

**CDBG/HOME
CONTRACT DOCUMENTS
NEW HOUSING CONSTRUCTION
JANUARY 2012**

**CDBG/HOME HOUSING NEW
CONSTRUCTION CONTRACT**

THIS CONSTRUCTION CONTRACT is made and entered into this _____ day of _____ 2012, by and between _____, (marital status), of _____, _____, KY _____ (hereinafter "Owner"), and _____ of _____, _____, Kentucky _____ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, Owner has received a commitment for funds from the **City of Somerset** (hereinafter "Lender" or "City") under the KENTUCKY HOME INVESTMENT PARTNERSHIPS PROGRAM ("HOME"), which program is created and existing pursuant to Title II of the National Affordable Housing Act of 1990, as amended, and/or the Community Development Block Grant Program ("CDBG") and the regulations promulgated thereunder, to expand the supply of decent and affordable housing for low- and very low- income persons; and

WHEREAS, the funds to be received by owner or contractor from Lender under HOME and/or CDBG will be used only to reconstruct the owner's house at _____ as described on the attached special conditions hereto made a part hereof.

The Owner does hereby employ the CONTRACTOR to do all the work and provide all materials, tools, machinery, supervision, etc. necessary for the complete construction of a new _____ **Bedroom, Plan** _____ at _____ in accordance with the New Housing Construction plans and specifications dated November, 2011 and the attached special conditions expressly incorporated herein by reference and made a part hereof.

ARTICLE 1

SCOPE OF THE WORK

- 1.1 The Contractor represents that he has visited the Property and has familiarized himself with the existing conditions under which the work is to be performed.
- 1.2 Upon receipt of a written "Notice to Proceed", the Contractor will furnish and pay for all of the labor, materials, equipment, tools, water, heat, utilities and services necessary for the proper completion of the work in accordance with the Plans and Specifications and this Contract. Contractor will also pay for all other permits, licenses, and inspections necessary for completion of the work. The Contractor shall obtain any required building permits.
- 1.3 All work will be of good quality, free from defaults and defects. All work shall be done in accordance with Kentucky Residential Code, Kentucky State Plumbing Code, the National Electric Code and the National Fuel Gas Code, the New Housing Construction Standard Specifications all Addenda and the House Plan (Drawings). All work not conforming to this requirement will be considered defective.

- 1.4 The Contractor will at all times and at his expense, keep the premises free from accumulation of waste or rubbish caused by his operations. Materials and equipment that have been removed and replaced as part of the work shall belong to the Contractor, unless stated otherwise in the specifications. The Contractor shall dispose of waste in accordance with state regulations.
- 1.5 Lead Based Paint - The Contractor shall comply with the Code of Federal Regulations, Title 24, Sub-Part C, 35.24 concerning Lead-Based Paint Standards. Lead-based paint shall not be used in the course of work under this contract.
- 1.6 Subcontracting - The Contractor agrees that he is completely responsible to the Owner for the acts or omissions of his subcontractors and of the persons either directly or indirectly employed by them, as he is for the acts and omissions of persons employed by him. Nothing contained in the Contract documents shall create any contractual relationship between any subcontractor and the Owner, however should the Owner or City on behalf of the Owner be required to expend funds to subcontractors or for another contract as necessary for completion of the contract work, it is agreed by the Contractor that reimbursement will be made to the Owner or City and that any court costs or attorney fees expended to finalize contract requirements will be paid by the primary contractor.

ARTICLE 2

CONTRACT PRICE

Owner will pay Contractor for the performance of this Contract subject to any additions and deductions provided herein, the sum of \$ _____ **for construction of a new house and \$ _____ for related demolition work for a total contract amount of \$ _____.**

ARTICLE 3

PROJECT WORK SCHEDULE

The Contractor shall commence work within ten (10) calendar days of receipt of written Notice to Proceed. The Notice to Proceed will be issued within 30 days of the signing of this contract. The Contractor shall satisfactorily complete the work within 120 calendar days of the written Notice to Proceed, time being of the essence. The Contractor shall make every effort to speed the work along by working outdoors when outdoor working conditions are favorable and by working indoors when outdoor working conditions are unfavorable. Owner may terminate contract in accordance with Article 8 if contractor fails to make reasonable progress to complete the work within the given time frame or abandons the job.

