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## AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Contractor Agreement (Agreement) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_,

by and between \_\_\_\_\_, (Owner),

and \_\_\_\_\_, (Contractor).

### WHEREAS

The Contractor has represented to the Owner that the Contractor has the necessary qualifications, experience and abilities to provide services to the Owner.

The Owner is agreeable to engaging the services of the Contractor, on the terms and conditions as set out in this Agreement.

**IN CONSIDERATION OF** the matters described below and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

### 1. Services

1.1 The Contractor agrees to provide all of the material and labor required to perform the following work for:

(Describe work to be performed)

as shown by the drawing(s) and described in the specifications prepared by \_\_\_\_\_ and provided by the Owner, which are identified by the signatures of the parties to this agreement and which form a part of this agreement.

### 2. Payment

2.1 The Owner hereby agrees to pay the Contractor, for the materials and labor, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), subject to adjustments for changes in the work as may be agreed upon by the Owner and the Contractor, or as may be required under this Agreement, in the following manner:

(Describe method and timing of payment)

If required by Owner as a condition to payment, each progress billing shall be accompanied by receipted invoices; by releases or waivers of lien, duly executed by each subcontractor and materialman, covering labor and materials furnished through the last day of the period for which Owner has previously made progress payments; and/or such other reasonable information and documentation as Owner may require.

### 3. Late Payments

If any payment is not made to Contractor as required under Paragraph 2.1 of this Agreement, Contractor may suspend work until such payment is made. Without prejudice to the Contractor's right to cease work upon default of payment by the Owner, if any of the installments set out in the payment schedule shall remain unpaid by the Owner at the expiration of Fourteen (14) days from the date of the Contractor's notification of claim on progressive payment, interest on such unpaid installment(s) shall commence immediately thereafter and be payable by the Owner, such interest to be calculated at the rate of ten percent (10%) per annum from the due date until the date of full payment, or, if less, the maximum rate of interest allowed by law. No interest shall accrue on monies withheld to the extent they relate to work subject of a bona fide dispute.

### 4. Time frame

4.1 The Contractor agrees that the various portions of the above-described work shall be completed on or before the following dates:

(Insert dates)

and the entire above-described work shall be completed no later than the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

### 5. Permits, Laws and Taxes

Contractor, at its expense, shall obtain all licenses, permits and authorizations required for the prosecution of the Work, shall comply with all federal, state and local laws, codes and regulations which apply to the Work, and shall pay all taxes, including sales and use taxes which pertain to the Work.

## **6. Insurance**

6.1 Unless otherwise provided, Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value. This insurance shall include the interest of the owner, Contractor, Subcontractors in the Work and shall insure against the perils of Fire, Vandalism and Malicious Mischief. This insurance does not cover construction tools and equipment and temporary construction facilities owned by Contractor or his Subcontractors.

6.2 Before any work is started, Contractor must satisfactorily furnish to owner evidence of insurance coverage by executing a Certificate of Insurance. Contractor shall maintain insurance in such amounts and for such coverages as shown on the Certificate of Insurance until final completion of the Work and shall ensure that Owner is added as additional insured on the coverage.

6.3 Contractor shall require any and all subcontractors to purchase and maintain liability insurance.

## **7. Materials**

7.1 The Contractor agrees to provide and pay for all materials, tools and equipment required for the prosecution and timely completion of the work. Unless otherwise specified, all materials shall be new and of good quality.

## **8. Quality**

8.1 In the prosecution of the work, the Contractor shall employ a sufficient number of workers skilled in their trades to suitably perform the work. Contractor warrants to the Owner that all materials and equipment under this Agreement shall be new unless otherwise specified and that all work will be performed in a good and workmanlike manner, shall be of good quality and shall conform to all Contract conditions and documents.

8.2 The Contractor agrees to re-execute any work which does not conform to the drawings and specifications, warrants the work performed, and agrees to remedy any defects resulting from faulty materials or workmanship which shall become evident during a period of one year after completion of the work.

## **9. Time**

9.1 Time is of the essence of this Agreement. Should Owner request it, the Contractor shall provide the Owner with a progress and completion schedule and shall conform to that schedule, including any changes to that schedule agreed to between the Owner and the Contractor under Paragraph 10 of this Agreement or required by circumstances beyond Contractor's control.

## **10. Changes and deviations**

10.1 All changes and deviations in the work ordered by the Owner must be in writing, the Agreement sum being increased or decreased accordingly by the Contractor. Any claims for increases in the cost of the work must be presented by the Contractor to the Owner in writing, and written approval of the Owner shall be obtained by the Contractor before proceeding with the ordered change or revision. Should an adjustment in the Agreement price be required because of errors in the plans and/or specifications, differing site conditions, lack of worksite access or other circumstances beyond the Contractor's control, the Contractor shall submit to the Owner a detailed estimate of the change to the Agreement price and the Agreement time. The Contractor shall not be obligated to perform changes in the work or additional work until the Owner has approved, in writing, the changes to the Agreement price and the Agreement time.

## **11. Access**

11.1 The Owner, Owner's representative and public authorities shall at all times have access to the work. The Owner shall provide all necessary access to the lands upon which the work is to be performed, including access to the lands and any other lands designated herein for use by the Contractor for the purpose of completion of the work described herein. Any failure to provide such access shall entitle the Contractor to an equitable adjustment in the Agreement price and Agreement time set forth herein.

## **12. Indemnity**

12.1 Contractor shall indemnify the Owner against any and all claims, demands, lawsuits and liabilities arising out of or connected to property damage or personal injury caused, or alleged to be cause, by Contractor or its subcontractors, suppliers, employees, agents or representatives. Contractor shall not be obligated to defend Owner beyond the extent of Contractor's insurance.

