

CONSTRUCTION AGREEMENT BETWEEN OWNER & GENERAL CONTRACTOR

AGREEMENT made as of the **[DAY]** day of **[MONTH]** in the year **[YEAR]**

BETWEEN the Owner:

[CUSTOMERS__FIRST_NAME] [CUSTOMERS__LAST_NAME] ("Owner")

and the General Contractor:

[CONTRACTOR] ("Contractor")

[ADDRESS]

[CITY], [STATE] [ZIP]

[PHONE NUMBER]

[E-MAIL]

for the following Project:

[PROPERTY_ADDRESS]

[PROPERTY_CITY], [PROPERTY STATE] [PROPERTY ZIP]

to perform the Work identified in Article 1 of this Agreement in accordance with the Project's Agreement Documents.

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1: Description of Work

The work to be performed by Contractor for Owner is the **[REMODEL, ADDITION, AND/OR NEW CONSTRUCTION]** of the "Project".

Contractor shall provide the Owner certain construction services and materials to perform the work on the Project as set forth and described in the following documents:

- Building plan documents **[DATED]** provided by **[ARCHITECT FIRM]**
- Cost Estimates provided for the purpose of describing "categories of work" and an estimated budget, and not for the purpose of establishing a fixed price for the work.
- Budgets are based entirely on provided drawings

Contractor shall execute the work described in the Agreement Documents except for work indicated in the Agreement to be the responsibility of others.

ARTICLE 2: Date of Commencement and Substantial Completion

Contractor shall commence the Preliminary Work and Consultation upon receipt of deposit and executed Agreement. Contractor shall commence the Site Work of this Agreement by not later than **[DATE]**. The Contractor estimates, but does not guarantee, that the Contractor shall achieve Substantial Completion of the Work not later than **[NUMBER OF MONTHS]** after Site Work commencement.

“Substantial completion” means the time at which the project is suitable for occupancy or its intended use, or the issuance of an occupancy consent or final building department approval from the city, county, or state, whichever occurs first. The Contractor shall be excused for the any delay in “substantial completion” of the Agreement caused by acts of God, acts of Owner or the Owner’s agent, inclement weather, wet or muddy grounds, acts of public utilities, delays in supplies, subcontractor schedules, public bodies, or inspectors, extra work, or the failure of the Owner to make progress payments promptly.

ARTICLE 3: Agreement Amount

The Owner shall pay the Contractor the sum of Cost of the Work as described in Article 4 plus the Contractor’s Fee. The Cost of the Work plus the Contractor’s Fee is referred to in this Agreement as the Agreement Sum.

The Contractor’s Fee is the sum equal to **[PERCENTAGE]** of the total Cost of the Work, as adjusted upwards or downwards by changes to the work. This Fee amount includes the contractor’s general conditions, project management, and site supervision.

The Cost of the Work is provided as a Cost Estimate. The Cost Estimate is a detailed estimate from the Contractor setting forth the Contractor’s estimated costs for each of the construction items listed therein. The cost of the items listed on the Cost Estimate does not include the Contractor’s Fee.

Contractor has made a good faith estimation of the cost of each of these items. The Contractor does not guarantee that the actual cost of any item listed on the Cost Estimate will not exceed the cost for the item.

The Contractor shall provide the Owner with timely information as to changes to the anticipated Cost of the Work. The Contractor shall compare the Cost Estimate with the actual cost for activities in progress. The Contractor shall keep the Owner informed as to estimates for uncompleted tasks and proposed changes. This information shall be provided by the Contractor to the Owner with each pay application.

