

Construction/ General Contractor Agreement
(Fixed Price – Guaranteed Maximum Price)

This Construction ~~and Sale~~ Agreement (the "Agreement") is made as of _____ (the "Effective Date") by and between R. Anthony Development Group, LLC (the "General Contractor") and Columbia Community Land Trust (the "Client").

1. **Scope of Work.** General Contractor desires to build for the Client and Client desires to have the General Contractor construct ~~an office~~ a residential building on land owned by the Client located at 19 Third Ave, Columbia, MO. This includes building and construction materials, labor, tools and machinery, and permits required for completion of construction of the building (the "Contractor's Work"). The home will be constructed to the standards as outlined in the attached RFP, including subsequent amendments, at minimum and the attached plans and specifications. Collectively, the RFP and plans and specifications constitute the "Contract Documents." General Contractor is responsible to complete the home per ~~attached plans~~ the Contract Documents and the home shall be considered complete when a Certificate of Final Occupancy is received from the City of Columbia. General Contractor shall have the building constructed and complete no later than November 30, 2019 (the "Date of Substantial Completion.")
2. **Plans, Specifications, and Construction Documents.** General Contractor shall make all plans, specifications, and drawings necessary for completion of work available to the Client. General Contractor warrants and represents that it has the right to use the plans, specifications and drawings in connection with Contractor's Work and that such use does not violate the rights of any third parties, including, but not limited to, the intellection property rights of any third parties.
3. **Compliance with Laws.** General Contractor shall comply with all applicable local, state, and federal laws and regulations and ~~all work~~ Contractor's Work shall be completed in a workmanlike manner.
4. **Work site.** Client warrants that Client owns the property herein described, free and clear of any liens and encumbrances, subject to easements and restrictions of record.
5. **Materials and Labor Provided.** General Contractor shall construct the home with equivalent materials and workmanship as outlined in City of Columbia Building Ordinances, at minimum, and in accordance with the ~~attached RFP~~ Contract Documents, including amendments.
6. **Payment.** This Agreement constitutes a fixed price Agreement. In exchange for completing the building in accordance with the Contract Documents prior to the Date of Substantial Completion, Client agrees to pay General Contractor the sum of \$147,609 (the "Contract Sum"). The Contract Sum is intended to be a Guaranteed Maximum

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Price. Client shall have no obligation to pay General Contractor any amount in excess of the Contract Sum unless such amount was approved by Client and reflected in a written change order executed by both parties.

6.a. Payment of the Contract Sum shall be made as follows:

- 1) On a monthly basis, the General Contractor shall submit to the Client and Boone Central Title Company (Dispersing Agent) a Draw Request which shall include invoices for labor and materials incurred the previous month and contingent lien waivers with respect to all materials and labor included in the draw request. The Client shall review the draw request and submit funds or authorize the Client's lender to submit funds to dispersing Agent sufficient to pay the Draw request in full.
- 2) This process shall be repeated on a monthly basis until the building is completed to the standards as set forth by the RFP and the ordinances as set forth by the City of ~~Boonville~~Columbia.
- 3) The Final Draw shall be the total project price of **\$147,609** less the sum of all other draws on the project.

3/4) Notwithstanding anything in this Agreement to the contrary, the Client may withhold part of any payment as may be reasonably necessary to protect Client from loss on account of: (i) defective portions of Contractor's Work; (ii) claims filed or reasonable evidence indicating probable filing of claims against Client or Contractor by reason of Contractor's subcontractors or materialmen or suppliers for materials or labor; (iv) a reasonable doubt that Contractor's Work can be completed for the unpaid balance of the Contract Sum; or (v) failure of Contractor to keep Contractor's Work progressing in accordance with the Contract Documents. When such grounds are removed or resolved, payment shall be made for all amounts withheld. Owner may deduct from any amount due or to become due to Contractor any sum or sums owing by Contractor to Owner. In the event of any assertion by other parties of any claim or mechanic's lien against Client or the property arising out of Contractor's performance of the Contractor's Work or any failure to make payment to any persons furnishing labor, materials or other items for the Contractor's Work, Client shall have the right to retain out of any payment due to General Contractor an amount sufficient to completely protect Client from any and all loss, damage or expense therefrom (including costs, expenses and attorney's fees), until the situation has been satisfactorily remedied or adjusted by General Contractor.

