

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (this "Contract") is made and entered into as of _____, 20____, between _____ ("Contractor"), whose mailing address is _____; and _____ (the "Owner"), whose mailing address is _____. The parties hereto are sometimes referred to herein as a "Party" or the "Parties."

RECITALS

WHEREAS, upon the terms and conditions set forth in this Agreement, the Owner desires to engage Contractor to perform services set forth herein, and Contractor desires to provide such services.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Engagement of Contractor; Term. The Owner hereby engages Contractor to perform the services substantially described as follows:

_____ (the "Services").

The Owner engages Contractor to perform the services at

_____ ("Property").

It is acknowledged that throughout the Term, the Services may be modified, expanded, or reduced by the Owner, based upon the needs of the Owner, upon discussion and mutual agreement of the Parties. Contractor represents and warrants to the Owner that Contractor has the requisite skill set, experience, ability, authority, and available time to perform the Services as contemplated herein. Contractor shall execute its duties at Property professionally and in good faith and applying its reasonable best efforts at all times.

This engagement shall commence on _____.

Select, as applicable:

- This engagement shall automatically end on _____, without the need for termination notice.
- This engagement shall be for a term of _____.



- Either Party may terminate this Agreement at any time, upon _____ advance written notice to the other Party, with or without cause, and without further obligation to the other.
- The Owner shall have the right to terminate this Agreement immediately based upon cause or default by Contractor, or in the event Contractor becomes unwilling or unable to perform the Services because of illness, incapacity, death, or otherwise.

Upon termination of this Agreement, neither Party shall have any further obligations to the other hereunder (except, in the case of the Owner, to pay any accrued but unpaid compensation to Contractor as of the date of such termination, and in the case of the Contractor, to return any and all Owner materials). Notwithstanding the foregoing, the Contractor's covenants set forth in Section 8 hereof shall survive expiration or termination of this Agreement.

2. Compensation. The compensation due to Contractor shall be as follows:

Check box, as applicable:

- Hourly rate of \$ _____ per hour
- Fixed fee of \$ _____
- Other: _____
- An upfront retainer or payment of \$ _____ shall be required.
- No upfront retainer or payment shall be required.

Compensation shall be payable as follows:

- When invoiced to Owner. Payable within ____ days of receipt of invoice.
- Daily
- Weekly
- Bi-Weekly
- Upon completion of the Services



Other. Describe milestones: _____

3. Materials. All personnel and equipment, including tools, construction equipment, machinery, transportation, and all other facilities and services, as well as all materials necessary to complete the Services, shall be provided and paid for by Contractor.

Check box, if applicable:

The following materials are not included in the Compensation, are the sole responsibility of the Owner, and are not covered by the Contractor's warranty:

4. Independent Contractor Relationship. The Parties expressly understand and agree that Contractor is engaged and shall serve as an independent contractor and not as an employee of the Owner or any affiliate thereof. Contractor expressly agrees that no withholdings will be remitted by the Owner for any federal, state, or local taxes, social security, FICA, or other United States or foreign taxes from the amounts paid to Contractor by the Owner pursuant to this Agreement. Contractor further agrees to be solely responsible for the payment and withholding of such taxes from the compensation paid by the Owner hereunder. As an independent contractor, Contractor shall have the sole right and responsibility to determine the manner, method, time involved, and means of performance by which Contractor renders the Services, subject to any reasonable request, recommendation, or procedure of the Owner.

5. Indemnification. Contractor shall indemnify, defend and hold harmless the Owner and the Owner's affiliates, employees, officers, agents, and assigns (collectively, the "Owner Indemnified Parties") from and against any and all liability or loss, and against all claims, damages, or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the performance of the Contractor's duties and responsibilities pursuant to this Agreement or by conditions created thereby, or based upon a violation of any statute, ordinance, or administrative regulations, and the defense of any such claims or actions, but in any event excluding to the extent attributable to the negligence of such Owner Indemnified Party. Contractor shall also indemnify the Owner Indemnified Parties against all liability and loss in connection with, and shall assume full responsibility for, payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, workers' compensation, social security, and income tax laws with respect to the Contractor's employees engaged in the performance of this Agreement.

6. Utilities.

Check box, as applicable:



All permanent electric, water, phone, cable, sewage, and gas service required to complete the Services shall be paid for by Contractor.

All permanent electric, water, phone, cable, sewage, and gas service required to complete the Services shall be paid for by the Owner.

During the course of the Services, Contractor shall pay for the installation, connection, and removal of all temporary utilities on the Property.

During the course of the Services, the Owner shall pay for the installation, connection, and removal of all temporary utilities on the Property.

7. Satisfaction by Owner. Unless otherwise agreed, no Compensation shall be paid to Contractor until due hereunder and the Services have been inspected, reviewed, and approved by Owner in Owner's sole discretion, acting reasonably. If Owner determines that Contractor's Services are deficient, defective, or incomplete in any fashion (any of the foregoing, a "Deficiency"), Owner shall have the right, in addition to all other rights that may be available to Owner whether at law or in equity, to elect, at its sole discretion to: (a) notify Contractor of the Deficiency, in which event Contractor shall promptly correct such Deficiency; or (b) retain a third party or undertake to perform the cure of the Deficiency itself, in which event the Compensation associated with such deficient Services shall be deemed not earned by Contractor and shall be retained by Owner and not paid to Contractor.

