



Construction Agreement For Residential Home Renovation (Cost-Plus Agreement)



Owner and Contractor enter into this agreement ("Agreement") on _____, 20__.

OWNER

Name

Address

City, State, Zip

Phone

CONTRACTOR

Full Company Name

Address

City, State, Zip

Phone

For good and valuable consideration, the Parties agree as follows:

1. PROPERTY ADDRESS. The address at which the Project, as defined below, is to be performed is:
Street Address _____, City _____,
State _____, Zip Code _____ ("Property").

2. SCOPE OF WORK. Contractor will provide labor, materials, and equipment to perform the work on the Exhibit "A" Construction Specifications and Allowances and the following described architectural plans, if any: _____ ("Plans").

3. COST-PLUS BASIS. Owner will pay Contractor on a "cost-plus" basis. "Costs" will be determined by the actual Cost of work on the Project, which will include, without limitation, the following items:

A. Materials, Tools & Equipment. The expense of all materials and supplies, temporary facilities, equipment and tools not customarily owned by Contractor in the performance of a residential home renovation (such as dump trucks, grading equipment, or heavy construction equipment).

B. Labor. Wages of construction workers employed by Contractor to perform the work, including all expenses associated with employment such as taxes, insurance, and benefits. Labor will be charged at the following rates:

| | | |
|-------------|---|------------------|
| Supervisors | - | \$_____ per hour |
| Carpenters | - | \$_____ per hour |
| Laborers | - | \$_____ per hour |

C. Subcontracts. All payments by Contractor to subcontractors associated on the Project.

D. Demolition. All expenses of demolition, debris removal, debris disposal, and site cleanup.

E. *Extraordinary Expenses.* All extraordinary expenses of Contractor incurred and attributable to the Project, including without limitation losses or expense incurred without the fault or negligence of Contractor and expenses associated with taking emergency action to prevent damage, injury, or loss.

F. *Added Benefits.* Any other expenses, fees, or services incurred by Contractor in performance of the work on the Project that benefit Owner or were provided at the request or direction of Owner, whether included in the Construction Specifications and Allowances.

G. *Miscellaneous.* All other expenses and fees associated with the Project.

In addition to the Cost of work, Contractor will be compensated for overhead and a fee based on a percentage of the Cost of work at the following rate:

| | | | |
|---------------------|---|-------|---|
| Contractor Overhead | - | _____ | % |
| Contractor Fee | - | _____ | % |

4. COST ESTIMATE AND ALLOWANCES. The Contractor's estimates of Project Costs may be on the Construction Specifications and Allowances. Those Costs are based on Contractor's experience, the Plans, and Owner's explanation of the Project. The Contract Specifications and Allowances may also include "allowances," which are Contractor's estimates of the expense of certain items (i.e., paint, fixtures, and appliances, etc.). The estimates are not a fixed fee and will not be used to determine the final consideration owed to Contractor for the Cost of work performed, overhead, or fee. At any time, Owner may request Contractor to prepare an updated statement that shows the variances between the original estimates and Contractor's best estimates of the Cost required to complete the Project.

5. PAYMENTS TO CONTRACTOR.

A. *Deposit.* Owner will pay an initial deposit to Contractor in the amount of \$_____ upon signing this Agreement.

B. *Progress Payments.* Owner will pay Contractor per the Exhibit "B" Payment Schedule. Failure to make progress payments in full when due will immediately excuse Contractor from continued work. Any delay in making a progress payment in full will extend Contractor's date for achieving Substantial Completion (defined below) by the length of the delay.

C. *Final Payment.* Final payment will be due upon notification by Contractor of Substantial Completion.

D. *Interest.* Any sum not paid within thirty (30) days of the due date shall accrue interest at eighteen percent (18%) per annum.

6. TIME OF PERFORMANCE.

A. *Commencement.* Contractor will commence work within _____ days after this Agreement has been signed, all required permits and approvals have been issued, and Contractor has received the deposit.

