

Capital Advance Program
Construction Contract
Lump Sum

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0011
(exp. 9/30/2013)

For use under Section 202 of the Housing Act of 1959 or Section 811 of the National Affordable Housing Act)

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Department of Housing and Urban Development (HUD) is authorized to collect this information by provisions set forth in Article 1.E of the National Housing Act (Public Law 479, 48 Stat. 1246, 12 U.S.C., 1701 et. seq.).

Privacy Act Notice. The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations.

This Agreement, made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_

\_\_\_\_\_ (hereinafter called the "Contractor") and

\_\_\_\_\_ (hereinafter called the "Owner").

Witnesseth, that the Contractor and the Owner, for the consideration hereinafter set out, agree as follows:

Article 1 - Scope of Contract

A. The Contract between the parties is set forth in the "Contract Documents" which consists of this Agreement, the Drawings and Specifications, together with any addenda thereto, the current edition of AIA Document A201, "General Conditions of the Contract for Construction," except all paragraphs concerning arbitration, and Form HUD 2554, "Supplementary Conditions of the Contract for Construction."

B. The Contractor shall furnish all of the materials and perform all of the work (within the property lines) shown on, and in accordance with, the Drawings and Specifications entitled \_\_\_\_\_

\_\_\_\_\_ ,

HUD Project No. \_\_\_\_\_, dated \_\_\_\_\_.

C. The Drawings, which are numbered \_\_\_\_\_, and the Specifications, the pages of which are numbered \_\_\_\_\_,

and addenda numbered \_\_\_\_\_, have been prepared by \_\_\_\_\_, ("Design Architect").

The Architect administering the Construction Contract (hereinafter, and elsewhere in the Contract Documents, referred to as the "Architect") is \_\_\_\_\_

D. A master set of said Drawings and Specifications, identified by the parties hereto and by the Design Architect, the Architect, and the

Contractor's Surety or Guarantor have been placed on file with the Department of Housing and Urban Development ("HUD"), and shall govern in all matters which arise with respect to such Drawings and Specifications.

E. Changes in the Drawings and Specifications or any terms of the Contract Documents, or orders for extra work, or changes by altering or adding to the work, or which will change the design concept, may be affected only with the prior written approval of HUD under such conditions as HUD may establish.

Article 2 - Time

A. The work to be performed under this Contract shall be commenced within \_\_\_\_\_ days of this Agreement, and shall be completed by \_\_\_\_\_, 20\_\_\_\_. The time by which the work shall be completed may be extended in accordance with the terms of the said AIA General Conditions only with the prior written approval of HUD.

B. The Contractor shall correct any defects due to faulty materials or workmanship which appear within one year from the date of final completion.

C. If the work is not brought to final completion in accordance with the Drawings and Specifications, including any authorized changes, by the date specified above, or by such date to which the contract time may be extended, the sum stated in Article 3A below shall be reduced by the actual cost of taxes and insurance, as approved by HUD, for the period from the scheduled date of completion through the date construction was actually completed, shall be determined. This cost shall be reduced by an amount equal to the project's net operating income (as determined by HUD) for the period upon which the aforementioned actual costs are based.

D. The Owner and Contractor may amend this contract prior to initial endorsement, in a form prescribed by the Commissioner, to provide for an incentive payment to the Contractor, which will result in an increase in the contract sum stated in Article 3A below, if the work is completed before the date specified in this contract. The Contractor will not be entitled to any incentive payment resulting

from early completion if HUD determines that the Contractor's cost certification, if required by Article 7, is fraudulent or materially misrepresents the Contractor's actual cost of construction.

E. The date of final completion shall be the date the HUD representative signs the final HUD Representative's Trip Report provided that the trip report is subsequently endorsed by the Chief Architect.

**Article 3 – Contract Sum and Payments**

A. The Owner shall pay the Contractor for the performance of the Contract, as hereinafter provided, the sum of \$ \_\_\_\_\_

B. Each month after the commencement of work hereunder, the Contractor shall make a monthly request on Form HUD 92448 for payment by the Owner for work done during the preceding month. Each request for payment shall be filed at least \_\_\_\_\_ days before the date payment is desired. Subject to the approval of HUD, the Contractor shall be entitled to payment thereon in an amount equal to (1) the total value of classes of the work acceptably complete; plus (2) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (3) the value of components stored off-site in compliance with applicable HUD requirements less (4) 10 percent holdback and less prior payments. The "values" of (1), (2) and (3) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgager's Cost Breakdown," attached hereto as Exhibit "A". The Contractor agrees that no materials or equipment required by the Specifications will be purchased under a conditional sale contract or with the use of any security agreement or the vendor's title or lien retention instrument.

