

Welcome to the Model Residential Design-Build Contract (Cost Plus)

The Council for the Construction Law Section of the Washington State Bar Association prepared this Model Residential Design-Build Contract to help homeowners and builders allocate risk and responsibilities. **This form contract document (the “Document”) does not constitute legal advice or recommendations, and there is no substitute for careful review by the parties and their attorneys.** The drafters, the Council, and the WSBA Construction Law Section are not responsible for any use of the Document.

The following comments are intended to provide background information about some of the Document provisions. The comments do not modify the language of the Document:

1. Relationship Between the Parties: The Document contemplates that the Owner is supplying the Design-Builder with design criteria setting forth the Owner’s desired parameters for the project, that the Design-Builder will rely upon those criteria in creating a design for the project, which, after approval by the Owner, the Design-Builder will then use to construct the project.

2. Cost-Plus Contract: This Document is written to be a **cost-plus contract**. It is not a “fixed price” contract. The Design-Builder estimates the project cost, but the actual project cost is ultimately determined by the actual costs of design services, labor, and materials supplied by the Design-Builder. The actual costs of design and construction may be higher, equal to, or lower than the cost estimated by the Design-Builder. This is not a “fixed price” or guaranteed maximum price under which the Owner is protected by a lump sum or guaranteed maximum amount. Rather, the Owner is responsible to pay for actual expenditures by the Design-Builder and for comparing expenditures to the amounts estimated by the Design-Builder. The Owner is to be provided a “control estimate” and is entitled to receive notice if the Contractor’s reimbursable costs exceed the control estimate by a certain percentage.

3. Components of Costs: Different Design-Builders have different billing practices. For instance, a Design-Builder’s listed hourly rate charged for an employee is usually not what the employee is actually paid. Therefore, the Document allows the parties to define reimbursable costs (Option A of Section 2.2) or identify such terms in an exhibit (Option B of Section 2.2). It is left to the parties to negotiate and agree upon what constitutes reimbursable costs and how much the Design-Builder will be paid for the Work.

4. Cost Auditing: The Document permits the Owner to review the Design-Builder’s cost records (such as design consultant invoices, subcontractor invoices, and labor and material costs) each time the Design-Builder submits a monthly progress billing. Because there is no fixed price or guaranteed maximum price, the Owner should carefully review payment applications and supporting documentation. In addition, lien release forms have been provided as Exhibits to the Document.

5. Damages for Late Performance: The Document requires the Design-Builder to pay the Owner daily “liquidated damages” if the specified date of Substantial Completion is not

achieved. Because the contract contains a waiver of consequential damages in Section 6.4, liquidated damages likely represent the Owner's only remedy for late completion of the project. The parties must negotiate the amount of the daily rate. To be enforceable, the daily rate must be a reasonable estimate of the Owner's damages for delay.

6. Bonds, Insurance, Registration: The Design-Builder and Owner are encouraged to contact their insurance agents before signing the contract to make sure all the insurance requirements can be met. The Design-Builder is required to provide insurance to insure the Work while in progress. Additionally, the Owner is encouraged to check the status of each potential contractor's registration and insurance with the Washington Department of Labor and Industries at www.lni.wa.gov. This Document does not require the Design-Builder to obtain a payment and performance bond in the amount of the cost of the Work.

7. Design-Builder's Warranty: In the documents, the Design-Builder warrants to the Owner that the Work will be in accordance with Contract Documents and free of material structural defects.

8. Owner's Notice of Claims After Completion: The Document incorporates Washington statutory notice and claim provisions from Chapter 64.50 RCW. Owners are encouraged to review these terms carefully and follow the procedure set forth in RCW 64.50 if they have a claim.

9. Revisions: The Document terms are intended to achieve consistency throughout the Document. If revisions are made, care should be taken that the changes do not contradict other terms in the Document.

RESIDENTIAL DESIGN-BUILD CONTRACT (Cost Plus)

Parties: _____
Design-Builder

Owner

Property: _____

Address

Tax Parcel No.

