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COST PLUS CONTRACT – FIXED FEE

THIS AGREEMENT, Made as of (Current Date), In the Year of (Current Year)

Between the Owner: **Owner's Name**
Address
Phone Number

And the Contractor: **Contractor's Name**
License Number
Address
Phone Number

For the Project: **Project Name**
Address

Construction Lender: **Construction Lender's Name**
Address

ARTICLE 1. CONTRACT DOCUMENTS

1.1. The contract documents consist of this agreement, general conditions, specifications, allowances, finish schedules, construction information disclosure statement, all addenda issued prior to execution and all change orders or modifications issued and agreed to by both parties. The contract documents noted herein shall be provided to the Contractor by the Owner. The contract documents represent the entire agreement of both parties and no prior oral or written agreement.

ARTICLE 2. SCOPE OF WORK

2.1. The Owner agrees to purchase and the Contractor agrees to construct the mentioned structure and fixtures attached thereto in (the city, county and state of project) according to the construction documents, allowances, finish schedules, addenda, change orders, modifications and specifications set forth in the project booklet.

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Contract
Project Name

ARTICLE 3. TIME OF COMPLETION

3.1. The approximate commencement date of the project shall be (Month Day, Year) and the approximate completion date of the project shall be (Month Day, Year). Change orders and/or unusual weather might delay or otherwise affect the completion date. Barring inclement weather or owner related delays, the Contractor shall be liable for liquidated damages of (dollar amount) per day if the project is not completed within (number of months) months. The contract execution date shall be (Month Day, Year).

ARTICLE 4. THE CONTRACT PRICE

4.1. The construction contract shall be calculated on a cost plus coordination fee basis. Labor, materials, permits and insurance figured as costs. Construction coordination services shall be a fixed amount of (\$00,000.00), payable on a bi-weekly basis.

4.2. Pre-construction estimates for construction costs and coordination fees shall be provided in (written) Dollars, (\$000,000.00). Closing costs shall be paid by the Contractor.

4.3. The Owner and the Contractor acknowledge that the Owner will provide a deposit of (Dollar amount) Dollars, (\$000,000.00), upon signing of this contract and before construction begins. A deposit and part of the purchase price of the project.

ARTICLE 5. PROGRESS PAYMENTS

5.1. The Owner will make payments to the contractor every two weeks for labor and materials submitted. Construction coordination fees shall be paid with those draws, in the amount of (\$0,000.00) every two weeks, with the completion of the project. Owner shall make payments to contractor after request by contractor. Should the owner fail to make payments, the contractor shall charge a penalty of (percent) annually upon the unpaid amount.



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5.2. If payment is not received by the Contractor within (number of days) of payment demand for work satisfactorily completed, contractor shall stop work or terminate the contract at his option. Termination by provisions of this paragraph shall not relieve the Owner of the obligation to pay the Contractor for that part of the work performed prior to such termination. Owner under the provisions of this paragraph shall not relieve the Contractor of obligations of payments to Contractor for that part of the work performed prior to termination.

ARTICLE 6. DUTIES OF THE CONTRACTOR

6.1 All work shall be in accordance to the provisions of the plans and specifications and all systems shall be in good working order.

6.2 All work shall be completed in a workman like manner, and shall conform to applicable national, state and local building codes and laws.

6.3 All work shall be performed by licensed individuals to perform the work as required by law.

6.4 Contractor shall obtain all permits necessary for the work to be completed.

6.5 Contractor shall remove all construction debris and leave the project in good condition.

6.6 Upon satisfactory payment being made for any portion of the work, Contractor shall furnish a full and unconditional release from any claim or mechanics lien for the work for which payment has been made.

ARTICLE 7. OWNER

7.1. The Owner shall communicate with subcontractors only through the Contractor.

7.2. The Owner will not assume any liability or responsibility, nor have any control over construction means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the project, since the Contractor is responsible for the Contractor's responsibility.