C. The balance due the Contractor hereunder shall be payable upon the expiration of 30 days after the work hereunder is fully complete, provided the following have occurred:

(1) All work hereunder requiring inspection by municipal or other governmental authorities having jurisdiction has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction;

(2) All certificates of occupancy, or other approvals, with respect to all units of the project have been issued by State or local governmental authorities having jurisdiction; and

(3) Permission(s) To Occupy (Form HUD-92485) for all units of the project have been issued by HUD.

D. With its final application for payment by the Owner, the Contractor shall disclose, on a form prescribed by HUD, all unpaid obligations contracted in connection with the work performed under this Contract. The Contractor agrees that, within 15 days following receipt of final payment, it will pay such obligations in cash and furnish satisfactory evidence of such payment to the Owner.

**Article 4 – Receipts and Releases of Liens**

The Owner may require the Contractor to attach to each request for payment its acknowledgement of payment and all subcontractors' and material supplier's acknowledgements of payment for work done and materials, equipment and fixtures furnished through the date covered by the previous payment. Concurrently with the final payment, the Owner may require the Contractor to obtain similar waivers or releases from all subcontractors and material suppliers.

**Article 5 – Requirements of Contractor**

A. The Contractor shall furnish, at its own expense, all building and

other permits, licenses, tools, equipment and temporary structures necessary for the construction of the project. The Contractor shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules and regulations, and protective covenants, and with the current regulations of the National Board of Fire Underwriters, wherever applicable. The Contractor further shall comply with the provisions of the Occupational Safety and Health Act of 1970. The Contractor shall immediately notify HUD of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other such certificates and instruments required by law, regardless of to whom issued, and shall cause them to be displayed to HUD upon request.

B. If the Contractor observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinances, rules or regulations, or protective covenants, it shall promptly notify the Architect in writing, and any necessary changes shall be made as provided in this Contract for changes in the Drawings and Specifications. If the Contractor performs any work knowing it to be contrary to such codes, laws, ordinances, rules or regulations, or protective covenants, without giving such notice to the Architect, it shall bear all cost arising therefrom.

C. Upon completion of construction, the Contractor shall furnish to the Owner a survey showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements. Such survey shall be prepared by a licensed surveyor who shall certify that the work is installed and erected entirely upon the land covered by the mortgage and within any building restriction lines on said land, and does not overhang or otherwise encroach upon any easement or right-of-way of others. In addition, the Contractor shall furnish additional surveys when required by the Owner for any improvements, including structures and utilities, not theretofore located on a survey. The Contractor shall furnish copies of such survey required hereunder for HUD.

D. The Contractor shall assume full responsibility for the maintenance of all landscaping which may be required by the Drawings and Specifications until such time as both parties to this Contract shall receive written notice from HUD that such landscaping has been finally completed. The Owner hereby agrees to make available to the Contractor, for such purpose, without cost to the latter, such facilities as water, hose and sprinkler.

**Article 6 – Assurance of Completion**

The Contractor shall furnish to the Owner assurance of completion of the work in the form of (specify) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

Such assurance of completion shall run to the Owner and HUD as obligees.

**Article 7 – Cost Certification**

An identity of interest between the Owner and the Contractor is prohibited. In the event HUD determines that there is an identity of interest between the Owner and the Contractor, the Contractor shall certify on a form prescribed by HUD, its cost incurred in the performance of work under this Contract.

**Article 8 – Right of Entry and Interpretation**

A. HUD, its agents or assigns, at all times during construction, has the right of entry and free access to the project and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the project. For such purpose, the Contractor shall furnish such enclosed working space as HUD may require and find acceptable as to location, size, accommodations and furnishings.

B. HUD shall also have the right to interpret the Contract Documents and to determine compliance therewith.

**Article 9 – Assignments, Subcontracts and Termination**

A. This Contract shall not be assignable by either party without prior written consent of the other party and HUD, except that the Owner may assign the Contract, or any rights hereunder, to HUD.

B. The Contractor shall not subcontract all of the work to be performed hereunder without the prior written consent of the Owner and HUD.

C. Upon request by the Owner, or HUD, the Contractor shall disclose the names of all persons with whom it has contracted or will contract with respect to work to be done and materials and equipment to be furnished hereunder.

D. The Contractor understands that the work under this contract is to be financed by a capital advance to be secured by a mortgage and subject to the terms of a Capital Advance Agreement between the Owner and HUD.

The Contractor further understands that said Capital Advance Agreement provides that in the event of the failure of the Owner to perform its obligations to HUD thereunder, HUD may, as attorney-in-fact for the Owner, undertake the completion of the project in accordance with this Contract. In the event HUD elects not to undertake such completion, the Contractor's obligations under this Contract shall terminate.

**In Witness Whereof**, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal) Attest:	Owner
Witness	By
Witness	Title

(Seal)	Contractor
Witness	By
Witness	Title

**Note: If Contractor or Owner is a corporation, Secretary should attest.**