

Welcome to the Model Residential Owner/Design Consultant Professional Service Agreement

The Council for the Construction Law Section of the Washington State Bar Association prepared this Model Residential Owner/Design Consultant Professional Service Agreement to help homeowners and design professionals 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.

Agreement is written with the assumption that Owner will execute a version of the WSBA Construction Section’s Model Residential Construction Contract Cost Plus between Owner and Contractor or the Model Residential Construction Contract Lump Sum between Owner and Contractor.

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: This Document contemplates that the Owner will be supplying a contractor with the plans, specifications and/or design documents that will be prepared by the Consultant. This Document governs the relationship between the Owner and the Consultant as the Consultant prepares the plans, specification and/or design documents for the project.
2. Scope of Work: The Consultant’s scope of work on the project should be specified in an Exhibit A to this Document. The Consultant’s typical scope of work includes a Design Development Phase, Construction Document Phase, and Construction Administration Phase. Design Development is when the Consultant works with the Owner to develop a conceptual design of the project, the Construction Document Phase is when the Consultant prepares the plans, specifications and/or design documents that will be used to obtain a permit for construction and also provided to the Contractor for pricing and construction, and the Construction Administration phase is when the Consultant assists in the administration of the contract with the contractor selected by the Owner. The Owner and Consultant may choose some to include all or some of these three phases in the Exhibit A scope of services.
3. Compensation of Consultant: This Document is written to compensate the Consultant based on unit prices for the Consultant’s services with a not to exceed price specified by the parties. The Consultant will not be entitled to additional compensation in excess of the not to exceed price without a change in the contract assumptions that entitles the Consultant to additional compensation or the prior written directive or approval of such services by the Owner.
4. Progress Payments: This Document is written to allow for progress payments during the course of the Consultant’s services on the project. The Document provides that the Owner will pay the Consultant monthly for the services and the Consultant will provide lien/claim releases that cover the periods being paid and previously paid by the Owner.
5. Insurance: This Document requires the Consultant to procure its own and insurance and maintain such insurance during the course of the project. The amount of insurance available may vary from year to year because the professional liability insurance is written on a claims-made basis. It is recommended that the Owner confirm with an insurance professional that the amounts

and scopes of insurance coverage provided by the Consultant are sufficient for the size and scope of the project.

6. Ownership of the Documents: This Document reserves the Consultant's ownership of all documents created by the Consultant and related to the project, but provides the Owner with a non-exclusive license to use such documents for the construction of the project so long as the Owner pays the Consultant.

7. Dispute Resolution: This agreement contains a mediation clause which requires the parties to participate in a non-binding mediation before initiating any lawsuit against the other party. In the event that the parties are not able to resolve their dispute at the mediation either party may proceed with a lawsuit in a court where the project is located.

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

CONTRACT BETWEEN OWNER AND DESIGN CONSULTANT
FOR RESIDENTIAL PROJECT

Parties: _____
Owner

Consultant

Project: _____

Address

Tax Parcel No.

Date: _____

The Owner and Consultant agree as follows:

SECTION 1. DESCRIPTION AND STANDARD OF SERVICES

- 1.1** Consultant will perform for the Project the services described in the document attached hereto as Exhibit A, together with all other services necessary or incidental to perform services (“Services”). The Services will include any services performed by Consultant on the Project prior to the date hereof.
- 1.2** Other than as described in Exhibit A, Consultant will not contract with or otherwise use any subconsultants, subcontractors or other non-employee persons or entities (“Subconsultants”) to perform the Services without the prior written approval of Owner. Consultant will be responsible for all acts and omissions of the Subconsultants.
- 1.3** Consultant warrants that it and the Subconsultants are fully licensed, registered or otherwise authorized to perform the Services in the jurisdiction where the Project is located the extent applicable law requires such licensure, registration, or authorization.
- 1.4** Consultant will coordinate the Services with the services of other Consultants, engineers, consultants and contractors working on the Project.
- 1.5** Consultant and the Subconsultants will exercise that degree of care in performing the Services in accordance with that prevailing among firms of comparable standing when performing similar services for projects similar to the Project in the jurisdiction where the Project is located (“Professional Standard”). Consultant will promptly correct or re-perform those Services not meeting the Professional Standard without additional compensation.
- 1.6** Consultant and the Subconsultants will comply with all applicable laws, statutes, codes, ordinances, rules, regulations and lawful orders as is consistent with the Professional Standard.
- 1.7** During the performance of this Contract, Consultant will follow any reasonable Owner policies and procedures regarding performance of services or work on the Project, and Consultant will cause all Subconsultants to comply with these policies and procedures. However, nothing in this Section requires Owner to develop policies and procedures or to provide policies and procedures to Consultant.