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ARTICLE 8. CHANGE ORDERS AND FINISH SCHEDULES

- 8.1. A Change Order is any change to the original plans and/or specifications. Change orders need to be agreed upon in writing, including cost, additional materials, approximate dates when the work will begin and be completed, a location where the work will be done and signed by both parties. Payment for each change order will be paid prior to the change, with the final payment at completion of the change order. A 12% fee shall be added to all change order overages in excess of initial allowances. Additional time needed for change orders shall be taken into consideration in the project completion schedule.
- 8.2. Completed Finish Selection Schedules shall be submitted to the Owner.
- 8.2.1. Schedule #1 within four weeks after site clearing begins.
- 8.2.2. Schedule #2 within eight weeks after site clearing begins.
- 8.3. Any delays or changes in finish selection schedules will delay the project completion date.

ARTICLE 9. INSURANCE

- 9.1 The Owner will keep in force a Builder's Risk Insurance Policy on the project to protect both owner's and contractor's interests until construction is complete.
- 9.2 The Owner will purchase and maintain property insurance to the full value of the project, in case of a fire, vandalism, malicious mischief or other insured risks.
- 9.3 The Contractor shall purchase and maintain needed [Workman's Compensation](#) and [General Liability](#) insurance coverage as required by law and deemed necessary for the project.



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ARTICLE 10. GENERAL PROVISIONS

10.1. If conditions are encountered at the construction site which are such as concealed physical conditions or unknown physical conditions of the site which differ naturally from those ordinarily found to exist and generally inherent in construction activities, the Owner will promptly investigate and, if they differ materially and cause an increase or decrease in cost of, and/or time required for, performance of any part of the work, the Contractor an equitable adjustment in the contract sum, contract time

ARTICLE 11. HAZARDOUS MATERIALS, WASTE AND ASBESTOS

11.1. Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, under this agreement includes the specific handling, disturbance, removal and disposal of hazardous materials, waste or asbestos, upon discovery of such materials, the Contractor shall notify the Owner immediately and allow the Owner to enter the contract with a properly licensed and qualified hazardous material removal contractor. Work shall be treated as a Change Order resulting in additional cost and schedule considerations.

ARTICLE 12. ARBITRATION OF DISPUTES

12.1. Any controversy or claim arising out of or relating to this contract, and the performance or non-performance hereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment of the arbitrator(s) may be entered in any court having jurisdiction.

ARTICLE 13. WARRANTY

13.1. At the completion of this project, Contractor shall execute an instrument warranting the project for **(number of years)** against defects in workmanship and materials utilized. The manufacturer's warranty will prevail. No legal action relating to the project, project performance or this contract shall be brought by either party against the other party after **(number of years)** beyond the completion of the project or cessation of work.



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ARTICLE 14. TERMINATION OF THE CONTRACT

14.1. Should the Owner or Contractor fail to carry out this contract, with the following options and stipulations shall apply:

14.1.1. If the Owner or the Contractor shall default on the contract, either party may declare the contract is in default and proceed as a result of the contract for the recovery of all damages incurred as a result of the contract, including a reasonable attorney's fee. In the case of a default by the Owner, the Earnest money herein mentioned shall be applied to the ascertained damages.

14.1.2. In the event of a default by the Owner or Contractor, the Contractor may state his intention to comply with the contract and proceed with the performance.

14.1.3. In the case of a defaulting Owner, the Contractor may accept the earnest money as shown herein as liquidated damages, should the earnest money not cover the expenses to date, the Contractor may make good on all work executed and for proven loss with respect to equipment, construction equipment and machinery, including reasonable attorney's fees and damages applicable to the property less the earnest money.

ARTICLE 15. ATTORNEY FEES

15.1. In the event of any arbitration or litigation relating to the project, pursuant to this contract, the prevailing party shall be entitled to reasonable attorney's fees and expenses.

ARTICLE 16. ACCEPTANCE AND OCCUPANCY

16.1. Upon completion, the project shall be inspected by the Owner and any repairs necessary to comply with the contract documents shall be made by the Contractor.

16.2. The Owner shall not occupy the property until final payment has been made to the Contractor and a Certificate of Occupancy has been obtained.



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Contract
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16.3. Occupancy of the project by the Owner in violation of Article 16.2. unconditional acceptance of the project and a waiver of any defect work.

