

CONSTRUCTION MANAGEMENT CONTRACT



This contract is made on this _____ day of _____, between _____ (hereinafter called Owner), and the Center for Environmental Structure (CES or Construction Manager and General Contractor of record), for the purpose of building the _____ at _____ location, according to plans prepared by the Center for Environmental Structure.

ARTICLE 1. DEFINITION OF PROJECT

The work is shown on the drawings that are attached to this contract as appendix 1, and specified by the 23 construction operations attached to this contract as subcontract proposals in appendix 2.

The following aspects of the work will be built as specified in the drawings:

- a. Siting of the building(s) as shown on the site plan.
- b. Configurations and dimensions of building(s) and rooms as shown on floor plan sheets.
- c. Additional interior and exterior work determined by CES during construction.

It is understood that the drawings have been obtained for building permit purposes, and are not to be construed as binding architectural plans and specs.

ARTICLE 2. BASE PRICE

Signed subcontract proposals attached in appendix 2 spell out the relative specifications and costs.

Based on these documents, the base price of the building(s) will be \$_____, plus whatever changes shall be agreed to by the Owner in writing.

ARTICLE 3. CES RESPONSIBILITY

CES shall provide management services and supervision necessary to execute and complete construction of the project.

CES will, as construction manager,

1. Enter into binding subcontracts with subcontractors.
2. Organize and manage the subcontractors.
3. Make changes to the design.
4. Determine how to spend the available budget so as to most benefit the building(s).
5. Administer construction work so as to meet our understanding of applicable codes.
6. Inspect finished work.
7. Obtain lien releases from subcontractors in exchange for final payment.
8. Keep full and detailed accounts as may be necessary for the construction of the project on behalf of the Owner, and will make those records available to the Owner at any time.
9. At completion, shall provide to the Owner a copy of the marked up job-site drawings, for the Owner's use and records.

In all matters of subcontractor dealings, in all matters of design changes, and in all matters of money management, the Owner grants CES complete authority to exercise its judgement on behalf of the Owner.

ARTICLE 4. CES GENERAL PHILOSOPHY

It is believed that the approach to construction laid out in this contract and based on the fundamental assumptions above will secure for the Owner the highest quality building(s) possible within the available budget.

Specifically, this approach is designed to eliminate the profit motive of the general contractor. By setting a fixed fee for the management of the job and maintaining open records of all transactions, the typical overbidding by the contractor to protect himself from unforeseen overruns and contractor's markups on materials and subcontracted work are eliminated. In the typical owner-contractor arrangement the overbid money becomes windfall for the contractor and does not benefit the building(s) or the owner. In the model laid out in this contract all available money is spent for the betterment of the building(s).

This method also provides the framework for efficiently dealing with changes which are a fundamental part of making a good building. In the typical Owner-Contractor agreement any changes are discouraged by adding an exorbitant surcharge to the direct costs of the changes, effectively providing the contractor a windfall profit. Even changes which reduce the costs are typically charged as extras. In the method laid out here changes are not subject to additional surcharges and are charged at their actual costs.

CES encourages the Owner to review all subcontracts, and to propose alternative lower priced subcontractors. CES will evaluate the subcontractor proposals and award subcontracts if CES determines that it is in the best interest of the project, and provided that these proposals are consistent with the construction schedule.

ARTICLE 5. SUMMARY OF CONSTRUCTION OPERATIONS

The construction will be organized under the following construction operations, with the following sums allocated to them. Detailed breakdown, showing subcontract amount, 15% contingency, and CES management fee is given in appendix 3.

- 1. GENERAL CONDITIONS _____
- 2. FOUNDATIONS _____
- 3. FRAME _____
- 4. FLOOR STRUCTURE _____
- 5. ROOF STRUCTURE _____
- 6. EXTERIOR WALLS _____
- 7. INTERIOR WALLS _____
- 8. ROOFING _____
- 9. MISC. METAL _____
- 10. WINDOWS/DOORS _____
- 11. BRICK AND TILE _____
- 12. PLASTERWORK _____
- 13. PLUMBING _____
- 14. ELECTRICAL _____
- 15. HVAC _____

- 16. ROADS AND PARKING _____
- 17. CIVIL WORKS _____
- 18. INTERIOR FINISH WORK _____
- 19. CABINETWORK AND FURNISHING _____
- 20. PAINTWORK _____
- 21. GARDENS AND LANDSCAPE _____
- 22. OWNER'S REQUESTS _____
- 23. BIDDING FEE _____

- TOTAL BUDGET _____

The total dollar amount under subcontractor's subcontract proposals and the total dollar amount under contingency will be used by CES to build the building(s). The use of this money is under the sole discretion of CES acting as the manager for the Owner, and may be applied to cost overruns or for any items required by CES to improve or upgrade the building(s).

