

BUILDING AND CONSTRUCTION CONTRACT

Agreement made, effective as of this ____ day of _____, 2001, by and between _____, of _____ [address], _____ [city], Clallam County, Washington, referred to in this contract as owner, and _____, of _____ [address], _____ [city], Clallam County, Washington, referred to in this contract as contractor, a person duly licensed as a contractor in the State of Washington, as follows:

SECTION ONE

DESCRIPTION OF WORK

Contractor shall perform the following described work, in accordance with the contract plans and specifications, referred to in this contract as the contract documents, at _____ [location of job, including street address]: _____ [insert complete description of work to be done].

SECTION TWO

CONTRACT PRICE

A. Owner agrees to pay contractor, for the work described, the total price of \$ _____.

B. Payment of this amount is subject to additions or deductions in accordance with the provisions of this contract and of the other documents to which this contract is subject.

_____ [If payment is to be made in unit prices, add: C. Payment on the total contract price is to be made in installments as follows: _____ (describe unit prices)].

SECTION THREE

PROGRESS PAYMENTS

A. Owner shall make progress payments on account of the contract price to contractor, on the basis of applications for payment submitted to _____ [architect or engineer] by contractor as the work progresses, and on the _____ [architect's or engineer's] certificate therefor, in accordance with _____ [specify contract document establishing basis for progress payments].

B. Progress payments may be withheld if:

(1) Work is found defective and not remedied;

- (2) Contractor does not make prompt and proper payments to subcontractors;
- (3) Contractor does not make prompt and proper payments for labor, materials, or equipment furnished him or her;
- (4) Another contractor is damaged by an act for which contractor is responsible;
- (5) Claims or liens are filed on the job; or
- (6) In the opinion of _____[architect or engineer], contractor's work is not progressing satisfactorily.

SECTION FOUR

FINAL PAYMENT

A. Owner shall make final payment to contractor within _____ days after the work is completed, if the contract is at that time fully performed, and subject to the condition that final payment shall not be due until contractor has delivered to owner a complete release of all liens arising out of the contract, or receipts in full covering all labor, materials, and equipment for which a lien could be filed, or in the alternative a bond satisfactory to owner indemnifying him or her against any and all such liens.

B. Owner by making payment waives all claims except those arising out of:

- (1) Faulty work appearing after substantial completion has been granted;
- (2) Work that does not comply with the contract documents;
- (3) Outstanding claims of lien; or
- (4) Failure of contractor to comply with any special guarantees required by the contract documents.

C. Contractor, by accepting final payment, waives all claims except those that he or she has previously made in writing, and which remain unsettled at the time of acceptance.

SECTION FIVE

STARTING AND COMPLETION DATES

Construction under this contract shall begin on _____[date], and be completed by _____[date].

SECTION SIX

CONTRACT DOCUMENTS

A. The contract documents on which the agreement between owner, _____ [architect or engineer], and contractor is based, that contain the plans and specifications in accordance with which the work is to be done, and that provide for the method of payment of the contract price are as follows: _____ [enumerate contract documents, such as:

- (1) This agreement, with supplementary agreements and conditions attached to this agreement;
- (2) The plans and specifications, with addenda attached to such plans and specifications, issued before execution of this agreement, and any amendments made after the effective date of this agreement;
- (3) Written interpretations of the contract documents and directives to be made from time to time by the _____ (architect or engineer); and
- (4) Work change orders issued, or to be issued].

B. The contract documents together form the contract for the work described in this agreement. The parties intend that the documents include provisions for all labor, materials, equipment, supplies, and other items necessary for the execution and completion of the work, and all terms and conditions of payment. The documents also include all work and procedures not expressly indicated in such documents necessary for proper execution of the above-described project.

C. The contract documents are to be separately executed in _____ [triplicate] by owner and contractor. Contractor, by executing the documents, represents that he or she has inspected and is familiar with the work site and the local conditions under which the work is to be performed. If by inadvertence any of the contract documents are not signed, _____ [architect or engineer] shall identify them.

SECTION SEVEN

DESIGNATION OF _____ [ARCHITECT or ENGINEER]; DUTIES AND AUTHORITY

A. The _____ [architect or engineer] for above-described project is _____ [name], having an office at _____ [address], _____ [city], _____ County, _____ [state].

B. The duties and authority of the architect are as follows:

- (1) General Administration of Contract. The primary function of the _____ [architect or engineer] is to provide the general administration of the contract. In performing these duties he or she is owner's representative during the entire period

of construction.