If the Contractor is unable to complete any portion of the work, in the time stated above, due to inclement weather, an extension of up to thirty (30) calendar days may be granted only in the following manner. The Contractor shall contact the Project Manager on the day they intend to claim as an extension day. Approval for an extension will be granted only when there is absolutely no work that can be done that day due to inclement weather. If there is interior work to be done, no extension will be given. If the Contractor fails to complete the work within the time

stated herein, they will be fined \$100 per calendar day until such time as all work is completed and all terms of this contract have been fulfilled. The total amount of the fine shall be withheld from final payment.

ARTICLE 4

INSURANCE

The Contractor will purchase and maintain for the life of this contract adequate workers' compensation insurance in accordance with state and Federal regulations. The Contractor shall purchase and maintain for the life of this contract public liability and property damage insurance which shall protect him and any subcontractor performing work covered by this contract from claims for damages or personal injury, including accidental death, as well as for claims for property damage which may arise from operation under this contract, whether by himself, or by one directly or indirectly employed by said contractor or subcontractor. Public liability insurance shall be in the amount not less than \$500,000 for injuries, including accidental death, to any one person or one accident. Property damage insurance shall be in an amount not less than \$100,000.

It is further agreed that the Contractor, at his sole cost and expense, shall acquire and maintain **fire and extended coverage insurance** upon the entire structure on which the work on this contract is to be done, to one hundred percent of the contract amount on a form of policy approved by the Insurance Commissioner of the State of Kentucky. Loss, if any, is to be payable to the Owner having legal title to the property except in such cases as may require payment of the proceeds of such insurance to a mortgagee as their interest may appear.

The Contractor shall maintain Worker's Compensation Insurance and Unemployment Insurance in conformance with the State of Kentucky. Evidence of Worker's Compensation Insurance shall be provided to the Lender.

ARTICLE 5

INSPECTION OF WORK

Contractor will permit and facilitate inspection of the work by City and its agents and public authorities at all times. Contractor will permit Owner to inspect work upon request at least once per week and at other times as coordinated with Project Manager. Owner is to schedule inspection times with Contractor or Project Manager to insure such inspections do not interfere with progress of work and to insure safety of visitors to the job site. Keys to the house shall not be given to the owner until the house is accepted at final inspection.

ARTICLE 6

CHANGES IN THE WORK

Owner will forward all instructions to the Contractor through the City. Owner will not permit any changes, additions, or deletions to this Contract or the work, without approval of Contractor and City. If changes are required a change order shall not be approved by City until sufficient money is made available to City, by the Owner or otherwise, to fully cover the costs of such change order.

ARTICLE 7

WARRANTY & CORRECTION OF WORK

The Contractor shall guarantee the work performed for a period of one year from date of final acceptance of all work required by this Contract. Upon written notice from the Owner to the Contractor and Grantee, the Contractor shall, within fourteen calendar days, remedy any defects due to faulty material or workmanship at no charge to the Owner and remedy or pay for any damage to other work resulting there from. If, for any reason, the Contractor fails to remedy any defects for which he/she has been duly notified, the Owner may, at his/her option, employ another contractor to remedy the defect. The Contractor that is party to this Contract shall be held liable for any cost incurred by the Owner resulting from the employment of another contractor to remedy the defect. The contractor shall also be held liable for any court costs or attorney fees as necessary to fulfill the contract requirements. Furthermore, the Contractor shall furnish the Owner all manufacturers, suppliers, and subcontractors written guarantees, manuals, and warranties covering material and equipment furnished under this contract. The provisions of this article apply to work done by subcontractors as well as to work done by direct employees of the Contractor.

ARTICLE 8

OWNER'S RIGHT TO TERMINATE CONTRACT

Should the Contractor neglect to perform the work properly, or failure to perform any provision of this Contract, the Owner, after seven days written notice to the Contractor and his surety, if any, may, without prejudice to any other remedy he may have, make good the deficiencies. The Owner may deduct the cost thereof from the payment then or thereafter due Contractor or, at his option, may terminate this Contract and take possession of all materials, tools, and appliances, and finish the work by such means as he sees fit. If the unpaid balance of the Contract price exceeds the expense of finishing the work, such excess will be paid to the Contractor. If such expense exceeds the unpaid balance, the Contractor will refund the difference to the City or Owner.

