**Time and Materials Contract for Construction**

 This Time and Materials Contract is entered into on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Owner”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) who agree to the following Project as follows:

*1. Agreement*

Contractor and Owner wish to enter the following Contract, whereby Contractor shall furnish labor and materials for construction of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Project”).

*2. Description of Project*

The Project, located above, will consist of the following construction, alteration, and/or improvement: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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*3. Drawings*

Drawings, plans, and/or specifications for this project, if applicable, are attached. If attached, Contractor and Owner agree that they have carefully examined these Drawings and agree that they are complete and accurate.

*4. Term and Schedule*

Contractor will begin work on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Contractor agrees to complete this Project within \_\_\_\_\_\_\_\_\_\_\_\_\_ (days/months/years) from the beginning of work. Contractor agrees that an extension of time for performance of this Project shall not be permitted without the Owner’s written consent.

*5. Payment*

Payment shall be made by the Owner to the Contractor according to the following Payment Plan: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Contractor and Owner agree that, if payment is not made according to the above Payment Plan, Contractor is entitled to stop work until payment is current and up to date.

*6. Contract Price*

The Owner agrees to pay Contractor for the sum of (1) the Cost of the Work, plus (2) the Contractor’s fee of \_\_\_\_ % of the Cost of the Work. The sum of (1) and (2) will constitute the “Contract Price”. Further, the Contract Price for this Project shall not exceed a Guaranteed Maximum Price of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Contractor shall notify Owner in writing whenever Contractor first has reason to believe that the Contract Price will exceed the Guaranteed Maximum Price. In the event that the Contract Price will exceed the Guaranteed Maximum Price, Contractor shall provide Owner a Revised Estimated Price for approval. Owner shall not unreasonably withhold approval for Revised Estimated Price.

Change in Materials Pricing: Owner acknowledges that the Guaranteed Maximum Price is based on current material costs, and that the price of construction materials may fluctuate. Contractor agrees to use their best efforts to secure the lowest possible price from available material suppliers for the materials necessary for this Project. However, should there be a change in the price of materials which affects the viability of the Guaranteed Maximum Price, Contractor and Owner agree to adjust the Guaranteed Maximum Price to reflect the then-current price of materials.

*7. Costs to Include in Cost of Work:*

In order for items to be included in the Cost of Work for this project, Contractor must keep full and detailed accounts of the financial management of this project, and must exercise discretion when controlling the costs associated. The Owner or any Agent of the Owner is shall be given access to the Contractor’s records relevant to the Project upon request and shall be entitled to audit and make copies of any records, as necessary.

The following costs may be included in calculating the Cost of Work for this Project.

1. Materials incorporated;
2. Salaries, wages, hourly rates, other overhead expenses of Contractor’s employees for on-site work, or work performed elsewhere if specifically approved by the owner;
3. Payments made by Contractor to Subcontractors;
4. Costs of machinery, equipment, and hand tools not customarily owned by Contractor or Subcontractors if consumed in the performance of work;
5. Rental of equipment, machinery, or other items necessary to complete the Project;
6. All fees and expenses related to securing building permit or other permits, licenses, or inspections necessary;
7. Other costs incurred to the extent that they were approved in writing by Owner.

*8. Costs to Exclude From Cost of Work*

The following costs may not be included in calculating the Cost of Work for this Project.

1. Salaries, wages, hourly rates, other overhead expenses of Contractor’s personnel unrelated to the Project;
2. Contractor’s expenses unrelated to the Project;
3. Costs related to Contractor’s negligence or failure to fulfil a specific responsibility, as well as those by any Subcontractors or Suppliers on the Project;
4. Costs not otherwise provided for in Section 7 (“*Costs to Include in Cost of Work*”) of this Agreement.

*9. Subcontractors*

Contractor shall be fully responsible for all acts and omissions of its subcontractors, suppliers, and other persons furnishing any work for this Project

*10. Materials and Equipment*

Unless otherwise described in this Agreement, Contractor will be responsible for securing all necessary materials and equipment for this Project.

*11. Job Site*

Contractor agrees to leave the job site clean and free of debris, equipment, materials, etc. at the completion of this Project.

*12. Claims*

Owner and Contractor both agree to attempt to resolve any and all disputes on this Project in good faith before any action becomes necessary. Further, Contractor will immediately notify Owner upon becoming aware of a dispute with Contractor’s subcontractors and suppliers.

*13. Change Orders, Alterations to Contract*

Any alteration to this Agreement or the project Drawings must be agreed to by the Contractor and Owner in writing.

*14. Termination by Owner*

If the Contractor breaches any obligation created by this Agreement or the attached Drawings (if any), Owner may give the Contractor a Notification of Breach which provides Contractor notification identifying the breach, in writing. Upon receipt of such Notification of Breach, Contractor will have seven (7) days to cure the breach. If the breach cannot be cured in seven (7) days, the Owner is entitled to terminate this Agreement and take possession of the Project. Alternatively, the Owner may cure the breach and deduct the cost of curing the breach from the amounts otherwise owed to the Contractor.

*15. Termination by Contractor*

If the Owner breaches any obligation created by this Agreement, Contractor may give the Owner a Notification of Breach which provides the Owner notification identifying the breach, in writing. Upon receipt of such Notification of Breach, Owner will have seven (7) days to cure the breach. If the breach cannot be cured within seven (7) days, the Contractor is entitled to terminate this Agreement. Contractor will remain entitled to payment for work performed prior to Termination.

*16. Severability*

If any provision of this Agreement should be found invalid or unenforceable, that provision should be severed from the Agreement and shall have no effect on the remaining provisions of this agreement.

This Agreement is subject to the laws and regulations of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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Contractor Name Signature Date

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Address Phone

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_

Owner Name Signature Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address Phone