WITNESS our hand and seal on this _____ day of _____,

Signed in the presence of:

Witness

Witness

Contractor Signature

Owner Signature

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PROJECT ALLOWANCES

THIS AGREEMENT, Made as of (Current Date), In the Year of (Current Year)

Between the Owner: **Owner's Name**
Address
Phone Number

And the Contractor: **Contractor's Name**
License Number
Address
Phone Number

For the Project: **Project Name**
Address

- 0,000 sq.ft. Finished Interior
- 000 sq.ft. Finished Basement
- 000 sq.ft. Garage
- 000 sq.ft. Front Porch
- 000 sq.ft. Rear Deck/Patio

0,000 sq.ft. Total

TOTAL BASE PRICE \$ 000,000.00

Lot Price Not Included

Base Price Includes:

- Exterior Finish
- Foundation Type
- Window Types
- Roof Shingles
- Type of Fascia and Soffit
- Specific Rooms Finishes and Mouldings
- Ceiling Heights and Styles
- Other specific items

Allowances Included:

- Irrigation \$ 0,000.00
- Landscaping \$ 0,000.00

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Project Allowances
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Site Work	\$ 0,0
Concrete Drives and Walks (0,000 SF)	\$ 0,0
Exterior Doors	\$ 0,0
Exterior Windows	\$ 0,0
Appliances	\$ 0,0
Plumbing Fixtures	\$ 0,0
Electrical Fixtures	\$ 0,0
Kitchen and Bathroom Cabinetry	\$ 0,0
Interior/Exterior Cabinetry	\$ 0,0
Carpet/Vinyl (approx. \$00.00/yd Installed)	\$ 0,0
Ceramic Tile (approx. \$00.00/ft Installed)	\$ 0,0
Fireplace Units (\$0,000.00 each)	\$ 0,0
Fireplace Trim/Mantel (\$000.00 each)	\$ 0,0
Hardwood Floors (dining, foyer & living)	\$ 0,0
Brick Steps	\$ 0,0
Closet Hardware	\$ 0,0
Electronic Garage Door with 2 Remotes	\$ 0,0
Interior/Exterior Door Hardware	\$ 0,0
Mirrors	\$ 0,0
Shower Doors	\$ 0,0
Lumber (to include:)	\$ 0,0
framing (floors, walls, ceilings, stairs and roof)	
fascia and soffit	
plywood decking	
sheathing	
nails and glue	
Additional Allowances	\$ 0,0

OPTIONAL CONTRACT ADDITIONS:

Optional Foundation Type	\$ 0,0
Additional Cabinetry	\$ 0,0
Septic Tank	\$ 0,0
Skylights	\$ 0,0
Optional Floor Finishes	\$ 0,0
Additional Concrete Drives and Walks	\$ 0,0
Central Vacuum System	\$ 0,0
Additional Additions	\$ 0,0

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GENERAL CONDITIONS

THIS AGREEMENT, Made as of (Current Date), In the Year of (Current Year)

Between the Owner: **Owner's Name**
Address
Phone Number

And the Contractor: **Contractor's Name**
License Number
Address
Phone Number

For the Project: **Project Name**
Address

ARTICLE 1. CONTRACT DOCUMENTS

- 1.1. The contract documents consist of the contract, general condition documents, specifications, allowances, finish schedules, construction information disclosure statement, all addenda issued prior to execution and all change orders or modifications issued and agreed to by both of the Contract Documents is to include all items necessary for the completion of the work by the Contractor. The Contract Documents and what is required by one shall be as binding as if required by a Contractor shall be required only to the extent consistent with the and reasonably inferable from them as being necessary to produce
- 1.2. The Contract Documents shall not be construed to create a contract of any kind (1) between the architect and contractor, (2) between the subcontractor or sub-subcontractor or (3) between any persons of owner and contractor.
- 1.3. The term "work" means the construction and services required by Documents, whether completed or partially completed, and include materials, equipment and services to be provided or to be provided the Contractor's obligations. The work may constitute the whole of

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General Conditions
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- 1.4. The drawings, specifications and other documents furnished by the Contractor shall not become property of the Owner if the instruments of service and shall not become property of the Owner if the project for which they are made is commenced. Drawings, specifications and other documents furnished by the Contractor shall not be used by the Contractor for any other project or for addition to this project or, unless the Contractor is in default of completion of this project by others, except by written agreement and compensation.
- 1.5. Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as a waiver or derogation of the contractor's common law copyrights or other rights. The Contractor shall own neither the documents nor the copyrights.

