

APPENDIX 2

Sample Contracts & Forms

The following legal instruments are published as examples. Because of varying state laws, these should not be used by you unless such use is approved by an attorney.

Manager's / Supervisor's
Construction Contract

1. GENERAL

This contract dated _____ is between _____ (owner) and _____ (manager), and provides for supervision of construction by Manager of a residence to be built on Owner's Property at _____, and described as _____. The project is described on drawings dated _____ and specifications dated _____, which documents are a part hereof.

2. SCHEDULE

The project is to start as near as possible to _____, with anticipated completion _____ months from starting date.

3. CONTRACT: FEE AND PAYMENT

- A. Owner agrees to pay Manager a minimum fee of \$ _____ for the work performed under this contract.
 - a. Down payment (due prior to start of work) \$ _____
 - b. Framed \$ _____
 - c. Roof on \$ _____
 - d. Ready for drywall \$ _____
 - e. Trimmed out \$ _____
 - f. Final \$ _____

- B. Payments billed by Manager are due in full within ten (10) days of bill mailing date.
- C. Final payment to Manager is due in full upon completion of residence; however, Manager may bill upon “substantial completion” (see Paragraph 11 for the definition of terms) the amount of the final payment less 10 percent of the value of work yet outstanding. In such a case, the amount of the fee withheld will be billed upon completion.

4. GENERAL INTENT OF CONTRACT

It is intended that the owner be in effect his own “General Contractor” and that the Manager provide the Owner with expert guidance and advice and supervision and coordination of trades and material delivery. It is agreed that Manager acts in a professional capacity and simply as agent for Owner, and that as such he shall not assume or incur any pecuniary responsibility to contractor, subcontractors, laborers, or material suppliers. Owner will contract directly with subcontractors and obtain from them their certificates of insurance and releases of liens. Similarly, Owner will open his own accounts with material suppliers and be billed and pay directly for materials supplied. Owner shall ensure that insurance is provided to protect all parties of interest. Owner shall pay all expenses incurred in completing the project, except Manager’s overhead as specifically exempted in Paragraph 9. In fulfilling his responsibilities to Owner, Manager shall perform at all times in a manner intended to be beneficial to the interests of the Owner.

5. RESPONSIBILITIES OF MANAGER

General

Manager shall have full responsibility for coordination of trades; ordering materials and scheduling of work; correction of errors and conflicts, if any, in the work, materials, or plans; compliance with applicable codes; judgment as to the adequacy of trades’ work to meet standards specified; together with any other function that might reasonably be expected in order to provide Owner with a single source of responsibility for supervision and coordination of work.

Specific Responsibilities

1. Submit to Owner in a timely manner a list of subcontractors and suppliers Manager believes competent to perform the work at competitive prices. Owner may use such recommendations or not at his option.
2. Submit to Owner a list of items requiring Owner's selection, with schedule dates for selection indicated, and recommended sources indicated.
3. Obtain in Owner's name(s) all permits required by governmental authorities.
4. Arrange for all required surveys and site engineering work.
5. Arrange for all the installation of temporary services.
6. Arrange for and supervise clearing and disposal of stumps and brush, and all excavating and grading work.
7. Develop material lists and order all materials in a timely manner from sources designated by Owner.
8. Schedule, coordinate, and supervise the work for all subcontractors designated by Owner.
9. Review, when required by Owner, questionable bills and recommend payment action to Owner.
10. Arrange for common labor for hand digging, grading, and clean-up during construction, and for disposal of construction waste.
11. Supervise the project through completion as defined in Paragraph 11.

6. RESPONSIBILITIES OF OWNER

Owner agrees to:

1. Arrange all financing needed for project so that sufficient funds exist to pay all bills within ten (10) days of their presentation.
2. Select subcontractors and suppliers in a timely manner so as not to delay the work. Establish charge accounts and execute contracts with same, as appropriate, and inform Manager of accounts opened and of Manager's authority in using said accounts.
3. Select items requiring Owner selection and inform Manager of selections and sources on or before date shown on selection list.