ARTICLE 4: Cost of the Work

Cost of the Work is those costs incurred by the Contractor in the proper performance of the Work. It includes the following:

- Labor costs for work performed by Contractor at the following rates:
 - \$[PRICE]/hour - Project Management
 - \$[PRICE]/hour - Journeyman Carpenter
 - \$[PRICE]/hour - Skilled Laborer/Apprentice carpenter
 - \$[PRICE]/hour - General Laborer
- **Note:** All hours will be billed based on starting and finishing from the contractor's shop location. All hourly rates are fixed for (1) year from date of signed contract, after (1) year rates may be re-assessed.
- Subcontract costs, including:
 - Payments made by the Contractor to Subcontractors;
 - Costs of materials and equipment incorporated into the Project;
- Costs of rental equipment, machinery, dumpsters and dump fees, temporary facilities, supplies, equipment/ machinery owned and provided by Contractor billed at a rental equivalent rate and tools required for the Project
- Miscellaneous costs, including but not limited to:
 - Moisture and mold remediation costs due to infiltration of ground water or precipitation during construction;
 - Removal of debris from the site;
 - That portion of reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling to discharge duties connected with the work;
 - That portion of insurance and premium bonds directly attributed to the Project;
 - Building permit and other permits, licenses or inspection fees or assessments that the Agreement Documents required the Contractor to pay for;
 - Any laboratory fees for tests required by the Agreement Documents;
 - Costs due to emergencies.
 - Fuel surcharges

ARTICLE 5: Subcontracts

Contractor may subcontract with subcontractors to perform those portions of the Work that Contractor does not customarily perform with its own personnel.

Contractor may perform with its own personnel, any scope of work that has a subcontractor estimate, for the same cost as the subcontractor estimate.

ARTICLE 6: Financing and Payment

Financing: Owner represents that Owner has arranged sufficient financing to comply with this agreement. Before commencing work under this agreement or at any time during the progress of the work, Contractor may request from Owner or its project financier evidence in writing (acceptable to Contractor) of financing for the work.

Agreement Deposit: **[AMOUNT]** dollars is due when this Agreement is signed and returned to Contractor and prior to commencement of work. Upon completion of the project, Contractor shall credit the deposit toward the final payment of the total Agreement price for the work. The Agreement Deposit is nonrefundable and if the project is terminated it will be kept to cover profit loss from other jobs not taken and will be considered a termination fee.

The Owner shall make progress payments on account of the Agreement Sum to the Contractor as provided here.

Progress Payments: Application for Payment (Invoices) shall be submitted as needed (typically monthly). The Owner shall make payment to the Contractor not later than **[NUMBER OF DAYS]** after Invoice is issued.

Pay applications shall show the Cost of the Work actually incurred and for which the Contractor has made or intends to make actual payment prior to the next pay application.

Final Payment: Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be made by the Owner to the Contractor when the Contractor has fully performed the Agreement. Contractor's responsibility to correct Work during the one-year warranty period or to satisfy other requirements, if any, extends beyond final payment. Contractor shall not be required to perform warranty work if final payment has not been made within **[NUMBER OF DAYS]** of Contractor's final Application for Payment.

ARTICLE 7: Changes in Scope of the Work

During the course of the work, Owner may increase or decrease the Scope of Work by requesting Contractor to perform additional or less work or the Owner may alter the selection of products or building design. Any such requests shall be made to the Contractor by means of a written Change Order.

A Change Order is a written instrument prepared by the Owner or the Contractor and signed by the Owner and the Contractor stating their agreement upon the following:

- (a) Change in the Work;
- (b) The amount of adjustment, if any, to the Cost of the Work and Contractor's Fee; and
- (c) The extent of the adjustment, if any, in the Agreement Time.

In the event the Owner and Contractor cannot agree on the terms of a Change Order, then no change to the original scope of work shall be made and the Contractor shall not be required to perform additional work unless the Owner and Contractor agree that they will resolve their dispute over the appropriate adjustment(s) to the Agreement Fee or Agreement Time after substantial completion of the project.

ARTICLE 8: Insurance

Builder's Risk: Contractor will procure at Owner's expense and before commencement of any work, a Special Form (including theft of building materials) Builder's Risk policy of insurance with an amount of insurance at least equal to the Agreement Sum.

General Liability: Contractor has a current Commercial General Liability policy, which it will carry at all times during the prosecution of this project. Contractor will require of all subcontractors on the project to carry a Commercial General Liability policy.

