

COMMERCIAL CONSTRUCTION AGREEMENT

This CONTRACT AGREEMENT ("Contract") is made on _____, 20____, by and between <> ("Owner") and <> ("Contractor").

A. Contractor wishes to enter into the following Contract with the Owner to furnish labor and materials to the project located at <> ("Project"), pursuant to plans dated _____, 20____, drawings dated _____, 20____, and specifications dated _____, 20____ (together with all changes and addendums: "Project Documents"), prepared by <> ("Architects"). This Contract includes, by reference, all terms and conditions, and all other documents listed in this Contract and modifications issued after execution of this Contract.

B. Owner has made available to Contractor all of the Project Documents, and Contractor has agreed to be responsible for obtaining copies pertinent to its work; and

C. The Project Documents have been carefully examined by Contractor, his agents and representatives. Contractor agrees the Project Documents are complete and accurate as to all work to be performed by the Contractor. Contractor assumes all responsibility for any part of the Project Documents that are incomplete or inaccurate.

I.

TERMS AND CONDITIONS RELATING TO CONTRACTOR

1. Contractor shall furnish all labor, material, skill and equipment necessary or required to perform all the work for the Project as follows:

Contractor to provide labor and materials as shown on the Project Documents <and as specified in sections: _____>. Contract price shall be (including all taxes and permit fees): \$_____.

Contractor shall be paid as follows: _____

2. Contractor shall pay for all materials, labor and equipment used in, or in connection with the performance of this Contract when such bills or claims become due and to indemnify and hold harmless the Project and Owner from all claims and mechanic's liens and to furnish satisfactory evidence to Owner, when and if required that the Contractor has complied with the above requirements.

3. Contractor shall begin work within three calendar days after being notified, in writing, by Owner that the Project is ready. Contractor further agrees to complete the work of this Contract Agreement within ____ days after starting work.

4. Contractor agrees to proceed with the work in an orderly and reasonable sequence and to abide by Owner's decision as to the allotment of all storage and working space of the Project.

5. Contractor agrees that no extension of time for performance of this Contract shall be recognized or permitted without the Owner's written consent.

6. Contractor agrees to indemnify and hold harmless Owner, Owner's agents and representatives, Architects, Owner's lender and all other contractors and/or subcontractors from any and all losses or damage (including without limiting the generality of the foregoing, attorneys' fees and disbursements paid or incurred by Owner to enforce the provisions of this paragraph) occasioned by the failure of Contractor to carry out the provisions of this Contract.

7. Contractor agrees to obtain worker's compensation insurance as is required by law. Contractor further agrees to obtain comprehensive general liability and property damage insurance to protect the Contractor and Owner against claims for bodily injury or death or for damage to property occurring upon, in or about the Project, with limits in amounts at least equal to those specified below:

Risk Insurance	\$1,000,000.00 Aggregate
Bodily Injury Liability	\$1,000,000.00 Each Person
General Liabilities Including Automobiles	\$5,000,000.00 Aggregate
Property Damage Liability	\$1,000,000.00 Aggregate
Worker's Compensation	As required by law

Any and all insurance shall be issued by an "A" rated insurance company or companies. Contractor agrees to furnish Owner with satisfactory evidence that he has complied with this paragraph. Contractor further agrees to obtain and furnish Owner with an undertaking by the insurance company issuing each such policy that such policy will not be canceled except after thirty (30) days written notice to Owner of its intention to do so.

Contractor agrees to assume the entire responsibility and liability for all damages or injury to any and all individuals, whether employees or otherwise and to all property, including Owner's property arising out of, resulting from, or in a manner connected with the performance of the work provided for in this Contract or occurring or resulting from the use by Contractor, his agents or employees of materials, equipment, instrumentality's or other property, whether the same is owned by Owner, Contractor or third parties, and Contractor agrees to indemnify and save harmless Owner, his agents and employees from any and all such claims, including, without

limiting the generality of the foregoing claims for which Owner may be, or may be claimed to be liable and attorneys' fees and disbursements paid or incurred to enforce the provisions of this paragraph.

All insurance required to be carried by Contractor shall name Owner and Owner's lender as additional insurers.