- 1.8** Owner's review, approval, acceptance, use, or payment for all or any part of the Services hereunder will in no way alter the Consultant's obligations or Owner's rights hereunder, and will not excuse or diminish Consultant's responsibility for performing all Services consistent with this Contract.
- 1.9** If Consultant's proposal is incorporated herein, any conflicts between the proposal and this Contract will be resolved in favor of this Contract. Any limitations of liability, waivers of damages, or disclaimers of warranty or liability contained in Consultant's proposal will not apply to the Project or this Contract, unless specifically listed below:

[List any warranty disclaimer or limitation of liability set forth in the proposal that the parties intend to become part of this Agreement]

SECTION 2. OWNER'S OBLIGATIONS

- 2.1** If requested by the Consultant, the Owner shall provide a program setting forth the Owner's design objectives for the project, including space and site requirements.
- 2.2** If requested by the Consultant, the Owner shall provide surveys to describe the characteristics and legal definitions/limitations of the project site. Consultant shall have a right to rely upon the survey information provided by Owner. If the Owner does not provide such surveys, Consultant shall, at Owner's expense and with prior written authorization by Owner, provide those surveys necessary to perform the Work.
- 2.3** If requested by Consultant, Owner shall provide the services of a geotechnical engineer to perform such studies as may be necessary to identify subsoil conditions at the site. Consultant shall have a right to rely upon the information provided by the geotechnical engineer. If the Owner does not provide such geotechnical information, Consultant shall, at Owner's expense and with prior written authorization by Owner, provide the geotechnical information necessary to perform the Work.
- 2.4** Owner shall timely review and provide information reasonably required by the Consultant to complete its Services in accordance with the applicable schedule.
- 2.5** Owner shall provide timely written notice to Consultant if Owner becomes aware of any error, omission, or inconsistency in Consultant's Work Product or of any fault in Consultant's Services

SECTION 3. COMPENSATION

[Payment Option 1: Maximum Price]

- 3.1 A** As full consideration for performance of the Services, Owner will pay Consultant based on the hourly rates described in Exhibit B, up to a maximum amount payable under this Contract of \$_____ ("Maximum Price"). Consultant will not be entitled to compensation in excess of such amount for any Additional Services performed on the Project without the prior written directive or approval of such Additional Services by Owner. Consultant will not perform any Additional Services on the Project for which the Consultant will seek compensation in excess of the Maximum Price without notifying Owner in writing in advance that Consultant considers the same to be Additional Services and stating the additional compensation Consultant intends to seek for such Additional Services. Owner may direct Consultant to perform particular services which both parties agree are additional services but as to which there is no agreement regarding the amount of additional compensation to be paid for the additional services, in which case Consultant will proceed to perform the services and the compensation paid for the additional services will be determined either by a future agreement of the parties or in accordance with Section 14

[Payment Option 2: Percentage of Construction Costs]

3.1 B As full consideration for performance of the Services, Owner will pay Consultant _____ percent (___%) of the total cost of construction of the Project, including contractor's overhead and profit and Washington State Sales Tax ("Compensation"). Consultant will not be entitled to Compensation in excess of such amount for any Additional Services performed on the Project without the prior written directive or approval of such Additional Services by Owner. Consultant will not perform any Additional Services on the Project for which the Consultant will seek additional compensation without notifying Owner in writing in advance that Consultant considers the same to be Additional Services and stating the additional compensation Consultant intends to seek for such performance. Owner may direct Consultant to perform particular services which both parties agree are additional services but as to which there is no agreement regarding the amount of additional compensation to be paid for the additional services, in which case Consultant will proceed to perform the services and the compensation paid for the additional services will be determined either by a future agreement of the parties or in accordance with Section 14.

Until such time as a total cost of construction has been established, Consultant will invoice based on the hourly rates set forth in Exhibit B for services rendered. Payments received during this period will be deducted from Consultant's total compensation and the balance will be distributed monthly throughout the duration of the project's construction. At project closeout the final cost of construction will be calculated and billing will be adjusted accordingly. Any outstanding balance as determined at that time shall be paid in full within fourteen (14) days.

