Division of Professional Licensing
UTAH DEPARTMENT OF COMMERCE

RESIDENTIAL CONSTRUCTION AGREEMENT

Explanation

This generic agreement is intended for use by contractors and homeowners for Utah construction projects on residential property. This form is optional. If you decide to use it, you may agree in writing to change or delete any provision. It is recommended that the contractor and homeowner read, understand, complete, and sign each page.

Disclaimer

This agreement is a generic document, not customized to specific needs. It is provided “as is” by the Utah Department of Commerce’s Division of Professional Licensing, without any representations or warranties. The agreement is not designed or intended for use in the sale of real estate or commercial construction projects. It is not intended as legal advice or other professional advice to any contractor, subcontractor, or homeowner.

If you have questions about the agreement or its effect, please consult an attorney for legal advice.

Division of Professional Licensing
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RESIDENTIAL CONSTRUCTION AGREEMENT

This RESIDENTIAL CONSTRUCTION AGREEMENT (Agreement) is hereby entered into between Contractor and Owner for the residential construction work specified below (Project) to be located at the Property. Contractor and Owner agree to all the following provisions.

1. PARTIES, PROPERTY, AND EFFECTIVE DATE.

1.1 Owner Information.

Name: _____

Mailing Address: _____

Email Address: _____

Phone: _____

1.2 Contractor Information.

Company Name: _____

Mailing Address: _____

Email Address: _____

Phone: _____

License Number: **-5501**

1.3 Property Address. _____

1.4 Effective Date of this Agreement. _____

2. SCOPE OF WORK.

2.1 Project Summary.

_____

_____

_____

_____

_____

_____

_____

_____

2.2 Scope of Work. The scope of work for the project is described in detail by the plans and specifications attached as Exhibit A ("Plans"), which are incorporated as part of this Agreement.

2.3 Conflicts. If a conflict exists between any term of this Agreement and the Plans, the terms of this Agreement will govern. If a conflict exists between the Plans and any specifications included within the Plans, the specifications will govern.

2.4 Contractor's Duties.

2.4.1 Contractor will furnish the material, labor, equipment, tools, and supervision ("Work") necessary to construct and complete the Project in compliance with the Plans. This Agreement, including its Exhibits, any addendum(s), and all Change Orders, constitute the "Agreement Documents."

2.4.2 Contractor will immediately inform Owner, in writing, of any material discrepancies, errors, or omissions in the Plans, and any unanticipated changes in the Project conditions. Contractor may not proceed with any Work affected by any material discrepancies, errors, omissions, or changes in the conditions of the Project until Owner directs Contractor to do so.

2.4.3 Before beginning Work on the Project, Contractor will obtain any required governmental, community, owners, or other association approvals of the Plans, and all required permits for the construction of

the Project. Owner will pay the cost of the approvals and permits, as invoiced according to section 3, below .

2.4.4 Unless otherwise stated in the Agreement Documents, Contractor will obtain any and all inspections, tests, or similar approvals required for the Project, and Owner will pay all associated costs and fees as invoiced according to section 3, below.

3. PRICE AND PAYMENT.

This is a fixed-price agreement. Any Changes must be detailed through a written, signed Change Order form (Exhibit B) according to subsection 5.2.

3.1 Project Cost. The price for all the Work up to and through the completion of the Project will be fixed at **$ _____** (Agreement Price), plus the costs associated with any Changes agreed to by Owner and Contractor and documented in a Change Order (Exhibit B), according to subsection 5.2.

All of Contractor's costs associated with performing the Work, including Contractor's payment to subcontractors, employee wages, the cost of supplies and equipment, insurance costs, the cost of any and all required permits, including building permits, and Plan approval costs incurred by Contractor are included in the Agreement Price.

3.2 Initial Payment. Owner will pay Contractor an initial payment of $_____**,** due by _____**(***date***)**. Contractor will apply or use the initial payment only as permitted in this Agreement, and credit the amount of the initial payment toward the total amount owed. Contractor will refund to Owner any part of the initial payment not used for the Project.