8. Contractor agrees to accept responsibility for all damage caused by Contractor to clean and repair all surfaces soiled or damaged by Contractor, and to protect the work performed by Contractor. If any dispute arises between Contractor and another Contractor and/or subcontractor as to which is responsible for any time of damage, the dispute shall be submitted to Owner for decision and Owner's determination as to responsibility shall be final and binding.

9. Contractor is solely responsible for initiating, maintaining and supervising all safety precautions and measures in connection with the performance of this Contract and agrees to take all safety precautions with respect to his work and shall comply with all applicable laws, ordinances, rules and regulations and lawful orders of any public or governmental authority for the safety of persons or property.

10. Contractor agrees not to assign or sublet any or all of this Contract and not to assign any money due or to become due thereunder without first obtaining prior written consent of Owner. Contractor further agrees to supply Owner with a list of all individuals or businesses it intends to subcontract work to or from whom it will obtain materials or equipment. Such list is attached hereto as Exhibit B and incorporated herein by reference, to which Owner hereby consents.

11. Contractor agrees to furnish such shop drawings or samples as may be required by the Owner or Architect.

12. Contractor agrees not to employ any person who would be unacceptable to Owner. Contractor further agrees to remove any such person if Owner reasonably objects to his continued employment on this project.

13. Contractor agrees that Owner, or his authorized representatives, shall have the right to order, in writing, the elimination or addition of any part of parts of work or materials as omitted from or added to this Contract by Architect and/or Owner. Fair adjustments shall be made in the contract price for such omitted or added work or materials. No extra work shall be allowed or changes made by Contractor, or paid for by Owner, unless and until authorized by Owner, in writing, before the work and/or changes are begun. Contractor agrees to sign attached Exhibit A to this Contract and waives all claims for additions or changes unless this Owner has signed a written Change Order.

Contractor further agrees to give notice to Owner of all claims for extras, for requests of extensions of time and for damages for delays or otherwise, promptly and in accordance with the General Contract. Contractor acknowledges and agrees that any change orders for extras must be consented to in writing by Owner. Further, Contractor understands that only _____ may sign Change Orders on the Owner's behalf.

14. Contractor agrees to obtain and furnish to Owner and to maintain in effect during the life of this Contract, if requested to do so, a performance and/or payment bond from a surety or sureties in the form and with sureties acceptable to Owner in an amount equal to the unpaid portion of the contract price, conditioned upon and covering the faithful performance of and compliance with all of the terms, provisions and conditions of this Contract, the premium therefor to be paid by Contractor.

15. Contractor guarantees its work against any and all defects in material or workmanship for a period of one year from the earlier of the date of final payment or the date the Certificate of Occupancy is issued by the building authority for the project. Contractor hereby assigns all vendor warranties given by each equipment or parts manufacturer to the Owner.

16. In the event Contractor fails to correct, replace and/or repair faulty or defective work performed and/or materials furnished under this Contract, or shall fail to complete or diligently proceed with its work under this Contract within the time herein provided for, Owner, upon three days notice in writing to Contractor shall have the right to correct, replace and/or re-execute such faulty or defective work, or to take over the work to be provided pursuant to this Contract and complete the same either through its own employees or through a contractor or subcontractor of its choice, and to charge the costs thereof to Contractor including compensation for the Architect's services against the sums owed under this Contract or to pursue any and all other remedies provided by law.

17. Contractor agrees that in case of default on the part of Contractor under the terms of this Contract, the material and equipment of Contractor shall be left at the Project for use by Owner in completing the work covered by this Contract. Owner shall be obligated to pay the Contractor for all such material and equipment.

18. Contractor agrees to obtain, at its cost, all permits, all licenses, all plan approval, all inspections and all other governmental approvals relating to this work on the Project and to comply with all federal, state, county, and municipal laws, codes and regulations and to pay all costs and expenses incurred in connection with such compliance, to pay all fees and taxes, including sales and use taxes, and also pay all taxes imposed by any state or federal law for any employment insurance, pensions, retirement funds or any similar purpose, and to furnish all necessary reports and information to the appropriate federal, state and municipal agencies, with respect to all of the foregoing, the same as though Contractor was in fact Owner and to hold

Owner and any other Contractor and/or subcontractor harmless from any and all losses or damage occasioned by the failure of Contractor to comply with the terms of this paragraph.