B. *Completion.* Contractor will diligently pursue and substantially complete all work within a reasonable time. Contractor estimates substantially completion ("Substantial Completion") will occur approximately _____ days from commencement. The Project will be considered substantially complete upon any of the following: (a) issuance of a government certificate of occupancy, final or temporary; (b) notice from Contractor that the work has been completed if a certificate of occupancy is not required; or (c) the Project is useable for the intended purpose.

The estimated date for Substantial Completion will be extended for any reason specified in this Agreement and for causes beyond Contractor's control, including without limitation, inclement

weather, differing site conditions, labor disputes, natural disasters, acts of God, unavailability of materials, stoppage required to comply with governmental order or regulation, and interference by Owner. Contractor will not be liable for any damage relating to these extensions

7. CHANGES TO THE PROJECT OR PRICE. Owner may not make changes to the Project without Contractor's agreement. Owner must timely request any desired change to permit scheduling and completion with minimum interruption and Cost increase. The Cost to complete the Project may increase or decrease due to: (a) changes to the Project agreed to by the Parties; (b) changes in codes after commencement; and (c) latent defects in the existing structure (such as soil conditions that may require extraordinary work, inadequate structural support, or termite/wood rot or other damage to the existing structure) that could not reasonably have been observed by Contractor before the work. If a latent structural defect is discovered, Contractor will give Owner notice and may prepare an estimate of the anticipated increase in Cost to complete the Project. Expenses incurred by Contractor in preparing the estimate (such as engineering fees) will be paid by Owner when billed by Contractor unless otherwise agreed in writing.

A change to the Project or Cost will be agreed to by the Parties and may be memorialized in a written Change Order in form substantially similar to Exhibit "C." For any change requested by Owner or of the type described above, whether a Change Order is executed, Owner will reimburse Contractor for all labor and material expenses and reasonable profit and overhead.

8. CONSTRUCTION STANDARDS. Contractor will construct the Project in substantial compliance with the Construction Specifications and Allowances, any Plans, applicable building codes, and (*select one of the following*):

_____ Those terms of the current version of the Homeowner Handbook published by the Greater Atlanta Home Builders Association, Inc. that cover the Project (provided that the term "closing" in the Homeowner Handbook will be deemed to be the date of Substantial Completion), supplemented by any higher standards in the current version of the Residential Construction Performance Guidelines for Professional Builders & Remodelers, published by the National Association of Home Builders.

_____ The current version of the Residential Construction Performance Guidelines for Professional Builders & Remodelers, published by the National Association of Home Builders.

Collectively, the standards referred to in this paragraph will be referred to in this Agreement as the "Construction Standards." If Owner has provided the Plans, Contractor is not responsible or liable for errors in them. Owner releases Contractor and will indemnify, hold harmless, and defend Contractor as to any claims, including ones based on Contractor's own, but not sole, negligence, relating to the design of the Project.

9. FINISH SELECTIONS. Owner will make all finish selections on the Construction Specifications and Allowances within the sooner of ____ days from the date of this Agreement or ____ days from being informed by Contractor that a finish selection should be made. If selections are not timely made, Contractor may charge Owner \$_____ per day of delay, the Parties agreeing that the actual damages to Contractor for delay are difficult to determine and this amount is a reasonable estimate not intended as a penalty. Any delay by Owner in making a selection will extend by a equal time the date for Substantial Completion.

If Owner selects an item that exceeds the allowance on the Construction Specifications and Allowances, Contractor may require Owner to pay for that item before ordering or installing it. The payment is not refundable after purchase or installation.

10. PROJECT ORIENTATION.

A. *Project Orientation List.* Upon Substantial Completion, the Parties will inspect the Project and prepare, sign and date a Project Orientation List listing all items that remain to be completed in accordance with the Construction Standards, including any noted in previous inspections.

B. *Corrective Work.* Contractor will use its best efforts to satisfactorily complete all items on the Project Orientation List within a reasonable time and with minimal disturbance to Owner, but the listing of any item will not permit Owner to withhold or delay final payment.