## **13. Cleaning Up**

Contractor shall at all times keep the Work site free from accumulations of waste material or rubbish. At the completion of the Work, Contractor shall remove all of its construction equipment, tools, surplus materials, personal belongings, waste materials and rubbish from the Work site. Contractor shall also clean all glass surfaces and leave the Work site "broom clean" or its reasonable equivalent.

#### **14. Accounting Records**

The Contractor shall keep efficient and accurate records of all costs incurred in performing the work, including all alterations, additions or deductions, for a period of two (2) years after said work is performed. The Owner or its authorized representative shall have the right at its request to audit and inspect all such records during the above period.

#### **15. Force Majeure**

10.1 In the event the Contractor is delayed in the prosecution of the work by acts of God, fire, flood or any other unavoidable casualties; or by labor strikes, late delivery of materials; or by neglect of the Owner; the time for completion of the work shall be extended for the same period as the delay occasioned by any of the aforementioned causes.

#### **16. Delay**

16.1 In the event the work is delayed due to neglect of the Contractor, the Contractor agrees to pay the Owner the sum of \$\_\_\_\_\_ per \_\_\_\_\_ as liquidated damages until such time as the work is completed.

#### **17. Assignment**

17.1 Neither the Owner nor Contractor shall have the right to assign any rights or interest occurring under this agreement without the written consent of the other, nor shall the Contractor assign any sums due, or to become due, to him under the provisions of this agreement.

#### **18. Termination**

18.1 The Owner shall have the right to terminate the work for any reason, upon notice in writing to the Contractor. Should the Owner exercise this right in accordance with the terms of this Agreement, Contractor shall be paid its actual costs for the portion of work performed to the date of termination and for all incurred costs of termination, including

but not limited to demobilization and any termination charges by vendors and subcontractors.

**19. Notice**

19.1 Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed given and received on the date of delivery or on the third (3rd) business day following the day of mailing of the same, or on the day of transmission by fax machine or other form of recorded communication service. All such notices shall be addressed as follows:

If to Owner:

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If to Contractor:

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or such other address as may be designated by either party by written notice to the other as hereinabove provided.

**20. Relationships**

20.1 The parties are independent contractors, and nothing in this Agreement shall be deemed or construed to create, or have been intended to create a partnership, joint venture, employment or agency relationship between the parties. Each party agrees that it neither has nor will give the appearance or impression of possessing the legal authority to bind or to commit any other party in any way except as provided in this Agreement.

**21. Interpretation**

21.1 This Agreement has been fully reviewed and negotiated by the parties and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party or its counsel drafted the provision being interpreted.

## **22. Modification**

22.1 No provision of this Agreement may be modified, waived or amended except by a written instrument duly executed by each of the parties.

## **23. Counterparts**

23.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

## **24. Waiver**

24.1 Any failure on the part of either party to insist upon the performance of this Agreement or any part of this Agreement, shall not constitute a waiver of any right under this Agreement.

## **25. Survival**

25.1 All representations made herein shall survive the termination of this Agreement and shall remain in full force and effect. All of a party's rights and privileges, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the termination of this Agreement, shall survive termination and shall be enforceable by such party and its successors and assigns.

## **26. Attorney fees**

26.1 Attorney's fees and court costs shall be paid by the defendant in the event that judgment must be, and is, obtained to enforce this agreement or any breach thereof.

## **27. Entire Agreement**

27.1 This Agreement represents the entire agreement between the Contractor and the Owner regarding the work described herein, and supersedes any prior written or oral agreements, contracts or representations as to that work.

## **28. Confidentiality**

28.1 Except as otherwise required by applicable federal and state securities laws, each party shall keep the information regarding the details of this Agreement confidential.

## **29. Headings**

29.1 Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement.

## **30. Gender**

30.1 Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

## **31. Severability**

31.1 If any provision of this Agreement is held to be or becomes invalid, illegal, or unenforceable, such provision or provisions shall be reformed to approximate as nearly as possible the intent of the parties, and the remainder of this Agreement shall not be affected and shall remain valid and enforceable to the greatest extent permitted by law.

## **32. Own Will**

32.1 The parties have entered into this Agreement in their own will and no statement, representation or promise has been made to induce either party to enter into this agreement.

## **33. Choice of Law**

33.1 The substantive laws of the State of \_\_\_\_\_ applicable to contracts shall govern (i) the validity and interpretation of this Agreement, (ii) the performance by the parties of their respective obligations hereunder, and (iii) all other causes of action (whether sounding in contract or in tort) arising out of or relating to this Agreement or the termination of this Agreement.

IN WITNESS WHEREOF, the parties set their hands and seals the day and year first written above.

OWNER'S NAME: \_\_\_\_\_

OWNER'S ADDRESS: \_\_\_\_\_

\_\_\_\_\_

OWNER'S PHONE NUMBER \_\_\_\_\_

OWNER'S SIGNATURE: \_\_\_\_\_

CONTRACTOR'S NAME: \_\_\_\_\_

CONTRACTOR'S ADDRESS: \_\_\_\_\_

\_\_\_\_\_

CONTRACTOR'S LICENSE NUMBER: \_\_\_\_\_

CONTRACTOR'S PHONE NUMBER: \_\_\_\_\_

CONTRACTOR'S SIGNATURE: \_\_\_\_\_

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\* Your State law may require anyone who contracts to do construction work to be licensed by the Contractors' State License Board in the license category in which the Contractor is going to be working – if the total price of the job is \$500 or more (including labor and materials).

\* Your State law may require specific language regarding mechanic's lien rights be included in a construction contract with the Owner in order to preserve the Contractor's lien rights.