3.3 Payments. Contractor will submit an invoice to Owner on the _____ of each _____. The invoice will itemize all costs, labor charges, and supply expenses incurred to date. The invoice will indicate any previous payment made by Owner. Owner must pay the full invoice amount no later than _____calendar days after receipt of the invoice.

3.4 Verification of Invoices. Upon Owner request, Contractor will provide documentation supporting invoiced costs, labor charges, and supply expenses, including copies of subcontractor and supplier invoices. Owner will notify Contractor of any discrepancies in the submitted documentation within 30 days of receiving it. Upon notification of a discrepancy, Contractor and Owner will work promptly to resolve the discrepancy, and any incorrect amount charged or

balance reflected, in the amounts owed. Owner has not “failed to make payment” based on a payment delay resulting from a request under this section.

3.5 Recordkeeping. Contractor will maintain detailed records of items billed and invoiced to Owner for a three-year period from the Project’s completion. Upon written request, Owner has the right to review Contractor’s accounts and records relating to the Project, including books, correspondence, instructions, drawings, receipts, vouchers, memoranda, or other documentation in support of costs and calculations of invoices and similar data. Contractor must comply with Owner's written request to review accounts and records within thirty (30) days of receipt. Contractor will respond in a reasonable time to Owner’s questions and requests for explanations of the Project accounts and records.

3.6 Failure to Pay. If Owner fails to pay Contractor as outlined in this Agreement, Contractor may suspend work on the Project after giving Owner a written and dated notice that:

(a) requests payment, and gives Owner fourteen (14) days to make payment;

(b) informs Owner that Contractor is suspending work on the Project until Contractor has received the amount due; and

(c) informs Owner that failure to pay within fourteen (14) days may result in Contractor terminating this Agreement.

If Owner fails to pay Contractor within fourteen (14) days of receiving this written notice, Contractor may terminate this Agreement by giving Owner written notice of the effective date of termination, according to subsection 13.1.

3.7 Punch List. Contractor will notify Owner when the Work has reached the stage when Owner has legal occupancy and full use of the Project, with only minor incidental work, correction, or repair remaining to be performed by Contractor (“Substantially Complete”). Within ten (10) days of the Project’s Substantial Completion, Owner may inspect the Work with Contractor and create a complete and exhaustive list of items (Punch List) that need to be completed or corrected on the Project before the Owner will agree that the Project and all necessary work is complete. Contractor must finish the Punch List within twenty-one (21) days of receiving it.

3.8 Final Payment. Final Payment is due _____ calendar days after Contractor completes all Work, including the Punch List, in accordance with the

Agreement, and provides Owner with a release of liens or encumbrances Contractor or subcontractors made on the Project, if any. Owner has the right to review Contractor invoices as outlined in this Agreement.

3.9 Subcontractor Payment. If Contractor fails to pay any subcontractor as required by this Agreement, or Utah Code § 58-55-603 and any other applicable laws, Owner may pay the subcontractor and subtract the payment amount from the amount Contractor invoiced Owner for the subcontractor's work.

4. SCHEDULE.

4.1 Commencement of the Work. Contractor will begin Work on or before _____*(date)*, or within fifteen (15) calendar days after receiving all necessary building permits, other required permits, and approvals as outlined in this Agreement.

4.2 Substantial Completion Date. Contractor expects that the Project will be substantially completed by _____, 20____.

4.3 Project Schedule. Contractor will provide Owner with a written estimated schedule for completing the Project. This schedule will include any subcontractors' activity, milestones for delivery of materials, and deadlines for Owner's decisions.

4.4 Delay. If Owner's failure to comply with this Agreement delays the Project, the Substantial Completion Date will be extended by a period equal to the duration of the delay. If Contractor becomes aware of a delay, Contractor will notify Owner of the delay within a reasonable time but in no event longer than seven (7) days, and inform Owner of the necessary extension of the Substantial Completion Date.

