



New Avenue Inc.  
P (510) 900-9402  
Email: info@newavenuehomes.com  
www.newavenuehomes.com

## Construction Agreement

Owner's Name(s):  
Address:  
Telephone Number:

Contractor's Name:  
Address:  
Telephone Number:  
License No.:

This Agreement is entered into as of \_\_\_\_\_ (the “**Effective Date**”) by and between the above-mentioned owner (the “**Owner**”) and contractor (the “**Contractor**”) for the renovation/construction of the property located at \_\_\_\_\_, (the “**Project**”).

1. General Overview. Owner shall pay the maximum sum of \$ \_\_\_\_\_ for completion of the work, including all sales tax due by law, together with such increases or decreases in the contract price as may be approved by the Owner and Contractor on the online project page provided by New Avenue Inc. (“**New Avenue**”). The work will begin on \_\_\_\_\_, 2016 and will be completed no later than \_\_\_\_\_ business days (Monday through Friday) after commencement, unless delayed beyond the Contractor's control and approved by New Avenue. The general provisions listed below are made a part of this Agreement.

1. Terms and conditions and contract documents: This Agreement includes all terms and conditions, general provisions, special provisions and architectural exhibits accepted by New Avenue in relation to the Project.
2. Both Owner and Contractor have reviewed the terms and conditions in the form, or substantially in the form, attached here to as Exhibit A (the “**Terms and Conditions**”). Owner and Contractor both agree to abide by the Terms and Conditions.
3. The Project includes new construction or remodel including the completion of all aspects of the construction shown in the drawings and plans attached hereto as

Exhibit E and Exhibit F including all finish work up to the final building inspection (the scope of work is included in the Control Budget, Exhibit D). The Project also includes tying new construction into existing house utility hook-ups, both wet and dry.

The following documents and exhibits are expressly incorporated into this Agreement:

Exhibits:

Exhibit A - Terms & Conditions

Exhibit B - Notices

Exhibit C - Change Order Approval Form

Exhibit D - Control Budget, Scope of Work Outline & Allowances

Exhibit E - Architectural plans titled and dated:

Exhibit F - Structural Drawings titled and dated:

Work not covered by this Agreement will not be required unless it is required by reasonable inference as being necessary to produce the intended result and approved by New Avenue. The items noted in Exhibit D as Exclusions, Purchased by Owner (“PBO”) or Owner Purchased Contractor Installed (“OPCI”) are specifically excluded from this contract and are to be provided by the Owner.

By executing this Agreement, the Contractor represents that he/she has visited the site and understands local conditions, including state and local building regulations and conditions under which the work is to be performed.

2. Owner’s Duties: Unless otherwise provided for in the Agreement, Owner will secure and pay for necessary easements, exceptions from zoning requirements, or other actions which must precede the approval of a permit for the Project. If owner fails to do so then this contract shall be null and void. If the Contractor fails to correct defective work or persistently fails to carry out the work in accordance with this Agreement or to its general provisions, the Owner may order the Contractor in writing to stop such work, or a part of the work, until the cause for the order has been eliminated.

3. Contractor’s Duties: Contractor will supervise and direct the work of all subcontractors. Contractor will use the best skill and attention and will be solely responsible for all construction methods and materials and for coordinating all portions of the work. Unless otherwise specified in the Agreement, Contractor will provide for and/or pay for all labor, materials, equipment, tools, machinery, transportation, and other goods, facilities, and services necessary for the proper execution and completion of the work. The Contractor will maintain order and discipline among employees and will not assign anyone unfit for the task. Contractor warrants to Owner that all materials and equipment incorporated are

new, unless approved by owner, and that all work will be of good quality and free of defects or faults. Contractor will pay all sales, use and other taxes related to the work and will secure and pay for building permits and/or other permits, fees, inspections and licenses necessary for the completion of the work, and Owner shall reimburse New Avenue for all such expenses. Owner may pay, in person, for building and trade permits at time of issuance of such permits. Such payments by Owner shall not be construed as change orders and shall not be subject to any change order fee. The cost of special inspections shall be borne by Owner and paid for in the same manner.

Contractor will indemnify and hold Owner harmless from and against all claims, damages, losses, expenses, legal fees or other costs arising or resulting from Contractor's performance of the work or provisions under this Section 3. Contractor will comply and perform the work in accordance with all rules, regulations, laws, ordinances and orders of any public authority, New Avenue's inspector, and/or New Avenue's selected inspector bearing on the performance of the work. Contractor is responsible for and indemnifies Owner against any and all acts and omissions of employees, subcontractors and their employees, or others performing work for Contractor as related to the Project. Contractor will provide shop drawings, samples, product data or other information provided for in this Agreement, where necessary.

