

SAMPLE

Construction Contract

CONSTRUCTION CONTRACT

This Construction Contract (hereinafter referred to as a "Contract") made and entered into this _____ day of _____, 200 , by and between,

(hereinafter referred to as "Owner") and

(hereinafter referred to as "Contractor") and trading as a Corporation ; and

WHEREAS Arundel Community Development Services, Inc. (hereinafter referred to as "Escrowee") joins as party to this Contract solely to act as escrowee and only as such in the Contract; and

WHEREAS the Owner desires to rehabilitate the property at the address known as _____ (hereinafter referred to as "Property"); and

WHEREAS the Contractor warrants being licensed in the State of Maryland and qualified to perform the work specified herein.

NOW THEREFORE, in consideration of the mutual promises and premises herein contained, the Owner and Contractor agree to meet and satisfy all terms and general conditions of this Contract as follows.

I. DESCRIPTION OF THE WORK

- A. The Contractor does hereby covenant and agree to furnish all labor, material and equipment, and to faithfully perform the work within the time period established by the Order to Proceed for this Contract, in strict accordance with the detailed description of work (hereinafter referred to as the "work write-up"), and subject to, and in strict conformance with all of the conditions, covenants, stipulations, terms and provisions contained in this Contract. All of the representations, rights, and obligations of the Owner and Contractor are embodied in the Contract and any prior oral or written agreement not included herein shall not be binding upon or inure to the benefit of any of the parties.
- B. This Contract includes the work write-up, Contractor's proposal, and, if applicable, drawings and amendments to the Contract, which are incorporated by reference and specifically identified below and hereby made a part of this Contract:
- (1) Work Write-Up dated _____
 - (2) Bid/Proposal dated _____
 - (3) _____
 - (4) _____

II. COMPENSATION AND METHOD OF PAYMENT

- A. Upon execution of the Contract, the Escrowee will obligate the necessary funds for Owner to pay the contract sum in accordance with the Contract. The Owner agrees to pay, from the obligated funds, and only from the obligated funds, the Contractor for the full and faithful performance of the work pursuant to this Contract at a sum equal to the aggregate cost of the work, labor, materials and supplies done and furnished at the price and rates set forth in the Contractor's proposal, said sum being dollars (). Contractor covenants and agrees to faithfully comply with and perform each and every obligation imposed upon the Contractor by the Contract and the terms of the proposal, as accepted by the Owner and approved by the Escrowee.
- B. Payment requests shall be made by the Contractor to the Owner for work that has been performed. The Contractor shall be entitled to a maximum of five partial payment requests plus a final payment request. Any additional Contractor payment requests to the Owner beyond the maximum number must be approved in writing by the Owner and Escrowee. A ten percent (10%) retainage shall be withheld by Escrowee from each Contractor payment. The final payment request shall include the release of the ten percent (10%) retainage and shall be submitted to the Owner upon final completion and acceptance of the work by the Owner and final approval by the Escrowee.
- C. No payment will be made for any work which is not specified in this Contract or any change order to it.
- D. Escrowee shall have no obligation to obligate any funds for the benefit of Owner or Contractor other than as specified in Paragraph A.
- E. Escrowee may not pay or release any of the obligated funds to or for the benefit of Contractor unless a full payment has been authorized by the Owner, by an arbitrator, or by a Court.

III. GENERAL CONDITIONS

- A. Proposal. This Contract, which includes the Contractor's proposal, has been properly signed and dated by the Contractor, and the Owner by signing this Contract, accepts the said Contractor's proposal which becomes part of this Contract.
- B. Order to Proceed. The Escrowee, on behalf of the Owner, shall issue a written Order to Proceed within fifteen (15) consecutive calendar days from the date this Contract is executed by Owner, Contractor and Escrowee. If the Order to Proceed is not received by the Contractor within this fifteen (15) day period, the Contractor shall have the option to cancel this Contract without liability to any party thereto. The Contractor shall commence construction within eighteen (18) consecutive calendar days after the issuance of the Order to Proceed and must satisfactorily complete the work specified by the completion date as set forth in the said Order to Proceed.

