

HOLM CUSTOM CONSTRUCTION

Building Your Dream

123 Main Street Ste 101 Ashland Oregon 97520 ~ 541-488-1234 ~ bholm@hcc.com ~ License: 012348

COST PLUS CONTRACT

This is a binding legal contract between the parties. If you do not fully understand the contract you should consult an attorney.

1 PARTIES

- A. Date - This contract between the parties is made as of November 19, 2009.
- B. Owner - The contract is between John Abercrombie and Mona Fitch, hereafter referred to as Owner, and
- C. Contractor - Holm Custom Construction LLC, hereafter referred to as the Contractor.

2 SCOPE OF WORK

- A. Work - This contract is for the work and materials listed below in paragraph 5.
- B. Location - The location of the work to be performed under this contract is 1234 Hersey Street , Ashland OR 97520 .
- C. Contract Documents - The work to be performed under this contract shall be governed by the documents enumerated in Paragraph 5 of this contract which shall become part of this contract.

3 TIME

- A. Start Date - The work to be performed under this contract shall start on 12/01/09.
- B. Duration - The work shall be substantially complete within 92 days after the start date. This date shall be the completion date.
- C. Delay of Start - In the event the start date is delayed for more than 45 days due solely to the Owner or to conditions pertaining to the Owner's lot, then the contract amount shall be increased by ____% on the 46th day and by ____% for each subsequent 30 days thereafter.
- D. Cancellation - If the start date is delayed more than 180 days due solely to the Owner or to conditions pertaining to the Owner's lot, then the contract is null and void and any deposit monies shall be refunded to the Owner.
- E. Penalty Clause - If the work is not substantially complete within 30 days after the completion date, then the contractor shall pay the Owner \$____ per day until substantial completion is obtained.
- F. Time is of the Essence - Time is of the essence in this contract and the Contractor shall manage the work to ensure achievement of substantial completion by the completion date.
- G. Substantial Completion - The date of substantial completion is when construction is sufficiently complete so that the Owner can fully utilize the work for its intended use. The date of substantial completion shall not precede the date of final occupancy permit or the date of the final inspection approval by the lending institution.
- H. Time Changes - Changes in any times in this contract shall be made only by change order signed by both parties to the contract
 - 1. If the Contractor is delayed by labor disputes, fire, unusual delays in transportation, unusual weather conditions or other conditions beyond the control of the Contractor, then the parties may mutually agree upon an extension of times by change order.

2. If changes are requested by the Owner, then the times may be extended by mutual agreement of the parties.

4 CONTRACT AMOUNT

- A. Contractor's Fee - The Contractor shall be paid a fixed fee of \$ _____ to supervise the work to be completed under this contract.
- B. Deposit - The Owner shall pay the Contractor **\$1,800.00** upon the signing of this contract. This deposit shall be subject to any provisions of this contract pertaining to deposits.
- C. Draws of Contractor's Fee - The Owner shall pay the Contractor in accordance with the approved draw schedule, with the final payment payable upon project completion.
- D. Changes - The Owner may request changes to the work.
 1. There shall be no increase in the Contractors fee for changes to the plans and specifications.
 2. For any major additions to the plans such as outbuildings, tennis court, swimming pool, etc., an increased fee shall be negotiated between the Owner and Contractor.
- E. Costs to be Reimbursed or Paid Directly by Owner
 1. The term cost of the work shall include costs set forth below incurred in the proper performance of the work and paid by the Contractor or directly by Owner.
 2. Wages paid for labor in the direct employ of the Contractor in the performance of the work including welfare, unemployment compensations, social security and other benefits.
 3. Cost of all materials, supplies and equipment incorporated in the work, including costs of transportation thereof. All discounts for cash or prompt payment shall accrue to the Owner.
 4. Payments made by the Contractor or Owner to Subcontractors for work performed pursuant to Subcontractors under this Agreement.
 5. Cost of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are consumed in the performance of the work.
 6. Reasonable rental costs of all necessary machinery and equipment, exclusive of hand tools, used at the site of the work, whether rented from the Contractor or others.
 7. Cost of premiums for all job site bonds and job site insurance, permit fees and sales use or similar taxes related to the work.
 8. Losses and expenses, not compensated by insurance or otherwise, sustained by the Contractor in commission with the work, provided they have resulted from causes other than the fault or neglect of the Contractor.
 9. Cost of removal of all debris.
- F. Costs Not to be Reimbursed
 1. The term Cost of the Work shall not include any of the items set forth below.
 2. Salaries or other compensation of the Contractor's personnel at the Contractor's offices.
 3. Expenses of the Contractor's offices.
 4. Any part of the Contractor's capital expenses, including interest on the Contractor's capital.
 5. Costs due to the negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, the correction of defective or nonconforming work, disposal of materials and equipment wrongly supplied, or making good any damage to property.
 6. Overhead, general expense, and the cost of any item not specifically or reasonably inferable as included in the items described in Paragraph 4.E.
- G. Accounting Records - The Contractor shall check all materials, equipment and labor entering into the work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The Owner shall be afforded access to all the Contractor's records relating to this Contract.