4. Subcontractors: Contractor will select all subcontractors, except that Contractor will not employ any subcontractor to whom Owner may have a reasonable objection, nor will Contractor be required by Owner to employ any subcontractor to whom Contractor has a reasonable objection.

5. Work By Owner or Other Contractor: Owner reserves the right to perform work related to the Project, but which is not a part of this Agreement, and to award separate contracts in connection with other portions of the Project not detailed in this Agreement. All contractors and subcontractors will be afforded reasonable opportunity for the storage of materials and equipment by Owner at the Project's location and by each other. Any costs arising by defective or ill-timed work will be borne by the responsible party.

6. Hours, Cleanup and Trash Removal: Contractor will perform the work Monday through Friday between 8 am and 6 pm, unless other times are approved by Client. Disruptively loud activities shall be performed at times that are agreeable to Client and General Contractor shall notify neighbors of planned activities at least 48 hours in advance. Contractor will collect construction waste and rubbish in an orderly manner and will remove such waste on a weekly basis. Contractor will store food waste in secure containers or remove it daily. Owner acknowledges that certain rubbish or materials may be stored on site for longer than one week in order to minimize transportation and disposal costs. Contractor will remove all waste, rubbish, tools, construction materials, and machinery promptly after completion of the work.

7. Delay in Starting or Completion: Contractor agrees to diligently pursue the work through its completion. Allowance of time shall be added to the agreed time for starting and/or completion, for any time during which Contractor is delayed in said work due to the inability of Contractor to obtain a building permit, or failure of Owner to obtain

variances, land use permits, easements and/or utility assessments. Allowance shall also be allotted for: (a) delays due to acts of neglect or gross negligence by Owner, (b) acts of God which Contractor could not reasonably have foreseen and provided against, such as stormy and inclement weather which delays the work, (c) to strikes, boycotts, or other similar obstructive action by employee or labor organizations, (d) additional work ordered by Owner, (e) acts of public enemy, riots or civil commotion, (f) inability to secure materials through regular recognized channels, (g) imposition of government priorities on allocations of materials, (h) failure of Owner to make payments when due unless amount due is being contested, (i) inspections or changes ordered by Owner or by authorized inspectors, (j) the presence of buried or concealed pipes, conduits, water or other utility lines or vents not known to Contractor at the time of this Agreement, or (k) any additional work due to soil conditions, rock or filled land. New Avenue and Owner must approve all allowances for additional time by submitting a change order request on the New Avenue Project Page. New Avenue will record each increase and report the change to Contractor and Owner as needed.

8. Payments and Completion: Progress payments, rather than fixed payments or billing for “time and materials”, are used to ensure that the payments requested do not exceed the work performed. Owner and Contractor agree that the amounts to be charged for the work to be performed are stated in Exhibit D – Control Budget, attached hereto (the “**Control Budget**”).

Contractor may request working capital to be used for material deposits. Owner may make such advances directly to firms requesting such deposits.

Work performed by Contractor will be billed by and payable to New Avenue and not payable to Contractor directly. New Avenue will inspect the project as needed to determine the percent complete and will then invoice Owner for all work completed. Work completed will be updated for each line item in the Control Budget.

New Avenue will submit invoices to Owner and upon receipt Owner will pay New Avenue directly within five (5) days of the billing date (the “**Due Date**”). Payments not received by the Due Date will bear interest at a ten percent (10%) Annual Percentage Rate (APR). If no payment is received by the Due Date, New Avenue or Owner will notify the Contractor and the Contractor may keep the job idle until such time as all payments due have been received. Failure to make a payment by the Due Date shall be considered a major breach of contract.

New Avenue will pay Contractors directly.

The payments shall be made as described below:

Progress billing ONE:

The first progress billing shall include the names, phone numbers and trade of subcontractors and suppliers who have an interest in the billing whether they have filed a Preliminary Notice or not. New Avenue shall inspect the project and record the percent complete of each line item in the Control Budget. New Avenue will then invoice the

Owner and Owner shall pay New Avenue the value of the invoice if there is no completed and billed work requiring correction. No retainage is allowed.