(2) Inspections, Opinions, and Progress Reports. _____[Architect or Engineer] shall keep familiar with the progress and quality of the work by making periodic visits to the work site. He or she will make general determinations as to whether the work is proceeding in accordance with the contract. He or she will keep the owner informed of such progress, and will use his or her best efforts to protect the owner from defects and deficiencies in the work. He or she will not be responsible for the means of construction, or for the sequences, methods, and procedures used in such construction, or for contractor's failure to perform the work in accordance with the contract documents.

(3) Access to Work Site for Inspections. _____[Architect or Engineer] shall be given free access to the work at all times during its preparation and progress. However, he or she is not required to make exhaustive or continuous on-site inspections to perform his or her duties of checking and reporting on work progress.

(4) Interpretation of Contract Documents; Decisions on Disputes.

_____ [Architect or Engineer] will be the initial interpreter of the contract document requirements, and make primary decisions on claims and disputes between contractor and owner. All _____[architect's or engineer's] decisions are subject to arbitration as provided in this agreement.

(5) Rejection and Stoppage of Work. _____[Architect or Engineer] shall have authority to reject work that in his or her opinion does not conform to the contract documents, and in this connection to stop the work or a portion of such work, when necessary.

(6) Payment Certificates. _____[Architect or Engineer] will determine the amounts owing to contractor as the work progresses, based on contractor's applications and his or her inspections and observations, and will issue certificates for progress payments and final payment in accordance with the terms of the contract documents.

SECTION EIGHT

RESPONSIBILITIES OF OWNER

A. Owner shall give all instructions to contractor through _____[architect or engineer], shall furnish all necessary surveys for the work, and shall secure and pay for easements for permanent structures or permanent changes in existing structures or facilities on the work site, or which are necessary for its proper completion.

B. Owner reserves the right to let other contracts in connection with the project. Contractor

shall cooperate with all other contractors to the effect that their work shall not be impeded by his or her construction, and shall give such other contractors access to the work site necessary to perform their contracts.

SECTION NINE

RESPONSIBILITIES OF CONTRACTOR

Contractor's duties and rights in connection with the above-described project are as follows:

A. Responsibility for and Supervision of Construction. Contractor shall be solely responsible for all construction under this contract, including the techniques, sequences, procedures, and means, and for coordination of all work. Contractor shall supervise and direct the work to the best of his or her ability, and give it all attention necessary for such proper supervision and direction.

B. Discipline and Employment. Contractor shall maintain at all times strict discipline among his or her employees, and contractor agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he or she was employed.

C. Furnishing of Labor, Materials, etc. Contractor shall provide and pay for all labor, materials, and equipment, including tools, construction equipment, and machinery, utilities, including water, transportation, and all other facilities and services necessary for the proper completion of work on the project in accordance with the contract documents.

D. Payment of Taxes; Procurement of Licenses and Permits. Contractor shall pay all taxes required by law in connection with work on the project in accordance with this agreement including sales, use, and similar taxes, and shall secure all licenses and permits necessary for proper completion of the work, paying the fees for such licenses and permits.

E. Compliance With Construction Laws and Regulations. Contractor shall comply with all laws and ordinances, and the rules, regulations, or orders of all public authorities relating to the performance of the work under and pursuant to this agreement. If any of the contract documents are at variance with any such laws, ordinances, rules, regulations, or orders, he or she shall notify _____ [architect or engineer] promptly on discovery of such variance.

F. Responsibility for Negligence of Employees and Subcontractors. Contractor assumes full responsibility for acts, negligence, or omissions of all his or her employees on the project, for those of his or her subcontractors and their employees, and for those of all other persons doing work under a contract with him or her.

G. Warranty of Fitness of Equipment and Materials. Contractor represents and warrants to owner and to _____ [architect or engineer] that all equipment and materials used in the work, and made a part of the structures on such work, or placed permanently in connection with such work, will be new unless otherwise specified in the contract documents, of good quality, free of defects, and in conformity with the contract documents. It is understood and agreed between the parties to this

agreement that all equipment and materials not so in conformity will be considered defective.

H. Furnishing of Samples and Shop Drawings. Contractor agrees to furnish at _____[architect's or engineer's] direction all samples and shop drawings for his or her consideration and approval as to conformance with the specifications of the contract documents and his or her concepts of design called for in such specifications.

