

HOME ACCESSIBILITY AND REPAIR PROGRAM (HARP)
CONSTRUCTION CONTRACT

Agency (CAA): _____ CAA Address: _____ Applicant Name: _____ Property: _____ Contractor: _____ Contract Amount: _____	CAA Technician Name: _____ CAA Technician Phone: _____ CAA Technician Email: _____ Co-Applicant Name: _____ Contractor Address: _____ Contract Date: _____
--	---

This Construction Contract ("Contract") is based on the Maine Attorney General's model contract for home construction, repair, or remodeling drafted by the Public Protection Unit of the Maine Attorney General in an attempt to meet requirements of 10 M.R.S.A. §§ 1486-90, Home Construction Contracts. Neither the Maine Attorney General nor the Home Accessibility and Repair Program ("Program") guarantees that this Contract satisfies all legal requirements.

1. PARTIES TO THIS CONTRACT

This Contract is between the above-named "Applicant" and "Contractor."

2. LOCATION OF WORK

Contingent upon receipt of funds, the Applicant intends to rehabilitate the above-named "Property."

3. CONTRACT PRICE

The Contract price as set forth in the Contractor's bid is \$_____ all in accordance with the estimate, plans, and specifications which are attached hereto as Exhibit A and expressly incorporated herein by reference and made a part hereof. **If Applicant does not receive financing to cover the cost of the Contractor's bid, this Contract is null and void.**

4. COMMENCEMENT AND COMPLETION DATES

- a. Start Date: Contractor shall start work on or about _____.
- b. End Date: The Contractor shall thereafter diligently pursue and execute the work, weather permitting, and complete the work prior to _____.
- c. It is further agreed that failure of the Contractor to perform any work under this Contract for a period of five (5) consecutive working days at any time after commencement of the work, without written consent of Applicant, shall constitute a breach of the Contract; and Applicant may, by written notice terminate his/her obligations hereunder and Contract for or otherwise effect the completion of any of the work then uncompleted by the Contractor and/or assess liquidated damages in the amount of \$50.00 per day for every working day that Contractor is not at the site without Applicant approval until such time the Contract is terminated.
- d. Any liquidated damages recovered shall be applied as a principal reduction to the outstanding balance of the loan or if a grant shall be refunded to Maine State Housing Authority (MaineHousing). Applicant may set-off against the Contract price the cost and expenses of completing such work. In the event Applicant has at the time of the breach and termination paid to Contractor an amount in excess of the fair value of the work then completed, Contractor shall refund to Applicant promptly upon demand an apportioned amount of the total sum paid by Applicant subject to the Resolution of Disputes provision of Section 14 below.

5. METHOD OF PAYMENT

The above-named "Escrow Agent" is holding the funds for the performance of this Contract. Contractor and Applicant agree to comply with the terms of a *Construction Escrow Agreement* between the Escrow Agent, the Contractor and Applicant of near or even date herewith. Contractor shall be compensated for services in accordance with said *Construction Escrow Agreement*.

6. ACCESS TO CONTRACTOR'S RECORDS

Applicant and the Escrow Agent shall be afforded access at all times to inspect the work and they may at times inspect Contractor's books, records, correspondence, construction drawings, receipts, vouchers, payrolls, and agreements with sub-contractors relating to this Contract. Contractor shall preserve all such records for a period of two (2) years after final payment hereunder.

7. LIENS

Contractor agrees to keep the Property free from recorded mechanics' liens arising out of this Contract. As a condition to receiving final payment hereunder, Contractor shall deliver to Applicant a complete release of all liens arising out of this Contract.

8. WARRANTIES

The Contractor provides the following express warranty:

Contractor warrants all work for a period of one year.

In addition to any additional warranties agreed to by the parties, the Contractor warrants that the work will be free from faulty materials, constructed according to the standards of the building code applicable for this location, constructed in a skillful manner, and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this Contract.

9. PERMITS AND FEES

Contractor shall comply with all applicable building, zoning, environmental, and land use laws, regulations, and ordinances. Contractor shall give all notices required by and comply with all applicable laws, ordinances and codes of the municipality where work is being performed and the State of Maine. Contractor shall at his/her own expense secure and pay fees or charges for all permits required for the performance of the work. Contractor shall provide copies of such notices and permits to the Applicant and the Escrow Agent.