ARTICLE 6. MANAGEMENT FEE

The Management Fees will be paid directly to CES as outlined under Article 9. The management fees will be used by CES to manage the project and will pay for CES management labor and overheads.

The total management fee paid to CES is \$ _____ plus 20% of construction for all construction above \$ _____.

The portion of this fee paid to CES for managing the construction of the project as outlined in this contract will be \$ _____ plus 16% of construction for all construction above \$ _____. This sum will be paid to CES according to the arrangement described in article 9.

The remaining portion of the fee (\$ _____ plus 4% of construction for all construction above \$ _____) will be paid to CES to cover bidding, organization of subcontractors and setup: \$ _____ to be paid as a lump sum, on notification by CES that the bidding work has begun; the remaining \$ _____ plus 4% to be paid on completion of the setup work.

ARTICLE 7. ALLOWANCES

Allowances are included in the main contract and subcontract documents for certain items not specified in detail. This portion of the budget is to be used by the Owner. The Owner can spend up to the allowance amount. If the Owner spends less than the allowance amount, the Owner will have the option of applying the savings to other allowance items. If the Owner wishes to spend more than the allowance amount, then they must spend less on subsequent allowance items or supply additional funds.

ARTICLE 8. CONTINGENCY

To protect the Owner and the job against unforeseeable fluctuations of price, unforeseen site conditions, and other changes, each of the budgeted amounts in article 5 contains a contingency of 15%. The contingency money is to be used entirely at CES discretion, for the benefit of the building(s) as judged by CES. CES shall have the right to distribute and redistribute this contingency money as it sees fit, in order to meet difficulties and changes which arise in the building(s), and whenever possible, to make improvements and extras which CES believes will increase the harmony of the emerging building(s).

CES's intention is to maintain as much of the 15% contingency money as possible, and use this money to pay craftsmen who will make various finishing touches continuously throughout the job.

ARTICLE 9. PAYMENT PROCEDURE

The Owner will open a project checking account and make deposits to the account according to the schedule below. CES will be signatory on this account, and will have control of the project checkbook.

The basis for payment will be the list of Construction Operations. Summary in article 5 and detail in appendix 3.

The Owner will make deposits to the project checking account according to the following schedule for each operation: 50% of the price of the operation will be deposited to the account upon notification of the commencement of that operation.

35% of the price of the operation, on demand, when a reasonable portion of the work is completed.

10% of the price of the operation when notified by CES that the operation is at least 85% complete.

The remaining 5% will be paid according to the provisions of article 14.

As each check is deposited to the account, CES will withdraw the appropriate amount from the management category (as shown in appendix 3) to make payment for construction management fees, up to 95% of the total management fee.

The remaining 5% of the total management fee will be deposited to CES upon final completion.

All records from the project account and all invoices for materials and labor, and all subcontractor's billings will be available for the Owner's review.

ARTICLE 10. SUBCONTRACTORS

Subcontract proposals for items 2-21 are attached as appendix 2. These proposals, signed by the various subcontractors constitute an addendum to the general contract, and serve as the basis for the project specifications and the construction budget. At the appropriate time CES will obtain subcontract proposals from subcontractors for any remaining items.

In performance of this task, CES will seek out and hire subcontractors which in CES's opinion are most appropriate for the particular job. The criteria may be price in one instance, timeliness in another, and quality of work in another. CES is under no obligation to find the "lowest" subcontractor, nor the "best" subcontractor.

Should a subcontractor default on their subcontract, for any reason, CES will endeavor to renegotiate or find another subcontractor to perform the work. CES will proceed in a manner which it determines is in the best interests of the Owner and the project with respect to time, quality, flexibility, and price, but CES is under no obligation to provide subcontracts or subcontractors at a guaranteed price.

The relationship between CES and the subcontractors shall be a contractor-subcontractor relationship. Within the confines of such a relationship, CES will include its best efforts to provide appropriate guidance of the Subcontractors in the performance of their work. CES is to be sole agent on behalf of the Owner. The Owner or any agents of the Owner aside from CES, are explicitly forbidden from giving any directions to, or making any requests directly to any of the

subcontractors. The Owner may, of course, make requests through CES as provided in article 11.