- C. Insurance. The Contractor and all subcontractors employed by the Contractor shall purchase and maintain insurance that will protect them from claims under workers compensation acts and other employee benefits acts, and from claims for damages which may arise out of or result from the Contractor's operations during construction, whether such operations be by the Contractor or by any subcontractor's operations or anyone directly or indirectly employed by any of them. Certificates showing that the insurance will remain in force throughout the life of the Contract may be required by Escrowee at the time of Contract signing. The insurance during construction and for the term of the Contract shall be written for not less than the following coverage:
- (1) comprehensive general liability insurance with minimum limits of coverage at \$500,000 each occurrence for property damage with an amount not less than \$500,000 for damages on account of all accidents and \$500,000 each occurrence for bodily injury including wrongful death;
 - (2) automobile liability insurance in compliance with and as required by the laws of Maryland; and
 - (3) worker's compensation insurance and other employee benefits in compliance with and as required by the laws of Maryland.
- D. Permits. The Contractor and all subcontractors must obtain and pay for all permits and licenses, as may be required by Anne Arundel County and the State of Maryland, necessary for the completion and execution of the work to be performed.
- E. Licenses. As required by law, the Contractor and all subcontractors must be licensed by the Maryland Home Improvement Commission and all other applicable regulatory agencies for the nature of work being performed.
- F. Damages/Repairs. The Contractor must make every reasonable effort to protect the possessions of the Owner that remain in the work area from loss or damage. Any portion of the property damaged by the Contractor or subcontractor during the course of the work must be repaired at no additional cost to the Owner. The term "damages" shall include, but not be limited to, any damage caused by contract operation or workers during construction to Owner's residence, fences, yards, and shrubs; to adjoining properties; or to public spaces. When "repair of existing work" is called for in the work write-up, the finished work shall match adjacent work in design and dimension to blend with existing work so that the patch or replacement will be inconspicuous.
- G. Assignment. This Contract shall not be assigned by Contractor in whole or part without the written consent of the Owner and approval by Escrowee. Any request for assignment shall be addressed to the Owner with a copy to the Escrowee.
- H. Subcontractors. The Contractor shall provide the Escrowee with a list of all subcontractors, and shall demonstrate that they are licensed in the State of Maryland and Anne Arundel County to perform the work for which they are subcontracted by Contractor. The Contractor agrees to not hire or use any

subcontractor that the Owner and the Escrowee deem unacceptable. The Contractor shall require each subcontractor to be bound to the Contractor by the terms of the Contract and to assume toward the Contractor all obligations and responsibilities which the Contractor assumes towards the Owner. The Contractor shall make available to each proposed subcontractor, prior to the subcontract agreement being executed, copies of the Contract to which the subcontractor shall be bound.

- I. Supervision. The supervision of all work, including coordination of all portions of the work under the Contract must be provided by the Contractor. The Contractor shall ensure discipline and order among all employees of Contractor and subcontractors. Workers shall be competent and capable of performing the work assigned to them. Helpers and apprentices shall work under the supervision of a skilled tradesperson or other supervisory personnel.
- J. Change Orders. This Contract may be amended by change order at any time provided that the change order makes specific reference to this Contract and is executed in writing by both the Contractor and the Owner and approved by the Escrowee. The change order will not invalidate this Contract, nor relieve or release the Contractor or the Owner from their respective obligations under this Contract. The change order may make changes in the time allowed for completion of the work or changes to the work write-up. The work thereunder shall not start until the Contractor has been notified in writing that the change has been approved by the Escrowee. Any work performed by the Contractor without written authorization of the Escrowee is at the Contractor's own risk. If the Contractor's proposal fails to specify a unit price, the Escrowee shall calculate the change based on the Contractor's costed work write-up. The cost of additional work and materials under any change order shall be the responsibility of the Owner unless the change order expressly states that Escrowee has obligated additional funds to pay for the work to be performed under the change order.
- K. Inspections and Final Payments. Periodic inspection shall be performed by the Escrowee and the applicable Anne Arundel County building inspector(s). Upon completion of work pertaining to this Contract, the Contractor shall notify and arrange for an inspection of the work by the Escrowee and the applicable Anne Arundel County inspector. If all work is satisfactorily completed, in the reasonable judgement of the Escrowee and Anne Arundel County inspector, Escrowee shall prepare a completion certificate for the Owner's signature. If Owner refuses to sign the completion certificate, Escrowee may not release final payment to the Contractor. Should an inspection reveal that the work is not completed and/or is not satisfactory, the Escrowee and/or the Anne Arundel County inspector will notify the Contractor of the deficiencies and will request that Contractor indicate what action will be under taken to complete the work. No final payment shall be authorized by Owner or made by Escrowee or authorized until the work is completed, and a re-inspection by Escrowee and the Anne Arundel County inspector verifies that the work is acceptable.
- L. Standard of Work and Codes. The Contractor shall perform all work in a good and workmanlike manner and in conformance with all applicable government code provisions as interpreted by Anne Arundel County inspectors, whether or not specifically mentioned in the work write-up and drawings for the work.