19. Contractor agrees to pay all royalties, license and permit fees to defend all suits or claims for infringement of any patent rights involved in the work of Contractor under this Contract and to save Owner and other Contractors harmless from loss, costs or expense on account of such use or infringement by Contractor.

20. If any part of Contractor's work depends, for proper execution, upon the work of Owner, any other Contractor, Contractor shall inspect and promptly report to Owner any apparent discrepancies or defects in such work that renders it unsuitable for use on the Project. Failure of Contractor to inspect and report shall constitute an acceptance of the work of Owner, other Contractors.

21. Contractor shall provide complete invoices and executed lien waivers in the form required by Owner, on or before the ____ day of the month so that Owner may accept, review and approve said invoices for the current payment cycle. Request for payment will be deemed accepted by Owner on the date Owner determines, in his sole judgment, that Owner has all the information required to process the payment. Acceptance by Owner after the ____ day of the month shall cause the request for payment to fall to the following payment cycle.

II.

TERMS AND CONDITIONS RELATING TO OWNER

22. Owner agrees to employ Contractor to do the work described in Paragraph 1 hereof subject to the terms and conditions of this Contract.

23. Owner agrees to pay Contractor the full amount, less retainage and other hold backs, owed upon faithful, prompt and complete performance of the Contractor's work to be performed under this Contract and Owner's written acceptance of the work.

24. Owner will release checks for Contractor's accepted invoices once a month on the 10th day of the month for completed work, less a ____% retainage and other hold backs.

25. Final payment, including all retention, shall become due and payable on the 10th day of the month within thirty days after acceptance of the entire project and all work has been accepted in writing by Owner.

III.

MISCELLANEOUS PROVISIONS

26. Any and all disputes relating to, or arising out of this Contract, including claims arising under the mechanic's lien laws, shall be submitted to binding arbitration before a single arbitrator appointed by the American Arbitration Association. Such arbitration shall be conducted under the Construction Industry Arbitration Rules of the American Arbitration Association and the arbitration hearing shall take place in _____, Minnesota. The discovery rules set forth in the Minnesota Rules of Civil Procedure shall apply to the arbitration and the parties shall be allowed to conduct discovery according to those Rules. The arbitrator shall have the power to decide any discovery disputes. The prevailing party, as determined by the arbitrator, shall be awarded the arbitration fees it incurred, its reasonable attorney's fees, costs, and expert witness fees incurred in connection with the arbitration. Prior to filing an arbitration claim, the parties agree to mediate their disputes in _____, Minnesota, with a mediator selected by the Owner. Each side shall pay one-half of the costs of the mediator.

27. This Contract shall not be modified except in writing signed by both Owner and Subcontractor.

28. This Contract shall be construed and governed by the law of Minnesota.

OWNER:

◇

By _____
Its _____

CONTRACTOR:

◇

By _____
Its _____

ARE YOU A CORPORATION? _____
PLEASE PROVIDE ONE OF THE FOLLOWING:

FEDERAL ID # _____
OR SOCIAL SECURITY # _____

PERSONAL GUARANTY

I hereby personally guaranty all obligations of the Contractor/Owner under this Contract, and agree to arbitrate and mediate all disputes as provided in the Contract.

EXHIBIT A

TO: All Contractors and Suppliers

RE: Extras, Change Orders and Waiver

Any and all additional work which deviates from the original contract price shall be at your own risk unless authorized in writing by the Owner prior to said work occurring.

Any and all changes must be documented by a written change order signed by Owner/Representative. Other employees of Owner do not have express, implied or apparent authority to authorize additional work for Owner. Verbal agreements or orders shall not constitute authorization and any work done pursuant to a verbal agreement or order shall be at your peril. This notice also constitutes your written waiver of any benefits conferred under a claim based on a quasi contract if and when work occurs pursuant to a verbal agreement or order.

Please sign and return this to:

OWNER:

CONTRACTOR:

◇

◇

By _____

By _____

Its _____
<Address>
<Phone>
<Fax>
<Email>

Its _____
<Address>
<Phone>
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