Progress billing TWO and subsequent billings:

Contractor shall provide a California **Unconditional** Waiver and Release Upon Progress Payment form (provided separately). New Avenue shall update the billings with the names and trades of any subcontractors and suppliers that have filed a preliminary lien notice as they become included in the billings. New Avenue shall inspect the project and record the percent complete of each line item in the Control Budget. New Avenue will then invoice the Owner and Owner shall pay New Avenue the value of the invoice if there is no completed and billed work requiring correction.

Final billing:

The final balance of the contract amount shall be paid (10) days after the later of both an inspection by New Avenue in which New Avenue determines that all work complies with this agreement and is completed, and a final inspection by the building department is complete and there is an issued Certificate of Occupancy. Owner may withhold the final payment until all corrective work has been completed.

Payments may be withheld because of: (a) defective work by Contractor that is not remedied, (b) failure of contractor to make proper payments to subcontractors, workers, or suppliers, (c) persistent failure by Contractor to carry out work in accordance with this Agreement or these general conditions, (d) legal claims, or (e) claims arising from other New Avenue projects that the Contractor is working on. Final payment will be due after complete release of any and all liens arising out of: (a) the contract or (b) submission of receipts or other evidence of payment covering all subcontractors or suppliers who could file such a lien. Contractor agrees to indemnify Owner against any such liens and will refund all monies including costs and reasonable attorneys' fees paid by Owner in discharging the liens.

**9. Optional Early Completion Bonus & Late Performance:** If performance of the specified work is completed early, Owner agrees that General Contractor shall be paid a bonus in the amount of \$100.00 per work day that is greater than 30 days prior to the completion date.

If performance of the specified work is late, General Contractor agrees that Owner shall be awarded in the amount of \$100.00 per work day that is greater than 30 days past the completion date and that General Contractor shall be liable for such sums, which may be credited against any sums owed to General Contractor by New Avenue, Inc. If there are change orders that affect the schedule, the completion date will be adjusted accordingly.

A dispute over any damages or loss claimed by Owner & New Avenue, Inc. for the delay in performance of the specified work shall be resolved as provided in Exhibit A Item 6 of this agreement.

- Client AGREES to include Section 9
- Client DOES NOT AGREE to include this Section 9

- Contractor AGREES to include Section 9
- Contractor DOES NOT AGREE to include Section 9

Both Client and Contractor must agree to this Section 9 in order for this to be included in the contract.

10. Protection of Property and Persons: Contractor is responsible for initiating, maintaining, and supervising all necessary or required safety programs. Contractor must comply with all applicable laws, regulations, ordinances, orders or laws of federal, state, county, tribal or local governments. Contractor will indemnify Owner for all property loss or damage to Owner caused by Contractor's employees or its direct or subcontractors.

11. Insurance: Contractor will purchase and maintain insurance necessary to protect from any and all claims under worker's compensation and from any and all damages to Owner's property resulting from this Agreement.

12. Changes in the Agreement: Owner may order changes, additions or modifications (Discretionary Change Orders) without invalidating the Agreement. Local municipalities and/or building inspectors may also request changes (Non-discretionary Change Orders)

Discretionary Change Order: Owner may order a change directly by submitting a request via email, in writing or in person to Contractor. Contractor will then have (3) days to provide a completed Change Order Form to Owner.

Non-Discretionary Change Order: When an inspector, soils report or structural engineer requests Contractor to make a change, Contractor will complete a Change Order Form (Exhibit C) and will present this to New Avenue and Owner.

New Avenue and Owner will respond to any change order request within (3) three working days.

Contractor will add a 15% mark up to Discretionary Change Orders and no mark up to Non-Discretionary Change Orders.

Accepted changes must be in writing and signed by Owner and accepted by New Avenue. New Avenue and Owner may not accept all change order requests and, therefore, Contractor proceeds at its own risk, if work is completed without an accepted change order. A form of change order is attached hereto as Exhibit C.

13. Correction of Deficiencies: Contractor must promptly correct any of its work or any of the work performed by its subcontractors which is found to be defective or which does not comply with the terms of the Agreement. New Avenue or Client will notify Contractor via email or in writing of anything in need of correction. Contractor will have (3) three days to respond with a course of action and will have 30 days to cure the defect.

14. Warranty: Contractor will provide a one-year warranty on all labor and materials used for the Project. This warranty must extend one year from the date of completion of the Project, or longer if prescribed by law, unless otherwise specified by other terms in this Agreement. Disputes will be resolved through the Construction Industry Arbitration Rules of the American Arbitration Association.

15. Termination: If Owner fails to make a payment under the terms of this Agreement through no fault of Contractor, Contractor may, upon ten working days written notice to Owner, terminate this Agreement. Owner will be responsible for paying for all work completed.

