

RESIDENTIAL CONSTRUCTION CONTRACT (Lump Sum)

Parties: _____
Contractor

Owner

Property: _____
Address

Tax Parcel No.

Date: _____

I. THE WORK

1.1 Contractor’s Duties. Contractor shall furnish the material, labor, equipment, tools, and supervision (the “Work”) necessary to construct or renovate a single-family residence (the “Project”) for Owner on the Property in compliance with the plans and specifications supplied by Owner (the “Plans”). The Plans are attached as **Exhibit A**. This Contract and all of its Exhibits, and all Change Orders after execution, are the “Contract Documents.”

Contractor agrees to immediately inform Owner in writing of any discrepancies, errors, or omissions in the Plans or materially changed or unanticipated conditions and not to proceed with any work affected by such discrepancy until Owner directs Contractor to do so.

1.2 Permits. [Choose ___Owner or ___Contractor] shall obtain the governmental approvals of the Plans and all permits for construction of the Project. The cost of the building permit and any other necessary permits is **not** included in the lump sum amount. Owner is responsible for cost of the building permit and other necessary permits.

II. LUMP SUM PRICE AND PAYMENT

2.1 Lump Sum Amount. Contractor shall perform the Work for the Lump Sum Price of _____ Dollars (\$_____) (“Contract Price”). The Contract Price is detailed by scope and trades in the Schedule of Values at **Exhibit B**. The Lump Sum Amount [choose: does ___ or does not ___ include Washington State Sales Tax].

2.2 Down Payment. Owner shall pay Contractor a down payment of _____ Dollars (\$_____) prior to commencement of the Work. The down payment shall be credited against the Contract Price beginning with Contractor’s first Progress Payment. Owner has sufficient funds, either personal or through lender financing, in an amount equal to the Contract Price.

2.3 Progress Payments. On the first business day of every month, Contractor shall present to Owner an Application for Payment to Owner. Each Application for Payment shall be based on the Schedule of Values at Exhibit B. The Schedule of Values shall allocate the entire Contract Price among the various portions of the Work. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The Schedule of Values shall be used as a basis for reviewing Contractor's Applications for Payment. Contractor's Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Owner shall make payment to Contractor based on the percentage of the Work completed for the period covered by the Application for Payment date plus sales tax, less previous payments and less retainage specified in Section 2.4. Owner shall make payment no later than _____ (____) (Twenty-Five if not filled in) calendar days from the date of receipt of each Application for Payment. With each Application for Payment, the Owner shall have the right to require Contractor to provide documentation to support the claimed percentage of the Work completed. Contractor shall apply Owner's payment only to the costs and fees of this Project.

2.4 Retainage. Owner shall withhold five percent (5%) as retainage from each progress payment (the "Retainage"). Retainage shall be released to Contractor at the time of Final Payment. The Retainage is a fund for the protection of the Owner (i) from incomplete or defective work by Contractor; (ii) for the payment of persons who supplied materials or who worked on the Project and were not paid by Contractor; and (iii) damages incurred due to other breaches of the Contract.

2.5 Lien Release. Owner shall not be required to make any payment to Contractor unless and until Contractor provides Owner with an unconditional waiver and lien release form signed by Contractor and by each subcontractor and supplier who is claiming Two Thousand Five Hundred Dollars (\$2,500.00) or more in payment, verifying payment in full, less any retainage, from Owner's prior month's payment to Contractor. A form lien release is attached as **Exhibit C-1**.