4. Inform Manager promptly of any changes desired or other matters affecting schedule so that adjustments can be incorporated in the schedule.
5. Appoint an agent to pay for work and make decisions on Owner's behalf in cases where Owner is unavailable to do so.
6. Assume complete responsibility for any theft and vandalism of Owner's property occurring on the job. Authorize replacement/repairs required in a timely manner.
7. Provide a surety bond for his lender if required.
8. Obtain release of liens documentation as required by Owner's lender.
9. Provide insurance coverage as listed in Paragraph 12.
10. Pay promptly for all work done, materials used, and other services and fees generated in the execution of the project, except as specifically exempted in Paragraph 9.

7. EXCLUSIONS

The following items shown on the drawings and/or specifications are NOT included in this contract, insofar as Manager supervision responsibilities are concerned: (List below)

8. EXTRAS/CHANGES

Manager's fee is based on supervising the project as defined in the drawings and specifications. Should additional supervisory work be required because of Extras or Changes occasioned by Owner, unforeseen site conditions, or governmental authorities, Manager will be paid an additional fee of 15 percent of cost of such work. Since the basic contract fee is a *minimum fee*, no downward adjustment will be made if the scope of work is reduced, unless contract is canceled in accordance with Paragraphs 13 or 14.

9. MANAGER'S FACILITIES

Manager will furnish his own transportation and office facilities for Manager's use in supervising the project at no expense to Owner. Manager shall provide general liability and workmen's compensation insurance coverage for Manager's direct employees only at no cost to Owner.

10. USE OF MANAGER'S ACCOUNTS

Managers may have certain "trade" accounts not available to Owner that Owner may find it to his advantage to utilize. If Manager is billed and pays such accounts from Manager's resources, Owner will reimburse Manager within ten (10) days of receipt of Manager's bill at cost plus 8 percent of such materials/services.

11. PROJECT COMPLETION

- A.** The project shall be deemed completed when all the terms of this contract have been fulfilled and a Residential Use Permit has been issued.
- B.** The project shall be deemed "substantially complete" when a Residential Use Permit has been issued and less than Five Hundred Dollars (\$500) of work remains to be done.

12. INSURANCE

Owner shall ensure that workmen's compensation and general liability insurance are provided to protect all parties of interest and shall hold Manager harmless from all claims by subcontractors, suppliers and their personnel, and for personnel arranged for by Manager on Owner's behalf, if any.

Owner shall maintain fire and extended coverage insurance sufficient to provide 100 percent coverage of project value at all stages of construction, and Manager shall be named in the policy to insure his interest in the project.

Should Owner or Manager determine that certain subcontractors, laborers, or suppliers are not adequately covered by general liability or workmen's compensation insurance to protect Owner's and/or Manager's interests, Manager may, as agent of Owner, cover said personnel on Manager's policies, and Owner shall reimburse Manager for the premium at cost plus 10 percent.

13. MANAGER'S RIGHT TO TERMINATE CONTRACT

Should the work be stopped by any public authority for a period of thirty (30) days or more through no fault of the Manager, or should work be stopped through act or neglect of Owner for ten (10) days or

more, or should Owner fail to pay Manager any payment due within ten (10) days written notice to Owner, Manager may stop work and/or terminate this contract and recover from Owner payment for all work completed as a proration of the total contract sum, plus 25 percent of the fee remaining to be paid if the contract were completed as liquidated damages.

14. OWNER'S RIGHT TO TERMINATE CONTRACT

Should the work be stopped or wrongly prosecuted through act or neglect of Manager for ten (10) days or more, Owner may so notify Manager in writing. If work is not properly resumed within ten (10) days of such notice, Owner may terminate this contract. Upon termination, entire balance then due Manager for that percentage of work then completed, as a proration of the total contract sum, shall be due and payable and all further liabilities of Manager under this contract shall cease. Balance due to Manager shall take into account any additional cost to Owner to complete the house occasioned by manager.

15. MANAGER/OWNER'S LIABILITY FOR COLLECTION EXPENSES

Should Manager or Owner respectively be required to collect funds rightfully due him through legal proceedings, Manager or Owner respectively agrees to pay all costs and reasonable attorney's fees.

16. WARRANTIES AND SERVICE

Manager warrants that he will supervise the construction in accordance with the terms of this contract. No other warranty by manager is implied or exists.

