

CONTRACT FOR REPAIR, REPLACEMENT, RESTORATION, OR REMODELING.

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[This contract form is suitable for repair, replacement, restoration, or remodeling of an existing house. MSBA Real Property Form No. 92 is suitable for construction of a new house, for construction of an addition to an existing house, or for construction of an accessory building on residential real property.]

PROPOSAL FOR CONTRACT

Date of Proposal: _____

Proposal submitted to: [full legal names] _____ ("Owner")

Address: _____

Phone Number(s): _____ Job Site Phone Number: _____

Job Site Address: _____

Contractor's Name: _____ ("Contractor")

Contractor's Address: _____

Contractor's Phone Numbers: _____

Contractor's Minnesota contractor license number: _____

Legal Description of the Real Property ("the Property"): _____

Attachments that are part of the "Contract:"

- Contractor's Licenses
- Exhibit A: FORM OF CHANGE ORDER
- Exhibit B: ALLOWANCES, approved by the parties and attached to this Contract at time of signing
- Exhibit C: SPECIFICATIONS, approved by the parties and attached to this Contract at time of signing
- Others [list]: _____

Any supplemental documents, modifications, amendments, or Change Orders executed by both parties after the date of the Contract become part of the Contract.

Contractor offers to provide for all labor, materials, mechanical equipment, furnishings, tools, construction equipment and machinery, approvals, permits, licenses, fees, transportation, and other facilities and services necessary for the execution and completion of the Contract (the "Work") for the sum of \$ _____ (the "Contract Price") to be paid by Owner to Contractor. The Work will begin on _____, 20____ (the "Start Date"), and will be substantially completed by _____, 20____ (the "Substantial Completion Date").

This Proposal may be withdrawn by Contractor if not accepted by 12:00 noon on _____, 20____.

By _____
Contractor's authorized signatory

Its _____
title

OWNER ACCEPTANCE OF PROPOSAL

The Contractor's Proposal is hereby accepted.

BY SIGNING THIS ACCEPTANCE YOU ARE INCURRING SIGNIFICANT LEGAL AND FINANCIAL OBLIGATIONS. YOU SHOULD CONSULT YOUR LAWYER BEFORE YOU SIGN THIS ACCEPTANCE.

Owner Signature Date

Owner Signature Date

GENERAL CONDITIONS OF CONTRACT

A. START DATE; COMPLETION DATE; DAMAGES FOR DELAY; DELAY. The Work will begin on the Start Date and will be substantially completed by the Substantial Completion Date.

If the Work is not substantially completed by the Substantial Completion Date, the Contract Price will be reduced by \$_____ for each day that substantial completion of the Work is delayed beyond the Substantial Completion Date. The actual damages for a delay in completing the Work would be difficult to determine, and the amount set forth in the preceding sentence is a reasonable measure of the damages caused by the delay and is not a penalty.

If Contractor is delayed in the progress of the Work by weather conditions not reasonably anticipated or any other cause not reasonably foreseeable and beyond Contractor's reasonable control, then the Substantial Completion Date shall be extended for a reasonable period of time as determined by the parties and confirmed in a Change Order.

B. SUBSTANTIAL COMPLETION. The Work will be deemed substantially completed when (1) a Certificate of Occupancy is issued for the Property or, if no Certificate of Occupancy will be issued, the date that the government building inspector completes a final inspection of the Work, and (2) Contractor and Owner agree upon a Certificate of Substantial Completion. The Certificate of Substantial Completion shall specify whether Contractor will thereafter maintain any responsibility for the job site items such as security, maintenance, utilities, insurance, and damage to the Work, include a list of items which are part of the Work that are not complete as of the Substantial Completion Date ("Punch List Items") and state a time for completion of all Punch List Items.

C. PAYMENT OF CONTRACT PRICE. Owner shall pay the Contract Price to Contractor in the following manner at the times indicated:

1. Before Substantial Completion. Payments to be made before Substantial Completion include the following [*Select applicable options*]:

Initial Deposit:
\$_____ shall be paid when Owner signs the Owner Acceptance of Proposal. The Initial Deposit shall be [*Select one*]:

- deposited in an account with _____ naming both Contractor and Owner as account holders and requiring both signatures for withdrawals.
- paid directly to Contractor for deposit into a separate account to be used by Contractor solely for the costs of the Work.
- paid directly to Contractor and commingled with Contractor's general funds for use by Contractor without restriction.