H. Payments to the Contractor

1. Based on Application for Payment submitted by the Contractor, the Owner shall make progress payments to the Contractor or directly to Subcontractors and suppliers as follows: On the _____ and _____ of each month the Contractor shall submit to the Owner invoices for direct payment to Contractor, suppliers and Subcontractors with accompanying statements. Said invoices shall be paid by the Owner on the _____ and the _____ of each month. Prior to submitting invoices to the Owner, the Contractor shall review the work progress to insure that it is in accordance with the plans and specifications. If deficiencies are found, the Contractor shall notify the suppliers and Subcontractors and recommend to the Owner an amount to be withheld from payment.
2. When approximately 50% of the Work has been completed the Contractor shall obtain partial Waiver of Liens from Subcontractors and suppliers paid directly by the Contractor. At the time of final payment, the Contractor shall obtain final Waiver of Liens in such form as approved by the Owner.
- I. Final Payment - Final Payment of the Contractor's Fee is due within _____ days after the date of substantial completion as defined by issuance of a final or temporary Use and Occupancy Permit and when construction is sufficiently complete so that the Owner can occupy or utilize the Work for the use for which it is intended.

5 CONTRACT DOCUMENTS

- A. The contract documents listed below are incorporated as part of this contract and in total are the entire agreement between the parties.
- Plans - signed on _____
- Specifications - signed on _____
- Allowance Schedule - signed on _____
- Warranty - signed on _____
- B. In the event of a conflict between the plans and specifications, the specifications shall govern work not covered in these contract documents will not be required unless it is reasonable to assume that the work is necessary to the completion of the project.

6 RESPONSIBILITIES OF CONTRACTOR

- A. Site Inspection
1. Contractor acknowledges that he has inspected the site and is aware of the existing conditions.
 2. Barring any other reference to testing herein or contained in the specifications, subsurface conditions not obvious to visual inspection are not the responsibility of the Contractor.
- B. Supervision
1. Contractor is solely responsible for determining the methods, and order of construction, and for supervising and coordinating all segments and phases of the work.
 2. Contractor shall utilize and employ persons and subcontractors who are competent in the tasks assigned. Discipline and accountability shall be maintained by the Contractor.
 3. The Contractor shall abide by all rules, ordinances, or regulations governing the execution of the work. Any deviations or variances of the plans or specifications for such rules and ordinances shall be brought to the attention of the Owner immediately.
 4. Contractors shall routinely maintain the cleanliness of the site of the work. When the work is complete, all waste materials as well as all equipment, tools or excess materials shall be removed.
- C. Materials
1. Unless otherwise specified or agreed to, all of the materials and equipment included in the work shall be new. All such materials will be as specified, free from defect and of good quality.
 2. Contractor shall pay for all materials including sales, use, or other similar taxes which are

in effect at the time this contract is executed. Additionally, unless otherwise specified, the Contractor shall pay for any and all government permits or fees required to accomplish the work.

D. Labor

1. The Contractor shall provide and pay for the labor and services necessary to accomplish the work in a timely fashion.
2. The Contractor shall be responsible for any acts and omissions of his employees and subcontractors.
3. To the fullest extent of the law, the Contractor shall hold the Owner harmless from all claims arising out of the performance of the work, when such claims are:
 - a. Attributable to bodily injury or death, or injury to or destruction of tangible property (not including the Work itself) and;
 - b. Caused in whole or in part by a negligent act or omission of the Contractor, his employees, or his Subcontractors. This obligation shall not relieve, negate or abridge any other right of indemnification which would otherwise exist. This indemnification obligation is not limited in any way by any restriction, or limitation on the type or amount of benefits or compensation payable under any relevant worker's compensation act.

