

**KETT CONSTRUCTION AND FABRICATION LLC
CONSTRUCTION SERVICES AGREEMENT**

This Construction Services Agreement (the “Agreement”) is entered into as of _____, 20__ (the “Effective Date”), by and between KETT Construction and Fabrication LLC, a Montana limited liability company (the “Subcontractor”) and _____, a [State of incorporation] [entity type] (the “Contractor”). Both Contractor and Subcontractor are sometimes referred to in this Agreement as a “Party,” and collectively as the “Parties.”

RECITALS

Contractor has entered into a contract for construction (the “Prime Contract”) with the following Owner (*Name, address, and other information*):

For the following Project (*Name, location, and detailed description*):

Contractor desires Subcontractor to perform certain work for the Project as set forth in the “**Scope of Work**” attached and incorporated into this Agreement as **Schedule 1**, and Subcontractor desires to perform such work for the Project on the terms and conditions set forth below.

Now, therefore, the Parties agree as follows:

1. SCOPE OF WORK

- 1.1.** Subcontractor shall perform the work on the Project (the “Work”) as per the specifications set forth in **Schedule 1 – Scope of Work**.
- 1.2.** Unless the Parties otherwise agree, Contractor shall be responsible for furnishing the materials and equipment necessary for the Work.
- 1.3.** Contractor shall be responsible for furnishing any permits necessary for the Work on the Project.

2. SCHEDULE OF WORK

- 2.1. Subcontractor shall be permitted to begin the Work on _____, 20__ (the "Commencement Date").
- 2.2. Subcontractor shall be required, unless otherwise stated under the terms of this Agreement, to complete the Work: **(choose one)**
- By the specific date of _____, 20__.
 - In accordance with industry standards.
 - Other: _____

3. PAYMENT

- 3.1. Contractor agrees to pay Subcontractor for the Work as follows: **(choose all that apply)**
- \$_____ lump sum.
 - At an hourly rate of \$_____ per hour.
 - At an hourly rate of \$_____ per hour for any Extra Work (as defined below).
- 3.2. If the Parties have agreed to a lump sum payment for the Work, then Contractor shall pay 10% of the lump sum to Subcontractor upon signing this Agreement.
- 3.3. Subcontractor shall submit an invoice to Contractor upon satisfactory completion of the Work.
- 3.4. Payments shall be made to Subcontractor for Work satisfactorily performed no later than seven (7) days after Contractor's receipt of an invoice from Subcontractor. If Contractor does not pay Subcontractor through no fault of Subcontractor, Subcontractor may, without prejudice to any other available remedies, upon seven (7) additional days' notice to Contractor, stop the Work under this Agreement until payment has been received. If the Contractor does not pay an invoice within 30 days after the date of the invoice, Subcontractor has the option to charge Contractor interest on all amounts owed at a rate of 12% per annum, compounded annually. Any payments shall first be applied to any accrued interest and then to amounts owed under the outstanding invoices, in chronological order.

4. CHANGE ORDERS

- 4.1. Any alteration or deviation from the Work or any other contractual specifications that result in a revision of the Scope of Work under this Agreement (each such change,

“Extra Work”) shall be executed by both Parties and attached to this Agreement in **Schedule 2** as a change order (“Change Order”).

- 4.2. Any damage to the Work caused by Contractor, other subcontractors on the Project, or any persons other than Subcontractor shall not be the responsibility of Subcontractor to repair, unless the Parties agree in a duly executed Change Order that such repairs constitute Extra Work to be performed by Subcontractor.
- 4.3. Extra Work authorized pursuant to duly executed Change Orders shall thereafter be deemed included in the “Work” under this Agreement.

5. COMMUNICATIONS

- 5.1. Contractor shall promptly make available to Subcontractor information, including information received from the Owner, that affects the performance of this Agreement and that becomes available to the Contractor subsequent to the execution of this Agreement.
- 5.2. Contractor shall not give instructions or orders directly to Subcontractor’s employees or to subcontractors or suppliers of Subcontractor unless such persons are designated as authorized representatives of Subcontractor.
- 5.3. If hazardous materials or substances are being used on the site by Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employee, Contractor shall, prior to delivery to the project site or exposure of Subcontractor’s employees to such material or substance, give notice to Subcontractor in sufficient detail and time to permit Subcontractor’s compliance with such laws.
- 5.4. Contractor shall promptly notify Subcontractor of any fault or defect in the Work under this Agreement or nonconformity with the specifications set forth in the Scope of Work.
- 5.5. Contractor shall furnish to Subcontractor within 30 days after receipt of a written request, or earlier if required by law, information necessary and relevant for Subcontractor to evaluate, give notice of or enforce construction lien rights.
- 5.6. If Contractor asserts a claim against, or defends a claim by, the Owner that relates to the Work, Contractor shall promptly make available to Subcontractor all information relating to the portion of the claim that relates to the Work under this Agreement.

6. INSURANCE

- 6.1. Prior to the execution of any Work, Subcontractor shall have insurance as set forth in this Section under the following terms and conditions:

Coverage Types: (**choose all that apply**)

- General Liability Insurance: Subcontractor shall carry minimum primary General Liability Insurance for the following amounts:

- a.) \$_____ Combined Single Limit: Bodily Injury + Property Damage;
- b.) \$_____ Personal Liability Injury;
- c.) \$_____ Aggregate for Products-Completed Operations; and
- d.) \$_____ General Aggregate (This shall apply separately to the Work provided by the Subcontractor).

- Vehicle Liability Insurance: \$_____ minimum required insurance policy on all owned, hired, and non-owned vehicles of the Subcontractor for combined single limit liability for each accident affecting incurring bodily injury and/or property damage.