- M. Clean-Up. On a daily basis, the Property must be kept free from the accumulation of waste materials and rubbish. All tools, construction equipment, machinery and surplus materials stored at the property must be neat and orderly. Upon the completion of work, all glass surfaces shall be cleaned and the work left "broom clean" or its equivalent, except as otherwise specified. All debris, trash, waste and surplus material shall be removed from the job site and disposed of by legal means. Final payment shall not be authorized until the Contractor has cleaned the property as required by this section.
- N. Guarantees and Warranties. The Contractor warrants and guarantees to the Owner that all materials and equipment used in the work are new, unless otherwise specified, and that all work is of good quality, free from faults and defects. All work not conforming to these standards and not in conformance with the work write-up shall be considered defective. The work performed by the Contractor is to be guaranteed for a period of one year from the date of final acceptance of all the work required by the Contract. The Contractor shall furnish Owner with all manufacturers' and suppliers' written guarantees and warranties, covering materials and equipment furnished under the Contract.
- O. Release of Liens. A partial release of liens must be provided in connection with each application for payment on a form supplied by Escrowee. A final release of liens must be provided to the Escrowee by the Contractor and all subcontractors for the entire job prior to release of the final ten percent (10%) retainage.
- P. Regulatory Requirements. All sales, consumer, use and other taxes required by law must be paid by Contractor. All laws, ordinances, rules, regulation and order of any public authority bearing on the work must be complied with by Contractor.
- Q. Separate Contracts. Owner reserves the right to perform construction or other operations related to the project and to award separate contracts in connection with other portions of the project. Contractor shall participate with other separate contractors and Owner in coordinating their construction schedule.
- R. Dispute Resolution. Should any dispute arise concerning (a) the intent or meaning of the work described in the work write-up or any change order, (b) the quality of workmanship or materials, (c) the value of any work, (d) payment for work, or (e) for other reasons pertaining to the terms and conditions of the Contract, the parties agree that, except for disputes and claims that may be brought in the District Court of Maryland and for which a party is not entitled to a trial by jury, and except as necessary to enforce the mediation and arbitration obligations of this Section, all disputes or claims arising out of this Contract shall be resolved through mediation or arbitration as specified in this section as the exclusive remedy for resolving such disputes or claims.
- (1) The parties agree to mediate any such dispute or claim between them before resorting to arbitration. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial, neutral mediator who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties. The parties jointly shall select a mediator, who shall be experienced and knowledgeable of the

home improvement industry and the construction contract process. The fees, if any, of the mediator shall be divided equally between the Owner and Contractor. If any party commences an arbitration proceeding based on a dispute or claim to which this section R applies without first attempting to resolve the matter through mediation, that party shall not be entitled to recover attorney's fees even if they would otherwise be available to that party in any such arbitration or litigation.

- (2) If mediation is unsuccessful in resolving the dispute, the parties agree to submit the dispute for final and binding arbitration before one arbitrator selected from a panel of arbitrators provided by the American Arbitration Association, and in accordance with the commercial arbitration rules of such Association. The party that seeks arbitration shall pay all required prepaid fees for such arbitration proceeding, subject to an adjustment of the costs of arbitration as part of the arbitrator's award.
- (3) Within twenty (20) days of the conclusion of the arbitration hearing, the arbitrator shall prepare written findings of fact and conclusions of law. Judgment on the written award may be entered and enforced in any court of competent jurisdiction. It is mutually agreed that the written decision of the arbitrator shall be valid, binding, final and non-appealable, except to the extent that the arbitrator exceeds their authority under this Contract. The parties further agree that the arbitrator may not award punitive damages against any party to the arbitration, the right to claim punitive damages is expressly waived. Judgment may be entered on the arbitrator's award in any court having jurisdiction.
- (4) In the event an action is brought before a court (to the extent allowed in this Section and in accordance with Section VIII), or an arbitrator arising out of this Contract or the performance of work under this Contract, the non-prevailing party shall be required to pay the reasonable and necessary fees and expenses of the prevailing party, except that if in the opinion of the court or arbitrator deciding such action there is no prevailing party, each party shall pay its own attorney's fees and expenses.
- (5) The parties agree that any mediation or arbitration brought pursuant to this section shall be confidential and no details, descriptions, settlements or other facts concerning such mediation or arbitration shall be disclosed or released to any third party without specific written consent of the other party or parties unless required by law or court order in connection with enforcement of any decision in such arbitration.