Date: _____

I. THE WORK

1.1 Owner's Duties. The Owner has provided the Design-Builder with Design Criteria setting forth the Owner's desired parameters to construct or renovate a single-family residence (the "Project") for the Owner on the Property. The Owner's Design Criteria are attached hereto as **Exhibit A**. The Owner shall consult with the Design-Builder in the development of plans and specifications based upon those criteria, and shall approve the final plans and specifications prior to application for permits or commencement of construction. The Owner's approval is for general compliance with the Design Criteria, and Owner's approval shall not be deemed to transfer any design liability to Owner. The Owner shall provide all reviews and approvals in a timely fashion so as not to delay the Design-Builder's schedule. The Owner shall pay the Design-Builder for the design and construction of the Project as set forth herein.

1.2 Design-Builder's Duties. Based upon the Owner's Design Criteria, the Design-Builder shall prepare plans and specifications ("Construction Documents") for the Owner's approval using design professionals ("Design Consultants") who are properly licensed and otherwise qualified to perform architectural, engineering, and other design work. The Construction Documents shall be consistent with the Owner's Design Criteria and any changes thereto. Design Builder shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Design-Builder agrees that each Design Consultant shall be fully bound to Design-Builder in the same manner as Design-Builder is bound to Owner for all material requirements of the Design-Build Contract which are applicable to the Design Consultant's scope of services. Design-Builder shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Design-Builder's obligations under the Design-Build Contract.

1.2.1 Nothing in this Agreement shall relieve Design-Builder from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

1.2.2 The standard of care for all design and engineering services (“Professional Services”) performed by Design-Builder and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

1.2.3 All drawings, specifications, and other documents and electronic data furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be the property of Design-Builder, and Owner is granted a limited license to use such Work Product solely for the Project to which this Design-Build Contract pertains. If Owner uses the Work Product on any other project, he/she shall do so at his/her sole risk and without liability or legal exposure to Design-Builder or its Design Consultants, or anyone working through them. Owner further agrees that he/she shall defend, indemnify, and hold harmless the Design-Builder and its Design Consultants from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys’ fees, arising out of or resulting from 1) use of the Work Product on another project; and 2) use of the Work Product on this Project if Design-Builder is terminated prior to Substantial Completion.

1.2.4 Design-Builder shall furnish the material, labor, equipment, tools, and supervision necessary to construct the Project for Owner on the Property in compliance with the plans and specifications approved by Owner (the “Plans.”) The design and construction of the Project constitutes the “Work” under this Design-Build Contract. This Contract and all of its Exhibits, and all Change Orders after execution, are the “Contract Documents.” If there is a conflict within the Contract Documents, the most recent document shall govern over previously signed documents.

1.3 Permits. [Choose ___ Owner or ___ Design-Builder] 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 Estimated Project Costs.

II. PRICE AND PAYMENT

2.1 Estimated Project Cost. Design-Builder estimates the total cost of the Work to be _____ Dollars (\$_____) as set forth in **Exhibit B** (the “Estimated Project Cost.”) The Estimated Project Cost is organized by trade categories and systems. Exhibit B is an estimate only, and it is based upon the Design Criteria provided by Owner. The actual total cost of the Work may be higher or lower than the Estimated Project Cost.

2.2 The Cost of the Work (Cost Plus Fee). Owner shall pay Design-Builder for the performance of the Work a sum equal to Design-Builder’s Actual Costs (defined below) plus a fee of _____ percent (____%) of the Actual Costs (the “Design-Builder’s Fee,”) plus sales tax.

[Option A] “Actual Costs” include the following:

- (a) the costs paid to Design Consultants for the design of the Project;
- (b) on-site Project personnel costs, but limited to those persons necessary for the proper performance of the Work, at the following hourly rates: (list by job title and hourly rate);
- (c) the costs paid for the purchase, installation and/or use of all materials, structural accessories, machinery, equipment or other items for the performance of the Work;
- (d) the costs paid for all insurance and governmental fees (except for permits) for the Project;
- (e) the costs paid to subcontractors for their performance of the Work;
and

Actual Costs do not include costs incurred because of Design-Builder error.