- Excess Liability Insurance: \$_____ minimum required insurance policy for anything other than General Liability or Automobile coverage.

- Additional Insurance Requirement: Owner, Contractor, and any other entity which the Contractor is required to name as an additional insured under the Prime Contract shall be named as additional insureds under the General Liability Insurance required by this Section and any such insurance afforded to the additional insureds shall apply as primary insurance. This Section shall in no event be construed to require that additional insured insurance coverage be provided to a greater extent than permitted under the statutes or public policy governed under State law.

6.2. Certificates of Insurance. Certificates of insurance, and the required additional insured and other endorsements shall be furnished to Contractor upon request.

7. INDEMNIFICATION. Subcontractor shall indemnify and hold harmless the Owner, Contractor, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from Subcontractor's performance of the Work under this Agreement, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.

8. WARRANTY. Subcontractor warrants to Owner and Contractor that any and all materials furnished shall be new unless otherwise specified and that all Work provided under this Agreement shall be performed, at a minimum, in accordance with industry standards.

9. REQUIRED LICENSES. All parties of this Agreement, including but not limited to, Contractor, Subcontractor, and other sub-contractors shall be licensed in accordance with respective State laws where the individual is performing their trade or service.

10. INDEPENDENT CONTRACTOR. No term, covenant, condition, or provision of this Agreement shall be considered to create an employer and employee relationship, a master-servant relationship, or a principal and agent relationship between Subcontractor and/or any of the Subcontractor's employees and the Contractor or Owner. All parties to this Agreement attest that the relationship between the Contractor and Subcontractor shall be recognized as the Subcontractor acting as an independent contractor. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties or constitute any Party to be the agent of the other Party for any purpose.

11. FORCE MAJEURE. Neither Party shall be liable for any failure to perform under this Agreement when such failure is due to causes beyond that Party's reasonable control, including, but not limited to, acts of State or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquakes, accident, pandemic, and prolonged shortage of energy. In the event of such delay, any date stated in this Agreement shall be extended by a period of time necessary by both Contractor and Subcontractor.

12. TERMINATION. Either Party may terminate this Agreement upon 30 days written notice. In the event of termination, Subcontractor shall be entitled to payment for any Work completed prior to the date of termination.

13. NOTICES. Any notices to be given by either Party to the other shall be in writing and shall be transmitted by either (1) personal delivery; (2) mail, registered or certified, postage prepaid with return receipt requested; (3) overnight delivery; or (4) via email with confirmation of receipt. Overnight delivery or mailed notices shall be addressed to the Parties at the addresses listed below. Each Party may change the contact information by giving written notice in accordance with this Section. In the event of mailing, notice shall be deemed given on the 3rd day after deposit.

To SUBCONTRACTOR: KETT Construction and Fabrication LLC
 8081 Bridger Canyon Road
 Bozeman, MT 59715-8246
 Dawson Purkett - Contact Phone: 406-224-1452
 Email: dawsonpurkett@kettconstructionandfabrication.com

To CONTRACTOR: Name: _____
Address: _____
Phone: _____
Email: _____

14. MISCELLANEOUS.

14.1. Governing Law. This Agreement will be construed in accordance with and governed by the substantive law of the state of Montana, without regard to Montana’s conflict of law rules.

14.2. Dispute Resolution.

14.2.1. Any dispute, controversy or claim arising out of, relating to, or in connection with, this Agreement or any breach, termination or validity thereof (a “Dispute”) shall first be attempted to be settled by mediation.

14.2.2. The mediation shall be conducted by an independent, third-party mediator. The Party initiating mediation (the “Claimant”) shall recommend a mediator in its request for mediation (a “Request”). The other Party (the “Respondent”) shall either agree to the mediator set forth in the Request or recommend their own mediator within 30 days of receipt of the Request and shall notify the Claimant of such recommendation in writing. If the Parties cannot agree upon a mediator, the two mediators recommended by the Parties shall appoint a third mediator within 30 days. When the mediators appointed by the Parties have appointed a third mediator and the third mediator has accepted the appointment, the two mediators shall promptly notify the Parties of such appointment.

14.2.3. In the event that mediation is ultimately unsuccessful in resolving a Dispute within 180 days of the Request, then any Party may commence litigation. Each Party agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement, in any forum other than the courts of the State of Montana sitting in the county in which the Project is located, and any appellate court from any of those courts. Each Party submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the courts of the State of Montana sitting in county in which the Home is located.

- 14.3.** Attorney Fees. In any proceeding by which one Party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorneys' fees, and costs and expenses.
- 14.4.** Modification. This Agreement may be modified only in a writing signed by both Parties.
- 14.5.** Waiver of Default. Failure by either Party to enforce any provision of this Agreement shall not be construed as a waiver of such provision or of the right of such Party to enforce such provision afterwards. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented.
- 14.6.** Severability. If any provision, in whole or in part, of this Agreement should be found to be invalid or unenforceable, it shall not affect the validity of any other provisions within this Agreement, which shall continue to bind the Parties.
- 14.7.** Binding Effect. This Agreement shall be binding on the successors and permitted assigns of each Party.
- 14.8.** Prohibition Against Assignment. Neither Party shall assign this Agreement or any of its rights or benefits under this Agreement without the prior written consent of the other Party.
- 14.9.** Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 14.10.** Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained in this Agreement, and it supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

[Remainder of page intentionally left blank. Signatures to follow.]

[Signature page to Construction Services Agreement]

The Parties have executed this Agreement as of the Effective Date.

SUBCONTRACTOR

KETT Construction and Fabrication LLC

By: Dawson Purkett
Its: President
Date:_____

CONTRACTOR

[Company Name]

By: _____
Its: _____
Date:_____

SCHEDULE 2
CHANGE ORDERS