4.5 Extension. Contractor will document any extension of the Substantial Completion Date in a Change Order, according to subsection 5.2.

5. SELECTIONS AND CHANGES.

5.1 Selections. If Owner is entitled to select specific items listed in the Plans (Exhibit A), and if Owner's selection exceeds the allowance or estimated price associated for an item, Owner will pay Contractor any additional cost associated with the selection without requiring a Change Order.

5.2 Changes. If one party requests a change to the Plans, Project, or this Agreement ("Change"), or believes a Change is necessary, then the parties must comply with the following procedure:

(a) the party requesting or noting the Change must provide the other party with a written description of the Change;

(b) before proceeding with the Change, unless excused by an emergency involving safety or property damage, Contractor must provide Owner with a written estimate of the cost and time impact of the requested Change; and

(c) If the Change is agreeable to both parties, they must execute a Change Order (Exhibit B), memorializing their agreement to (1) the Change, (2) any additional cost, and (3) any extension of the Substantial Completion Date.

6. CONSTRUCTION STANDARDS.

6.1 Standards for Construction. Contractor will construct the Project in compliance with all applicable government codes, regulations, and ordinances and in a good and workmanlike manner consistent with construction industry standards.

6.2 Compliance with the Plans. Contractor will construct the Project according to the Plans. Contractor has no liability for errors or omissions attributable to its compliance with Plans (a) prepared by Owner or Owner's agent, or (b) altered by Owner or Owner's agent to comply with the specifications or requirements of any homeowner's association or other similar entity.

6.3 Inspection Rights. Owner has the right to inspect the Project at reasonable times during normal business hours. While inspecting the Project, Owner may not interfere with the Work. If Owner becomes aware of any material problem during an inspection, Owner will promptly notify Contractor.

7. SUBCONTRACTORS, EMPLOYEES, AND SUPPLIERS.

Contractor may hire subcontractors, employees, and suppliers to provide work or materials to the Project. Unless otherwise agreed in writing, Contractor will pay any subcontractor, employee, or supplier for work or materials provided on the Project. If Contractor fails to pay any subcontractor, employee, or supplier, and that failure results in a lien placed on Owner's property, Contractor will be liable for any costs, including attorney's fees, associated with resolving the lien.

8. OWNER'S PROTECTION AGAINST LIENS AND CIVIL ACTIONS.

An owner or subsequent owner who has fully paid their construction contract may be protected from a lien against their owner-occupied residence and from a civil action (lawsuit) to recover money owed for qualified services a third party provided to the residence (for example, labor provided by a subcontractor or construction materials

provided by a supplier). Visit https://dopl.utah.gov/residence-lien-recovery-fund/forms for information about this legal protection under Utah Code Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

9. LICENSE AND INSURANCE.

9.1 License. Contractor must be licensed with the Utah Division of Professional Licensing (DOPL). Details of Contractor's DOPL license are in the attached Proof of Licensure and Insurance (Exhibit C). Anyone may verify a license administered by DOPL by visiting https://secure.utah.gov/llv/search/index.html. Additional information concerning DOPL contractor licenses may be found at https://dopl.utah.gov/contracting.

9.2 Insurance. Contractor must maintain general liability insurance, any required workers' compensation insurance, and any other insurance as required by law, regulation, code, or rule. Contractor will, before starting Work on the Project, and upon Owner request, provide proof of insurance, evidencing policy limits, coverages, and any coverage exclusions. Initial proof of insurance is included in the attached Proof of Licensure and Insurance (Exhibit C).

10. SAFETY.

Contractor will provide a safe job site for all employees, personnel, subcontractors, equipment, and materials. Contractor and subcontractors will furnish safety equipment and personal protective equipment required by applicable safety laws, regulations, codes, or rules. Contractor will promptly provide Owner written notification of any safety hazard or violation found on the job site, or any injury to any person that occurred on the job site.

