of such proposed progress draw requests within 24 hours after presentation. Extra work shall be submitted at the time of completion of such extras and is subject to the same payment requirements as scheduled draw requests. If the construction costs are paid by the owner's own funds, written approval of a proposed progress draw request shall be made within 24 hours after presentation with payment within \_\_\_\_\_ hours thereafter.

There shall be a down payment of \$\_\_\_\_\_ to cover actual and/or incurred costs for ordering materials, equipment, preliminary services, mobilization, review or preparation of plans, and preparation of contract arguments.

Final payment (including unpaid extras and retention) is due within \_\_\_\_calendar days after completion, regardless of any outstanding punch list.

Owner has the right, prior to making a progress or final payment to contractor, to secure a statement that all obligations to subcontractors and suppliers have been paid to date, or shall be paid upon receipt of funds.

In the event of the filing of a mechanic's lien by any subcontractors or suppliers, contractor will defend and hold owner harmless from any such lien or claim. Contractor agrees that monies received shall be used solely for labor and materials on this project and shall not be diverted to satisfy obligations on other contracts or projects.

Contractor agrees that monies received, other than the actual amounts due contractor, shall be used solely for the benefit of suppliers and subcontractors and shall constitute a trust fund for their benefit and shall not in any instance be diverted by contractor for any other purpose or project.

Ten percent (10%) shall be held on each draw as retainage and paid within five days of the date the building inspector issues his or her final sign-off on the project. Punch list and/or back-ordered items shall not be cause for nonpayment of the retainage. If a dispute arises as to items on a punch list (defects list), owner shall not be entitled to withhold more than the necessary and reasonable cost to correct them as evidenced by written estimates from others.

Upon final payment, the contractor shall provide the owners with unconditional lien releases for subcontractors and suppliers. As to any alleged deficiencies, Owners shall not be entitled to retain another contractor for such work, until providing five business days notice to contractor and allowing contractor a reasonable time to cure same with its own crew or another contractor of his/her choosing. If so cured, Owners shall have no further cause of action against contractor. If not so cured, and if owner retains another contractor, any back charges shall be at the same hourly rate, actual profit, and overhead (not to exceed the combined rate of 15%) charged by contractor, and only for the reasonable value of labor and materials customarily charged in the trade. Assuming said back charge is justified, and the expenses exceed the balance of the contract, contractor shall be liable for the difference. This shall be the owners' sole redress and compensation for any defects, loss, or damages pertaining to the project.

- 8. Time of performance.** Owners shall have the jobsite ready for commencement of the work no later than 30 days from the date of this contract and shall notify contractor of that fact. Commencement shall be within 72 hours of the securing of all building permits and the furnishing by the architect or designer of an approved construction set of drawings. Barring any material supply problems, owner or architect changes and substitutions, delay in payment, acts of neglect or omissions of owner or its representatives, delay occasioned by building inspectors, weather, site conditions, availability of subcontractors, plan check delays, variances and/or government approvals, delays occasioned by engineers and architects, as well as any other factors beyond the control of the Contractor, this project is estimated to be completed in approximately \_\_\_\_months.

Contractor agrees to keep fully informed as to the progress of the project and to faithfully prosecute its work at such times and in such order as owner considers necessary to keep the same sufficiently in advance of the other parts of the project and to avoid delay in the completion of the whole. Contractor shall follow the progress of the project, be prepared to commence work when notified, and maintain any reasonable progress schedule, as revised by owner.

Time is of the essence and upon default described in ¶ 7, Contractor may temporarily stop work. If there is non-payment after an additional 10 calendar days, a material breach has occurred and contractor may terminate this Agreement without breach. Costs for delay in stopping and re-mobilizing shall be an extra.