S. Occupancy. The premises are to be occupied vacant during the course of the work.

- T. Lead Based Paint. The use of lead based paint materials on any surface, interior or exterior, is prohibited.
- U. Scheduled Working Hours. Regular scheduled working hours, except work connected with safety or protection at the site or emergency repairs and including sediment control devices will be performed between 8:00 a.m. and 5:00 p.m., Monday through Friday. The Contractor will not permit the performance of work on Saturday, Sunday or any legal holiday without written approval from the Owner or Escrowee.
- V. Time of Essence. Time is of the essence as to each and every provision of this Contract.
- W. Hold Harmless. It is expressly understood that the Contractor shall indemnify and hold the Owner and Escrowee harmless from any claims, suits, action, damages and costs of every name and description arising out of, or resulting from, the Contractor's acts or omissions in its performance of the work to be rendered by the Contractor under this Contract.
- X. Miscellaneous. This Contract becomes effective and binding when signed by the Contractor and the Owner and approved and signed by the Escrowee.

IV. OWNER'S RESPONSIBILITIES

- A. Owner shall facilitate the performance of the work by cooperating with the Contractor by removing and replacing non-fastened rugs or floor coverings, decorations and furniture as necessary for the orderly progress of the work by the Contractor.
- B. Owner shall permit the Contractor to use, at no cost, existing utilities such as light, heat, power, and water as reasonably necessary to carry out and complete the work.
- C. Owner shall not permit any changes or additions to the Contract without prior approval of the Escrowee.

V. FEDERAL REQUIREMENTS

The Contractor and all subcontractors employed by the Contractor shall comply with all terms expressed in the "Federal Requirements for Construction Contracts Related to Projects Under \$100,000" to be attached hereto and incorporated by reference and made a part of this Contract.

VI. TERMINATION BY OWNER FOR CAUSE

- A. The Owner shall have the right to terminate this Contract without process or action at law, by notice to the Contractor in writing sent registered or certified mail to the Contractor's last known address, and to Escrowee, should the Contractor (a) become insolvent or declare bankruptcy, (b) fail to start or make satisfactory progress on the work to be performed under this Contract, (c) fail to

comply with written orders of the Owner or Escrowee which are consistent with the terms of the Contract, (d) perform anew unsatisfactorily such work as has been rejected by the Owner and Escrowee, (e) carry on the work in a manner contrary to this Contract, or (f) otherwise fail to perform its obligations under this Contract.

- B. The mailing of such notice shall constitute notice to the Contractor under the terms of the Contract. Upon receiving said notice, the Contractor shall vacate the premises and quit any work in progress or any parts specified in said notice. The Owner may complete the work by awarding another contract with the funds remaining in the Owner's escrow account with the approval of the Escrowee. The Contractor shall be entitled to payment by the Owner for work performed only to the extent of the difference between the Contract price and the cost to complete the work by another contractor after the Contract is terminated. If Owner terminates this Contract, Escrowee shall have no liability to Contractor, and Contractor shall have no recourse against Escrowee for the payment of any monies, under Escrowee's control, except to the extent of the difference between the contract price and the cost to complete the work by another contractor after the Contract is terminated.

VII. INDEMNIFICATION

- A. The Owner and the Contractor agree to indemnify, defend, save and hold the Escrowee, its successors and/or assigns, harmless from any and all loss, liability, damage or claims of any nature whatsoever arising out of this Contract and expressly waive any claims against Escrowee. The Owner and the Contractor further agree not to pledge the credit of the Escrowee, its successors and/or assigns, or to purchase, rent, lease or contract for any equipment or appliances in the name of the Escrowee, its successors and/or assigns.
- B. The Escrowee does not warrant or guarantee any work performed by the Contractor, nor does Escrowee attest to the performance by the Contractor or the Contractor's timeliness of performance in association with this Contract.
- C. If Owner and/or Contractor bring any claim against Escrowee in violation of Paragraph A of this Section VII, Owner and/or Contractor, as applicable, shall pay the costs and expenses, including all the fees incurred by Escrowee in defending any such action.

VIII. MARYLAND LAW

This Contract shall be governed by Maryland law, exclusive of principles governing choice or conflicts of law, and any mediation, arbitration or judicial actions between the Owner and the Contractor shall be brought in Anne Arundel County.

IX. NOTICES

Notices to the parties shall be in writing and directed as follows:

CONTRACTOR:

OWNER:

ESCROWEE: Arundel Community Development Services, Inc.
2666 Riva Road, Suite 210
Annapolis, MD 21401
Telephone: (410) 222-7600
Facsimile: (410) 222-7619

IN WITNESS WHEREOF, the parties have caused this Contract to be signed and duly attested to by witnesses.

Name of Contractor

Owner:

Maryland Home Improvement Number

Owner:

Signature of Contractor

DATE

DATE

(Where Contractor is incorporated,
an officer of the corporation must sign.)

TITLE (if officer of corporation)

Address of Contractor

Address of Owner(s)

Witnessed by

Witnessed by

Approved this _____ day of
_____, 200

ATTEST:

Escrowee:
Arundel Community Development
Services, Inc.

Kathleen M. Koch
Executive Director