Subcontractors normally warrant their work for one year, and some manufacturers supply yearly warranties on certain of their equipment; such warranties shall run to the Owner and the enforcement of these warranties is in all cases the responsibility of the Owner and not the Manager.

(Manager) _____ (seal) Date:

(Owner) _____ (seal) Date:

(Owner) _____ (seal) Date:

Contract to Build House (Cost Plus Fee)

Contractor: _____

Owner: _____ Date: _____

Owner is or shall become fee simple owner of a tract or parcel of land known or described as: _____.

Contractor hereby agrees to construct a residence on the above described lot according to the plans and specification identified as: Exhibit A — plans and specifications drawn _____ by _____.

Owner shall pay Contractor for the construction of said house cost of construction and a fee of _____. Cost is estimated in Exhibit B. Each item in Exhibit B is an estimate and is not to be construed as an exact cost.

Owner shall secure/has secured financing for the construction of said house in the amount of cost plus fee, which shall be disbursed by a savings and loan or bank from time to time as construction progresses, subject to a holdback of no more than 10 percent. Owner hereby authorizes Contractor to submit a request for draws in the name of Owner under such loan up to the percentage completion of construction and to accept said draws in partial payment hereof. In addition, it is understood that the Contractor's fee shall be paid in installments by the savings and loan or bank at the time of and as a part of each construction draw as a percentage of completion, so that the entire fee shall be paid at or before the final construction draw.

Contractor shall commence construction as soon as feasible after closing of the construction loan and shall pursue work to a scheduled completion on or before seven months from commencement, except if such completion shall be delayed by unusually unfavorable weather, strikes, natural disasters, unavailability of labor or materials, or changes in the plans or specifications.

Contractor shall build the residence in substantial compliance with the plans and specifications and in a good and workmanlike manner and shall meet all building codes. Contractor shall not be responsible for failure of materials or equipment not Contractor's fault. Except as herein set out, Contractor shall make no representations or warranties with respect to the work to be done hereunder.

Owner shall not occupy the residence and Contractor shall hold the keys until all work has been completed and all monies due Contractor hereunder shall have been paid.

Owner shall not make changes to the plans or specifications until such changes shall be evidenced in writing; the costs, if any, of such changes shall be set out; and the construction lender and Contractor shall have approved such changes. Any additional costs thereof shall be paid in advance, or payment guaranteed in advance for the work being accomplished.

Contractor shall not be obligated to continue work hereunder in the event Owner shall breach any term or condition hereof, or if for any reason the construction lender shall cease making advances under the construction loan upon proper request thereof.

Any additional or special stipulations attached hereto and signed by the parties shall be and are made a part thereof.

Contractor: _____ (seal)

Owner: _____ (seal)

_____ (seal)

Contract to Build House

(Contract Bid)

Contractor: _____

Owner: _____ Date: _____

Owner is or shall become fee simple owner of a tract or parcel of land known or described as _____

Contractor hereby agrees to construct a residence on the above described lot according to the plans drawn by _____, and the specifications herein attached.

Owner shall pay Contractor for the construction of said house \$_____.

Prior to commencement hereunder, Owner shall secure financing for the construction of said house in the amount of \$_____, which loan shall be disbursed from time to time as construction progresses, subject to a holdback of no more than 10 percent. Owner hereby authorizes Contractor to submit a request for draws in the name of the Owner from the savings and loan, or similar institution, up to the percentage completion of construction and to accept said draws in partial payment thereof.

Contractor shall commence construction as soon as feasible after closing and shall pursue work to a scheduled completion on or before seven months from commencement, except if such completion shall be delayed by unusually unfavorable weather, strikes, natural disasters, unavailability of labor or materials, or changes in the plans and specifications.

Contractor shall build the residence in substantial compliance with the plans and specifications and in a good and workmanlike manner and shall meet all building code requirements. Contractor shall not be responsible for failure of materials or equipment not Contractor's fault. Except as herein set out, Contractor shall make no representations or warranties with respect to the work to be done hereunder.

Owner shall not occupy the residence and Contractor shall hold the keys until all work has been completed and all monies due Contractor hereunder shall have been paid.