11. GENERAL INDEMNITY.

Contractor will defend, indemnify, and hold harmless Owner and Owner's agents from and against any claims, damages, losses, injuries, liabilities, and expenses, including attorneys' fees, costs, and expenses, arising out of or resulting directly or indirectly from any person's acts or omissions related to the Work, the Project, or this Agreement, including hazardous materials or substances brought onto the property by Contractor or Contractor's agents. However, Contractor owes no indemnity if the harm was caused by the negligence of Owner or Owner's agents, including undisclosed hazardous materials or substances on the Property.

12. WARRANTY AND DEFECTS.

12.1 Contractor's Warranty. Contractor warrants that the completed Work will conform to the Agreement Documents and will be free from material defects including structural defects. Contractor agrees to repair any nonconformities or defects that are discovered within three (3) years from the Substantial

Completion Date (Warranty Period).

12.2 Cure of Defect. If Owner discovers any nonconformity or defect during the Warranty Period, Owner will provide written notice to Contractor within thirty (30) days. Contractor will then cure the nonconformity or defect in a manner customary in the industry, within thirty (30) days of receiving such notice or within another period of time agreed to by Owner and Contractor in writing. If Contractor fails to timely cure the nonconformity or defect, Contractor will be responsible to pay Owner for all damages and reasonably associated costs of curing the defect.

12.3 Product Warranties. All product warranties are deemed assigned from Contractor to Owner.

13. TERMINATION.

13.1 Termination Must be in Writing. Notice of termination, or an agreement to terminate, must be in writing, provide the effective date of termination, include an accounting of Owner's payments and the Work performed by Contractor up to the effective date of termination, and identify any payments due by Owner to Contractor or refunds due by Contractor to Owner.

13.2 Termination by Owner. Owner may terminate this Agreement if Contractor violates any material provision of the Agreement Documents; fails to supply properly skilled, trained, or licensed workers; fails to provide proper materials; fails to pay subcontractors for materials or labor as required by this Agreement; or if Contractor or subcontractors disregard applicable laws, ordinances, rules, regulations, or orders of any public authority having proper jurisdiction. Before terminating this Agreement, Owner must give Contractor written notice of the *violation*, giving Contractor fourteen (14) days to cure (fix) the violation. If Contractor fails to cure the violation within fourteen (14) days of receiving the written notice, or, if the violation cannot reasonably be cured within fourteen (14) days, Contractor fails to commence and diligently continue with cure efforts, then Owner may terminate this Agreement by giving Contractor written notice of termination according to subsection 13.1.

13.3 Termination by Contractor. Contractor may terminate this Agreement if Owner violates any material provision of the Agreement Documents. Before terminating this Agreement, Contractor must give Owner written notice of the *violation*, giving Owner fourteen (14) days to cure (fix) the violation. If Owner fails to cure the violation within fourteen (14) days of receiving written notice, then Contractor may terminate this Agreement by giving Owner written notice of termination according to subsection 13.1.

13.4 Termination by Mutual Agreement. Contractor and Owner may agree in writing to terminate the Agreement, according to subsection 13.1.

13.5 Other. Upon the effective date of a termination, Contractor will stop operations as agreed by the parties, terminate all existing subcontracts and purchase orders, and stop entering into any further subcontracts or purchase orders.

15. NEGOTIATION, MEDIATION, AND LITIGATION.

The parties will attempt to resolve any dispute relating to this Agreement through good faith negotiation before commencing formal legal proceedings, except if legal action is required to preserve a statute of limitations, lien, or other similar rights. If the parties use a third-party mediator, the parties will share the cost of mediation. Any agreement reached during negotiation or mediation is not considered a waiver by either party of any future breaches or violations of this Agreement.

16. GENERAL.

16.1 Time of Essence. Time is of the essence in this Agreement. Any extension must be agreed to in the form of a Change Order (Exhibit B), according to subsection 5.2. Performance dates and times are not binding on inspectors, lenders, and others who are not parties to this Agreement, except as otherwise agreed to in writing by the non-party.