10. INDEMNIFICATION AND INSURANCE

Contractor shall indemnify and hold Applicant, Escrow Agent, and MaineHousing harmless for liability for any bodily injury, property damage or other claims or demands of third parties resulting from performance of the work by Contractor. Contractor shall obtain, maintain and furnish evidence of general commercial liability insurance coverage in an amount no less than \$2,000,000 aggregate coverage and \$1,000,000 for each occurrence for bodily injury, death and property damage arising out of the work to be performed by Contractor and shall procure any worker's compensation insurance required by law.

11. RELEASE AND HOLD HARMLESS

Applicant agrees to assume all risk of injury, harm or damage to his/her person or property which may arise as a result of the performance of the Contract by Contractor and does hereby release and agree to indemnify and hold harmless MaineHousing, the CAA, their agents, officers and employees from any and all liability actions, damages and claims of any kind and nature whatsoever for injury or harm that might arise in connection with the use of the Contract, the Contractor's performance of the Contract and/or Applicant's participation in the Program.

12. COOPERATION

Applicant shall cooperate with Contractor to facilitate performance of the work, including the reasonable movement of rugs, coverings and furniture. Applicant will allow Contractor reasonable access to the premises to perform the work and will cooperate with the Contractor in coordinating access. Contractor recognizes that the premises may be occupied during the course of the work and Contractor agrees to make reasonable efforts to lessen the inconvenience occasioned to the occupants during work to the extent possible, including, but not limited to, the keeping of the premises clean and orderly during the course of the work. Applicant shall permit Contractor to make reasonable use of existing utilities for the performance of the work and all such use shall be at the expense of the Applicant.

13. CHANGE ORDERS

Any alteration or deviation from the contractual specifications presented in Exhibit A require a written *Change Order* approved and signed by the Escrow Agent, the Contractor and the Applicant prior to Contractor performing any additional work.

14. RESOLUTION OF DISPUTES

Disputes between the Applicant and the Contractor may arise from time to time during the life of the rehabilitation project. Under Maine law 10 M.R.S.A. §§1487 (8), the parties to a home construction contract may agree to settle disputes arising under the contract by jointly paying for one of the following: **Please select one of the following options:**

binding arbitration as regulated by the Maine Uniform Arbitration Act with the parties agreeing to accept as final the arbitrator's decision. If selected: **Client initials** _____ **Contractor initials** _____

non-binding arbitration, with the parties free to not accept the arbitrator's decision and to seek satisfaction through other means, including a lawsuit. If selected: **Client initials** _____ **Contractor initials** _____

mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences. If selected: **Client initials** _____ **Contractor initials** _____

The Program that finances this work requires disputes to be resolved in accordance with the above selected option.

15. ADDITIONAL PROVISIONS

- a. The Contractor shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 94B; 62 Stat. 862; Title U.S.C., Section 874; and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto and shall be responsible for the submission of statements required of subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions from the requirements thereof.
- b. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, ancestry, age, physical or mental disability, or familial or marital status and in the case of employment, genetic information or national origin. Contractor will take affirmative action to ensure that employees and applicants for employment are treated during employment without regard to their race, color, religion, sex, ancestry, age, physical or mental disability, or familial or marital status and in the case of employment, genetic information or national origin.
- c. The Contractor, by execution of this Contract, certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- d. **NOTE:** If this Contract is being used by contractors who sell door to door it must meet any applicable requirements of 32 M.R.S.A. §§ 4661-4671, Consumer Solicitation Sales Act; 32 M.R.S.A. §§ 14501-14512, Door to Door Home Repair Transient Sellers; and 9-A M.R.S.A. §§ 3-501-3-507; Home Solicitation Sales, including a description of the consumer's right to avoid the Contract. If this Contract includes installation of insulation in an existing residence it must contain a detailed description of the insulation as required by 10 M.R.S.A. § 1482. If this Contract includes construction of a new residential building or a new addition to an existing residence, it must contain a statement that 10 M.R.S.A. §§ 1411-1420 establishes minimum energy efficient building standards for new residential construction, and whether this building or addition will meet or exceed those standards.

