

SAMPLE CONSTRUCTION CONTRACT

7 Pages

(For guidance only - change to incorporate specifics of your project)

This agreement is made this <date> by and between <CONTRACTOR>, <ADDRESS>(hereinafter "Contractor") and <OWNER OF CONTRACT AND ADDRESS> (hereinafter "Owner").

WITNESSETH

The owner does hereby employ the Contractor to do all the work and provide all the materials, tools, machinery and supervision necessary for the construction of a <DESCRIPTION OF WORK> in the <SITE>, the total sum of <AMOUNT>, all in accordance with the drawings, and specifications which are attached hereto as Exhibit ___ and expressly incorporated herein by reference and made a part hereof. Reference is made to an accompanying contract with <SUBCONTRACTOR, WHERE APPLICABLE> which will be <INSERT A DESCRIPTION OF THE ACTIVITY> associated with this project.

The Contractor shall commence the work to be performed within ___ days from the date of the Notice to Proceed, and shall complete the work ___ days thereafter, or by <DATE>, whichever comes later, time being of the essence of this contract.

The Contractor shall carry liability insurance with the limits of <AMOUNT> for injury to or death of one person, <AMOUNT> for injuries or death suffered in one accident and <AMOUNT> property damage and Workman's Compensation insurance and shall provide Owner with proof of such insurance.

Hold Harmless

The Contractor agrees to defend, indemnify and hold the owner harmless from any liability or claim for damage because of bodily injury, death, property damage, sickness, disease or loss and expense arising from the Contractors' negligence in the performance of the construction Contract. Each Contractor and subcontractor is acting in the capacity of an independent Contractor with respect to the Owner. The Contractor further agrees to protect, defend and indemnify the Owner from any claims by laborers, subcontractors or materialmen for unpaid work or labor performed or materials supplied in connection with the Construction Contract.

Assignment of Contract

The contractor agrees not to assign the Construction Contract without the written consent of the Owner.

Change Orders

The Contractor agrees not to make any changes in the schedule of work, design, or of the specifications without written authorization by the Owner.

SAMPLE CONSTRUCTION CONTRACT (continued)

Lien Waivers

The Contractor shall protect, defend and indemnify the Owner from any claims for unpaid work, labor or materials.

General Guarantee

The Contractor shall remedy any defect due to faulty material or workmanship and pay for any damage to other work resulting therefrom which shall appear within the period of one year from final payment. Further, the Contractor will furnish Owner with all manufacturer's and supplier's written guarantees and warranties covering materials and equipment furnished under this Contract.

Permits and Codes

The Owner shall obtain all necessary building permits, including those required by the <MUNICIPALITY>, <STATE AGENCY>, and Act 250 as applicable. The Contractor will secure at his/her own expense any other necessary permits and licenses required to do the work and will comply with all building and code regulations and ordinances whether or not covered by the specifications and drawings for the work.

Work Performance

- 1) The Contractor shall protect all work adjacent to the Contract site from any damage resulting from the work of the Contractor and shall repair or replace any damaged work at his/her own expense.
- 2) The Contractor shall replace and put in good condition any existing conditions damaged in carrying out the contract.
- 3) The Contractor shall take all precautions to protect persons from injury and unnecessary interference or inconvenience.
- 4) The Contractor shall conduct his activities in a business like manner and adhere to the reasonable wishes of the Owner in relation to his working schedule.

Condition of Premises

The Contractor agrees to keep the premises clean and orderly and to remove all debris as needed during the hours of work in order to maintain work conditions which do not cause health or safety hazards.

SAMPLE CONSTRUCTION CONTRACT (continued)

Use of Utilities

The Owner shall permit the Contractor to use, at no cost, power and water necessary to the carrying out and completion of the work.

Use of On Site Loam

Owner Agrees as part of this contract to allow the Contractor use of on-site loam to the degree available as necessary for the completion of the project.

Inspection

The Owner shall have the right to inspect all work performed under this contract. As well it shall be a condition of this contract that all work that needs to be inspected or tested and certified by the engineer as a condition of the Dept. of Environmental Conservation Permit, (or other State agency), or inspected and certified by the local health officer, shall be done at each necessary stage before further construction can continue. All inspection and certification will be done at the Owner's expense. Failure to follow this requirement will be grounds for termination of the contract.

Right to Stop Work

If the Contractor fails to correct defective work or persistently fails to supply materials or equipment in accordance with the Contract Documents, the Owner may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated.

Payment Schedule

Payments for work shall be as follows:

Payments shall be disbursed based on the attached schedule of values. Within three days of notification by the Contractor of each stage of completion, the Owner or its designee will inspect and approve the work, or request any necessary adjustments in the work. The Owner agrees to make payments to the Contractor within ten days of approving work.

Contract Security

Contractor shall furnish bonds covering the faithful performance of the Contract and the payment of all obligations related thereto and as required in the instructions to bidders or elsewhere in this Contract.