C. *Private Inspections.* If Owner uses a private home inspector or consultant to inspect the Project, the inspector must at the time of an inspection: (a) maintain all business licenses required by law; (b) be a member of the American Society of Home Inspectors, the Georgia Association of Home Inspectors, or other professional inspection association mutually agreed upon in writing prior to the inspection; and (c) have general liability insurance and professional liability errors and omissions insurance of at least \$500,000 each. At the beginning of an inspection, Owner must provide Contractor with proof that the inspector meets these requirements. Arrangements for a private inspection must be made at least one (1) week in advance. If the inspector concludes that there are code violations, the inspector must provide a written list specifying the applicable code(s) and section(s) for each alleged violation. Any inspection must evaluate construction solely in accordance with the Construction Standards.

11. LIMITED WARRANTY. Contractor's Limited Warranty, Exhibit "D," is a one (1) year limited warranty, which will become effective at Substantial Completion. The Limited Warranty will be voidable, in Contractor's sole discretion, in the event that final payment to Contractor is not made. THIS LIMITED WARRANTY IS IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

12. CONCERNS INHERENT WITH REMODELING PROJECTS.

A. *Matching.* Contractor will use reasonable efforts to match old and new materials and to patch damage to existing materials where they join new materials. But, the points of connection and patched areas may be detectable. Contractor has no liability or responsibility to make the old and new materials look identical or joints invisible.

B. *Property Damage.* Contractor will use reasonable efforts to minimize damage to existing improvements, including, without limitation, driveways, landscaping, lawns, and any other existing improvements on the Property. However, Contractor is not responsible or liable for minor incidental or consequential damages to the Property, other than the Project, or to Owner's personal property. Owner is responsible for removing or protecting personal property, furniture, landscaping, and other items in the vicinity of the Project.

C. *Assumption of Risk & Disturbance.* Owner understands and acknowledges that during the course of construction, the residence may not be safe for non-construction personnel. Owner assumes all risks for Owner, family members, invitees, agents, or guests, including without limitation, personal injury from, relating to or associated with, the Project or Contractor's performance, except for gross negligence or willful injury.

D. *Noise and Dirt.* Loud noise, dust, dirt, and general commotion can be expected during construction. Owner understands and acknowledges that these conditions may exist from

approximately 7:00 a.m. to 6:00 p.m., Monday through Saturday. Owner will be solely responsible for addressing any related concerns of neighbors.

E. *On-Site Utilities and Facilities.* Unless otherwise agreed in writing, Contractor and its subcontractors and employees may use the utility services, telephone (not including toll calls), water supply, and a designated bathroom within the Project without charge.

F. *Advertising.* Contractor may display its business sign (subject to applicable ordinances) in a place on the Property visible until Substantial Completion of the Project, and take pictures of the Project, before, during and afterwards, for use in advertising, promotional material, or displays.

G. *Exclusions.* Unless specifically included in the Construction Specifications and Allowances or the Plans, the Project specifically excludes: changing electrical service or electrical equipment that is in violation of the applicable electrical or building codes, painting the interior and exterior of the existing residence, and identification, detection, abatement, encapsulation, handling, or removal of any hazardous materials or substances as defined by the U.S. Environmental Protection Agency.

13. INSURANCE REQUIREMENTS/RISK OF LOSS. Contractor must maintain workers compensation insurance required by law and liability insurance for damages to persons or property who enter the Project at Contractor's request. Owner is responsible for all other insurable risks, including without limitation, property, casualty, and theft insurance in an amount necessary to cover the Project and residence's contents and to meet any other lender insurance requirements. Owner bears the risk of loss for all materials incorporated into Project or stored on the job site.

14. OWNER WARRANTIES & RESPONSIBILITIES. In addition to all other Owner duties, the following apply:

A. *Ownership.* Owner warrants that it has fee simple title to the Property.

B. *Access.* Owner must provide Contractor and all employees, subcontractors, and suppliers of contractor with adequate access to the Project as required by Contractor to perform this Agreement.

C. *Homeowner Association Approval.* Owner is responsible for obtaining all approvals required by an architectural control committee or community association.

D. *Survey.* Owner is responsible for obtaining any reasonably necessary boundary surveys, site plans, foundation surveys, and final surveys.

E. *Easements and Zoning.* Owner must provide any easements, variances, zoning changes, modifications to restrictive covenants, and other similar matters prior to commencement of the Project.