ARTICLE 11. DESIGN DECISIONS AND CHANGES INITIATED BY CES

Part of CES philosophy is that there are no defined plans and specifications. CES will have authority to make design decisions and design changes as it determines necessary, without written confirmation from the Owner, as long as these decisions do not increase the total budgeted cost. Whenever possible CES will confer with the Owner but CES is not obligated to do so. Design decisions and changes may be generated by any of the following causes.

CES-initiated design changes may be generated in response to the emerging building(s). As the building(s) and rooms begin to take shape, doorway sizes and locations, window sizes and locations, wall locations and wall lengths, cabinets, finishes, etc. may have to be altered. These decisions can only be made on the site, during construction, as the building(s) is taking shape.

CES-initiated design changes will be required to keep the overall price of the building(s) in budget. As a result of some unforeseeable problem, or as a result of an overage due to a previous design change, it will become necessary to make changes in the building(s) to offset the overages. This is not something that might happen, it is something that will happen. Although often seen as negative, these types of changes are more often than not positive changes which ultimately result in producing the best buildings.

CES will confer with the Owner in major design decisions which the Owner has identified as important ahead of time, and before making any major design changes, but CES has the main commitment to “listen” to the emerging building(s), and to do what is in the best interests of the building(s). The owner will be consulted on and encouraged to participate in the detailed layout of _____ as the Owner has requested.

ARTICLE 12. CHANGES NOT COVERED BY ARTICLE 11.

Changes not covered by article 11, and resulting in an increase of cost, will be approved in writing by the Owner. In cases where an increase of cost is anticipated, the Owner must approve the change in writing before CES can begin the work. If the owner does not approve it, the work will not be done.

ARTICLE 13. TIME

The work to be performed under this contract shall commence within 15 days of the signing of this contract. The work shall be completed in accordance with the schedule provided pursuant to the paragraph below.

Both Owner and CES desire to complete the project in _____ months starting from the date of commencement. CES will provide the Owner with an estimated construction schedule for the project. This schedule shall indicate the dates for the starting and completion of the various stages of the construction and shall contain the necessary information to allow the Owner to monitor the progress of the work. It shall be revised as required by the conditions of the work and those conditions and events which are beyond the control of CES.

The Owner agrees that if the building process is slowed down, by any act or neglect of Owner, by any separate contractor employed by the Owner, by any unreasonably slow process of decision making or design negotiation from the Owner, CES will then be entitled to an appropriate increase of management fee, to make up for the extra time. If the building process is slowed down for any other reason not caused by CES negligence, CES and the Owner will negotiate fair compensation if any additional management fee is required. Adherence to time conditions is of vital importance to

the proper running of the job site, and is of material importance to the successful completion of this contract.

ARTICLE 14. SUBSTANTIAL COMPLETION

The date of substantial completion of the project or a designated portion thereof is the date when construction is sufficiently complete in accordance with the drawings and specifications so the Owner can occupy or utilize or, in fact, does occupy or utilize, the project or designated portion thereof for the use for which it is intended.

The date of substantial completion shall be established in writing, signed by the Owner and CES. At that time, a punch list of items to be completed or corrected (if any) shall be prepared by the Owner and CES along with a time schedule for their completion or correction, and the remaining unpaid balance of the contract including the 5% subcontract retentions will be deposited to the construction account.

ARTICLE 15. LIEN RELEASES

CES warrants that all money paid by Owner, except management, will be used on the building to pay for materials, job expenses, subcontractors and craftsmen.

CES will obtain partial waivers of lien for all payments to subcontractors and will forward these to the Owner.

ARTICLE 16. FINAL PAYMENT

Following full completion of the work as defined by the punch list (article 14) and final inspection and acceptance of the work in writing by the Owner, CES shall have authority to make final payments to subcontractors, and to withdraw final payment of the management fee. To protect the Owner CES agrees that they will not use these funds to make final payments until the subcontractor has provided the appropriate final lien releases. When all payments have been made, CES will issue a duly executed final waiver of lien.

ARTICLE 17. CES OBLIGATION AND FIRST-YEAR REPAIRS

CES will maintain \$_____ from the contingency in the job account, for a period of one year after final completion. This money is to be spent for repairs and annoyance items which occur after final completion. CES will use the \$_____ at its discretion, to fix items that are unsatisfactory to the Owner. If, one year after final completion, this money or any part of it remains unspent. CES will use the balance in consultation with the Owner, to make some nice small improvements to the building(s). CES shall have no further obligation, beyond that covered by this money, for making repairs or improvements on items considered unsatisfactory by the Owner. CES will also make its best efforts to help the Owner enforce the warranties provided by subcontractors.