16.2 Calculation of Time. Unless otherwise explicitly stated in this Agreement:

- (a) performance that references a day or date is required by 11:59 p.m. on the stated day or date;
- (b) "days" means calendar days, and a period stated in days or a longer unit of time shall be counted as follows:
  - (i) exclude the day of the event that triggers the period (for example, receipt of a notice);
  - (ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
  - (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

16.3 Entire Agreement. The Agreement Documents contain the entire agreement between the parties. No amendments, modifications, or changes are binding, unless they are made in accordance with the terms of this Agreement. If any clause or provision of this Agreement is found to be invalid, the remaining clauses and provisions will remain in full force and effect.

16.4 Governing Law, Venue. The performance, interpretation, and enforcement of this Agreement will be governed by the laws of the State of Utah. Any litigation arising out of or in connection with this Agreement will be conducted in the county where the Property is located.

16.5 Assignment. Neither party may assign or transfer this Agreement or any rights under this Agreement without the prior written consent of the other party. This Agreement is binding upon the parties and their heirs, successors, executors, administrators, and assigns.

16.6 Notices. All notices under this Agreement must be in writing and delivered in person; by email to the party's Email Address in this Agreement; or by certified mail, postage prepaid, to the party's Mailing Address in this Agreement. Notices will be deemed effective upon delivery, successful transmission, or two (2) days after the postmark stamp on the USPS mail.

16.7 Force Majeure. A party will not be considered in breach of or in default under this Agreement and is not liable to the other party for any delay, or failure to perform its obligations, because of fire, earthquake, storm, flood, explosion, riot, war, terrorism, legally declared emergency, or similar event beyond that party's reasonable control (a "Force Majeure Event"); provided that, if a Force Majeure Event occurs, the affected party must, as soon as practicable: (a) notify the other party of the Force Majeure Event and its impact on performance; and (b) use diligent efforts to resolve any resulting issues and perform its obligations under this Agreement to the extent reasonable.

16.8 Attorney's Fees and Legal Expenses. If legal proceedings are brought to interpret or enforce any term of this Agreement, the prevailing party will be entitled to the costs and expenses, including reasonable attorneys' fees, incurred in the legal proceeding.

IN WITNESS WHEREOF Contractor and Owner hereby sign this Agreement, on their own behalf or through their duly authorized representative:

Contractor

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Owner

Signature(s): _____

Printed Name(s): _____

Date: _____

Exhibit A to *Residential Construction Agreement*
dated _____, 20_____

between

Contractor _____ and
Owner _____

PLANS

Exhibit B ***to Residential Construction Agreement dated _____, 20_____***

between

Contractor _____ and
Owner _____

CHANGE ORDER

Change Order # _____

Date: _____

This is a Change Order to the Residential Construction Agreement.

1. Change In Work: Describe the changes in the Work to be performed by Contractor: (Attach additional pages if necessary.)

_____

_____

_____

_____

_____

_____

_____

2. Price: The Agreement price is [ ] INCREASED [ ] DECREASED by $_____ as a result of this Change Order.

3. Payment: Any increase in the Agreement price relating to this Change Order will be paid according to the Agreement, and subject to the following:

_____

_____

_____

_____

4. Completion Date Adjustment: The new estimated Completion Date for the Project will be _____ 20____.

5. Other Terms: All other terms of the Agreement, including those relating to Change Orders and Warranties, apply to this Change Order and remain in full force and effect.

Contractor

Signature: _____

Printed Name: _____

Date: _____

Owner

Signature(s): _____

Printed Name(s): _____

Date: _____

Exhibit C to *Residential Construction Agreement*
dated _____, 20_____
between
Contractor _____ and
Owner _____

PROOF OF LICENSURE AND INSURANCE

1. DOPL License.

   Name: _____

   License #: **-5501**

   Expiration Date: _____

   Qualifier(s): _____

2. Insurance.

   List below all current applicable insurance policies (attach copies to this Exhibit).

   _____

   _____

   _____

   _____

Contractor

Signature: _____

Printed Name: _____

Date: _____

Owner

Signature(s): _____

Printed Name(s): _____

Date: _____