- 9. Change orders.** The contract price is based on the scope of the contract documents. Any changes to the work will cause the project cost to either increase or decrease, as appropriate. Contractor is entitled to extra compensation for a) conditions later discovered or which have changed and are either different from those indicated in this contract or not ordinarily encountered and not generally recognized as inherent in work of the character provided in this contract, b) alterations or deviations from the drawings; c) changes directed either by owner, plan checkers, building inspectors, the architect (who will not be considered the final arbiter of disputes), engineers, or any other persons; d) unusual or unanticipated ground conditions (such as fill, hard soil, rock or ground water), and d) other changes to the initial scope.

Change orders shall be in writing and signed by one of the owner's and contractor, but if contractor is directed to do the changed work and does so, with the owner not signing a change order, the writing requirement is waived and extra compensation is nevertheless allowed. Contractor may refuse to start work on extras if there is no signed change order or advance payment. The parties shall agree upon the nature of the work, additional time, and price before commencing such extras. In the absence of an agreement to the contrary, extras are the cost of labor (hourly rates under this contract), subcontracts, material, equipment, and subcontractors, plus \_\_\_\_ % P. & O.

If the owner or representative requests a change, but does not sign a written change order, contractor may confirm this change in writing and this shall be deemed authorization to perform work and be paid extra compensation. If changes have been performed which are not been compensated for by owner, this shall be grounds for contractor to temporarily cease work on the project.

This project is to be built precisely according to the plans and specifications. The owner is cautioned that one of the most frequent problems, sources of dispute, and cause of increased cost are changes made after the drawings have been approved. Although minor and infrequent changes are inevitable, they become expensive and delay the project if frequent change orders are made during construction. Changes in the form of add-ons or additions which require extra or more expensive labor and materials will increase the contract price. Changes which do not require extra or more expensive labor and materials (such as substitutions, trades, etc.) nevertheless result in increased hours and overhead, and will be billed extra on a cost plus basis (extra man/woman hours to implement the changes plus 15% profit and overhead). Changes are to be approved only by \_\_\_\_\_ and not any

other crew members, material suppliers, or subcontractors. In accordance with industry standards and to ensure a smooth-running project, the owner or representatives should communicate directly with the contractor and not material suppliers or subcontractors.

Prior to commencement of construction, owner shall have chosen all finish items, fixtures, and appliances. Contractor wishes owner to be satisfied with those choices. Changes and substitutions can be made (subject to additional cost as described hereunder); however, they should be made at least \_\_\_\_\_ days before planned installation for ordering and job coordination purposes.

**10. Completion and occupancy.** The date for substantial completion is the date the project passes final inspection by the building inspection department, which also shall serve as the date of commencement of all contractor service warranties. The issuance of a punch list (list of items to correct) shall not extend this completion date. Within five days thereafter, owner shall record a Notice of Completion, and if there is a failure to do so, owner hereby appoints contractor as owner's agent to sign and record the Notice of Completion. This agency is irrevocable and is coupled with an interest.

**Attached additional terms.** It's agreed the General Terms and Conditions section attached shall be binding upon the parties and incorporated into this Agreement.

IN WITNESS WHEREOF, the parties have caused this Construction Agreement to be executed by their duly authorized agents, effective as of the date below.

CONTRACTOR:

Company name: \_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

OWNER:

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



OWNER:

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Sample

## General Terms and Conditions

- 11. Bonus for early completion.** If contractor completes the project earlier than required by the terms of this Agreement, the owners will pay the contractor a bonus for early completion in the sum of \$ for each business day the actual completion precedes the schedules completion date.
- 12. Existing conditions.** The Owners have made known to contractor, prior to execution of this Agreement, all information of which it is aware as to surface and subsurface conditions in the vicinity of the project, which owner knows or has available including drawings, maps, reports, tests, written opinions, and any other information from technical advisors which might assist contractor in properly evaluating the extent and character of the work that may be required.
- Upon the contractor discovering differing site conditions that are a material variance from those indicated in the contract documents or from initial investigation, he or she shall promptly investigate the conditions and if they materially differ and cause an increase or decrease in the cost of or the time required for performance of this Agreement, an equitable adjustment in the contract price and the time for completion shall be made. Contractor shall have no obligation to perform any corrective or remedial work that would require the handling of or exposure to hazardous material.
- 13. Matching materials.** Contractor calls attention to Owner of the limitations of matching existing materials such as stucco, drywall, paint, wood, tile, flooring, concrete, roofing, interior woodwork, and the like, and therefore, exact duplication in matching, texture, and color cannot be guaranteed. Variations within industry tolerances will be considered acceptable.
- 14. Contractor's duties.** Contractor shall supervise and direct the work, using his/her best skill and attention and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the work. Contractor shall have the right to decide the time and order in which the various portions of the work shall be performed. Contractor shall also be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the project.
- Owner shall furnish all existing reports and/or surveys, point out boundaries, and pay for and insure there is full and legal access to the property, including zoning, variances, easements, and the availability of all necessary utilities.
- 15. Owner's duties.** Owner shall procure and keep in place either builder's risk, "all-risk", or homeowner's (fire) insurance with course of construction coverage, adding contractor as an additional insured. Both parties waive the right to subrogation. If the property is destroyed in whole or part by accident or calamity, any work to rebuild shall be an extra. Owner shall pay for all architectural and engineering costs, as well as permits and assessments. Owner shall be responsible to supply water, gas, sewer and electrical utilities and shall remove or protect any personal property.
- 16. Home solicitation.** This agreement is not subject to any state law governing home solicitation contracts. Additionally, this Agreement is made at the appropriate trade premises of contractor and is therefore not a home solicitation contract.
- 17. Delay.** The scheduled completion date is approximate only, subject to extension for the extra time to perform change orders, weather, site conditions, funding delays, availability of material/subcontractors, material shortage and/or ordering problems, delays in issuance of building permits, acts of neglect or omission by owner or representatives, acts of God, strikes, failure of owner to make payments, inspections or changes ordered by a building inspector, and any other factors beyond the control of the contractor.
- 18. Asbestos and hazardous waste.** This Contract excludes the testing, demolition, or removal of any hazardous material, and if encountered, contractor shall stop work and allow owner to obtain qualified abatement contractors.
- 19. Toilet facilities.** Contractor is to provide a rented portable toilet for all workers and subcontractors.
- 20. Concrete, stucco, and drywall.** Contractor is not responsible for any surface cracking in new concrete,

stucco, and/or drywall which develops after installation, providing proper installation procedures have been followed. Any rework of these surfaces shall be billed to the Owner on a time and materials basis. If, however, the contractor has improperly installed any of these items, he/she shall be held responsible for all costs associated with repair or replacement of said item(s).

- 21. Signs and promotions.** Contractor is authorized to display a sign until completion of work. Contractor is also authorized to take and display photographs of the project, as well as allow other clients to enter the project area for promotional purposes.
- 22. Communication.** To maximize job efficiency, owner shall communicate with contractor and not directly with subcontractors. Contractor assumes the risk of profit or loss and (except for change orders) may not increase the price. Likewise, owner may not request Contractor's internal financial information on costs or profit/loss.
- 23. Work Stoppage.** Time is of the essence as to payment under this contract, and timely payments are an express condition precedent to further performance. If payment is not made as described herein, upon five days written notice to owner and the failure to make payment, contractor may stop work or terminate the contract and recover from the owner payment for all work performed and any loss sustained, as well as reasonable profit and other damages.

Draw requests may be presented without back-up documentation or receipts. However, such backup information shall be available for inspection by owner during normal business hours. Contractor's profit, overhead, original estimate, and tape-offs, margins/mark-ups for materials and contractor costs, and time sheets (if any) of the principal owners of contractor shall be confidential.