[Option B] “Actual Costs” are listed in an attachment provided by Design-Builder and incorporated herein by this reference.

2.3 Down Payment. Owner shall pay Design-Builder a down payment of _____ Dollars (\$_____) prior to commencement of the Work. The down payment shall be credited against the Cost of the Work beginning with Design-Builder’s first Progress Payment. Owner warrants that he/she has funds, either personal or through lender financing, in an amount equal to the Estimated Project Cost.

2.4 Progress Payments. On the first business day of every month, Design-Builder shall present to Owner an Application for Payment based on the Actual Costs incurred to that date plus the Design-Builder’s Fee and plus sales tax, less previous payments. Owner shall pay the full amount billed, less Retainage, no later than _____ (____) (twenty-five if not filled in) days from the date of receipt of each Application for Payment. With each Application for Payment, the Owner shall have the right to require Design-Builder to provide documentation to support those Actual Costs. Design-Builder shall apply Owner’s payment only to the costs and fees of this Project.

2.5 Anticipated Actual Costs Exceeding Estimated Project Costs. If Design-Builder reasonably believes that anticipated Actual Costs will exceed any Work component of the Estimated Project Cost in Exhibit B by more than ten percent (10%.) then, at the earliest possible opportunity and in any event before completion of that Work component, Design-Builder shall give written notice to Owner of the anticipated increase.

2.6 Retainage. Owner shall withhold five percent (5%) as retainage from each progress payment (the “Retainage.”) Retainage shall be released to Design-Builder at the time of Final Payment. The Retainage is a fund for the protection of the Owner (i) from incomplete or defective work by Design-Builder; (ii) for the payment of persons who supplied materials or who worked on

the Project and were not paid by Design-Builder; and (iii) damages incurred due to other breaches of the Contract.

2.7 Lien Release. Owner shall not be required to make any payment to Design-Builder unless and until Design-Builder provides Owner with an unconditional waiver and lien release form signed by Design-Builder and by each Design Consultant, 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 Design-Builder. A form lien release is attached as **Exhibit C-1**.

2.8 Final Payment. Within ten (10) days after Design-Builder notifies Owner that the Work is Substantially Complete, Owner shall inspect the Work with Design-Builder and deliver to Design-Builder 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 Design-Builder within _____ (___) [twenty-one if not filled in] days of Design-Builder's receipt of the Punch List. Deficiencies in the work discovered after delivery of the Punch List shall be deemed warranty work. Owner may withhold the reasonable value to complete such work from Final Payment to correct such work, but Owner cannot withhold Final Payment based on deficiencies discovered after delivery of the Punch List. Final Payment shall be due fourteen (14) days after Design-Builder (1) completes the Work in accordance with the Contract Documents; and (2) provides Owner with final lien releases from Design-Builder and all subcontractors and suppliers, conditioned only on receipt of Final Payment attached as **Exhibit C-2**. "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 Design-Builder.

2.9 Failure of Payment. If Owner fails to pay Design-Builder amounts due within fourteen (14) days of the time required by Section 2.4, Design-Builder 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, Design-Builder 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.

2.10 Design-Builder'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 Design-Builder's compliance with the disclosure requirements.

III. CHANGES

3.1 Nature of Change. If Owner or Design-Builder 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 Design-Builder shall provide Owner with a written estimate of the cost and time impact of the requested Change; and
- (c) Owner and Design-Builder shall execute a Change Order confirming their agreement with the Change, the cost (including how the change is priced), 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. Design-Builder shall commence the design portion of the Work within ten (10) days of receipt of the Owner’s execution of this Contract, and shall commence the construction portion of the Work within ten (10) days of the issuance of the building permit. Subject to the permitted extensions and delays provided herein, Design-Builder shall Substantially Complete the Work within _____ (____)days after the commencement date for the construction portion of the Work. With its first Application for Payment, Design-Builder shall provide a schedule indicating proposed Design Consultants’ and subcontractors’ activity sequences and durations, deadlines for Owner’s decisions on preliminary plans and specifications, and milestones for delivery of final plans and completion of various portions of the Work. The schedule is included in this Contract as **Exhibit F.**