7. **Term.** Work shall commence August 1, 2019 or as soon as possible and shall be completed by November 30, 2019. This date may be extended due to issues beyond the General Contractor's control such as acts of God, change orders, back orders. Changes

and modifications to Contractor's Work shall only be made if done in a written "Change Order" signed and dated by both parties. Such Change Orders shall become a part of this agreement.

8. **Permits.** The General Contractor shall apply for a permit and build the structure to the code requirements of the City of Columbia, MO. It is anticipated and the bid reflects a waiver of all permit costs and connection fees by the City of Columbia. If this does not happen, the ~~cost of construction~~Contract Sum shall be increased to reflect these costs.
9. **Warranty.** General Contractor shall provide a one (1) year written warranty on all goods and services in the home with the exception of landscaping. Other manufacturer warranties on appliances, HVAC, and any other applicable components of the home will transfer to the Client and remain in effect.
10. **Inspection.** Client and Client's guests shall have access to the job site to inspect the work. Client and Client's guests shall enter the job site at their own risk and shall hold the General Contractor harmless for any accidents, damage, or injury of any sort for any reason.
11. **Default.** The occurrence of any of the following shall constitute a material default under this Agreement:
 - a. The insolvency of either party or if either party shall, either voluntarily or involuntarily, become a debtor of or seek protection under Title 11 of the United States Bankruptcy Code,
 - b. A lawsuit is brought on any claim, seizure, lien or levy for labor performed or materials used on or furnished to the project by either party, or there is a general assignment for the benefit of creditors, application for sale for or by any creditor or government agency brought against either party.
12. **Remedies.** In addition to any and all other rights a party may have according to the law of the State of Missouri, if any party defaults by failing to substantially perform any provision, term, or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving said notice shall have thirty (30) days from the effective date of said notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.
13. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with the Commercial Arbitration Rules (including the Optional Rules for Emergency Measures of Protection) and judgment on the award rendered by the arbitrator(s) may be entered into the court having jurisdiction thereof. During any arbitration proceedings related to this Agreement, the parties shall continue to perform their respective obligations under this Agreement.

14. **Entire Agreement.** This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any prior written or oral agreement between the parties.
15. **Severability.** If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
16. **Amendment.** This Agreement may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.
17. **Governing Law.** This Agreement shall be construed in accordance with, and governed by the laws of the State of Missouri.
18. **Notice.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested.
19. **Waiver of Agreement Right.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
20. **Robert and Christi Wolverton are licensed Realtors in the State of Missouri.**
21. **Insurance.** ~~The Client shall keep Builder's Risk Insurance in force during the construction period of the building.~~ Client and General Contractor shall enter into and execute that certain "Insurance Transfer of Risk Agreement" concurrently with the execution of this Agreement. The terms of the Insurance Transfer of Risk Agreement are attached hereto and shall be deemed incorporated into this Agreement upon the execution of the Insurance Transfer of Risk Agreement.
22. **No Mechanic's Liens.** General Contractor shall timely pay for all labor, materials and services provided to or through General Contractor for performance of Contractor's Work. General Contractor shall keep Contractor's Work and the property free from any mechanic's liens or bond claims or claims filed or made as a result of a failure by General Contractor or any of its subcontractors, materialmen or suppliers, to pay for any work, labor, materials, services or other items supplied for Contractor's Work. In the event any mechanic's lien, bond claim or similar claim is filed by any person furnishing labor or materials to or through General Contractor for Contractor's Work, Contractor agrees to take all steps necessary for the release and discharge of such lien or claim. Further, General Contractor shall reimburse Client for all monies paid by Client in obtaining the release of the lien, including costs, expenses and attorney's fees. If Client shall be

subjected to any claim (including but not limited to a mechanic's lien) by any of General Contractor's suppliers, employees and/or subcontractors, who claim or contend that they have not been paid any sums due them for labor, materials, services or other items furnished for the Contractor's Work, then General Contractor shall indemnify, defend, save and hold harmless Client therefrom and shall guarantee the removal of such claim. General Contractor warrants, represents and agrees that all sums paid to General Contractor shall be used first to pay all persons furnishing labor, materials and services for performance of Contractor's Work. No funds Client pays to General Contractor shall be diverted to any other use until all such persons have been fully paid.

General Contractor: R. Anthony Development Group, LLC

By: _____

Its: _____

Client(s):

Signed and Dated: _____

Attachments:

RFP and Exhibits

Floorplan

Insurance Transfer of Risk Agreement