All sums owing and unpaid shall accrue interest at the rate of 2% per month, or the maximum rate permitted by law, whichever is less, from the due date. In the event owner fails to promptly make payments under this Agreement, it would be difficult to fix the resulting damages which may be suffered by contractor due to the varying rates of interest and inflation as late payments impair capital and vendor relationships. As liquidated damages, parties therefore agree that the 2% per month shall be assessed, as a reasonable endeavor to estimate fair compensation, and this is considered to be a valid liquidated damages provision. Payment is not dependent upon the consent of any architect, engineer, or designer chosen by owner.

- 24. Contractor--owner disputes.** The interpretation and/or enforcement of this Agreement, as well as any and all disputes between the contractor and owner, on any basis, whether at law or equity, and pertaining to any cause of action, whether equitable, contractual, or tortious, and pertaining to any alleged damages, shall be determined by private binding arbitration, without the right to appeal.

The binding arbitration shall be conducted by a single arbitrator. Parties waive discovery with the exception of 1) each side, within fifteen days of the arbitration demand, shall informally exchange documents in their files, with the exception of privileged material (copying costs of the files in excess of 100 pages to be paid by the requesting party), 2) each side having the right to propound a single set of document requests not exceeding 35 items, 3) each side having one day per party set for depositions of the parties and any percent in witnesses, 4) each side having one day set for depositions of any experts, and 5) subpoenas of witnesses and documents. The parties confer jurisdiction upon the arbitrator for any and all pre-judgment provisional remedies, including but not limited to attachment, lien or stop notice foreclosure, temporary restraining orders, preliminary injunctions, rescission, reformation, and specific performance. Motions in limine, not exceeding five per side, shall be presented ten days before the date set for arbitration.

The agreement and appointment of an arbitrator shall be made within twenty days after arbitration demand. All proceeding shall be conducted within four months of that arbitration demand. Only one continuance, for cause, may be granted. Any award from the arbitrator shall become a judgment of any court of competent jurisdiction. All parties will pay equally the cost of the arbitrator. The prevailing party is entitled to its ½ share paid of such costs. The arbitration hearing shall be within 30 miles of the job site. If this action proceeds to a court action, any discovery through court shall be preserved. Any arbitration or court proceeding between the parties shall receive independently of, and without consolidation with, any proceedings between other persons or entities and shall not be otherwise dependent upon the outcome of any such proceeding.