F. *Hazardous Materials.* Owner represents that it is not aware of any hazardous materials or substances as defined by the U.S. Environmental Protection Agency, including but not limited to, asbestos, polychlorinated biphenyl (PCB), and lead paint, to which Contractor or its employees or subcontractors may be exposed during work. If Contractor encounters or reasonably believes it has encountered any of these substances, it may stop work and remove its employees and subcontractors from the area until the nature of and remedy for the materials has been determined. If that information cannot be determined within a reasonable time, Contractor may terminate this Agreement and be compensated as for Owner's default under this Agreement. To the fullest extent permitted by Georgia law, Owner will indemnify, hold harmless, and defend Contractor from any claims, including ones based on Contractor's own, but not sole, negligence, arising out of or relating to hazardous materials and substances.

15. SUBCONTRACTORS, EMPLOYEES & SUPPLIERS. Contractor is entitled to select the subcontractors, employees, and suppliers who will work on or provide materials for the Project. Contractor is solely responsible for hiring, firing, and supervising construction personnel. Owner will not give directions or orders to anyone other than Contractor or its designated Project supervisor. Owner will not interfere with construction personnel or negotiate with or retain any of Contractor's employees or subcontractors without Contractor's prior written consent. Owner will not have any work performed on the Project by other personnel until Contractor has completed the Project or this Agreement has been terminated.

16. DEFAULT.

A. Default. Contractor will be default under this Agreement if it abandons work on the Project or otherwise refuses to carry out its obligations under this Agreement (unless the abandonment or refusal is based upon a prior uncured default by Owner). Contractor will be deemed to have abandoned work if neither it nor any subcontractor performs work on the Project for twenty-one (21) consecutive days unless that is the result of a force majeure. Owner will be in default under this Agreement if it refuses to permit Contractor to complete performance, fails to pay any amounts when due, or otherwise refuses to carry out its obligations under this Agreement, unless that is based on a prior uncured Contractor default.

B. Notice. If a default occurs, the non-defaulting Party must give the defaulting Party written notice (other than for the payment of money), by certified mail return receipt requested or by hand delivery, which specifies the default. The defaulting Party will have ten (10) days (except for the payment of a progress payment or final payment) from receipt of the notice in which to begin curing the default, which cure must be continuously pursued and completed within a reasonable time in light of the nature of the default. If the default is cured within that time, this Agreement will remain in full force and effect and neither Party may assert claims as the result of the default. If a default is not cured within that time or a payment is not made when due, the non-defaulting Party may suspend performance under the Agreement.

C. Termination. If Owner terminates as a result of a Contractor default, Owner must pay Contractor: (a) amounts then due based on the payment schedule for the work completed; (b) amounts due in any Change Order; (c) amounts due for allowances or finish selections that have been made; and (d) all expenses incurred by Contractor in connection with the Project that are not otherwise covered by this subparagraph. If Contractor terminates because of a default by Owner, Owner must pay Contractor all the amounts to be paid to Contractor under the immediately preceding sentence, plus any profit Contractor would have earned under the Agreement absent that default.

17. STATUTORY ALTERNATIVE DISPUTE RESOLUTION:

A. "Act:" Under this paragraph "Act" means O.C.G.A. §§ 8-2-35 through 8-2-43.

B. Notice: GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND

PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

- C. **“Construction Defect:”** For application of the Act, the term “construction defect” means: any matter concerning the design, construction, or repair of a “dwelling,” as that term is defined in O.C.G.A. § 8-2-36 (7), or an alteration of, repair, or addition to an existing dwelling, or of an appurtenance to a dwelling on which a person has a complaint against a “contractor,” as that term is defined in O.C.G.A. § 8-2-36 (6); and any physical damage to the dwelling or real property on which it is located that is caused by a construction defect. This definition does not change or expand the definition of “Construction Standards” in this Agreement or duties relating to design, construction, repair or replacement under this Agreement, any limited warranty, the law or otherwise. The term “construction defect” is incorporated into this Agreement to make it clear that any “action,” as that term is defined in O.C.G.A. § 8-2-36 (1), whether based on breach of contract, breach of warranty, negligence, fraud or other statutory or common-law grounds, that alleges a “construction defect” is subject to the Act.
- D. **Interaction of Act and Agreement:** Owner’s duties under this Agreement are in addition to those under the Act.
- E. **Failure to Follow Act:** Except as permitted by O.C.G.A. § 8-2-38 (o), if Owner files an “action,” as that term is defined in O.C.G.A. § 8-2-36 (1), without first complying with the requirements of the Act, Owner will be liable for the reasonable attorney’s fees and expenses incurred by Contractor in obtaining a stay or dismissal of that action.