Progress Payments:
Progress Payments for portions of the Work then completed shall not be requested by Contractor more often than once during any one 30-day period. Each Progress Payment shall be disbursed by _____ ("Disbursing Agent"). Contractor and Owner promptly shall comply with Disbursing Agent requirements. Disbursing Agent shall issue all checks directly to the suppliers and Subcontractors for those portions of the Work being performed by the suppliers and Subcontractors. If Contractor is required to make an advance payment to a supplier or Subcontractor, Contractor may include the advance payment for reimbursement with the next Progress Payment and the advance payment shall be paid to Contractor. Any part of the Progress Payment to be paid for portions of the Work performed by Contractor shall be subject to a "Retainage" so that Contractor shall receive 90% of such part of the Progress Payment with the remaining 10% being retained on behalf of Owner until Substantial Completion.

Milestone Payments:
All requests for Milestone Payments shall include a sworn construction statement and supporting lien waivers for the portion of the Work included in the Milestone Payment.

<u>Milestone Event(s)</u>	<u>Amount to be Paid</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

2. After Substantial Completion. The unpaid balance of the Contract Price less an amount equal to 200% of the estimated cost of Contractor completing the Punch List Items ("Substantial Completion Payment") is due and payable upon acceptance of the Certificate of Substantial Completion. Payment of the Substantial Completion Payment is subject to reasonable delay resulting from the processing of Owner's insurance claims, if any, relating to the Work. If the Progress Payments option was selected above, the Substantial Completion Payment shall be made in the same manner as provided above for a Progress Payment. If the Progress Payments option was not selected above, the Substantial Completion Payment shall be made only after Contractor has delivered to Owner a Contractor's sworn construction statement identifying all contractors, Subcontractors, and material suppliers who provided labor or material to the Work, attesting that all of them have been paid in full, and accompanied by lien waivers from each of them along with recordable satisfactions or releases for any liens of record. Thereafter, as each Punch List Item is completed, the Owner shall pay Contractor monthly the amount retained for that completed Punch List Item.

3. Upon Final Completion. Upon final completion of the Work, Contractor shall prepare for Owner's acceptance a Final Application for Payment stating that, to the best of Contractor's knowledge, and based on Owner's inspections, the Work has been completed in accordance with the Contract. Contractor shall also submit:

- a. an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Property;
- b. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract;
- c. a release of any liens, conditioned on final payment being received;
- d. a consent of any surety, if applicable; and
- e. a report of any accidents or injuries experienced by Contractor or its Subcontractors at the work site.

Payment of the balance of the Contract Price shall be made to Contractor within 20 calendar days of Owner's receipt and acceptance of the Final Application for Payment along with the submissions. Any claims not reserved in writing by the Owner with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, non-conforming Work, non-conforming materials, fixtures, or equipment, defective work, and latent defects.

149 **D. CONTRACTOR'S RESPONSIBILITIES.**

150
151 **1. Quality of Work.** Contractor shall perform and complete the Work in a good and workmanlike manner. The Work shall
152 be free from material defects not intrinsic in the design or materials specified in the Contract. All materials, fixtures, and
153 equipment shall be new unless otherwise specified, of good quality, and free from defects. All Work shall conform to applicable
154 building codes and laws. Upon completion of construction, all improvements will comply with all applicable laws, ordinances,
155 and regulations and with all covenants, easements, and restrictions affecting the Property. The uses for which the Work is
156 intended will be conforming uses and the Property will be a conforming lot size and a conforming site plan under applicable land
157 use regulations. Contractor shall promptly correct any work not completed according to this Contract and shall repair or replace
158 any defective materials, fixtures, or equipment if requested by Owner in writing.