I. Clean-up. Contractor agrees to keep the work premises and adjoining ways free of waste material and rubbish caused by his or her work or that of his or her subcontractors. Contractor further agrees to remove all such waste material and rubbish on termination of the project, together with all his or her tools, equipment, machinery, and surplus materials. Contractor agrees, on terminating his or her work at the site, to conduct general clean-up operations, including the cleaning of all glass surfaces, paved streets and walks, steps, and interior floors and walls.

J. Indemnity and Hold Harmless Agreement. (1) Contractor agrees to indemnify and hold harmless owner and _____[architect or engineer], and their agents and employees, from and against any and all claims, damages, losses, and expenses, including reasonable attorneys' fees in case it shall be necessary to file an action, arising out of performance of the work in this contract, that is (a) for bodily injury, illness, or death, or for property damage, including loss of use, and (b) caused in whole or in part by contractor's negligent act or omission, or that of a subcontractor, or that of anyone employed by them or for whose acts contractor or subcontractor may be liable. (2). This agreement to indemnify and hold harmless is not applicable to liability of _____[architect or engineer], or that of his or her agents or employees, arising out of preparation or approval of reports, opinions, surveys, maps, drawings, designs, or specifications, or out of their giving or failure to give instructions, which giving or failure to give is the primary cause of the injury or damage.

K. Payment of Royalties and License Fees; Hold Harmless Agreement. Contractor agrees to pay all royalties and license fees necessary for the work, and to defend any and all actions and settle all claims for infringement of copyright or patent rights, and to save owner harmless in connection with any such actions and claims.

L. Safety Precautions and Programs. Contractor has the duty of providing for and overseeing all safety orders, precautions, and programs necessary to the reasonable safety of the work. In this connection, contractor shall take reasonable precautions for the safety of all employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent to the construction site, complying with all applicable laws, ordinances, rules, regulations and orders.

SECTION TEN

TIME OF ESSENCE; EXTENSION OF TIME

A. All times stated in this agreement or in the contract documents are of the essence.

B. The times stated in this agreement or in the contract documents may be extended by a

change order from _____[architect or engineer] for such reasonable time as he or she may determine, when in his or her opinion contractor is delayed in work progress by changes ordered, labor disputes, fire, prolonged transportation delays, injuries, or other causes beyond contractor' control or which justify the delay.

SECTION ELEVEN

SUBCONTRACTORS

A. Contractor agrees to furnish _____[architect or engineer], prior to the execution of this agreement, with a list of names of subcontractors to whom he or she proposes to award the principal portions of the work to be subcontracted by him or her.

B. A subcontractor, for the purposes of this agreement, shall be a person with whom contractor has a direct contract for work at the project site.

C. Contractor agrees not to employ a subcontractor to whose employment _____[architect or engineer] or owner reasonably objects, nor shall contractor be required to hire a subcontractor to whose employment he or she reasonably objects.

D. All contracts between contractor and subcontractors shall conform to the provisions of the contract documents, and shall incorporate in them the relevant provisions of this agreement.

SECTION TWELVE

ARBITRATION

A. All claims and disputes relating to this agreement shall be subject to arbitration at the option of either owner, contractor, or _____[architect or engineer] in accordance with the Arbitration Rules of the American Arbitration Association for the construction industry then obtaining.

B. Written notice of demand for arbitration shall be filed with the other party to this agreement and with the American Arbitration Association, within a reasonable time after the dispute has arisen.

SECTION THIRTEEN

INSURANCE

A. Contractor's Liability Insurance. Contractor agrees to keep in force at his or her own expense during the entire period of construction on the project such liability insurance as will protect him or her from claims, under workers' compensation and other employee benefit laws, for bodily injury and death, and for property damage, that may arise out of work under this agreement, whether directly or indirectly by contractor, or directly or indirectly by a subcontractor. The minimum liability

limits of such insurance shall not be less than the limits specified in the contract documents or by law for that type of damage claim. Such insurance shall include contractual liability insurance applicable to contractor's obligations under this agreement. Proof of such insurance shall be filed by contractor with owner within a reasonable time after execution of this agreement.

B. Owner's Liability Insurance. Owner agrees to maintain in force his or her own liability insurance during the construction on this project, and reserves the right to purchase such additional insurance as in his or her opinion is necessary to protect him or her against claims arising out of the contractor's operation, without diminishing contractor's obligation to carry the insurance specified in this agreement on contractor's part to be carried.