Workers Compensation: Contractor shall maintain a worker's compensation insurance policy at all times during the prosecution of this project.

Personal Liability: Owner may choose to carry at his/her expense a homeowner's personal liability policy extending liability protection on Owner's behalf to the building project and premises with limits of liability to be determined by Owner. Each party shall issue a certificate of insurance to the other prior to construction. Contractor and Owner hereby waive all claims against each other for fire damages or damages from other perils covered by the insurance provided for in this Article. Contractor is not financially responsible for damage to construction work in place or materials on the jobsite, or for damage to personal items left in work areas, or for delays to schedule due to Force Majeure events.

ARTICLE 9: Warranties

Contractor provides to Owner and Owner only a nontransferable limited warranty on all Contractor and subcontractor supplied labor and materials used in this project for a period of one year following substantial completion.

Owner understands that its sole remedy against Contractor under this limited warranty agreement is repair and replacement. All manufacturer warranties on equipment and consumer products incorporated into the property such as air conditioners, heating units, water heaters, refrigerators ranges, dishwashers, and other appliances or equipment shall be assigned by Contractor to Owner. The original buyer may not assign, transfer, or convey this warranty without prior written consent of Contractor.

From time to time and just before the closing, Owner or Owner's agent shall inspect the house in the presence of Contractor or Contractor's representative. At final inspection and prior to occupancy, Owner shall give Contractor a signed "punch list" that identifies any alleged deficiencies in the quality of work or materials. Owner shall notify Contractor in writing no later than 12 months following "substantial completion" of items requiring warranty repair. Owner shall notify Contractor earlier of items that need immediate attention to prevent damage to the structure or occupants.

ARTICLE 10: Right to Cure

Contractor, at Contractor's discretion, shall have the right to cure by repair or replacement of any defective components of the Project that do not meet the conditions of the Contract, or fail to perform

to industry standards and function in accordance with intended purpose. Owner shall give Contractor written notice of such defects. Contractor shall have a reasonable opportunity to correct such defects.

ARTICLE 11: Dispute Resolution

Any dispute that arises between the parties shall be submitted to mediation by an attorney with significant construction law experience who shall be agreed upon by the parties. The selection of the mediator shall occur not later than twenty days after one party demands mediation of the other. Once the mediator has been identified, mediation shall be held within twenty days or later but as soon as reasonably possible if necessary to accommodate the mediator's schedule.

If mediation fails and the dispute is of such significance that the parties are no longer able to proceed on the Project, the parties shall proceed to litigation in a court venued where the Project is located.

If the mediation fails and the dispute has not prevented the parties from continuing to perform on the Project, the parties may delay litigation until after the Project is completed or substantially completed so that all disputes not successfully mediated might be resolved in one action.

Any mediation or litigation procedure that arises under this Agreement is governed by **[STATE]** law.

ARTICLE 12: Contractor's Right to Suspend Performance and Terminate Agreement

Contractor shall have the right to stop all work on the project if payments are not made to Contractor in accordance with the Payment Schedule in this Agreement. Simultaneous with suspending work on the project, Contractor shall give Owner written notice of the nature of Owner's default and must give Owner a **[NUMBER OF DAYS]** period in which to cure this default.

If Owner fails to cure the default **[NUMBER OF DAYS]** following Contractor's notice of suspension, then Contractor may give Owner notice of termination. Five days thereafter, if the Owner continues to failure to cure the default, Contractor may terminate this Agreement. In such event, Contractor is relieved from all other contractual duties, including warranty work.

Neither the suspension of Work nor the termination of Work in accordance with this Article shall be deemed to be a breach of Agreement.

ARTICLE 13: Owner's Right to Suspend Construction and Terminate Agreement

The owner may terminate this Agreement if the Contractor materially breaches this Agreement. When the Owner has a reason to terminate the Agreement, the Owner, after giving the Contractor **[NUMBER OF DAYS]** written notice to cure, may terminate the Contractor.