159
160 **2. Construction Obligations.** Contractor will supervise and be solely responsible for all construction means, methods,
161 techniques and procedures for the Work. Contractor will provide and pay for all labor, materials, equipment, tools, construction
162 equipment and machinery, transportation, and other facilities and services necessary for execution and completion of the Work.
163 The Contract Price reflects that Contractor has evaluated the existing utilities on the Property. Contractor acknowledges that
164 the utilities are available to the Property in capacities sufficient for the Work, or Contractor has included an upgrade to utilities
165 as part of the Contract Price and shall provide such utilities to the Property as part of the Contract Price. For any utility
166 upgrades or additions, Contractor shall pay all municipal charges for development on, construction on, or improvement of the
167 Property related to access fees, connection fees, and "hook up" fees for connections to sewer, water, and other utilities
168 necessary to complete the Work.

169 Contractor will obtain and pay for all approvals, building permits, architectural reviews, licenses, zoning permits, conditional
170 use permits, variances, well permits, sewage treatment system permits, environmental permits, environmental approvals, and
171 all other permits, licenses, approvals, and inspections necessary for completion of the Work. Contractor will comply with all
172 laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction over performance of the Work.
173 Contractor shall maintain the Property in a reasonably clean condition throughout the course of construction so that Owner may
174 continue to use and occupy that part of the Property not under construction. Upon completion of the Work, Contractor will
175 remove all of Contractor's tools, equipment, and surplus materials from the Property.

176
177 **3. Subcontractors.** A "Subcontractor" is a person or entity who has a direct contract with and authority from Contractor to
178 perform any part of the Work. Contractor will have sole discretion as to whom it hires for subcontracted work and shall be solely
179 responsible for the conduct and performance of the Subcontractors. Contractor will give Owner the names and addresses of
180 each Subcontractor and material supplier employed to perform or supply any portion of the Work.

181
182 **4. Mechanics' Liens.** Contractor will timely pay all Subcontractors, laborers, and material suppliers for their respective
183 contributions to the Work so as to prevent mechanics' or material suppliers' liens against the Property. Contractor will
184 indemnify, defend, and hold Owner harmless for any such liens against the Property, and this indemnity will survive termination
185 of this Contract.

186
187 **5. Condition of Property.** Contractor covenants that, by the Substantial Completion Date, Contractor shall have removed
188 all trash, garbage, and miscellaneous discarded materials from the Property, and shall leave the Property and the Work in a
189 thoroughly clean condition. (In this Contract, "thoroughly clean" means that all surfaces and floors will be free of spots, marks,
190 dust, and dirt, and will be in the same high level of cleanliness that would be required if the Property were scheduled to be
191 photographed and publicized as Contractor's "model home.")

192
193 **6. Indemnification; Protection of Property and Persons.** Contractor will indemnify, defend, and hold Owner harmless from
194 and against all claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees (1) for bodily
195 injury, sickness, disease or death or for injury to or destruction of tangible property (other than the Work itself) including the
196 resulting loss of use arising out of or resulting from any negligent act or omission of Contractor, any Subcontractor, anyone
197 directly or indirectly employed by Contractor or any Subcontractor or anyone for whose acts any of them may be liable, except
198 to the extent that the claim, loss, or expense is caused in part by a party indemnified under this Contract, or (2) arising out of
199 or relating to injury to any employee of Contractor, any Subcontractor or material supplier, or any of their respective employees,
200 which occurs as a result of, or is in any manner related to execution of the Work or which occurs or results from the use by
201 Contractor, Contractor's Subcontractors or suppliers or any of their respective employees of materials, equipment,
202 instrumentalities, or other property in connection with the Work, regardless of the owner thereof and all regardless of whether
203 Owner may be liable or claimed to be liable for the same. Contractor will reimburse Owner for all costs and disbursements,
204 including reasonable attorneys' fees paid or incurred to enforce the provisions of this Part D.6.

205
206 **7. Insurance.** Contractor has, and will continue to maintain, insurance coverage sufficient to protect Contractor and Owner
207 from the claims of workers under the Workers' Compensation Act and other employee benefit acts for damages because of
208 bodily injury, including death. Contractor has, and will continue to maintain, insurance coverage sufficient to protect Contractor
209 and Owner from claims for damages to property, other than to the Work itself, which may arise out of or result from Contractor's
210 work under this Contract, whether the Work is conducted by Contractor or by any Subcontractor or anyone directly or indirectly
211 employed by Contractor or any Subcontractor. Contractor shall obtain and maintain liability insurance sufficient to protect Owner
212 against claims that arise from any operations under this Contract, which insurance policy will name Owner as an additional
213 insured. Contractor will also insure the Work against the perils of fire and extended coverage and shall include "all risk"
214 insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism, and malicious mischief,
215 which insurance policy will name Owner as an additional insured. Contractor shall obtain, maintain, and pay for Commercial
216 General Liability insurance coverage with a Contractual Liability endorsement. Before the Start Date, Contractor will give Owner
217 certificates evidencing the insurances required by this Part D.7.