ARTICLE 18. JOB EXPENSES

Owner will maintain working telephones on site at all times. Owner will supply working electric service and water to the job site. Owner will supply toilet, storage, cleanup facilities and lunch room for subcontractors workers at all times. Owner will reimburse CES management personnel for mileage to and from CES office, at 27 cents per mile. CES will pay the phone, electric, water and toilet bills, together with mileage reimbursements out of the job account. Estimated

costs for these items are included in the construction budget under general conditions. If these costs run above estimate, overage to be carried by Owner.

ARTICLE 19. UNKNOWN CONDITIONS

The work may include modification or connection to existing structures. It is not possible to anticipate all problems which may arise, in the work of connecting to such existing structures. If unexpected conditions that affect the performance of the work and vary from those indicated by the contract documents, are encountered, base price of project and schedule shall be equitably adjusted for such unexpected conditions in writing between CES and the Owner upon claim made by CES.

ARTICLE 20. INSURANCE

The Owner will carry all necessary general liability, fire, and earthquake insurance and any other insurance which may be required to protect the Owner against claims which may arise from operations under this project.

CES will purchase and maintain the following insurance to cover CES's operations under this agreement:

1. Workers' compensation insurance in full compliance with workers' compensation laws of the State of California for all employees of CES and other persons directly associated with CES's management team.
2. CES will, in addition, request that all subcontractors provide certificates of worker's compensation insurance for their employees. In any case where this is unavailable, CES will carry the necessary worker's compensation on its own policy and deduct the cost from the subcontract price.

ARTICLE 21. CES SPECIAL CONSTRUCTION METHODS AND PHILOSOPHY

The Owner recognizes that the methods and philosophy of CES include unusual use of materials, and unusual combinations of high-level and low-level finish. The building(s) will not necessarily be designed to typical California industry standards for residential or public buildings, and the Owner's desire to break with these prevailing standards is explicitly part of the intent of this contract.

Owner approves the form and content of the CES subcontract forms attached to this contract as appendix 2, and recognizes the right of CES to make substitutions as provided in the subcontract agreements.

The Owner is specifically bargaining for CES's exercise of its independent judgment in carrying out the above-described construction methods and philosophy.

ARTICLE 22. SAFETY.

CES shall take necessary precautions for the safety of CES employees on the job, and shall comply with all applicable provisions of federal, state and municipal safety laws. CES shall have no responsibility for the abatement of safety hazards resulting from work at the job site carried on by other persons, or by subcontractors. Subcontractors will be responsible for their own safety, but CES and CES employees will encourage safety on the site.

ARTICLE 23. WARRANTIES.

CES warrants to the Owner that all materials and equipment furnished under this agreement will be new unless other-

wise specified, and that all construction work will be of good quality, free from improper workmanship and defective materials. Any warranty or guaranty obtained by CES from any manufacturer, shall be deemed to have been obtained for the benefit of Owner. CES will collect all equipment manuals and deliver them to the Owner together with all written warranties from equipment manufacturers, and CES will have no further obligation with respect to them.

ARTICLE 24. ATTACHMENTS.

The signed subcontracts and documents attached hereto as appendices are expressly incorporated into this contract. To the extent the attachments are inconsistent with the main contract, the terms of the main contract shall govern.

ARTICLE 25. ARBITRATION.

Claims, disputes and other matters in question between the parties to this agreement arising out of or relating to the agreement shall be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then in effect, unless the parties agree otherwise. This provision shall be specifically enforceable in any court of competent jurisdiction.

Notice of demand for arbitration shall be filed in writing with the other party to this agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when the applicable statute of limitations would bar institution of a legal or equitable proceeding based on such claim, dispute or other matter in question. The award rendered by arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

Unless otherwise agreed in writing, CES shall carry on the work and maintain its progress during any arbitration proceedings, and the Owner shall continue to make payments to CES in accordance with the contract documents.

This article shall survive completion or termination of this agreement.

ARTICLE 26. ATTORNEYS' FEES.

In the event that either party files suit to enforce the provisions of this contract, the prevailing party shall be entitled to a reasonable attorney's fee as cost of suit, to be fixed by the Court.

Signed

for the Owner date

Signed

for CES date