The Owner may, at any time, terminate this Agreement for the Owner's convenience. If the Owner terminates this Agreement for its convenience, the Owner shall pay the Contractor for all Costs of

Work incurred as of the time of the termination plus the Contractor's Fee attributable to the same. The Agreement Deposit is nonrefundable and will not be applied to the job balance if the owner terminates the work. It will be considered a Termination Fee.

ARTICLE 14: Additional Owner's Responsibilities

Owner shall verify and inform Contractor of all easements and encroachments on the property. Owner shall verify compliance with city or county development regulations or covenants.

Owner has been informed of the possible presence of radon gas on this building location. Owner shall test the house for radon after occupancy to determine the radon levels and take appropriate action to install a fan if required.

Owner shall be responsible for removal and disposal of any material containing asbestos or other hazardous materials or pollutants as defined by the EPA or for verifying or mitigating pre-existing environmental contamination on the building site.

Owner shall be responsible for any architectural or engineering fees unless provided under separate agreement.

Owner shall not hire subcontractors outside of this agreement or self-perform work without prior written notice to and approval by Contractor.

ARTICLE 15: Other Provisions

Additional Testing: Contractor shall obtain at owner's expense all inspections required by local, State and Federal governing bodies including inspections for plumbing and electrical work. All other reasonable inspection costs shall be paid by Owner. Contractor shall provide the results of said inspections and any other inspections and tests conducted. The Owners are entitled at their own expense to have any inspections and tests conducted that they deem necessary including but not limited to geotechnical and structural tests.

Mold and Mildew Disclosure Statement: Contractor has conducted no test to determine the presence of mold or mildew prior to, during or upon completion of the improvements. Owners of property in the State of Montana should be aware that some homes and outbuildings may develop and/or contain mold or mildew. There are currently no Federal Guidelines to address the health problems associated with mold or mildew. Therefore, if mold or mildew is a concern, it is highly recommended that Owner have the home and outbuildings tested, prior to taking possession of the property and consult with an expert in mold/mildew prevention for future prevention measures which are the responsibility of the Owner.

Notice of Completion and Walk-Through: Contractor shall notify Owner that the improvements have been completed in accordance with this Agreement. Within 15 days receipt of this notice, Owner shall provide to Contractor a "punch list" setting forth all items that need to be repaired, completed, or otherwise. Thereafter, Owner and Contractor shall agree upon, by completion of a written form,

those items that will be repaired by Contractor within a reasonable time after closing. Owner shall upon execution of such form accept the improvements and acknowledge that they were constructed pursuant to this Agreement, except as set out in said written form.

Occupancy: Unless otherwise agreed to in writing, the area encompassing the construction site shall not be occupied by Owner or Owner's family, livestock, ranch hands/employees or used for the staging of equipment, materials, etc. until time of completion of the improvements.

Notices: All notices required by this Agreement shall be sent to the addresses listed below for the appropriated parties unless otherwise modified in writing.

Indoor Air Quality: Contractor assumes no responsibility for the indoor air quality of the structure from such sources as radioactive soils and radon gas; wood burning devices; etc.

Signage and Photographs: Owner agrees to permit Contractor to place signs on or about the premises during the course of construction and allow Contractor to show home to potential customers during the course of construction. Owner agrees to permit Contractor to use photographs of the project for advertising, social media, or any other use.

Clean-up: Upon "substantial completion" of the project, all of Contractor's construction debris and equipment shall be removed by Contractor and the premises shall be left in neat, "broom swept" condition.

IN WITNESS WHEREOF, Owner and Contractor have executed this Agreement as of the day, month and year set forth above.

Owner and Contractor have signed copies of this Agreement.

Owner signature acknowledges the contents of the pages to this Agreement and that they have read such content (each page to be initiated by Owner).

[CONTRACTOR]:	Owner:
(Signature)	(Signature)
Name:	Name:
Title:	Phone Number:
Date:	Email:

