

# ARCHITECT-BUILDER AGREEMENT

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This Architect-Builder Agreement (this "**Agreement**") is entered into as of [EFFECTIVE DATE] (the "**Effective Date**") by and between:

[DESIGN-BUILDER LEGAL NAME], a [STATE] [ENTITY TYPE] with its principal place of business at [DESIGN-BUILDER ADDRESS], holding the applicable design and contractor licenses ("**Design-Builder**"); and [OWNER LEGAL NAME], [an individual / a STATE ENTITY TYPE] with an address at [OWNER ADDRESS] ("**Owner**").

Design-Builder and Owner are each a "**Party**" and together the "**Parties**."

**Recitals.** Owner wishes to design and construct [DESCRIBE PROJECT, e.g. a new single-family residence] on the real property located at [PROJECT ADDRESS] (the "**Project**"). Design-Builder provides integrated architectural design and construction services and wishes to deliver the Project on a design-build basis, under which a single entity is responsible for both the design and the construction. In consideration of the mutual promises below, the Parties agree as follows.

## 1. Design-Build Delivery and Scope

**1.1 Single point of responsibility.** Design-Builder will provide both the design services (the "**Design Services**") and the construction services (the "**Construction**") for the Project, and is responsible to Owner for coordinating and delivering both as an integrated whole.

**1.2 Program.** Owner's program, objectives, and any criteria documents are described in [EXHIBIT A — Owner's Program] (the "**Program**"). The Design Services and Construction will conform to the Program as developed and approved under Section 2.

**1.3 Standard of care.** Design-Builder will perform the Design Services with the professional skill and care ordinarily exercised by licensed architects and engineers practicing under similar conditions, and will perform the Construction in a good and workmanlike manner consistent with industry standards and applicable codes.

**1.4 Licensed professionals.** All architectural and engineering work requiring a license will be performed or supervised by, and sealed by, professionals licensed in the State where the Project is located.

**1.5 Codes and permits.** Design-Builder will design and construct the Project in compliance with applicable building, zoning, accessibility, energy, and life-safety codes, and will obtain the permits and approvals required to perform, with Owner's reasonable cooperation.

## 2. Design Phases and Owner Approvals

**2.1 Schematic design.** Design-Builder will prepare schematic design documents illustrating the scale and relationships of the Project for Owner's review and written approval.

**2.2 Design development.** On Owner's approval of schematic design, Design-Builder will prepare design development documents fixing and describing the size and character of the Project, including materials and major systems, for Owner's review and written approval.

**2.3 Construction documents.** On Owner's approval of design development, Design-Builder will prepare construction documents (drawings and specifications) sufficient to construct the Project and obtain permits.

**2.4 Owner review.** Owner will review and respond to submittals within **[NUMBER, e.g. 10]** business days. Owner's approval of a phase authorizes Design-Builder to proceed to the next phase and confirms the design through that phase, subject to refinements in later phases.

**2.5 Changes after approval.** Owner-requested changes after a phase is approved are handled as changes under Section 7 and may affect the price and schedule.

### 3. Construction

**3.1 Means and methods.** Design-Builder is solely responsible for construction means, methods, techniques, sequences, procedures, and jobsite safety.

**3.2 Subcontractors.** Design-Builder may perform the Construction through qualified, licensed subcontractors and suppliers, and remains responsible to Owner for their work as if performed by Design-Builder.

**3.3 Materials and workmanship.** Unless the construction documents allow otherwise, all materials will be new and of good quality, and all work will conform to the approved construction documents.

**3.4 Inspections.** Design-Builder will arrange for required governmental inspections and will give Owner reasonable notice and opportunity to observe major milestones.

**3.5 Substantial and final completion.** "**Substantial Completion**" occurs when the Project is sufficiently complete that Owner can occupy or use it for its intended purpose. "**Final Completion**" occurs when all Work, including punch-list items, is complete.

### 4. Compensation

**4.1 Contract sum.** Owner will pay Design-Builder for the Design Services and the Construction on a **[STIPULATED LUMP SUM / COST OF THE WORK PLUS A FEE, WITH A GUARANTEED MAXIMUM PRICE]** basis, as set out in **[EXHIBIT B]** (the "**Contract Sum**").

**4.2 Guaranteed maximum price.** If a guaranteed maximum price ("**GMP**") applies, Design-Builder will establish the GMP after **[design development / construction documents]**, and the Contract Sum will not exceed the GMP except for approved changes.

**4.3 Deposit.** Owner will pay a deposit of **[\$AMOUNT or %]** on signing. Local law may cap deposits for residential work; the deposit will not exceed the maximum permitted by applicable law.

**4.4 Progress payments.** Design-Builder will submit periodic applications for payment for Work performed, with reasonable supporting detail. Owner will pay each undisputed application within **[NUMBER, e.g. 15]** days of receipt.

**4.5 Retainage.** Owner may retain **[e.g. 5% or 10%]** of each progress payment until Substantial Completion, after which retainage is reduced or released as the Parties agree and as permitted by law.

**4.6 Final payment.** Final payment, including released retainage, is due within **[NUMBER]** days after Final Completion and Design-Builder's delivery of warranties, lien waivers, and required closeout documents.

4.7 **Late payment.** Undisputed amounts not paid when due accrue interest at the lesser of [e.g. 1.5%] per month or the maximum rate permitted by applicable law. Design-Builder's statutory lien rights are preserved, and the Parties will exchange conditional and final lien waivers as payments are made.

## 5. Schedule

5.1 **Project schedule.** Design-Builder will prepare and update a schedule showing the design phases, permitting, and construction milestones, with a target Substantial Completion of [DATE or NUMBER of days].

5.2 **Excusable delay.** A delay caused by an event beyond Design-Builder's reasonable control — including unusual weather, concealed conditions, permitting delay, force majeure, or Owner-caused delay — extends the schedule by the time lost without penalty, and any added cost is handled by change order.

## 6. Owner Responsibilities

6.1 **Information and access.** Owner will provide the Program, available surveys, geotechnical reports, title information, and timely access to the site.

6.2 **Owner's representative.** Owner will designate a representative authorized to render decisions and approvals promptly to avoid delay.

6.3 **Financing and budget.** Owner is responsible for arranging financing sufficient to fund the Project and for paying when due.

6.4 **Separate consultants.** Owner will not engage separate contractors on the site without coordinating with Design-Builder, to preserve Design-Builder's single point of responsibility and the integrity of its work.

## 7. Changes

7.1 **Change orders.** A change to the scope, Contract Sum, or schedule takes effect only when both Parties sign a written change order describing the change and its effect.

7.2 **Concealed conditions.** If Design-Builder encounters concealed or unforeseen physical conditions materially different from those reasonably anticipated, it will notify Owner promptly, and an equitable adjustment to the Contract Sum and schedule will be made by change order.

7.3 **Out-of-scope work.** Design-Builder is not obligated to perform out-of-scope work until a change order is signed, except emergency work to protect persons or property, addressed by change order afterward.

## 8. Ownership of Documents

8.1 **Instruments of service.** The drawings, specifications, and other documents prepared by Design-Builder are instruments of service. Design-Builder retains the copyright and ownership of them.

8.2 **License to Owner.** On full payment, Design-Builder grants Owner a non-exclusive license to use the documents to construct, occupy, maintain, and repair the Project. Owner will not use the documents for other projects without Design-Builder's written consent, and Owner uses them on other projects, if at all, at Owner's sole risk and without liability to Design-Builder.

## 9. Insurance and Indemnification

9.1 **Insurance.** Design-Builder will maintain commercial general liability, workers' compensation as required by law, automobile, and professional liability (errors and omissions) insurance in amounts of at least [\$AMOUNTS], and will name Owner as an additional insured for the non-professional coverages where permitted. Certificates

will be provided on request.

**9.2 Indemnification.** Design-Builder will defend, indemnify, and hold Owner harmless from third-party claims for bodily injury, death, or property damage to the extent caused by Design-Builder's negligence or willful misconduct, subject to Section 10. Owner will indemnify Design-Builder for claims to the extent arising from Owner's negligence or Owner-supplied information.

**9.3 Procedure.** The indemnified Party will give prompt written notice, allow the indemnifying Party to control the defense, and cooperate reasonably.

## 10. Warranty and Limitation of Liability

**10.1 Construction warranty.** Design-Builder warrants that the Construction will be free from defects in materials and workmanship and will conform to the approved construction documents for [NUMBER, e.g. 12] months after Substantial Completion, and will correct warranted defects at no charge. Statutory warranties under applicable law are in addition to this warranty.

**10.2 Indirect damages.** Except for the excluded matters in Section 10.4, neither Party is liable for indirect, incidental, special, consequential, or punitive damages.

**10.3 Cap.** Except for the excluded matters in Section 10.4, Design-Builder's total aggregate liability arising out of this Agreement will not exceed the greater of the Contract Sum or available insurance proceeds.

**10.4 Exclusions.** The limits do not apply to indemnification obligations, gross negligence or willful misconduct, bodily injury or death, or liability that cannot be limited by law.

## 11. Termination

**11.1 For convenience.** Owner may terminate for convenience on [NUMBER] days' written notice and will pay for Design Services and Construction performed and costs reasonably incurred through termination, including reasonable demobilization.

**11.2 For cause.** Either Party may terminate on written notice if the other materially breaches and fails to cure within [NUMBER, e.g. 10] days after written notice. On termination, Design-Builder will deliver the documents and work product for which Owner has paid.

## 12. General Provisions

**12.1 Independent contractor.** Design-Builder is an independent contractor. Nothing creates a partnership, joint venture, or employment relationship.

**12.2 Governing law and venue.** This Agreement is governed by the laws of the State of [STATE], without regard to conflict-of-laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts in [COUNTY, STATE].

**12.3 Dispute resolution.** Before filing suit, the Parties will attempt in good faith to resolve any dispute through direct discussion and [OPTIONAL: mediation] within [NUMBER] days of written notice. [OPTIONAL: arbitration — discuss with counsel.]

**12.4 Assignment.** Neither Party may assign this Agreement without the other's prior written consent, except Owner may assign to a lender for financing purposes on notice.

**12.5 Notices.** Notices must be in writing and sent to the addresses above (or as updated in writing) and are effective on receipt.

12.6 **Entire agreement; amendment.** This Agreement, with its exhibits and change orders, is the entire agreement on its subject and supersedes prior discussions. It may be amended only by a writing signed by both Parties.

12.7 **Severability and waiver.** If any provision is unenforceable, the rest remains in effect. A Party's failure to enforce a provision is not a waiver.

12.8 **Counterparts and electronic signature.** This Agreement may be signed in counterparts and by electronic signature, each of which is an original and all of which together form one agreement.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement as of the Effective Date.

DESIGN-BUILDER	OWNER
Signature: _____	Signature: _____
Printed name: [NAME]	Printed name: [NAME]
Title: [TITLE]	Title: [TITLE / N/A]
Date: _____	Date: _____

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