[Payment Option 3: Time and Material]

3.1 C Consultant's compensation for Services shall be hourly at the rates set forth in Exhibit B. Consultant shall also be entitled to compensation for Reimbursable Expenses as set forth and identified in Exhibit B.

3.2 The parties select the below Payment Option for this Contract:

- 3.1 A Payment Option 1: Maximum Price
- 3.1 B Payment Option 2: Percentage of Construction Cost
- 3.1 C Payment Option 3: Time and Material

3.3 If applicable, payments for Reimbursable Expenses are set forth and identified in Exhibit B. Consultant will not be entitled to reimbursement of any expenses other than those identified in Exhibit B, and Consultant's reimbursement for reimbursable expenses will be limited to the actual cost of the Reimbursable Expenses, up to any limitation set forth in Exhibit B unless otherwise approved in writing in advance by Owner. Consultant shall submit evidence satisfactory to Owner of the cost of the Reimbursable Expenses with each invoice.

3.4 Consultant will submit monthly invoices to Owner for work completed to the date of the invoice. Payments under this Contract will be due thirty (30) days after Owner's approval of a properly completed invoice. As a condition precedent to payment, Consultant will deliver to the Owner lien waivers and releases signed by Consultant and each of the Subconsultants, using the forms provided in Exhibit C. Consultant and each Subconsultant shall provide a Conditional Lien Release pending payment by Owner for the current pay period. Consultant and all Subconsultants shall provide an Unconditional Lien Release for the previous pay periods to the extent payment has already been made by Owner for such work.

SECTION 4. SCHEDULE

4.1 Consultant shall prepare and update a schedule for its services, and shall identify milestones dates for decisions to be made by Owner, services provided by Consultant, and completion of documentation by Consultant. Any changes to the schedule shall be agreed upon by Consultant and Owner in writing. Should any action by Owner or Owner's contractor or consultants, or other activity beyond the control of the Consultant, delay the schedule, the schedule will be revised to reflect any such delay.

SECTION 5. RECORDS/OWNERSHIP AND USE OF DOCUMENTS

- 5.1** Consultant will maintain all accounting and financial records relating to this Contract in accordance with generally accepted accounting principles. Consultant will grant Owner and its duly authorized representatives access at reasonable times to all such records and all other books, documents, papers, drawings, and writings of Consultant or the Subconsultants that refer or relate in any way to this Contract. All such records, books, documents, papers, drawings, and writings will be retained by Consultant and kept accessible for a minimum of six years following final payment, termination of this Contract or substantial completion of the Project, whichever is later. Consultant will include a provision consistent with this Section 5.1 in its contracts with the Subconsultants.
- 5.2** All drawings, specifications, documentation, and other work product prepared by Consultant or its Subconsultants that result from this Contract (“Work Product”), whether in hard copy or electronic form, are solely for use on this project. Consultant and its Subconsultants are deemed authors and owners of the Work Product and will retain all rights to such Work Product. Provided that Owner complies with all requirements under this Contract, including payment of all sums when due, Consultant grants to Owner a non-exclusive license to use or reproduce the Work Product for the construction, use, and maintenance of the project. Owner shall not assign or transfer this license without prior written consent of the author of the Work Product. Owner may not use the Work Product for future additions or alterations to the project or on other projects, unless Owner obtains prior written consent from the authors of the Work Product. Unauthorized use of the Work Product by Owner will be at Owner’s sole risk and without liability to Consultant or its Subconsultants. Submission of any Work Product to permitting authorities, contractor, or any subcontractors for the purpose of constructing the project shall not be in derogation of the Consultant’s, Subconsultants’, or Owner’s rights as stated in this Paragraph.

SECTION 6. INDEMNIFICATION

- 6.1** To the fullest extent permitted by law, Consultant will indemnify and hold harmless Owner, from, for and against suits, actions, awards, penalties, liabilities, claims, judgments, economic and noneconomic damages, injuries, losses and expenses, whether actual or merely alleged and whether directly incurred, of third parties, including but not limited to attorneys’ and expert witnesses’ fees and related costs, disbursements and expenses, arising out of or resulting from performance of the Services and subject to the limitations below.
- 6.2** Consultant’s duty to indemnify and hold Owner harmless shall not apply to claims for damages arising out of the services performed or to be performed by Consultant, its Subconsultants, or those for whom they are responsible, or arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Owner or Owner’s agents.
- 6.3** Consultant’s duty to indemnify and hold Owner harmless for claims arising out of the services performed or to be performed by Consultant, its Subconsultants, or those from whom they are responsible, or arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) Owner or Owner’s agents, and (b) Consultant, its agents or employees, and Subconsultants, shall apply only to the extent of negligence of Consultant, its agents or employees, and Subconsultants.
- 6.4** Consultant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, and all other applicable industrial insurance / workman’s compensation acts or their equivalent in the applicable jurisdiction. Further, 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, disability benefits acts, or other employee benefits acts; PROVIDED Consultant’s waiver of immunity by the provisions of this paragraph extends only to indemnification claims against Consultant by Owner and does not include, or extend to, any claims by Consultant’s employees directly against Consultant.

SECTION 7. INSURANCE

Consultant, at its own expense, shall carry: (1) \$1 million of professional liability insurance; and (b) workers' compensation and employer's liability coverage as required by applicable state law. All policies are available for inspection at Owner's request and shall be carried for a minimum of three years from the date Consultant terminates its services on the Project. If Owner desires insurance coverage in addition to or for a longer period than that specified herein, Consultant will cooperate to obtain such additional insurance, if available, at Owner's expense.

SECTION 8. ASSIGNMENT

- 8.1** Neither party will assign or transfer any of its interest in this Contract, in whole or in part, without the prior written consent of the other party, which will not unreasonably be withheld.
- 8.2** The provisions of this Contract will be binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.

SECTION 9. INDEPENDENT CONTRACTOR; SAFETY

- 9.1** Consultant will perform the Services as an independent contractor and employing unit.
- 9.2** Consultant agrees to immediately provide Owner notice of any claim made against Consultant by any third party for acts or omissions related to, or that may impact the completion of, the Services.
- 9.4** Consultant will be responsible for the safety of its employees and those of the Subconsultants, and will take all reasonable precautions to prevent personal injury, death and property damage resulting from the Services and its acts and omissions and those of the Subconsultants under this Contract. Consultant, Subconsultants, and their respective employees and agents shall comply with all safety rules established by Owner and/or Contractor.

SECTION 10. TERMINATION OF CONTRACT; SUSPENSION OF SERVICES

- 10.1** Owner may terminate all or any portion of this Contract in whole or in part at any time for its convenience or for cause. For cause termination must be based on a material breach of the Contract by Consultant. For a termination for convenience, the termination will be effective upon five (5) business days after Consultant's receipt of Owner's written notice. For a termination for cause, the termination will be effective ten (10) days after Consultant's receipt of Owner's written notice specifying the material breach and Consultant's failure during that period to cure the default. In the event of a termination for convenience, Consultant will be paid within thirty (30) days of termination for Services actually rendered through the date of termination, including any costs related to termination, minus any damages, backcharges or claims incurred or anticipated by Owner caused by Consultant. In the event of termination for cause, Consultant will be paid for Services satisfactorily rendered within thirty (30) days after Owner's damages, backcharges or claims caused by Consultant have been finally accounted and settled. If compensation under this Contract is on a lump sum basis, payment upon termination for convenience or for cause will be prorated based on percentage completion of the Services as of the date of the written notice of termination and payment for any reimbursable costs. If compensation under this Contract is on a percentage of construction costs basis, payment upon termination for convenience or for cause will be based upon services provided at the hourly rates set forth in Exhibit B, including payment for any reimbursable costs. In no event will Consultant be entitled to payment for anticipated profit or overhead on Services not performed.
- 10.2** Consultant may terminate this Contract for cause based upon a material breach of Owner so long as Consultant gives written notice to Owner specifying the material breach and provides Owner with ten (10) days to cure the default. Consultant may also terminate this Contract if Consultant's Services are suspended for a period of time in the aggregate in excess of six (6) months.
- 10.3** In any circumstance in which Owner or Consultant is entitled under this Section to terminate this Contract, that party may instead suspend the performance of the Services upon written notice to the other party. In the event of such suspension, Owner will pay Consultant for Services performed prior to the suspension.

Notwithstanding the above, in the case of a suspension for cause, Owner may delay the payment and adjust the amount of any such payment based on the cost of replacement performance and other damages incurred by Owner. Upon resumption of the Services following a suspension hereunder, the amount of compensation to be paid to Consultant and the period of time for performance of the Services will be equitably adjusted. Nothing in this Section 10.3 will remove or reduce Consultant's liability for damages resulting from its performance failures, if any, prior to any suspension of the Services under this Section. Either party's exercise of its right to suspend performance of the Services under this Section 10.3 will be without effect on its rights, if any, to terminate this Contract under Sections 10.1 or 10.2.

- 10.4** The rights and remedies of the parties provided in this Section 10 are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract. All rights and remedies the parties will be cumulative and may be exercised successively or concurrently.

SECTION 11. FORCE MAJEURE

Neither Owner nor Consultant will be held responsible for delay or default to the extent caused by fire, riot, an Act of God, war, terrorist attack or other cause beyond Owner's or Consultant's reasonable control. Both parties will, however, make all reasonable efforts to mitigate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

SECTION 12. HAZARDOUS MATERIAL AND OTHER SPECIAL CONDITIONS OR CIRCUMSTANCES

If Consultant or a Subconsultant is performing the Services on the Project site and becomes aware of an actual or suspected condition or circumstance at the Project site that (1) may harm property or persons (such as hazardous materials released on the Project site) or (2) could be harmed by activities at the Project site (such as an archaeological site or wetlands located on the Project site), then Consultant will immediately cease its activities and those of the Subconsultants in that vicinity of the Project site, will immediately notify Owner by the most expeditious means with prompt written confirmation, and will not resume its activities or those of the Subconsultants in that vicinity until directed by Owner to do so.

SECTION 12. PROJECT ACCESS

Consultant and the Subconsultants will have reasonable access to the Project, but only with the prior approval of Owner.

SECTION 13. PUBLICITY

With Owner's prior written approval, which shall not be unreasonably withheld, Consultant is authorized to, describe the project and/or publish images of the project in Consultant's literature and marketing materials. Consultant is further authorized to submit the project for awards and recognition. Owner shall provide Consultant with reasonable access to the Project site for this purpose.

SECTION 14. MEDIATION, DISPUTES, LIENS, AND LIMITATION PERIODS

- 14.1 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. 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. Notwithstanding anything herein, if either party believes that its right to commence a legal action may be impaired by the running of a statute of limitations, that party may commence a legal action but shall stay that action pending the resolution of the mediation. Nothing in this Agreement shall in any way suspend, toll or otherwise affect any statute of limitations period applicable to claims filed by either party.

14.2 Forum. The forum for resolving any and all claims, disputes or other matters in question arising out of or relating to this Contract, whether by mediation, arbitration or litigation, will be commenced and prosecuted in the County where the Project is located. Consultant will include a provision similar to this Section 14.2 in each of its contracts with the Subconsultants.

14.3 Removal of Subconsultant Liens. Within ten (10) days after Owner's demand, Consultant at its expense will remove from the Project and Project site any mechanics' or design professionals' lien filed by a Subconsultant of Consultant or any other person or entity claiming an amount due for labor, services, materials or equipment furnished for the Project. Consultant will remove such lien by payment, settlement or lien release bond pursuant to applicable law. If Consultant fails or refuses to perform its obligations under this Section 14.3, Owner may do so at Consultant's expense. Consultant shall indemnify, defend and hold Owner harmless from all costs and expenses arising out of or relating to such lien claims. This Section 14.3 will not apply to the extent a lien claim was filed due to Owner's failure to pay amounts due under this Contract.

SECTION 15. WAIVER

The failure of either party to enforce any provision of this Contract will not constitute a waiver by that party of that or any other provision of this Contract.

SECTION 16. NOTICES

Any notice or other communication regarding this Contract will be served in one of the following manners: (1) personal delivery, (2) facsimile transmission, or (3) delivery by courier or messenger service that maintains records of its deliveries.

SECTION 17. GOVERNING LAW

The laws of the state in which Project is located will govern this Contract.

SECTION 18. SEVERABILITY

Owner and Consultant agree that if any term or provision of this Contract is determined to be illegal, in conflict with any law, void or otherwise unenforceable, and if the essential terms and provisions of this Contract remain unaffected, then the validity of the remaining terms and provisions will not be affected and the offending provision will be given the fullest meaning and effect allowed by law.

SECTION 19. SURVIVAL

All rights and obligations set out in this Contract and arising hereunder will survive the termination of this Contract (i) as to the parties' rights and obligations that arose prior to such termination and (ii) as is necessary to give effect to rights and obligations that arise after such termination but derive from a breach or performance failure that occurred prior to the termination.

SECTION 20. ADDITIONAL TERMS

20.1 Notwithstanding any other provision contained within this Agreement, nothing shall be construed so as to void, vitiate or adversely affect any insurance coverages held by either party to this Agreement.

20.2 Optional: Limitation of Liability. Consultant's liability hereunder, whether in tort or in contract, for any cause of action, inclusive of legal costs, shall be limited as follows:

- (a) for insured liabilities arising out of Consultant's negligence, to the amount of insurance then available to fund any settlement, award or verdict;
- (b) for uninsured liabilities, to the total amount of Consultant's compensation actually paid by Owner to Consultant under this Contract.

If Owner desires a higher limitation, Consultant may agree, at Owner's request, to increase the limitation of liability amount to a greater sum in exchange for a negotiated increase in Consultant's compensation. Any additional charge for a higher limit is consideration for the greater risk assumed by Consultant and is not a charge for additional professional liability insurance. Any agreement to increase the limitation of liability amount must be made in writing and signed by both parties in advance of the provision of services under this Agreement.

Notwithstanding the above, the limitations set forth in Section 20.2(a) shall not apply if proceeds under a given policy are not available and/or coverage under a given policy, where coverage otherwise would have existed, is denied because: the Consultant (a) failed to timely pay insurance premiums; (b) failed to timely provide required notices to any carrier; (c) failed to procure the coverage set forth in this Agreement; or (d) failed to take any other action within the Consultant's control that is necessary to maintain the coverage required under this Agreement. In the event a liability is not covered due to Consultant's failure to act as set forth above, Consultant's total liability, whether in tort or contract, shall be limited to the amount of coverage that would have been available but for Consultant's action(s) or failure(s) to take action.

By entering into this Agreement, Owner acknowledges that this limitation of liability clause has been reviewed, understood and is a material part of this Agreement, and that Owner has had an opportunity to seek legal advice regarding this provision.

The above limitation of liability shall only apply if signed by both Owner and Consultant:

Owner: _____

Consultant: _____

20.3 Optional: Attorneys' Fees and Expenses. In any litigation or arbitration instituted to enforce any of the terms or conditions of this Agreement, the Prevailing Party shall be entitled to receive, as part of any award or judgment, in addition to costs and disbursements allowed by statutes, its reasonable attorneys' fees and costs incurred in handling the dispute. For these purposes, the "Prevailing Party" shall be the party who obtains a litigation or arbitration result more favorable to it than its last formal written offer (made at least twenty calendar days prior to the formal trial or hearing) to settle such litigation or arbitration.

The above optional attorneys' fees provision shall only apply if signed by both Owner and Consultant:

Owner: _____

Consultant: _____

SECTION 21. ENTIRE CONTRACT

This Contract constitutes the entire, legally-binding contract between the parties regarding its subject matter. 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. No waiver, consent, modification or change of terms of this Contract will bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. This Contract supersedes any and all prior or contemporaneous understandings, agreements, or representations, whether oral or written, not specified herein. No documents referenced, referred to, or incorporated into any exhibit to this Contract are incorporated into this Contract unless specifically referenced in this Contract and included herein. This Contract takes precedence over and replaces any terms and conditions contained in any document included as an exhibit to this Contract.

SECTION 22. SIGNATURES

This Contract may be executed in several counterparts, each of which will be an original, all of which will constitute one and the same instrument. A facsimile, PDF or other electronic signature will be considered an original. The individuals signing this Contract certify that they are authorized to execute this Contract on behalf of Consultant and Owner, respectively.

SECTION 23. EXHIBITS

The following documents are incorporated into and made a part of this Contract:

- Exhibit A – Scope of Work
- Exhibit B – Hourly Rates/Reimbursable Expenses
- Exhibit C – Waivers and Releases

CONSULTANT: _____

Signature: _____ Name: _____

Title: _____ Date: _____

Contact Person: _____ Office Phone: _____

Address: _____ Office Fax: _____

_____ Tax ID Number: _____

OWNER: _____

Signature: _____ Name: _____

Title: _____ Date: _____

Contact Person: _____ Office Phone: _____

Address: _____ Office Fax: _____

EXHIBIT A
SCOPE OF WORK

The Services are described in the following documents submitted by Consultant to Owner, copies of which are attached to this Exhibit A:

EXHIBIT B

HOURLY RATES/REIMBURSABLE EXPENSES

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 Consultant)

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: _____

(Design Consultant)

By _____

(Print Name)

(Title)