2.6 Final Payment. Within ten (10) days after Contractor notifies Owner that the Work is Substantially Complete, Owner shall inspect the Work with Contractor and deliver to Contractor a comprehensive list of items to be completed or corrected prior to Final Payment (the "Punch List"). The Punch List and other Work shall be finished by Contractor within _____ (____) [Twenty-One if not filled in] days of Contractor's receipt of the Punch List. Final Payment shall be due fourteen (14) days after Contractor (1) completes the Work in accordance with the Contract Documents; (2) provides Owner with final lien releases from Contractor and all subcontractors and suppliers, conditioned only on receipt of Final Payment attached as **Exhibit C-2**; and (3) makes available the cost records supporting the final Cost of the Work if requested by Owner. "Substantially Complete" or "Substantial Completion" means the stage in the progress of the Work when Owner has legal occupancy and full and unrestricted use and benefit of the Project for its intended purpose with only minor incidental work or correction or repair remaining to be performed by Contractor.

2.7 Failure of Payment. If Owner fails to pay Contractor amounts due within fourteen (14) days of the time required by Section 2.3, Contractor may, upon providing seven (7) days written notice to Owner, suspend the Work until the amounts due have been received. If the failure

of payment remains uncured for fourteen (14) days after the first written notice, Contractor may terminate the Contract. Payments due and unpaid under the Contract Documents shall bear interest at the rate of twelve percent (12%) per annum from the date payment was due until paid.

2.8 Contractor's Registration. A Contractor's Disclosure Statement / Notice to Customer ("Notice") is attached as **Exhibit D**. Under Washington law, Owner's signature is required on the Notice. Owner acknowledges receipt of the Notice and Contractor's compliance with the disclosure requirements.

III. CHANGES

3.1 Nature of Change. If Owner or Contractor requests, or one of the parties believes that a change is necessary, (a "Change"), then the parties shall comply with the following procedure to reflect a Change in the Work:

- a. The Party requesting or noting the Change shall write a description of the Change and give the other Party that writing (the "Change Notice");
- b. Before proceeding with the changed work, unless excused by an emergency involving safety or property damage, the Contractor shall provide Owner with a fixed-price written estimate of the cost and time impact of the requested Change;
- c. Owner and Contractor shall execute a Change Order confirming their agreement with the Change, the fixed-price cost, and the extension of the Substantial Completion date, if any. If the Change cannot be performed on a fixed-price basis, the Change Order shall identify the agreed method of compensation.

3.2 Change Order Format. A blank Change Order form is included in this Contract as **Exhibit E**.

IV. SCHEDULE

4.1 Commencement and Completion of the Work. Contractor shall commence the Work within ten (10) calendar days of receipt of a building permit. Subject to the permitted extensions and delays provided herein, Contractor shall Substantially Complete the Work within _____ (___) calendar days after the commencement date. With its first Application for Payment, Contractor shall provide a schedule indicating proposed subcontractors' activity sequences and durations, deadlines for Owner's decisions on material selections, and milestones for delivery of materials. The schedule is included in this Contract as **Exhibit F**.

4.2 Construction Time and Liquidated Damages. Contractor agrees that the time in Section 4.1 to reach Substantial Completion, as reflected by Contractor's schedule, provides sufficient time for the expeditious and practical execution of the Work. If Contractor fails to

achieve Substantial Completion of the Work by the date set forth in Section 4.1, Owner will suffer substantial damages that are both extremely difficult and impractical to determine. Owner and Contractor agree that if Contractor fails to meet the Substantial Completion date, then *Contractor shall pay Owner liquidated damages at a daily rate of _____ Dollars (\$_____)*. The parties agree that liquidated damages are not a penalty, but rather a reasonable estimate of the amount of damages Owner will suffer in the event of delay. Owner shall have the right to withhold the amount of liquidated damages from any sums due to Contractor.

4.3 Delay. If the Project is delayed by the act, neglect or default of Owner, Owner's agent, Owner's design professional, Owner's lender, governmental action or inaction, any contractor employed by Owner, any materials supplier acting for Owner, or any other reason or reasons beyond Contractor's reasonable control, including without limitation damage caused by fire or other casualty, strikes, force majeure, shortage of materials or labor, transportation delays, weather conditions, change orders, or deficiencies in the Contract Documents (the "Excusable Delay"), then the Substantial Completion date shall be extended for a period reasonably equivalent to the time lost by reason of such delay.

V. INSURANCE

Before commencing the Work and as a condition of payment, and as part of the Lump Sum Amount, Contractor shall purchase and maintain insurance as described below from an insurer admitted to do business in Washington with an A.M. Best financial strength rating of A-1 or better, that will protect it from bodily injury or property damage claims arising out of its operations under this Contract, 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.

1. Commercial General Liability (CGL) insurance providing bodily injury liability and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate limits, and Products/Completed Operations aggregate limits of \$2,000,000, written on an occurrence form.
2. Automobile liability insurance with a minimum limit of liability of not less than \$300,000 per occurrence for all owned, non-owned and hired automobiles.
3. If the Owner requires that Contractor's general liability policy be endorsed so that the aggregate limits of insurance apply on this job, both parties must check the appropriate box: Owner [] Contractor [].
4. Owner shall be included as an additional insured under the CGL policy.

Prior to starting work, Contractor shall provide a copy of the actual additional insured endorsement or blanket additional insured policy wording to the CGL policy that documents the Owner's additional insured status.

Unless otherwise agreed, Owner shall secure and maintain property insurance upon the Work to its full insurable value (replacement cost) including the peril of theft and, including materials delivered to the Property (whether those materials are actually incorporated into or adjacent to the Work), miscellaneous materials and supplies incidental to the Work and temporary structures. If work is to be performed on an existing residential structure, the Owner may retain an all risk homeowner's policy and delete any exclusion to theft of building materials. Owner's policy limit must be increased to contemplate the value of the existing structure and improvements to be added.

Owner and Contractor hereby waive their rights of subrogation against one another for any losses covered by the required insurance policies except that Contractor shall be liable for the property insurance deductible if a claim is made against such property insurance and that claim arises out of Contractor's negligence.

VI. CONTRACTOR'S WARRANTY

6.1 Contractor's Warranty. Contractor warrants that the Work shall be in accordance with the Contract Documents and free from material structural defects and shall return and repair any Work not in accordance with the Contract Documents for a period of one (1) year from the date of Substantial Completion of the Work (the "Warranty Period"). All product warranties, if any, are deemed assigned from Contractor to Owner.

6.2 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 (the "Warranty Defect Notice") 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. This Warranty Defect Notice shall serve as the written notice of claim described in the following paragraph. In no event shall Contractor's liability exceed the fair and reasonable cost of repair or replacement of the warranted defect. Contractor shall not be liable for any cost or expense incurred by Owner in remedying any warranted defects unless Contractor has been notified in writing and has been afforded the opportunity to cure the claimed defect or to pay the sums specified herein. Nothing contained in this section shall be construed to establish a period of limitation with respect to Contractor's other obligations under the Contract Documents

6.3 Notice of Defect Claim. WASHINGTON LAW, CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST CONTRACTOR. FORTY-FIVE (45) DAYS BEFORE OWNER FILES A LAWSUIT, OWNER MUST DELIVER TO CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE CONTRACTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT OWNER'S ABILITY TO FILE A LAWSUIT.

6.4 Limitation of Damages. Contractor and Owner waive claims against each other for consequential damages. This mutual waiver includes, but is not limited to:

- (a) damages incurred by Owner for loss of income, profit, financing, business, and reputation; and
- (b) damages incurred by Contractor for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 9. Nothing contained in this Section 6.4 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with Section 4.2. If any court determines that this section or its application to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Contract shall not be affected thereby and each other term, covenant or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

VII. SAFETY

Contractor and its subcontractors shall 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. Contractor shall at all times be responsible for providing a safe job site and be responsible for the work performance and safety of all employees, personnel, equipment, and materials within the care, custody, or control of Contractor or its subcontractors of any tier. Contractor and its subcontractors shall furnish all required safety equipment and ensure all of its employees and lower-tier subcontractors' employees have and wear personal protective equipment in compliance with applicable safety requirements. Contractor shall promptly provide Owner with written notice of safety hazard(s) or violation(s) found on the job site or of any injury to its or its subcontractors' workers incurred on the job site.