218 Before the Start Date, Owner shall give Contractor a certificate of homeowner's insurance coverages and limits for public
219 liability coverage and for fire and casualty coverage on dwelling and improvements.

220
221 **8. Performance and Payment Bonds.** Contractor *[select one]* shall / shall not provide performance and payment
222 bonds to Owner, issued by a surety acceptable to Owner, naming Owner as an obligee, bonding and assuring performance by
223 Contractor of this Contract.

224
225 **9. Toilet and Lavatory.** Sanitary facilities at the job site *[Select one]*:

226
227 Contractor will arrange for a portable, self-contained toilet on the job site at Owner's expense.

228
229 Owner shall make a toilet and lavatory in the house available to Contractor and keep it supplied with soap and paper
230 products. The location of the toilet and lavatory is _____.

231
232 **E. WARRANTIES OF CONTRACTOR.**

233
234 **1. Statutory Warranties Under Minn. Stat. Chapter 327A.** The "Statutory Warranties" of Minn. Stat. Chapter 327A apply

to home improvement work involving the repairing, remodeling, altering, converting or modernizing of, or adding to a residential building but that the term "residential building" does not include appurtenant recreation facilities, detached garages, driveways, walkways, patios, boundary walls, retaining walls not necessary for the structural stability of the building, landscaping, fences, nonpermanent construction materials, off-site improvements, and all other similar items.

2. Contractual Warranties. For any part of the Work not covered by the Statutory Warranties, the following Contractual Warranties apply.

Contractor represents and warrants to Owner that Contractor is licensed to perform construction work in Minnesota and Contractor has the financial and staffing capacity to complete the Work. Contractor warrants to Owner, and to Owner's heirs, successors, and current mortgagees, that all materials, fixtures and equipment will be new unless otherwise specified, of good quality, and free from defects, and that all Work will be of good quality. To the extent a higher standard of quality than "good" has been specified for any part of the Work, Contractor warrants that the applicable item of Work will conform to that higher standard.

For a period of one year following the final Completion Date, Owner may submit supplemental checklists to Contractor. Contractor covenants that Contractor will correct any defective or non-conforming Work, and repair or replace any defective or non-conforming materials, fixtures, or equipment, reasonably specified on the checklists, and that such corrective action will begin and be completed promptly, at the sole expense of Contractor. Contractor shall remain responsible for Contractor's warranties and for conformance of the Work, materials, fixtures, and equipment with the requirements of the Contract, regardless of whether the non-conformance, defect, or breach of warranty arises, occurs, or is discovered within or following the one year period. Notification of non-conformance or defect and repair by Contractor is not a waiver or release of Contractor's obligation for any such repair that might arise in the future.

Contractor will assign to Owner all available manufacturers' warranties applicable to materials, fixtures, or equipment installed by Contractor or by Subcontractor as a part of the Work.

The warranties of Contractor shall survive the closing of the transaction, completion of the Work, final payment, occupancy, default, and cancellation, termination, or abandonment of the Contract.

F. DEFAULTS. The following default provisions will survive termination of this Contract.

By Owner: If Owner fails to make any payment for 30 calendar days after it is due and the failure to pay continues for 7 calendar days after written notice from Contractor, Contractor may terminate this Contract and recover from Owner payment for the Work performed and material furnished and for the use of all machinery and equipment, and a reasonable profit not to exceed 10% of the Contract Price and any actual damages.

By Contractor: If Contractor breaches any of the terms of this Contract, which breach continues for 7 calendar days after written notice from Owner, Owner may, without prejudice to any other remedies, terminate Contractor's services and complete the Work in any reasonable manner. Upon completion, Owner shall pay Contractor the Contract Price minus all amounts paid to complete the Work. If such total paid is more than the Contract Price, Contractor shall pay the difference to Owner within 30 calendar days of Owner's written demand.