ARTICLE 9

ACCEPTANCE AND PAYMENTS

Partial payment may be requested by the Contractor once every thirty days for contract work satisfactorily completed. **Requests for payment must be submitted to the project manager on the 12th or 26th day of the month. Requests for payment received after these dates will not be processed until the next period.** Payment to the contractor shall be made within 30 days of the timely receipt of the pay request. Late requests will not be processed until the next period. The minimum partial payment request shall be \$5,500. The amount of ten percent (twenty-five percent if no bond is provided) shall be withheld from partial payments to provide incentive for the Contractor to finish the job. Final payment shall be due and payable within thirty days following completion of all terms of this contract and final acceptance of same by Owner and City. The making and acceptance of the final payment will constitute a waiver of all claims by

Owner, other than those arising from unsettled liens or from faulty work appearing thereafter, as provided for under “correction of work” and of all claims by Contractor except any previously made and still unsettled. Payments otherwise due may be withheld on account of defective work not remedied, liens filed, damage by Contractor to others not adjusted, or failure to make payments properly to subcontractors or for material or labor. Final payment requests will only be processed once release of lien forms including contractor’s and subcontractor’s affidavit, warranty and lien waiver forms have been properly executed and filed with the City.

Owner's Right to Withhold Certain Amounts and Make Application Thereof: The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, worker’s, mechanics, suppliers and furnishers of machinery and parts thereof, equipment, power tools and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the Contractor fails to do so, then the Owner may, after having served written notice on the said Contractor, either pay unpaid bills, of which the Owner has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or his Surety .In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the Contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

ARTICLE 10

CONFLICT OF INTEREST

No member of the governing body of the community and no other officer, employee or agent of the community who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Contractor shall take appropriate steps to assure compliance. No Contractor responsible for provision of goods and/or services under this Contract shall be forced or encouraged to forfeit any portion of this Contract amount in order to secure this Contract.

ARTICLE 11

CONTRACTOR’S COMPLIANCE

Contractor will comply with any and all applicable state, federal and local laws, ordinances, regulations and codes, including, but not limited to, Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5), the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as

supplemented in Department of Labor regulations (29 CFR, Part 3), Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60), the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR part 5), Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11625, 12432 and 12138 (Minority/Women's Business Enterprises) as supplemented in 24 CFR 85.36(e), the Lead Based Paint Poisoning Prevention Act (24 CFR part 35), and rules regarding conflict of interest as provided in 24 CFR 85.36 and OMB Circular 110.

ARTICLE 12

SECTION 3 COMPLIANCE

"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities (Contracts Over \$100,000)

- 12.1 The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given low and very low income residents of the project area (including public housing residents and persons with disabilities) and contracts for work in connection with the project be awarded to business concerns which are owned by or employee low and very low income residents of the project area.
- 12.2 The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- 12.3 The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract of understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- 12.4 The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any Subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the

Subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- 12.5 Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified in 24 CFR Part 135.

ARTICLE 13

DEBARMENT AND SUSPENSION

Contractor certifies, by submission of its proposal and execution of this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

ARTICLE 14

NON-LIABILITY

The parties of this Contract agree to hold the Lender or its designated representative harmless for any damages concerning or arising out of the undertaking and execution of this contract.

ARTICLE 15

SEPARATE CONTRACTS

Owner waives the right to perform work either with his own work forces or to award contracts to perform other work under this Contract without consent of Contractor and City.

ARTICLE 16

MISCELLANEOUS PROVISIONS

- 14.1 There will be no assignment of the rights and obligations of the Contractor under this Contract without the prior written approval of Owner and City.
- 14.2 No variance or modification of this Contract will be valid and enforceable, except by supplemental agreement in writing, executed and approved in the same manner as this Contract.
- 14.3 Contract is made under and is governed by the laws of the Commonwealth of Kentucky.

14.4 The invalidity or unenforceability of a particular provision of this Contract will not affect the other provisions of this Contract, and this Contract will be construed in all respects as if such invalid or unenforceable provisions were omitted.

14.5 Dispute Resolution - In those instances where a mutually satisfactory agreement cannot be reached between the Owner and the Contractor, the Project Manager shall meet with the Owner and the Contractor informally to attempt to resolve the dispute. If a resolution is not forthcoming, the dispute shall be reviewed by the Chief Executive Officer of the City or their designated representative. After such review, the decision shall be affirmed by the Governing Body of the City. All decisions made by the Governing Body shall be final and binding upon both the Owner and the Contractor.

14.6 Owner has authorized City to hold the loan or relocation payment proceeds and to make the payments provided for in the Contract directly to Contractor on behalf of Owner.

ARTICLE 17

OWNER'S RESPONSIBILITIES

The Owner shall cooperate with the Contractor to facilitate the performance of the work. The contractor shall be responsible for providing temporary utilities. Owner shall provide proof of homeowner's insurance with one year paid in advance prior to occupying the structure.