VIII. INDEMNITY

Contractor agrees to defend, indemnify, and hold harmless (the "Indemnity Duty") Owner and its agents from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and costs and expenses, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) (the "Harm"), provided, however, that the Contractor owes no Indemnity Duty if the Harm was caused by or results from the sole negligence of the Owner or its agents or both, and provided further that in the event of concurrent negligence (i) by Contractor or the Contractor's subcontractors agents or employees, or both and (ii) by the Owner or its agents, or both, then the Contractor's Indemnity Duty is valid and enforceable only to the extent of the negligence of Contractor, its agents, and its employees.

Contractor further agrees to defend, indemnify, and hold Owner harmless from all WISHA 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.

For purposes of the foregoing indemnification provision only, and only to the extent of claims against Contractor by Owner under such indemnification provision, Contractor specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disabilities benefit acts, or other employee benefit acts.

IX. TERMINATION

9.1 Termination by Owner for Cause. Owner may, after giving Contractor seven (7) days written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Contract if Contractor violates any material provision of this Contract or:

- (a) refuses or fails to supply enough properly skilled workers or proper materials; or
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Contractor and the subcontractors; or
- (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 date of Substantial Completion.

When termination based on any of the above reasons occurs, Owner may, without prejudice to any other rights or remedies:

- (a) take possession of the site and of all materials, equipment, and machinery thereon owned by Contractor;
- (b) accept assignment of subcontracts;
- (c) finish the Work using reasonable methods. Upon Contractor's request, Owner shall furnish to Contractor a detailed accounting of the costs Owner incurs in finishing the Work; and

- (d) charge Contractor the costs of completion in excess of the amounts due to Contractor.

9.2 Termination by Owner for Convenience. Owner may terminate the Contract for Owner's convenience. Upon receipt of written notice from Owner of such termination, Contractor shall:

- (a) cease operations as directed by Owner in the notice;
- (b) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of Termination by Owner for Convenience, Contractor shall be entitled to receive payment for Work executed to the effective date of termination, based on the percentage of the Work completed compared to the Schedule of Values at Exhibit B, plus those costs necessary to satisfy the obligations incurred as a result of the requirements of subsections (a)-(c), above.

9.3 Termination by Contractor for Cause. In addition to Contractor's right to terminate the Contract pursuant to Section 2.7, the Contractor may terminate the Contract for cause if the Owner breaches any material provision of the Contract Documents. Prior to terminating the Contract for cause under this Section, Contractor shall first provide Owner seven (7) days written notice of the alleged breach. If Owner fails to cure the breach within seven (7) days of receipt of such notice, or fails to commence and diligently continue with cure efforts if the breach cannot reasonably be cured within seven (7) days, the Contractor may terminate the Contract.

X. MEDIATION

The parties agree to attempt to resolve any dispute through good faith negotiation as a condition precedent to commencing litigation, except where commencing litigation is necessary to preserve lien or other similar rights. If negotiation is not successful, then before beginning any legal proceeding, other than to enforce this Section, the parties agree to engage in non-binding mediation conducted by a mediator selected by them and in accordance with the Washington State version of the Uniform Mediation Act. Unless the parties agree otherwise, the mediation will be in accordance with the Home Construction Mediation Procedures of the American Arbitration Association ("AAA"). Either party may give written notice to the other party requesting mediation and the parties agree to use their best efforts to conduct the mediation within sixty (60) days of the notice. The parties will share the cost of mediation equally. The mediation notice and mediation process are not a condition to satisfying the notice requirements identified in Section 6 of this Contract or the recording of a mechanics' lien.

XI. GENERAL

11.1 Survival. In the event any clause or provision of this Contract shall be held to be invalid, then the remaining clauses and provisions shall nevertheless be and remain in full force and effect.