Owner shall not make any changes to the plans and specifications until such changes shall be evidenced in writing; the costs, if any, of such changes shall be set out; and any additional costs thereof shall be paid in advance of the work being accomplished.

Contractor shall not be obligated to continue work hereunder in the event Owner shall breach any term or condition hereof, or if for any reason the construction draws shall cease to be advanced upon proper request thereof.

Any additional or special stipulations attached hereto and signed by the parties shall be and are made a part hereof.

Contractor: _____ (seal)

Owner: _____ (seal)

_____ (seal)

Description of Materials

Proposed Construction No. _____

Under Construction

Property address _____

City _____ State _____

Mortgagor or Sponsor _____

Contractor or Builder _____

INSTRUCTIONS

1. For additional information on how this form is to be submitted, etc., see the instructions applicable to the FHA Application for Mortgage Insurance or VA Request for Determination of Reasonable Value, as the case may be.
2. Describe all materials and equipment to be used, whether or not shown on the drawings, by marking an X in each appropriate check-box and entering the information called for in each space. If space is inadequate, enter "See misc." and describe under item 27 or on an attached sheet. The use of paint containing more than one percent lead by weight is prohibited.
3. Work not specifically described or shown will not be considered unless required, then the minimum acceptable will be assumed. Work exceeding minimum requirements cannot be considered unless specifically described.
4. Include no alternates, or "equal" phrases, or contradictory items. (Consideration of a request for acceptance of substitute materials or equipment is not thereby precluded.)
5. Include signatures required at the end of this form.
6. The construction shall be completed in compliance with the related drawings and specifications, as amended during processing. The specifications include this Description of Materials and the applicable Minimum Property Standards.

1. EXCAVATION

Bearing soil, type _____

2. FOUNDATIONS

Footings: concrete mix _____; strength psi _____ Reinforcing _____

Foundation wall: material _____ Reinforcing _____

Interior foundation wall: material _____ Party foundation wall _____

Columns: material and sizes _____ Piers: material and reinforcing _____

Girders: Material and sizes _____ Sills: material _____

Basement entrance areaway _____ Window areaways _____

Waterproofing _____

Footing drains _____

Termite protection _____

Basementless space: ground cover _____; insulation _____;

foundation vents _____

Special foundations _____

Additional information _____

3. CHIMNEYSMaterial _____ Prefabricated _____
(*make and size*)

Flue lining: material _____ Heater flue size _____

Fireplace flue size _____

Vents (*material and size*): gas or oil heater _____;

water heater _____

Additional information _____

4. FIREPLACESType solid fuel; gas-burning; circulator _____
(*name and size*)

Ash dump and clean-out _____ Fireplace: facing _____;

lining _____; hearth _____;

mantel _____

Additional information _____

5. EXTERIOR WALLS

Wood frame: wood, grade, and species _____ Corner bracing

Building paper or felt _____ Sheathing _____;
 thickness _____; width _____;
 solid; spaced _____" o.c.; diagonal: _____

Siding _____; grade _____;
 type _____; size _____; exposure _____"; fastening _____

Shingles _____; grade _____;
 type _____; size _____;
 exposure _____; fastening _____

Stucco _____; thickness _____";

Lath _____ weight _____ lbs.

Masonry veneer _____ Sills _____ Lintels _____ Base flashing _____

Masonry: solid faced stuccoed; total wall thickness _____";
 facing thickness _____; facing material _____
 Backup material _____; thickness _____"; bonding _____

Door sills _____ Window sills _____ Lintels _____ Base flashing _____

Interior surfaces: damp proofing, _____ coats of _____; furring _____

Additional information _____

Exterior painting: material _____; number of coats _____

Gable wall construction: same as main walls other construction

6. FLOOR FRAMING

Joists: wood, grade, and species _____; other _____;
 bridging _____; anchors _____

Concrete slab: basement floor first floor ground supported
 self-supporting mix _____; thickness _____";
 reinforcing _____ insulation _____; membrane _____

Fill under slab: material _____ thickness _____"

Additional information _____

7. SUBFLOORING *(describe underflooring for special floors under item 21)*

Material: grade and species _____; size _____; type _____

Laid: first floor second floor attic _____ sq. ft. diagonal
 right angles

Additional information _____