If Contractor fails or neglects to carry out the terms of this Agreement, Owner, after ten working days written notice to Contractor, may terminate this Agreement. Owner may finish the job by whatever reasonable method Owner deems expedient and in such case if the cost of completion exceeds the contract balance, the difference, as well as any reasonable attorneys' fees incurred, will be paid to Owner by Contractor.

16. Entire Agreement: This Agreement constitutes the entire understanding between the parties. No other understanding or representations, verbal or otherwise, shall be binding unless in writing and signed by both parties. This Agreement shall not become effective or binding upon Contractor until signed by Contractor or a principal of Contractor. By his/her signature below, Owner acknowledges receipt of a fully completed copy of this Agreement.

17. Notices: Any notice provided under this Agreement shall be in writing and shall be deemed to have been effectively given (a) upon receipt when delivered personally, (b) one (1) day after sending when sent by private express mail service (such as Federal Express), or (c) five (5) days after sending when sent by regular mail to the addresses set forth below or to other such address as may have been designated by Owner or Contractor in writing.

If to Owner: Use address above.  
with a copy to: New Avenue Inc.  
5515 Doyle Street  
Emeryville, CA 95608  
Phone: 510-621-8679

If to Contractor: Use address above  
with a copy to New Avenue Inc. at the above address.

18. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

Owner(s) Signature(s) and Date: \_\_\_\_\_

Contractors Signature and Date: \_\_\_\_\_



## EXHIBIT A

### TERMS AND CONDITIONS

1. Hazardous Materials: If asbestos products or other hazardous materials are known to be present in the building before construction begins, it is Owner's responsibility to subcontract the abatement of the asbestos. If asbestos is discovered during the process of renovation, California State law requires that work must stop until proper removal or encapsulation has taken place. These delays to the work schedule and other related costs are not the liability of Contractor. Contractor is not liable for any present or future hazards or injuries related to known or unknown presence of hazardous materials (including asbestos) in the existing structure.

2. Termites/Insects/Fungal Growth:

a. Contractor shall not be obligated to perform any work to correct damage caused by termites, other insects, or fungal growth (rot), unless otherwise specified herein.

b. Mold: If mold is known to be present in the building before construction begins, it is also Owner's responsibility to subcontract for its abatement. If mold is discovered during the process of renovation, work shall stop until proper testing, abatement, and/or removal has taken place and such discovery and consequences therein shall be grounds for additional time for starting and/or completing the Project, as discussed below. It is also Owner's responsibility to subcontract for its abatement. These delays to the work schedule and other related costs are not the liability of Contractor. Contractor is not liable for any present or future hazards or injuries related to known or unknown presence of mold in the existing structure.

3. Work Stoppage: Contractor shall have the right to stop work and keep the job idle if payments are not made by Owner when due. If the work shall be stopped for any reason, for a period of sixty (60) days, then Contractor may, at Contractor's option, upon ten (10) days' written notice, demand and receive payment for all work executed and materials ordered or supplied prior to the stoppage. Owner shall provide for protection of and be responsible for, any damage, warpage, racking, or loss of materials on the premises.

4. Work By Owner or Other Contractor: Owner reserves the right to perform work related to the Project, but which is not a part of this Agreement, and to award separate contracts in connection with other portions of the Project not detailed in this Agreement. All Contractors and subcontractors will be afforded reasonable opportunity for the storage of materials and equipment by Owner at the Project's location and by each other. Any costs arising by defective or ill-timed work will be borne by the responsible party.

5. Indemnification: Contractor shall indemnify and hold Owner harmless from and

against all liability to any third party for bodily injury, death or tangible property damage caused by the negligent acts or omissions of Contractor, but only to the extent caused by the fault of Contractor. Contractor shall have no such obligation for any claims, demands, causes of action, damages, liabilities, losses, or expenses to the extent caused by Owner or any other party other than Contractor or any sub-contractor or other third party working on Contractor's behalf, including any claims based on lead removal and abatement and/or exposure to lead. Nothing herein abridges the rights, if any, of Owner or Contractor to seek contribution from others, where appropriate.