4.2 Construction Time and Liquidated Damages. Design-Builder agrees that the time in Section 4.1 to reach Substantial Completion, as reflected by Design-Builder’s schedule, provides sufficient time for the expeditious and practical execution of the Work. If Design-Builder 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 Design-Builder agree that if Design-Builder fails to meet the Substantial Completion date, then *Design-Builder shall pay Owner liquidated damages at a daily rate of _____ Dollars (\$_____)* until Substantial Completion is achieved. 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 Design-Builder.

4.3 Delay. If the Project is delayed by the act, neglect, or default of Owner, Owner’s agent, Owner’s Design Consultant (if any,) 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 Design-Builder'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 Design Criteria (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.

4.4 Notice of Delay. Within a reasonable time following the date Design-Builder knows, or within reasonable diligence should know of an Excusable Delay, but in no event longer than seven (7) days, Design-Builder shall notify Owner of the extension of time resulting from such delay. The extension of time shall be based upon Design-Builder's reasonable determination of the delay period. Any time extension to the Substantial Completion date shall be documented in a Change Order.

V. INSURANCE

5.1 Before commencing the Work and as a condition of payment, Design-Builder 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-, VII, 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 Design-Builder, Design-Builder'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 Design-Builder'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 [] Design-Builder [].
- .4 Owner shall be included as an additional insured under the CGL policy.
- .5 Design-Builder shall require its Design Consultants, sub-consultants, and subcontractors to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in paragraphs .1-.4 above.
- .6 Design-Builder's and its Design Consultants', sub-consultants', and subcontractors' insurance coverages set forth in paragraphs .1-.4 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery on the Project.

.7 Design-Builder and/or any Design Consultants to Design-Builder shall provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or its Design Consultants. The coverage limits, duration, and other specifics of such insurance shall be as set forth in **Exhibit G** hereto. Such professional liability insurance shall specifically delete any exclusion for design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services hereunder.

5.2 Prior to starting work, Design-Builder 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.

5.3 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.

5.4 With the exception of professional liability insurance and worker's compensation coverage, Owner and Design-Builder hereby waive their rights of subrogation against one another for any losses covered by the required insurance policies except that Design-Builder shall be liable for the property insurance deductible if a claim is made against such property insurance and that claim arises out of Design-Builder's negligence.

VI. DESIGN-BUILDER'S WARRANTY

6.1 Design-Builder's Warranty. Design-Builder warrants that the Professional Services shall be performed in accordance with the degree of care and skill set forth in Section 1.2.2. Design-Builder warrants that the construction work shall be in accordance applicable laws and the Contract Documents, 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 Design-Builder to Owner, and Design-Builder shall reasonably assist Owner in enforcing such product warranties.

6.2 Cure of Defect. If a defect is discovered within the Warranty Period, then Owner must promptly notify Design-Builder in writing following the discovery of that defect (the "Warranty Defect Notice,") and must provide Design-Builder 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 reasonably estimated by Design-Builder. This Warranty Defect Notice shall serve as the written notice of claim described in the following paragraph. Design-Builder shall not be liable for any cost or expense incurred by Owner in remedying any warranted defects unless Design-Builder 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 Design-Builder's other obligations under the Contract Documents.