E. Subsurface Conditions

This contract assumes standard excavation with no subsurface solid rock, streams or springs which require excavation or special equipment, other than a tracked front loader. Excavation costs above standard conditions are to be paid as an extra. This contract assumes subsurface soil bearing conditions adequate for the footing sizes shown on plans. Additional footing costs are to be paid as an extra.

F. Protection of Persons

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. He shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to

- 1) all employees on the work and other persons who may be affected thereby,
- 2) all the work and all materials and equipment to be incorporated therein, and
- 3) other property at the site or adjacent thereto. The Contractor shall remedy all damage or loss to any property caused in whole or in part by the Contractor his employees or any Subcontractor, except damage or loss attributable to the acts or omissions of the Owner or his agents or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Contractor.

G. Repair and Correction of Work

The Contractor shall promptly correct or repair any work defective or failing to conform to the Contract Documents whether observed before or after substantial completion: The Contractor shall correct any work found to be defective or nonconforming within a period of one year from the date of substantial completion of the contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the contract documents.

7 RESPONSIBILITIES OF OWNER

- A. The Owner shall furnish all surveys and record plats and a legal description of the building site.
- B. Except as provided in Paragraph 7C, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures.
- C. The Owner shall forward all instructions to the Contractor.
- D. The Owner shall sign all necessary applications required to obtain permits and bonds.

- E. The Owner shall select, in a timely manner, all allowance items, materials and colors required during the construction process.
- F. The Owner shall obtain all necessary approvals, and/or acknowledgements from any Architectural Board or Committee whose jurisdiction is relevant to this project.
- G. Owner agrees to cooperate and make every reasonable effort to assist Contractor and further agrees to permit Contractor to place signs on or about the premises during the course of construction and allow Contractor to show the home to potential customers during the course of same. Owner shall not contract with, authorize or permit, for any reason whatsoever, any individual, other contractor or subcontractor to perform, in whole or in part, any additions or changes to the plans and specifications unless authorized to do so by the Contractor in writing. Owner shall not communicate directly with any workman, employees, agents or subcontractors of the Contractor, unless so directed by the Contractor.

8 INSURANCE

- A. Contractor shall obtain and maintain liability insurance in the amount of \$ _____ to protect him from workers' compensation claims and claims for damages because of bodily injury, including death, and from claims for damages, other than to the work itself, to property which may arise out of or result from the Contractor's operations under this contract, whether such operations be by himself or by any employee or Subcontractor. This insurance shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is the greater.
- B. The Contractor shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may maintain such insurance as will protect him against claims which may arise from operations under the contract.
- C. The Contractor shall purchase and maintain property insurance upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor and Subcontractors in the work and shall insure against the perils of fire and extended coverage and shall include "Builder's Risk" insurance for physical loss or damage including, theft, vandalism and malicious mischief. The insurance shall include glass coverage with a maximum deductible of \$ _____ per occurrence.
- D. Any loss insured under Paragraph 7C is to be adjusted with the Owner and made payable to the Owner as trustee for the insured.
- E. The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this contract or any other property insurance applicable to the work, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee.

9 SUBCONTRACTS

- A. Definition - A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the work at the site.
- B. List of Principal Subcontractors - The Contractor, as soon as practicable, shall furnish to the Owner in writing the names of Subcontractors for each of the principal portions of the work.
- C. Reasonable Objections to Subcontractors - The Contractor shall not employ any Subcontractor to whom the Owner may have a reasonable objection. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.
- D. Required of Subcontractors - Contracts between the Contractor and the Subcontractors shall:
 - 1) require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these documents, assumes toward the Owner and,

- 2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

10 OTHER

A. Governance

This contract shall be governed by the Laws of the State of Oregon.

B. Arbitration

Unless the parties mutually agree otherwise, all claims or disputes between the Contractor and the Owner arising out of, or relating to, the Contract Documents or the breach thereof shall be decided by arbitration in accordance with the current Construction Industry Arbitration Rules of the American Arbitration Association. Notice of the demand for arbitration shall be filed in writing with the other party to the Owner-Contractor Agreement and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

C. Contingencies

This contract is null and void in the event Owner is unable to obtain construction financing in the amount of \$ _____ at an interest rate not to exceed _____ %.

11 SIGNATURES

This contract shall constitute the sole and entire agreement between the parties whose signatures are affixed below.

John Abercrombie

Date

Mona Fitch

Date

Bill Holm
Holm Custom Construction LLC

Date