8. Certain Contractor Covenants. Contractor expressly covenants and agrees as follows:

(a) Confidential Information. In connection with Contractor's relationship with the Owner in accordance with this Agreement, Contractor will or may have access to confidential and proprietary information with respect to the Owner, which may include, without limitation, financial information, service methods, marketing information, intellectual property, and any other information learned by Contractor as a result of its involvement with the Owner (collectively, "Confidential Information"). Contractor agrees to hold all Confidential Information in confidence and not discuss, communicate or transmit to others, or make any unauthorized copy of or use the Confidential Information in any capacity, position or business except as it directly relates to the performance by Contractor of the Services hereunder. Contractor agrees to use the Confidential Information only in furtherance of proper business-related reasons of the Owner to further the interest of the Owner; to take all reasonable actions that Owner deems necessary or appropriate to prevent unauthorized use or disclosure of or to protect the interest of the Owner in the Confidential Information; and that any of the Confidential Information, whether prepared by Contractor or which may come into Contractor's possession during Contractor's affiliation hereunder, are and remain the property of the Owner, and all such Confidential Information, including copies thereof, together with all other property belonging to any of the Owner or its affiliates shall be returned to the Owner upon termination of this Agreement.

The foregoing confidentiality provisions of this Agreement do not apply to (i) information that by means other than Contractor's deliberate or inadvertent disclosure becomes well known to the public; or (ii) disclosure compelled by judicial or administrative proceedings after Owner



diligently tries to avoid each disclosure and affords the Owner the opportunity to obtain assurance that compelled disclosures will receive confidential treatment.

(b) *Representations and Warranties.* Contractor warrants and represents that (i) the Services shall be done in a timely and professional manner and shall meet the deadlines and performance milestones agreed between Contractor and the Owner; (ii) Contractor is knowledgeable and competent in the Services to be performed hereunder; (iii) Contractor is duly authorized to enter into this Agreement; (iv) Contractor's performance of the Services pursuant to this Agreement does not violate any agreement or obligation between Contractor and any third party; (v) the work as delivered to the Owner hereunder will not infringe upon any copyright, patent, trade secret, or other proprietary right held by any third party.

(c) *Remedies for Breach.* Contractor acknowledges that the covenants contained in this Section 8 of this Agreement are independent covenants and that any failure by the Owner to perform its obligations under this Agreement shall not be a defense to enforcement of the covenants contained in this Section 8, including but not limited to, a temporary or permanent injunction, and any available recourse under applicable law. Contractor acknowledges that damages in the event of Contractor's breach of this Section 8 will be difficult, if not impossible, to ascertain, and it is therefore agreed that the Owner, in addition to, and without limiting any other remedy or right it may have under this Agreement or applicable law, shall have the right to an injunction enjoining the said breach. Contractor agrees to reimburse the Owner for all costs and expenses, including reasonable attorney's fees, incurred by the Owner because of any breach of this provision.

(d) *Reasonableness of Covenants.* Contractor has carefully considered the nature and extent of the restrictions upon Contractor and the rights and remedies conferred upon the Owner under this Section 8, and hereby acknowledges and agrees that, in light of Contractor's position, the information to which Contractor will be privy, and the nature of the business, the same are reasonable and fair, are fully required to protect the Owner's legitimate interests, and do not confer a benefit upon the Owner disproportionate to any detriment to he Contractor.

(e) *Survival.* All covenants and provisions contained in Sections 8 shall survive the expiration of this Agreement and the termination of the Contractor's engagement by the Owner, regardless of the reason of such expiration or termination.

9. Return of Materials. Upon termination of this Agreement for any reason by either Party, Contractor shall return to the Owner all drawings, notes, memoranda, specifications, designs, writings, software, devices, documents, materials, equipment, electronic devices, and any other material, including without limitation any items containing or disclosing any confidential or proprietary information of the Owner or of the Owner's past or present clients. Contractor will not retain any such materials.

10. Waiver; Remedies Cumulative. No waiver of any right or option hereunder by any Party shall operate as a waiver of any other right or option, or the same right or option as respects any subsequent occasion for its exercise, or of any legal remedy. No waiver by any party of any breach of this Agreement or of any agreement or covenant contained herein shall be held to



constitute a waiver of any other breach or a continuation of the same breach. All remedies provided by this Agreement are in addition to all other remedies by it or the law provided.

11. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns. Unless approved in advance in writing by the Owner, neither this Agreement nor any rights or duties hereunder shall be assignable or delegable by Contractor, and any such purported assignment or delegation by Contractor shall be null and void and of no force or effect whatsoever.

12. Dispute Resolution. This Agreement shall be governed by, and construed in accordance with, the laws of the State of _____. In the event of a dispute between the Parties, the Parties shall first attempt, in good faith, to amicably resolve such matter. If a good faith effort to resolve the dispute is not effective, said dispute shall be submitted to mediation for resolution. The cost of any such mediation shall be split equally between the Parties. If the dispute, in whole or in part, cannot be resolved via mediation, the unresolved matter(s) shall be submitted to binding arbitration for resolution. Such arbitration shall be conducted in the State of _____, in accordance with the Rules of Commercial Arbitration of the American Arbitration Association. The non-prevailing party in such arbitration shall pay all costs and expenses of the arbitration.

13. Miscellaneous. The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the other provisions hereof, which shall remain in full force and effect. This Agreement constitutes the entire understanding between the parties concerning the Contractor's Services for the Owner and supersedes all previous agreements between the Contractor and the Owner concerning such Services. This Agreement cannot be amended or modified in any respect, unless such amendment or modification is evidenced by a written instrument signed by both the Owner and Contractor. The captions of the various sections and subsections of this Agreement are not a part of the context hereof, are inserted merely for convenience, and shall be ignored in construing this Agreement.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the date set forth above.

The Owner: _____

Contractor: _____



By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