SAMPLE CONSTRUCTION CONTRACT (continued)

Contract Security (In lieu of conventional performance and payment bonds)

Contractor shall grant to Owner a mortgage on certain property in <LOCATION> as set forth in Exhibit _____. The mortgage shall secure the performance by Contractor of all of Contractor's obligations under this agreement including, but not limited to, completion of the work for the Contract's price; indemnification of Owner from claims as set forth in this agreement; Contractor's general guarantee of materials and workmanship, and any special or consequential damages to which Owner may be entitled as a result of breach of this Contract by Contractor. The mortgage shall further secure the payment of any award to Owner pursuant to arbitration as provided herein. Contractor acknowledges that this mortgage is being accepted by Owner in lieu of a conventional performance and payment bond with a commercial surety, as well as Owner's agreement not to require retainage during construction. Contractor further acknowledges that the Owner has a limited ability to complete the Contract on its own in the event of Contractor's default, and that the Owner may freely assign the mortgage and any interests it may have as mortgagee. Owner agrees that the Contractor shall be entitled to a discharge of the mortgage one year from the date that the final payment for the completion of the work is made, or ____ days following payment in full by Contractor of any award to Owner pursuant to arbitration pending at the end of the one-year period, whichever occurs later.

Liquidated Damages

Contractor hereby agrees to commence work under this contract within <DAYS> days of the Notice to Proceed and to fully complete the project within <DAYS> consecutive calendar days thereafter. Contractor further agrees to pay as liquidated damages, the sum of <AMOUNT> for each consecutive calendar day thereafter. These damages shall not apply, should unforeseeable causes beyond the control and without the fault or negligence of the Contractor cause delays in the completion of this project.

Taxes

The Owner hereby agrees to supply the Contractor with its tax-exempt number for relief from the sales tax on purchase of materials, if applicable.

Arbitration

- 1) All claims, disputes, and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, except for claims which have been waived by the making and acceptance of final payment, shall be decided by Arbitration in accordance with the construction Industry Arbitration Rules of the American Arbitration Association (or other arbitration rules). This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgement may be entered upon it in any court having jurisdiction thereof. Any award shall provide for payment within 30 days of the date of the award.

SAMPLE CONSTRUCTION CONTRACT (continued)

- 2) Notice of the demand for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and with the <ARBITER=S>, <ADDRESS>) Demand for arbitration shall in no event be made on any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.
- 3) The Contractor will carry on the work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

Governing Law

Reference is made to the attached Grant Agreement <# _____ > between the Town of <MUNICIPALITY> and the Vermont Community Development Program, and the Contractor agrees to abide by the following laws and regulation and to make all records, invoices, materials, payrolls, records of personnel, conditions of employment and other documentary data available at any time for the purpose of an audit and to ensure compliance with relevant laws:

- 1) Equal Employment Opportunity: The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, sex, religion, or national origin;
- 2) Title VI of the Civil Rights Act of 1964, as amended;
- 3) The Davis-Bacon Act (Wage Rate Determination attached);
- 4) The Contract Work Hours and Safety Standards Act;
- 5) Title I of the Housing and Community Development Act of 1974, as amended;
- 6) The Copeland Anti-Kickback Act;
- 7) The Vermont Community Development Act;
- 8) The National Environmental Policy Act (NEPA);
- 9) Section 3

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the

SAMPLE CONSTRUCTION CONTRACT (continued)

labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

10) Additional citations as applicable.

Retention of and Access to Records

Authorized representatives of the Secretary of the Agency, the Secretary of HUD, the Inspector General of the United States, the U.S. General Accounting Office, the <MUNICIPALITY>, or other pertinent party to this VCDP Grant shall have access to all books, accounts, records, reports, files, papers, things, or property belonging to, or in use by, the Grantee pertaining to the receipt and administration of Vermont Community Development Program Funds, as may be necessary to make audits, examinations, excerpts, and transcripts.

Financial records, supporting documents, statistical records, and all other records pertinent to this VCDP-FUNDED project shall be retained in separate records and for a minimum of three years after receipt of a Certificate of Program Completion.

The above requirements shall apply to all sub-grantees, contractors, and subcontractors who enter into contracts or agreements with the Grantee.

SAMPLE CONSTRUCTION CONTRACT (continued)

Conflict of Interest

No person who is an employee, agent, consultant, officer, or elected or appointed official of the <MUNICIPALITY> or other pertinent party may obtain a personal or financial interest or benefit form, or have an interest in, this contract or the proceeds hereunder, either for themselves or for those with

whom they have family or business ties, during their tenure or for one year thereafter, if they exercise or have exercised any functions or responsibilities with respect to the program or are in a position to participate in a decision-making process or gain inside information with regard to the program.

This Contract shall be construed under the laws of the State of Vermont and may be modified or amended only by a written instrument executed by both the Owner and the Contractor.

IN WITNESS WHEREOF, THE OWNER AND THE CONTRACTOR HAVE EXECUTED THIS CONTRACT AS OF THE DATE FIRST WRITTEN ABOVE.

CONTRACTOR

OWNER

NAME

NAME

AUTHORIZED SIGNATURE

SECRETARY/TREASURER