C. Property Damage Insurance on Work Site. Owner agrees to maintain at his or her expense during construction of the project property damage insurance on the work at the site to its full insurable value, including interests of owner, contractor, and subcontractors, against fire, vandalism, and other perils ordinarily included in extended coverage. Losses under such insurance will be adjusted with and made payable to owner as trustee for the parties insured as their interests appear. Owner shall file a copy of all such policies with contractor within a reasonable time after construction begins under and pursuant to this agreement.

D. Waiver of Work Site Property Damage Claims to Extent of Insurance Coverage. Owner and contractor hereby waive all claims against each other for fire damage or damages from other perils covered by insurance provided in paragraph C. of this section. Contractor agrees to obtain waivers of such claims by all subcontractors.

SECTION FOURTEEN

CORRECTING WORK

When it appears to contractor during the course of construction that any work does not conform to the provisions of the contract documents, contractor shall make necessary corrections so that such work will so conform, and in addition will correct any defects caused by faulty materials, equipment, or quality of performance in work supervised by him or her or by a subcontractor, appearing within _____ [one year] from the date of issuance of a certificate of substantial completion, or within such longer period as may be prescribed by law or as may be provided for by applicable special guaranties in the contract documents.

SECTION FIFTEEN

WORK CHANGES

A. Owner reserves the right to order work changes in the nature of additions, deletions, or modifications, without invalidating this agreement, and agrees to make corresponding adjustments in the contract price and time for completion.

B. All changes will be authorized by a written change order signed by owner or by

_____ [architect or engineer] as owner's agent. The change order will include conforming changes in the agreement contract and completion time.

C. Work shall be changed, and the contract price and completion time shall be modified only as set out in the written change order.

D. Any adjustment in the contract price resulting in a credit or a charge to owner shall be determined by mutual agreement of the parties, or by arbitration, before starting the work involved in the change.

SECTION SIXTEEN

TERMINATION

A. Contractor's Termination. Contractor may, on _____ [seven days] written notice to owner and _____ [architect or engineer], terminate this agreement before the completion date specified in this agreement when for a period of _____ days after a progress payment is due, through no fault of contractor, _____ [architect or engineer] fails to issue a certificate of payment therefor, or owner fails to make the payment. On such termination, contractor may recover from owner payment for all work completed and for any loss sustained by contractor for materials, equipment, tools, or machinery to the extent of actual loss thereon plus loss of a reasonable profit, provided he or she can prove such loss and damages.

B. Owner's Termination. Owner may, on _____ [seven days] notice to contractor, terminate this agreement before the completion date specified in this agreement, and without prejudice to any other remedy he or she may have, when contractor defaults in performance of any provision in this agreement, or fails to carry out the construction in accordance with the provisions of the contract documents. On such termination, owner may take possession of the work site and all materials, equipment, tools and machinery on the work site, and finish the work in whatever way he or she deems expedient. If the unpaid balance on the contract price at the time of such termination exceeds the expense of finishing the work, owner will pay such excess to contractor. If the expense of finishing the work exceeds the unpaid balance at the time of termination, contractor agrees to pay the difference to owner.

C. On any such default by contractor, owner may elect not to terminate this agreement, and in such event he or she may make good the deficiency of which the default consists, and deduct the costs from the progress payment then or to become due to contractor.

SECTION SEVENTEEN

GOVERNING LAW

It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of _____.

SECTION EIGHTEEN

ATTORNEY FEES

In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney' fees, including expert witness fees and costs; and all fees and costs incurred on any and all appeals.

SECTION NINETEEN

ENTIRE AGREEMENT

This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

SECTION TWENTY

MODIFICATION OF AGREEMENT

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

SECTION TWENTY-ONE

NOTICES

Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this agreement.

SECTION TWENTY-TWO

ASSIGNMENT OF RIGHTS

The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

SECTION TWENTY-THREE

CONTRACT OWNERSHIP

This contract has been licensed for a one-time use by the Law Office of Chuck E. Marunde, P.S., to the owner named herein, and no duplication whatsoever of this contract may be made by contractor for any purpose except to serve the needs of the owner herein. Should contractor wish to use this contract, or any portion thereof, contract must first obtain the license or the right from the Law Office of Chuck E. Marunde, P.S.

SECTION TWENTY-FOUR

PARAGRAPH HEADINGS

The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

In witness, each party to this agreement has caused it to be executed at _____ [place of execution] on the date indicated below.

Owner

Date

Contractor

Date