

OWNER/CONTRACTOR AGREEMENT

OWNER:

PROPERTY ADDRESS:

CONTRACTOR:

AGENCY:

CONTRACT PRICE: \$

EFFECTIVE DATE:

EXECUTION DATE
(NLT):

This Contract is between "Owner" and "Contractor", warranting itself to be licensed and qualified to perform the work specified herein. This Contract is for the rehabilitation of property located as indicated above (referred to in this contract as the "property").

**IN CONSIDERATION OF THEIR MUTUAL PROMISES, THE PARTIES
AGREE AS FOLLOWS**

Part I - Specific Terms

(1) EFFECTIVE DATE: This document shall have no force or effect unless and until executed by the Owner and Contractor, approved by the "Agency", and properly executed and approved copy is mailed to the owner at the address shown above. The date on which the copy is mailed shall be referred to as the "Effective Date." If a properly executed and approved copy of this contract is not mailed on or before the execution date, the contractor is not bound by the terms of this contract. If, however, a properly executed and approved copy of this contract is mailed after that date, the contractor subsequently performs work on or delivers materials to the property, the contractor shall be bound by this contract. The contractor shall not be compensated under this contract for work commenced or materials delivered to the property before the Effective Date.

(2) THE CONTRACT. This Contract consists only of this Part I (Specific Terms), Part 11 (Standard Terms), and the following attachments:

- A. Schedule of work (work write-up dated:
- B. Specifications contained in **General Specifications**.
- C. Payment Schedule.

(3) **TIME FOR COMMENCEMENT AND COMPLETION.** The contractor agrees to commence, or cause to be commenced, the actual work described in the schedule of work within thirty (30) days after Effective Date. The contractor agrees to complete, free of liens or rights of liens of contractors, mechanics, materialmen or laborers, all work listed above within _____ **days** after the Notice to Proceed is given, subject to extensions approved by the Owner and the Agency for the period of excusable delays (including strikes, acts of God or other reasons beyond the control of the Owner or Contractor). The contractor agrees that time is of the essence of this contract. If work has not been completed by the date herein, the contractor shall be assessed liquidated damages in favor of the Owner and the Agency in the amount of **ONE HUNDRED DOLLARS (\$100.00)** per day for each calendar day in excess of the number of days, as provided herein, unless the act from a source, as determined by the Owner or the Agency, is found to be beyond the contractor's control caused such delay in completing the project.

(4) **CONTRACT PRICE.** The Contractor agrees to accomplish work as described in the Schedule of Work in accordance with each and every term and condition of this Contract, for a total contract price. The price of specific items of work is stated in the Schedule of Work.

(5) **PROGRESS PAYMENTS.** The Contractor agrees that the total contract price shall be paid in one or more progress payments, based upon the value of the work completed at the time the progress payment is made. Such progress payments shall be disbursed at the item and in the amounts specified in the Payment Schedule (Attachment C, after inspection and approval of the work by Owner and the Agency, less a holdback of 10% of the price of the work completed. The holdback shall be retained until final payment in order to protect the Owner from any default by the Contractor. In the event the Contractor defaults, the holdback shall be disbursed in accordance with Part 11, paragraph 10 of this Contract. Final payment shall be due upon satisfactory completion and acceptance of the work as in compliance with this Contract by the Owner and Agency, permit signoff, submission of satisfactory waiver(s) of liens or a bond satisfactory to the Owner and Agency indemnifying the Owner against any lien, and submission of all warranties and guarantees. The Owner shall not withhold payment to the Contractor except for noncompliance with the terms of this Contract, and shall not request the Contractor to perform work outside the scope of this Contract as a condition of receiving payment.

The Contractor acknowledges that is a material breach of this Contract to request or accept a progress or final payment which is in excess of the price of the work completed at the time such payment is requested, less the required holdback.

(6) **WARRANTY.** The Contractor warrants that all improvements, hardware and fixtures of whatever kind or nature to be installed or constructed on the property by the Contractor or the Contractor's subcontractors will be of good quality, suitable for their purpose and free from defects in workmanship or materials, or other deficiencies. This is

a full warranty extending to the Owner and subsequent owners of the property; provided, however, that the warranty set forth in this paragraph shall apply only to deficiencies and defects about which the owner or subsequent owner(s) shall have notified the Contractor at the address above within one year, except for a longer warranty period(s) specified below:

- (a) _____ years for _____
- (b) _____ years for _____

(7) PARTIES TO CONTRACT. The Owner and Contractor agree that they are the sole parties to this Contract and are solely responsible for its performance. The parties agree that neither the Agency nor the Arkansas Development Finance Authority nor the United States Department of Housing and Urban Development assumes any liability or responsibility whatsoever for the performance of any term of this Contract.

OWNER

DATE

CONTRACTOR/TITLE

DATE

This business operates as a () corporation () partnership () sole proprietorship approved by the Agency.

PART II - Standard Terms

(1) INSURANCE. During the continuance of the work under this Contract, the Contractor and all subcontractors shall:

A. Maintain worker's compensation and employers' liability insurance in amounts sufficient to protect themselves and the Owner from any liability or damage for injury (including death) to any of their employees, including any liability or damage which may arise by virtue of any statute or law in force or which may hereafter be enacted, and

B. Maintain public liability insurance in amounts sufficient to protect themselves and the Owner against all risks of damage or injury (including death) to property or persons wherever located, resulting from any action or operation under this Contract or in connection with the work.

C. The Contractor agrees to provide evidence to the Owner and Agency of such insurance prior to commencement of work. Failure to provide adequate evidence of insurance or failure to maintain the insurance as required by this paragraph shall be grounds for terminating this Contract at the option of the Owner.