ARTICLE 2. OWNER

- 2.1. The Owner shall furnish all necessary surveys and a legal description of the project.
- 2.2. Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for all necessary easements, assessments and charges required for the construction of permanent structures or permanent changes in existing facilities.
- 2.3. If the Owner observes or otherwise becomes aware of a fault or defect in the work or any nonconformity with the design or Construction Documents, the Owner shall give prompt written notice to the Contractor.
- 2.4. The Owner shall furnish required information and services and shall make decisions pertaining there to avoid delay in the orderly progress of construction.
- 2.5. The Owner shall, at the request of the Contractor, provide a certified statement of funds available for the project and their source.
- 2.6. The Owner shall communicate with the subcontractors only through the Contractor.
- 2.7. The Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, safety precautions and programs in connection with the work, since these are the Contractor's responsibility.

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- 2.8. The Owner will choose all finish selections, fixtures and equipment the allowances. Any overage or under will be calculated at the cost. The allowances will include material, shipping and where noted in

ARTICLE 3. CONTRACTOR

- 3.1. The Contractor shall supervise and direct the work, using the Contractor's attention. The Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures, coordinating all portions of the work under the contract.
- 3.2. Unless Contract Documents give other specific instructions concerning the Contractor shall provide and pay for all labor, materials, equipment, construction equipment and machinery, water, heat, utilities, transportation facilities and services necessary for the proper execution and completion, whether temporary or permanent and whether or not incorporated into the work.
- 3.3. The Contractor shall enforce strict discipline and good order among its employees and other persons carrying out the contract. The Contractor shall not employ or use unfit persons or persons not skilled in tasks assigned to them.
- 3.4. The Contractor warrants to the owner that materials and equipment furnished by the contractor will be of good quality and new unless otherwise required by the Contract Documents, that the work will be free from defects not in the contract required or permitted and that the work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, substitutions not properly approved and authorized, may be considered a breach of the Contractor's warranty excludes remedy for damage or defect caused by modification not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. The Owner, the Contractor shall furnish satisfactory evidence as to the quality of the materials and equipment.

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- 3.5.** Unless otherwise provided in the Contract Documents, the Contractor shall pay all taxes, including sales tax, use tax and other similar taxes which are legally enacted or levied on the Contractor or its subcontractors, or negotiations concluded, whether or not yet effective or merely in effect, and shall secure and pay for the building permit and other governmental fees, licenses and inspections necessary for proper completion of the work.
- 3.6.** The Contractor shall comply with and give notices required by law and regulations, and lawful orders of public authorities bearing on the work. The Contractor shall promptly notify the Owner if the drawings are observed by the contractor to be at a variance therewith.
- 3.7.** The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, subcontractors and their agents and employees or persons performing portions of the work under a contract with the Contractor.
- 3.8.** Design services shall be performed by a qualified professional selected by the Owner. The professional obligations of such persons shall be undertaken and performed in the interest of the Contractor. Construction services shall be performed by qualified subcontractors and suppliers, selected and paid by the Contractor. There shall be no professional obligation or contractual relationship between the Contractor and the Owner.
- 3.9.** The Contractor shall keep the Owner informed of the progress and status of the work.

ARTICLE 4. RELATIONSHIP OF BOTH PARTIES

- 4.1.** The Contractor accepts the relationship of trust and confidence established by this agreement and covenants with the Owner to cooperate with the Contractor in the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to make available at all times an adequate supply of workers and materials, and to perform the work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to enable the Contractor to perform the work in the best way and most expeditious manner by promptly approving in a timely way information required by the Contractor and to provide to the Contractor in accordance with the requirements of the Contract Documents.

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General Conditions
Project Name

ARTICLE 5. UNKNOWN CONDITIONS

5.1. If conditions are encountered at the site which are:

(1) Subsurface or otherwise concealed physical conditions which those indicated in the Contract Documents

(2) Unknown physical conditions of an unusual nature, which differ from those ordinarily found to exist and generally recognized as inherent in the character provided for in the construction documents, then the Contractor shall be given to the other party promptly before conditions event later than 21 days after the first observance of the condition to promptly investigate such conditions and will negotiate with the Owner for an adjustment in the contract sum, contract time or both.