- 25. Assurances.** If at anytime either party shall have reasonable doubt as to the ability of the other to perform its duties because of financial, labor, or other reasons, the party seeking assurances may request from the other written assurances of ability to perform and shall be provided same within five business days of receipt of demand. The failure to so provide shall be a default.
- 26. Termination.** Upon the material breach of either party, the other may terminate this Agreement if there is no commencement of performance (or payment by owner) after 10 days' written notice. Contractor's remedy is limited to the percentage of services performed but unpaid to that date, together with interest and \_\_\_\_\_ % profit and overhead for the balance of the contract. Owner's remedy is limited to the reasonable cost to correct defective work below industry standards and to complete the contract, less the amounts owed contractor. The cost to complete by another contractor shall not exceed the contract balance. If work is removed and replaced, contractor is liable only for the percentage attributable to the specific problem areas. If work is repaired, the back charge shall not exceed the original cost of the item under this Agreement. If the court or arbitrator finds contractor liable for any problems, it shall split the difference between the estimates offered by the parties. Neither party is liable for any other damages or expenses (example: emotional distress or punitive), whether direct or consequential. Contractor will not be in default or liable for damages, attorney's fees or costs, if access to do work or correct same is denied.
- 27. Punch lists.** Within 5 calendar days of completion, owner may submit a written punch list which contractor shall commence working upon within 7 calendar days. Even with such punch list, Owner shall be required to make final payment, but may hold back 150% of the cost of all punch list work, to be paid to contractor immediately as that work is completed.
- 28. Bankruptcy.** A material breach shall have occurred if contractor dissolves its business, has entered against it an order for relief in an involuntary bankruptcy proceeding, or commences a voluntary bankruptcy proceeding, makes an assignment for the benefit of creditors, becomes insolvent, or fails to pay its obligations as they become due.
- 29. Warranties.** All labor and materials furnished shall be of a quality, nature and within industry standards and tolerances. New materials shall be furnished unless otherwise agreed by owner. Contractor warrants the dwelling constructed or remodeled against defects and within such industry standards and tolerances, in the original material and workmanship for one year from the date of receiving a final from the building and inspection department. Contractor will repair or replace, at its option, and at no charge, any component of the project which shall be found to be defective. All claims for correction of defects must be made within the warranty period by written notice. This warranty is given and accepted in lieu of all other warranties, whether express or implied by law, including the implied warranty of merchantability and fitness for purpose and waves all other consequential or incidental damages. The exclusive remedy for any such defects is the replacement or repair of any part of the work which is found to be defective during the warranty period. Contractor will not be responsible for damage caused by other parties in the improper use or operation of installed items, except subcontractors employed by contractor.
- 30. Insurance.** Before commencing work on the project, contractor and its sub contractors of every tier will supply to owner duly issued certificates of insurance, naming contractor as an "additional insured," showing in force the following insurance for comprehensive general liability, automobile liability, and worker's compensation:
- comprehensive general liability with limits of not less than \$\_\_\_\_\_ per occurrence;
  - automobile liability in comprehensive form with coverage for owned, hired, and non-owned automobiles;
  - worker's compensation insurance in statutory form.
- All insurance binders must contain a clause indicating that certificate holders be given a minimum of 10 days written notice prior to cancellation.
- 31. Access to work and utilities.** Owner shall grant free access to work areas for workmen and vehicles, and shall allow areas for storage of materials and construction debris. Unless otherwise specified, owner shall supply electric power to jobsite at their expense. Owner agrees to keep

driveways clear and available for movement and parking of trucks during normal work hours. Unless otherwise restricted by local ordinance, normal work hours shall be Monday through Friday, \_\_\_\_\_ a.m. to \_\_\_\_\_ p.m. Contractor and workmen/women shall not be expected to keep gates closed for animals or children. Contractor shall protect adequately the work performed under this contract, but shall not be held responsible for damage to driveways, walks, lawns, trees, and shrubs by movement of trucks and materials unless due to contractor's negligence. Owner agrees to remove or to protect any personal property, inside and out, including shrubs and flowers which cannot be protected adequately by contractor, and contractor shall not be held responsible for damage to or loss of said items. Contractor shall endeavor to perform services as orderly and quietly as possible, without disturbing the lifestyle of owner or adjacent property owners.