(2) ASSIGNMENT. The Contractor agrees not to assign this Contract without written consent by the Owner and written concurrence by the Agency.

(3) CHANGE ORDER. The Contractor agrees not to make any changes in the Schedule of Work or the specifications without written authorization by the Owner and written concurrence by the Agency.

(4) PERMITS AND CODES. The Contractor agrees to secure and pay for all necessary permits and licenses required for the Contractor's performance of this Contract in compliance with applicable local requirements, including local building and housing codes, where applicable, whether or not specified in the Schedule of Work or Specifications.

(5) HOLD HARMLESS. The Contractor agrees to defend, indemnify, and hold the Owner and the Agency harmless from any liability or claim for damages because of bodily injury, death, property damage, sickness, disease or loss and expense arising from the Contractor's performance of this 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 and materialmen for unpaid work or labor performed or materials supplied in connection with this Contract.

(6) ELIGIBILITY. The Contractor represents that he or she is not listed on the Disbarred and Suspended Contractor's List of the U.S. Department of Housing and Urban Development or the Agency, and further agrees not to hire or utilize as a subcontractor or supplier any person or firm that is so listed.

(7) FEDERAL LABOR STANDARDS. If this Contract (i) concerns the rehabilitation of residential properties containing 12 or more units or (ii) calls for a price of \$2,000 or more for the rehabilitation, in whole or in part, of nonresidential property or the non-residential portion of a mixed-use property, the Contractor agrees to abide by the Federal Labor Standards provisions contained in Form HUD4010A.

(8) CONDITION OF PREMISES. The Contractor agrees to keep the premises broom clean and orderly and remove all debris as needed during the course of the work, in order to maintain work conditions that do not cause health or safety hazards.

(9) LEAD BASED PAINT. The Contractor agrees to use no lead-based paint in the Contractor's performance of this Contract, including the performance of any subcontractor. "Lead-based paint" means any paint containing more than six one-hundredths of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied,

(10) **TERMINATION.** The Contractor agrees that the Owner shall have the right to declare the Contractor in default if the Contractor fails to furnish materials or perform work in accordance with the provisions of this Contract. In such event, the Owner shall be responsible for providing written notice to the Contractor by registered mail of such default. If the Contractor fails to remedy such default within fifteen (15) days of such notice, the Owner shall have the right to select one or more substitute contractors acceptable to the Agency. If the expense of finishing the work exceeds the balance not yet paid to the Contractor on this Contract, the Contractor shall pay the difference to the Owner. The Owner may use any holdback amount to compensate substitute contractors selected pursuant to this paragraph, and the Contractor shall have no further right to interest in the holdback amount.

(11) **INSPECTION.** The U.S. Government, the Agency, the Arkansas Development Finance Authority (ADFA), and their designees shall have the right to inspect all work performed under this Contract. The Contractor and Owner will take all steps necessary to assure that the Government, the Agency, the ADFA and or their designees are permitted to examine and inspect the property, and all contracts, materials, equipment, payrolls and conditions of employment pertaining to the work, including all relevant data and records. By such inspection, the U.S. Government, ADFA, and the Agency assume no responsibility to the Owner for defective material or work under this Contract or to either party for any breach of this Contract by the other.

(12) **INTEREST OF FEDERAL, STATE, OR CITY PERSONNEL.** The Contractor agrees that none of the following shall have any interest or benefit, direct or indirect, in this Contract:

- A. Any officer or employee of the Agency or State who exercises any function or responsibility in connection with administration of the HOME Program or any member of the governing body of the Agency or State.
- B. Any member of or delegate to the Congress of the United States.
- C. Any Resident Commissioner.
- D. Any person employed by HUD at a grade level of GS-9 or above.

(13) **EQUAL OPPORTUNITY.** The Contractor agrees to abide by all Federal, State or local regulations relative to equal opportunity to all persons, without discrimination as to race, color, creed, religion, national origin, sex, marital status, age, and status with regard to public assistance or disability,

ATTACHMENT A

WORK WRITE-UP – SCHEDULE OF WORK

ATTACHMENT B
SPECIFICATIONS

ATTACHMENT C

PAYMENT SCHEDULE. Progress payments to the Contractor under this Contract for work completed may be requested by the Contractor in the amounts and at the intervals specified below. All payments (except the final payment) shall be reduced by the holdback percentage (10%) specified in paragraph 5 of this Contract.

The Contractor may request payments as indicated below. The ten percent (10%) holdback will be paid 30 days after certification of completion by the Agency and the Owner and upon receipt of the retainage draw request and all supporting documentation.

<u>ACTIVITY</u>	<u>INSPECTION REQUIRED</u>	<u>PAYMENT AUTHORIZED</u>
Rehabilitation – monthly or upon contractor’s request until project completion.	YES	YES
Reconstruction –		
Demolition	YES	YES
Footings – ready to pour	YES	NO
Foundation - ready to pour	YES	YES
Monthly or upon contractor’s request until project completion.	YES	YES
Manufactured home –		
Demolition	YES	YES
Footings – ready to pour	YES	YES
Home on site (provide copy of manufacturer’s invoice)	YES	YES
Monthly or upon contractor’s request until project completion.	YES	YES

The final payment shall include the holdback amounts remaining due, if preceeded by the following:

1. Electrical and plumbing certificates,
2. Acceptance of the work by the Agency and the Owner, and
3. Submission of satisfactory waiver of liens or a bond satisfactory to the Owner and Agency indemnifying the Owner against any lien and submission of all warranties and guarantees.