6.3 Notice of Claim. WASHINGTON LAW, CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS THAT OWNER MUST FOLLOW BEFORE OWNER MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST DESIGN-BUILDER. FORTY-FIVE (45) DAYS BEFORE OWNER FILES A LAWSUIT, OWNER MUST DELIVER TO DESIGN-BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS OWNER ALLEGES ARE DEFECTIVE AND PROVIDE DESIGN-BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY DESIGN-BUILDER. 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. Design-Builder 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 Design-Builder 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

7.1 Design-Builder 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. Design-Builder 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 Design-Builder or its subcontractors of any tier. Design-Builder 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. Design-Builder 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

8.1 Design-Builder 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 Professional Services and/or 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 “Claim,”) and provided further that the Design-Builder owes no Indemnity Duty if the Claim was caused by or results from the sole negligence of the Owner or its agents or both. In the event of concurrent negligence (i) by Design-Builder or the Design-Builder’s subcontractors, agents, or employees, or both; and (ii) by the Owner or its agents, or both, then the Design-Builder’s Indemnity Duty is valid and enforceable only to the extent of the negligence of Design-Builder, its agents, and its employees.

8.2 Design-Builder 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 Design-Builder’s failure to comply with any safety-related laws, ordinances, rules, regulations, orders, or its obligations hereunder.

8.3 For purposes of the foregoing indemnification provision only, and only to the extent of Claims against Design-Builder by Owner under such indemnification provision, Design-Builder 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.

8.4 By initialing here, the parties agree that this clause was mutually negotiated:

_____ Design-Builder _____ Owner

IX. TERMINATION

9.1 Termination by Owner for Cause. Owner may, after giving Design-Builder seven (7) days’ written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Contract if Design-Builder 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 Design-Builder 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 Design-Builder;
- (b) accept assignment of subcontracts;
- (c) finish the Work using reasonable methods. Upon Design-Builder's request, Owner shall furnish to Design-Builder a detailed accounting of the costs Owner incurs in finishing the Work; and
- (d) charge Design-Builder the costs of completion in excess of the amounts due to Design-Builder.

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, Design-Builder 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, Design-Builder shall be entitled to receive payment for Work executed to the effective date of termination, including Actual Costs and Design-Builder's Fee, plus those costs necessary to satisfy the obligations incurred as a result of the requirements of subsections (a)-(c) above.

9.3 Termination by Design-Builder for Cause. In addition to Design-Builder's right to terminate the Contract pursuant to Section 2.9, the Design-Builder 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, Design-Builder 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 Design-Builder may terminate the Contract.

X. MEDIATION

10.1 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. In entering into this Agreement, neither party has relied upon any statement, estimate, forecast, projection, representation, warranty, action or agreement of the other party except for those expressly contained in this 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.

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.

DESIGN-BUILDER:

OWNER:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

E-Mail: _____

E-Mail: _____

Fax: _____

Fax: _____

Address: _____

Address: _____

Contractor Registration No.: _____

- Exhibits:
- A – Plans
 - B – Estimated Project Cost dated _____
 - 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
 - G – Errors & Omissions Insurance

EXHIBIT A
PLANS

Owner's Design Criteria:

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

EXHIBIT B
ESTIMATED PROJECT COST

(To be provided by Design-Builder)

DRAFT, SUBJECT TO REVIEW AND APPROVAL BY WASHINGTON STATE BAR ASSOCIATION

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: _____

(Design-Builder)

By: _____

(Print Name)

(Title)

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EXHIBIT C-2

**CONDITIONAL WAIVER AND RELEASE UPON
FINAL PAYMENT**

Upon receipt by the undersigned of a check from
_____ in the sum of \$_____ payable to
(Maker of Check)

_____ and when the check has been properly endorsed
(Payee)

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: _____

(Design-Builder)

By: _____

(Print Name)

(Title)

EXHIBIT D

DISCLOSURE STATEMENT / NOTICE TO CUSTOMER

This Design-Builder 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 Design-Builder for breach of contract including negligent or improper work in the conduct of the Design-Builder’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 Design-Builder. 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 Design-Builder 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 DESIGN-BUILDER TO PROVIDE YOU WITH ORIGINAL “LIEN RELEASE” DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.

The Design-Builder 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

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The Design-Builder 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.

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EXHIBIT E
ATTACHMENT “A”
CHANGE ORDER NO. ____

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EXHIBIT F
PROJECT SCHEDULE

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EXHIBIT G
ERRORS & OMISSIONS INSURANCE

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