G. GOVERNING LAW. This Contract is governed by Minnesota law.

H. RESTRICTION ON ASSIGNMENT. Neither party may assign this Contract without the written consent of the other party. This restriction does not preclude the hiring of Subcontractor(s) for performance of part(s) of the Work.

UREA FORMALDEHYDE DISCLOSURE OF CONTRACTOR

Minnesota Statute Section 325F.18 requires a warning to be provided in the sale of buildings or building products containing Urea Formaldehyde. Many products, particularly particle board and plywood use formaldehyde-based glue in their manufacture. Contractors who purchase and use products containing Urea Formaldehyde have a responsibility to pass this warning onto their customers. The required warning follows:

"IMPORTANT HEALTH NOTICE.

SOME OF THE BUILDING MATERIALS USED IN THIS HOME (OR THESE BUILDING MATERIALS) EMIT FORMALDEHYDE. EYE, NOSE, AND THROAT IRRITATION, HEADACHE, NAUSEA AND A VARIETY OF ASTHMA-LIKE SYMPTOMS, INCLUDING SHORTNESS OF BREATH, HAVE BEEN REPORTED AS A RESULT OF FORMALDEHYDE EXPOSURE. ELDERLY PERSONS AND YOUNG CHILDREN, AS WELL AS ANYONE WITH A HISTORY OF ASTHMA, ALLERGIES, OR LUNG PROBLEMS, MAY BE AT GREATER RISK. RESEARCH IS CONTINUING ON THE POSSIBLE LONG-TERM EFFECTS OF EXPOSURE TO FORMALDEHYDE.

REDUCED VENTILATION MAY ALLOW FORMALDEHYDE AND OTHER CONTAMINANTS TO ACCUMULATE IN THE INDOOR AIR. HIGH INDOOR TEMPERATURES AND HUMIDITY RAISE FORMALDEHYDE LEVELS. WHEN A HOME IS TO BE LOCATED IN AREAS SUBJECT TO EXTREME SUMMER TEMPERATURES, AN AIR-CONDITIONING SYSTEM CAN BE USED TO CONTROL INDOOR TEMPERATURE LEVELS. OTHER MEANS OF CONTROLLED MECHANICAL VENTILATION CAN BE USED TO REDUCE LEVELS OF FORMALDEHYDE AND OTHER INDOOR AIR CONTAMINANTS.

IF YOU HAVE ANY QUESTIONS REGARDING THE HEALTH EFFECTS OF FORMALDEHYDE, CONSULT YOUR DOCTOR OR LOCAL HEALTH DEPARTMENT."

MECHANICS' LIEN NOTICE BY CONTRACTOR (Minnesota Statutes Section 514.011)

(a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for the contributions.

(b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due them from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or material for the improvement and who gave you timely notice."

Insert copies of Contractor's licenses after this page and before Exhibit A.

Exhibit A to Contract

CHANGE ORDER NUMBER _____

Dated: _____

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Contractor: _____

Owner: _____

Job Site Address: _____

TO: Contractor

You are directed to make the changes noted below to the Work specified in our Contract.

[Signature of Owner]

[Signature of Owner]

Nature of Change:

Attachments [identify and attach amended plans, drawings, specifications, etc.]:

Changes to Contract Price and contract time resulting from this Change Order:

Contract Price before this Change Order: \$ _____

Net increase (decrease) from this Change Order: \$ _____

Resulting Contract Price: \$ _____

Substantial Completion Date before this Change Order: (date) _____

Net increase (decrease) in contract time: _____ days

Resulting Substantial Completion Date: (date) _____

ACCEPTANCE BY Contractor:

This Change Order is accepted this _____ day of _____, 20____.

Contractor

By: _____
Contractor's authorized signatory

Its: _____
title

Exhibit C to Contract
SPECIFICATIONS

Attach detailed Specifications after this sheet.
Attach Specifications **before signing** this Contract.

1 Additional Terms Regarding the Specifications: _____
2 _____
3 _____
4 _____
5 _____
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24 _____

Contractor and Owner: Initial each page of the approved Specifications.

We approve the attached Specifications. We have initialed each page of the approved Specifications.

Contractor:
By: _____
Contractor's authorized signatory
Its: _____
title

Owner:

signature

signature