11.2 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 Contract. There are no other agreements which modify or affect the terms hereof. No amendment hereto shall be binding unless the terms thereof are in writing and signed by both parties. No verbal or other agreements modify or affect this Contract.

11.3 Binding Effect. This Contract shall be binding upon the parties hereto, and their heirs, successors, executors, administrators and assigns.

11.4 Assignment. Neither party shall assign nor transfer this Contract or any rights hereunder without the prior written consent of the other.

11.5 Notices. All notices which may be required under this Contract are to be in writing and delivered (a) to the attention of the party at the address listed on the signature page; or (b) by email to the email address on the signature page; or (c) by fax to the fax number on the signature page, or (d) mailed by certified mail, postage prepaid, to the address listed on the signature page. All notices shall be deemed served upon delivery, successful transmission, or two (2) days following deposit of the notice in the U.S. mail as required herein.

11.6 Governing Law, Venue. The performance and interpretation of this Contract shall be governed in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Contract shall be conducted in the County where work is performed.

CONTRACTOR:

OWNER:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

E-Mail: _____

E-Mail: _____

Fax: _____

Fax: _____

Address: _____

Address: _____

Contractor Registration No.: _____

- Exhibits:
- A – Plans
 - B – Schedule of Values
 - C-1 – Unconditional Lien Release Form
 - C-2 – Conditional Lien Release On Final Payment Form
 - D – Disclosure Statement / Notice to Customer
 - E – Change Order Form
 - F – Project Schedule

EXHIBIT A

PLANS

List of Plans provided by Owner:

- 1.
- 2.
- 3.
- 4.

EXHIBIT B

SCHEDULE OF VALUES

(To be provided by Contractor)

EXHIBIT C-1
CONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of \$_____ for labor, services, equipment, or material furnished to _____ on the job of _____ (Maker of Check) located at _____ (Owner) _____ (Job Description)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, the undersigned does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to _____ through _____ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; or extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: _____ (Contractor)

By _____ (Print Name)
_____ (Title)

EXHIBIT C-2

**CONDITIONAL WAIVER AND RELEASE UPON
FINAL PAYMENT**

Upon receipt by the undersigned of a check from _____ in the
(Maker of Check)
sum of \$ _____ payable to _____ and when the check
(Payee)
has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall
become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job
of _____ located at _____.
(Owner) (Job Description & Address)

This release covers the final payment to undersigned for all labor, services, equipment, or material
furnished on the job. Before any recipient of this document relies on it, the party should verify evidence
of payment to the undersigned.

Dated: _____
_____ (Contractor)

By _____
_____ (Print Name)
_____ (Title)

EXHIBIT D

DISCLOSURE STATEMENT / NOTICE TO CUSTOMER

This Contractor is registered with the State of Washington, Registration No. _____ and has posted with the state a bond or deposit of \$_____ for the purpose of satisfying claims against the Contractor for breach of contract including negligent or improper work in the conduct of the Contractor’s business. The expiration date of this Contractor’s Registration is _____.

THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.

This bond or deposit is not for your exclusive use because it covers all work performed by this Contractor. The bond or deposit is intended to pay valid claims up to \$_____ that you and other customers, suppliers, subcontractors, or taxing authorities may have.

FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

YOUR PROPERTY MAY BE LIENED.

If a supplier of materials used in your construction project or an employee or subcontractor of your Contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL “LIEN RELEASE” DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.

The Contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the Washington State Department of Labor and Industries.

I have received a copy of this Disclosure Statement.

Dated this _____ day of _____ of the year _____.

Signature of Customer

The Contractor must retain a signed copy of the Disclosure Statement in his or her files for a minimum of three (3) years, and produce a signed or electronic signature copy of the Disclosure Statement to the Department upon request.

EXHIBIT F
PROJECT SCHEDULE

Attachment “A”
Change Order No. ____