- 32. Materials, equipment, and tools.** All materials, fixtures, appliances, and all other items furnished and incorporated into the job shall remain the property of the contractor, notwithstanding same being delivered to the site or being installed unless and until, same are paid in full by owner. Contractor shall be responsible for placing materials, equipment, fixtures, appliances and tools in a reasonable place of safekeeping at the jobsite and bears the risk of loss, except as to any actual negligence of owner or representatives. Upon default, contractor may reclaim the materials, fixtures, appliances, but not cause substantial damage in any such removal. Contractor is not responsible in any defects of material, appliances, or fixtures chosen by the owner.
- 33. Supervision.** The principal owner(s) of contractor's business shall endeavor to be on site for reasonable periods to supervise construction. However, these persons shall not be required to be on site during any particular days or times. Their supervision need not be continuous. Owner is advised that contractor has other projects that may be ongoing at the same time. The principals of contractor may employ a foreman/woman or job superintendent as necessary to perform this supervision and represent the contractor, including receiving communications, directing work, and making decisions during the course of construction.
- 34. Emergencies.** If there is an emergency situation which requires appropriate action to remedy or mitigate, contractor is presumed authorized to go forward with such action, including the incurring of additional costs, as long as reasonable and in good faith, and as long as notification is given to owner as soon as practical under the circumstances.
- 35. Safety.** Contractor shall take all responsible safety precautions pertaining to its work and conduct. Contractor shall strictly comply with all applicable laws, ordinances, codes, rules, regulations and orders issued by any public authority, whether Federal, state, or local, including, but not limited to, the Federal Occupational Safety and Health Act.
- 36. Completion defined.** Substantial completion shall be defined as the date the project passes final inspection by the building inspection department, whether or not occupied by owner. Owner's occupancy shall constitute acceptance of contractor's work and waiver of any claims against the contractor.
- 37. Housekeeping.** Contractor shall perform its work in such a manner that the premises are clean, orderly, and free from debris. Upon completion, contractor shall remove all the equipment and excess materials from the site, clean up any and all refuse and debris and generally leave the site in good condition.
- 38. Indemnification.** Both parties shall indemnify, protect, defend, and hold harmless each other (including its principals, officers, directors, sureties, agents, and employees) from all loss and damage, against all claims; demands; personal injury, death, or property damage; lawsuits; arbitrations; mechanic's liens; administrative proceedings; debts; awards; fines; judgments; interest; attorneys' fees; and costs caused or contributed to by any act, omission, misconduct, negligence, whether passive or active, of the other.
- 39. Subcontracts.** Contractor may subcontract portions of this work to subcontractors. Contractor shall not assign or sell any earnings under this subcontract without the express written consent of owner.
- 40. Interest.** All unpaid amounts shall bear interest at 2% per month, commencing 30 days after the due date.

41. **Lien waivers.** Upon satisfactory payment for any portion of the work, contractor shall, upon request, furnish owner or representative lien waivers on the next progress draw for it's work and subs/suppliers, for the portion of the work for which payment has been made.
42. **Compliance with laws.** Contractor shall comply with all applicable Federal, state, and local laws, regulations, standards, and recognized trade practices for the protection of workers and other persons about the work area, including without limitation those governing labor, safety, health, and sanitation. Contractor shall promptly comply with any directives relating to safety.
43. **Warning signs and barricades.** Contractor shall provide, erect, and maintain proper warning signs, signals, lights, barricades, and fences along the line of its work and shall take all other necessary precautions for the protection of the work and safety of the public. Contractor shall comply with all safety regulations imposed by owner, owner, and the applicable laws.
44. **Independent contractor.** Contractor is an independent contractor and employing unit, subject to all applicable Social Security and unemployment compensation statutes, and shall make reports and payments for such taxes as required.
45. **Severability.** Should any provision of this Agreement be in conflict with any law, ruling, or regulation, then such provisions shall continue in effect only to the extent it remains valid. If any provision becomes inoperative, the remaining provisions of this agreement shall remain in full force and effect.
46. **Venue.** The laws of the state of the project shall govern as to all matters arising under or related to this Agreement. Any action, proceeding, or arbitration shall be brought in \_\_\_\_\_ county, State of \_\_\_\_\_. Provided however, if the prime contract requires a different venue, that provision shall take precedence.
47. **Remedies.** The remedies provided in this Agreement are not exclusive, and contractor shall be entitled to pursue any other remedies provided at law or equity. A waiver by contractor of any breach shall not constitute a waiver of any further or additional breach.
48. **Entire agreement.** This Agreement is the final and entire agreement of the parties and supersedes all prior or contemporaneous oral or written communications, understandings, representations, or agreements. There are no promises, terms, conditions, or obligations other than those contained in this Agreement. This subcontract shall not be modified in any way except in writing signed by the party against whom the modification is asserted.
49. **Successors.** This Agreement shall be binding on the parties and their successors, heirs, and assigns.
50. **Notices.** Any notices required to be given by either party may be sent to the addresses first given above, and can be in the form of personal delivery, mail, e-mail, or fax.
51. **Reserved.**
52. **Reserved.**
53. **Reserved.**

**Exhibit “A”**

**Sample**

## Attachments

Sample