- a. For claims against Owner by an employee of Contractor, a subcontractor, or anyone directly or indirectly employed by Contractor or subcontractor, or anyone for whose acts they may be liable, Contractor's indemnification obligation under this section shall be limited to the amount or type of damages, compensation or benefits payable by or for Contractor or subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- b. Owner shall defend, indemnify, and hold Contractor and its subcontractors harmless from and against any and all claims, demands, causes of action, damages, liabilities, losses and expenses arising from the Project and/or the Agreement, to the extent caused by the fault of Owner or Owner's consultants, design professionals or agents.
- c. Owner may not delay, withhold or set off payment otherwise due to Contractor for reason of any claim which may be subject to Contractor's indemnification obligations under this section.

6. Dispute Settlement – Direct and Mediated Negotiations: Both parties agree that in the event any material difference of interpretation or any other controversy or claim arises out of or is related to this Agreement or the breach thereof, both parties shall promptly make good faith efforts to settle the matter directly between themselves.

- a. Mediation: If any controversy or claim remains unsettled for fifteen (15) days, following notification by ordinary mail that a dispute exists, both parties shall immediately retain a mutually acceptable mediator experienced in the field to conduct mediation. The parties shall participate in good faith confidential mediated negotiations according to the evidence rules of the State of California. Each party shall pay one-half of the mediation fee and their own attorneys' fees and expenses.
- b. Small Claims Exception: Any dispute or claim arising out of or related to this Agreement that is not resolved in mediation and that the parties agree involves an amount of *less* than \$5,000 (or the maximum limit allowed in the Small Claims Court) must be heard in the Small Claims Division of the Municipal Court in the county where the Contractor's office is located. Any controversy or claim arising out of or related to this Agreement which, in the opinion of one or both parties, is over the dollar limit of the Small Claims Court must be settled by binding arbitration, as described below.

- c. Arbitration of Disputes: All claims or disputes between Owner and Contractor arising out of, or relating to, the Agreement or breach thereof which are not within the Small Claims exception described in Section 6(b) above and which were not resolved in mediation pursuant to Section 6(a) above, shall be decided by binding arbitration held in accordance with the rules and procedures of the California Code of Civil Procedure (“CCP”) Section 1282 et seq., unless the parties mutually agree otherwise. As one alternative, the parties agree to use the Construction Industry Arbitration Rules of the American Arbitration Association. If the parties cannot agree on the appointment of a neutral arbitrator they shall be required to abide by the selection process described in CCP Section 1281.5. A notice of demand for arbitration shall be filed within a reasonable time after the dispute has arisen. The notice of demand for arbitration must be filed in writing with the other party to this Agreement and with the AAA and must be made in a reasonable time after the dispute has arisen. The award rendered by the arbitrator(s) will be considered final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**NOTICE**: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVER AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION ABOVE. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

I HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

\_\_\_\_\_  
Contractor's Initials

\_\_\_\_\_  
Owner's Initials

Attorney's Fees and Costs: The prevailing party in any legal proceeding, including arbitration, related to this Agreement shall be entitled to payment of reasonable attorneys' fees, costs, and expenses.

## **EXHIBIT B**

### NOTICES

Contractors are required by law to be licensed and regulated by the Contractors' State License Board, which has jurisdiction to investigate complaints against Contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a Contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.

You, as owner or tenant, have the right to require the Contractor to have a performance and payment bond.

You, the client, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

### WRITTEN ACKNOWLEDGMENT

#### WRITTEN ACKNOWLEDGMENT OF RECEIPT OF PAMPHLET REGARDING LEAD IN YOUR HOME.

By signing this Agreement, Owner acknowledges that Owner has received a pamphlet, "Lead in Your Home", informing Owner of the potential risk of lead hazard exposure from renovation activity to be performed in Owner's dwelling unit. Owner has received a copy of this pamphlet with this Agreement and prior to start of work.

\_\_\_\_\_  
Owner's Initials

**EXHIBIT C**

CHANGE ORDER APPROVAL FORM – EXAMPLE, ACTUAL FORMS ARE  
SUBMITTED ON THE PROJECT PAGE

**Field Work Order**

In order to expedite the work and avoid or minimize delays, Contractor is authorized to proceed with the work outlined below immediately. The work will be performed on either a time and material basis or a fixed-cost basis, depending upon the type of contract used for this Project, and Contractor will follow up with estimated costs as soon as possible.

<b>Job Name:</b>		<b>Date:</b>	
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**Description of Work:**

**Materials:**

Labor Cost	Material Cost	Total	Additional Time
<b>Grand Total</b>			

Contractor Representative \_\_\_\_\_

Client \_\_\_\_\_

**Contractor and Client signatures are required for approval.**

**EXHIBIT D**

Control Budget, Scope of Work Outline & Allowances