18. REMEDIES AFTER DEFAULT - BINDING ARBITRATION. The Parties will cooperate in avoiding and informally resolving their disputes. Warranty procedures first apply to any unresolved warranty claims. Any warranty claim that thereafter remains unresolved and any other claim or dispute of any kind or nature between the Parties arising out of or relating to this Agreement, or the breach of it, or the Project must be resolved by binding arbitration per O.C.G.A. § 9-9-1 *et seq.*, and the rules and procedures of the arbitrator. The arbitrator’s award is final and may be enforced in a court having jurisdiction and venue. If the Parties do not voluntarily agree on the arbitrator, Construction Arbitration Associates, Ltd. will be the arbitrator. Any questions about the interpretation of this arbitration provision or the arbitrability of a dispute under it shall be decided by the arbitrator, unless specifically required by law to be decided by a court, and that decision shall be binding on the Parties.

The Parties’ initials below evidence their agreement to the provisions of this paragraph:

_____ / _____ (Owner’s initials) _____ (Contractor’s initials)

The fee to initiate arbitration will be shared evenly by the Parties, but the arbitrator may allocate filing fees and arbitration costs in the award.

19. GOVERNING LAW. This Agreement and all of its provisions, exhibits and attachments will be governed by and construed, interpreted and enforced in accordance with the laws of the State of Georgia, not including its conflict laws.

20. INTEGRATION CLAUSE. The contract is the complete agreement between the Parties and may not be modified except in writing signed by all Parties.

21. TERMS. All pronouns, singular or plural, masculine, feminine or neuter, mean and include the person, entity, firm, or corporation to which they may refer under the context. Where appropriate in the context, the singular means and includes the plural and the plural means and includes the singular.

22. NOTICES. Except as otherwise provided in this Agreement, notice must be to the addresses on page 1, in writing, and delivered: (a) in person; (b) by overnight courier prepaid; (c) by facsimile transmission with confirmation of receipt; or (d) by the United States Postal Service certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate Party. Notice will be effective upon receipt. Refusal by the addressee to accept notice will be deemed receipt. The inability to deliver the notice because of a change of address of which no notice was given to the other Party will be deemed receipt. Either Party may change addresses by giving the other written notice.

23. SPECIAL STIPULATIONS. These special stipulations control over any conflicting provisions of the preceding paragraphs:

24. EXHIBITS AND ADDENDA. These attached or selected exhibits and/or addenda are part of this Agreement:

- ☐ Construction Specifications and Allowances, Exhibit "A"
- ☐ Payment Schedule, Exhibit "B"
- ☐ Change Order Agreement, Exhibit "C"
- ☐ Limited Warranty Agreement, Exhibit "D"
- ☐ _____, Exhibit " "
- ☐ _____, Exhibit " "
- ☐ _____, Exhibit " "

Owner's Signature_____

Date_____

Owner's Signature_____

Date_____

Contractor's Signature_____
(Use full legal name)

Date_____

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Construction Specifications and Allowances

Exhibit “A”

**Payment Schedule
Exhibit “B”**



Change Order Agreement
Change Order #_____
Exhibit "C"



This Change Order, made_____, 20___, modifies the Construction Agreement ("Agreement") between the Parties. For the consideration below, Contractor will furnish all labor and materials necessary to complete the following:

This work is governed by the terms of the Agreement, including as to Costs, fees, and overhead. Owner will pay the Change Order Costs, fees, and overhead as follows: _____.
As a result of this Change Order, the estimated date for Substantial Completion is extended by ____ days.

Owner's Signature

Date

Owner's Signature

Date

Contractor's Signature
(Use full legal name)

Date

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