5.2. If the Contractor wishes to make claim for an increase in the contract price as provided herein shall be given to the Owner before proceeding with the work. Prior notice is not required for claims relating to an emergency on the property. If the Contractor believes additional cost is involved for the work, it is not limited to:

(1) A written interpretation from the Owner

(2) An order by the Owner to stop the work where the Contractor is required to stop

(3) A written order for a change in the work issued by the Owner

(4) Failure of payment by the Owner

(5) Termination of the Contract by the Owner

(6) Owner's suspension

(7) Other reasonable grounds, claims shall be filed in accordance with the procedures established herein.

5.3. If the Contractor wishes to make claim for an increase in the contract price as provided herein shall be given. The Contractor's claims shall include the cost and of probable effect of delay on progress of the work. In the event of a delay, only one claim is necessary.



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General Conditions
Project Name

- 5.4.** If adverse weather conditions are the basis for a claim for additional costs, the claim shall be documented by data substantiating that weather conditions during the period of time and could not have been reasonably anticipated and that the weather conditions has an adverse effect on the scheduled construction.
- 5.5.** If either party to the contract suffers injury or damage to person or property as a result of an act or omission of the other party, any of the other party's employees, agents, or others for whose acts such party is legally liable, written notice of the claim, whether insured or not, shall be given to the other party within a reasonable period of time, not exceeding 21 days after first observance. The notice shall provide sufficient information to enable the other party to investigate the matter. If a claim for additional costs related to this claim is to be asserted, it shall be filed as provided in sections 5.1 and 5.3.

ARTICLE 6. CHANGES IN THE WORK

- 6.1.** A Change Order is a written order signed by the Owner and the Contractor after execution of the contract, authorizing a change in the work or contract sum or contract time. The contract sum and time can only be changed by a change order.
- 6.2.** The Owner without invalidating the contract may order changes in the general scope of the original contract consisting of additions, deletions, or substitutions and the contract sum and contract time shall be adjusted accordingly. All changes to the work shall be authorized by a change order, and shall be performed under the conditions of the contract documents.
- 6.3.** If the Owner requests the Contractor to submit a proposal for a change and the Owner then elects not to proceed with the change, a change order shall be issued by the Contractor for any costs incurred for design services, bid preparation, and revisions to the contract documents, with the addition of a change order fee.
- 6.4.** The Contractor shall be compensated for changes in the work necessitated by the enactment or revisions or codes, laws or regulations subsequent to the Contractor's proposal.

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General Conditions
Project Name

ARTICLE 7. TIME

- 7.1. Time Limits stated in the contract documents are of the essence of executing the agreement the Contractor confirms that the contract period for performing the work.
- 7.2. If the Contractor is delayed at any time in the progress of the work in the work, by labor disputes, fire, unusual delays in deliveries, a weather conditions not reasonably anticipated, unavoidable event beyond the Contractors control, or by other causes which the owner determine may justify a delay, then the contract time shall be extended for such reasonable time as the Owner and the Contractor may negotiate.
- 7.3. The date of substantial completion of the work, or the portion thereof by the Contractor when construction is sufficiently complete, in accordance with the contract documents, so the Owner can occupy or utilize the work therefor for the use for which it is intended, as expressed in the contract documents.

ARTICLE 8. CORRECTION OF WORK

- 8.1. The Contractor shall promptly correct work failing to conform to the contract documents whether observed before or after substantial completion and whether installed or completed and shall correct work found not to be in accordance with the requirements of the contract documents within a period of one year after substantial completion of the contract or by terms of an applicable warranty required by the contract documents. The provisions of this article shall apply to subcontractors as well as to work done by direct employees of the Contractor.
- 8.2. The Contractor shall complete the construction of the project to the satisfaction of the Owner in accordance with the contract documents, however there could be a **variance in the contract documents** based on site conditions, materials used, or other encumbrances.



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ARTICLE 9. TERMINATION OF THE CONTRACT

9.1. If the Owner fails to schedule a "Closing" with the Contractor on the 14 days after the certificate of substantial completion has been issued to the Contractor, the Contractor may, upon 7 additional days written notice to the Owner, terminate the contract and recover from the owner payment for proven loss with respect to equipment, materials, tools and equipment and machinery, including reasonable overhead, profit and interest applicable to the project.

ARTICLE 10. ACCEPTANCE

By execution of this document, I agree to have read and fully understand the implications of this document. I agree to explicitly abide by and follow the terms listed in this agreement.

Company Name

Contractor's Signature

Date

Owner's Signature

Date

Owner's Signature

Date

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