The Owner shall grant, at no cost, any right-of-way and/or easements necessary to facilitate the work under this contract.

The Owner is required to maintain the structure and property on which it is located in accordance with International Property Maintenance Code. The Code Enforcement Officer will perform periodic inspections. Inform the property owner of any items that have deteriorated, and request corrective action. The City reserves the right to take any appropriate action necessary to insure that the property is maintained. This action may, as a last resort, include early payback of any financial assistance. If the property is not maintained, the City will write a letter to the Owner, giving the Owner thirty (30) days to perform said maintenance or to remove junk or debris from the property. If the Owner does not correct said items within thirty (30) days, the City may undertake correction of said items, or hire someone to correct said items, with the cost of doing so placed as a tax lien on the property. The Owner may appeal such action to the City's Governing Body.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

OWNER

CONTRACTOR:

WITNESS OF OWNER

WITNESS OF CONTRACTOR

RELEASE OF LIEN FORM

GENERAL CONTRACTOR'S AFFIDAVIT, WARRANTY AND LIEN WAIVER

To (City or County) _____

OWNER: _____

STREET: _____

CITY, ST, ZIP: _____

CONTRACT DATE: _____

CONTRACT AMOUNT: _____

THAT I, the undersigned, being duly sworn, do depose and say that I was contracted to construct, alter or repair an improvement on the above described property.

THAT, the improvements on the subject property have been fully and satisfactorily completed in substantial conformity with the contract.

THAT all the materials used in said improvement, all labor performed thereon and all fees, insurance and permits, in connection with the said improvements which might give rise to liens on the property have been paid in full.

Listed below are all subcontractors and major materialmen included in this work. Attached are waivers of liens from all of them as substantiation of the above statement.

Name of Subcontractor or Materialmen and Address

Framing supplier: _____

General supplier: _____

HVAC: _____

Electrical: _____

Plumbing: _____

Flooring supplier: _____

Cabinet supplier: _____

Other: _____

Other: _____

Other: _____

THAT I hereby waive any lien or right to lien which I may have against the described property and I warrant to save harmless the said Property Owner and the City or its agents from any liens which are now in existence, or may hereafter arise by reason of said improvements, and cause the same to be released of record immediately.

THAT the foregoing waiver and these statements are an express warranty and representation to the City and the Property Owner of the facts herein sworn to and is made for valuable consideration, receipt whereof is acknowledged.

THAT I hereby guarantee the work performed per my contract for a period of one year from the date of final acceptance of said work and that I have finished all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under the contract.

NAME OF COMPANY

BY: _____
SIGNATURE

TITLE

STATE OF KENTUCKY

COUNTY OF _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, _____

Notary Public: _____

My Commission Expires: _____

PLEASE CHECK IF YOUR FIRM IS ANY OF THE FOLLOWING:

_____ **51% or more Woman Owned Business**

_____ **51% or more Minority Owned Business**

**SUBCONTRACTOR OR MATERIALMAN'S AFFIDAVIT, WARRANTY AND LIEN
WAIVER**

General Contractor: _____

Property Owner: _____

Property Address: STREET: _____

CITY, ST, ZIP: _____

CONTRACT For: _____

SUBCONTRACT or MATERIAL AMOUNT: _____

THAT I, the undersigned, do depose and say that I was employed to furnish labor or engaged to furnish materials for an improvement on the above described property.

THAT I hereby declare that I have been paid in full for my labor or the material supplied for said improvement and I waive any lien or right to lien against the described property. I warrant to save harmless the said property owner and the City/County from any liens which are now in existence or may hereafter arise by reason of said improvements.

NAME OF COMPANY

By: _____
SIGNATURE

Phone number for company

Printed name and title of authorized person

DATE

PLEASE CHECK IF YOUR FIRM IS ANY OF THE FOLLOWING:

_____ **51% or more Woman Owned Business**

_____ **51% or more Minority Owned Business**

MEMORANDUM

COMPLETION OF WORK

OWNER: _____

STREET: _____

CITY, ST, ZIP: _____

CONTRACT DATE: _____

CONTRACT AMOUNT: _____

TODAY'S DATE: _____

This memorandum, with the signatures of the parties involved, confirms the completion of the construction of a new house and related work at the address listed above in conformance with the contract and any associated change orders. The owner hereby accepts said work and authorizes final payment. The Contractor will guarantee said work for a period of one year.

Homeowner

Contractor

Homeowner

Project Manager