16. TERMINATION

This Contract may be terminated by written agreement of the Contractor, Applicant and Escrow Agent. Additionally, this Contract will terminate in the event that the Home Accessibility and Repair Program Grant Agreement, executed by the Applicant, is terminated. In the event of termination of this Contract, Contractor will only be entitled to payment for undisputed work completed prior to the effective date of the termination.

17. ASSIGNMENTS

Contractor shall not assign the benefits of the Contract nor delegate its duties thereunder without written consent of Applicant and Escrow Agent.

18. MAINE ATTORNEY GENERAL ADVISORY

Applicants are strongly advised to visit the Maine Attorney General's publicly accessible website to obtain current information on how to enforce their rights when constructing or repairing a home at:

http://www.maine.gov/ag/consumer/law_guide_article.shtml?id=27919 or contact the Attorney General's Office by mail or phone at 6 State House Station, Augusta, ME 04333 (207) 626-8800 / TTY # (207) 626-8865.

http://www.maine.gov/ag/consumer/law_guide_article.shtml?id=27919 or contact the Attorney General's Office by mail or phone at 6 State House Station, Augusta, ME 04333 (207) 626-8800 / TTY # (207) 626-8865.

19. JOB SPECIFICATIONS CERTIFICATION

The attached *Job Standards and Specifications* pertain to the *Construction Contract* between the following Applicant(s) and the Contractor:

CONTRACTOR:

The undersigned Contractor certifies that he/she has performed an on-site pre bid walk-thru and has reviewed and agrees to perform the work described in the attached *Job Standards and Specifications* (Appendix A to the *Construction Contract*). ANY and ALL changes to these specifications, regardless of any cost, must be by a written *Change Order* and pre-approved by MaineHousing.

Contractor Representative Signature

Date

Contractor Representative Name (*printed*)

APPLICANT:

The undersigned Applicant(s) certifies that he/she has participated in the development of the attached *Job Standards and Specifications* (Appendix A to the *Construction Contract*). After careful review, the Applicant(s) understand and accept the work described. Only the work listed in the attached *Job Standards and Specifications* will be performed. ANY and ALL changes to these specifications, regardless of any cost, must be by a written *Change Order* and pre-approved by MaineHousing.

Signed by all owners of the property:

Applicant Signature

Date

Co-Applicant Signature

Date

20. AUTHORIZED SIGNATURES

Applicant

Signed by all owners of the property:

Applicant Signature

Date

Co-Applicant Signature

Date

Contractor

Contractor Representative Signature

Date

Contractor Representative Name

Escrow Agent

Signature of Escrow Agent Representative

Date

Escrow Agent Representative Name

CONTRACT ADDENDUM MAINE ATTORNEY GENERAL HOME CONSTRUCTION WARNING STATEMENT

If you are thinking about building a new home or repairing your existing home, here are some things you should know.

Contractors Are Not Licensed – Buyer Beware!

Home contractors are not licensed or regulated by the State of Maine. The old saying “Buyer Beware” applies. While some towns and cities have adopted building codes and enforced them, others have not. We recommend that you talk to your town’s code officials before you begin construction. Although home construction contractors are not licensed, some building trades are licensed. Plumbers, electricians, oil burner technicians, and installers of mobile and modular homes are licensed in Maine. For more information on these licensed trades, go to <http://www.maine.gov/pfr/>

Always Check Contractors References

The Attorney General receives more complaints about home contractors than about almost any other business. We **strongly** recommend that you ask any contractor you are considering hiring for several references and that you follow up on them. It is also a good idea to check with your local building supply companies or real estate brokers. They will know the dependable contractors in your area.

You can also call the Attorney General’s Consumer Protection Division at 1-800-436-2131. The Better Business Bureau also provides information on companies. Go to www.bosbbb.org or call (207) 878-2715.

Home Contractors the State Has Sued

In the recent past the State has successfully sued the following home contractors for poor workmanship or failure to complete jobs: *State of Maine v. Daniel B. Tucci, a/k/a Dan the Handyman, and TPDF, LLC; In re: Thomas J. Hutchinson Contractor, Inc. and Thomas J. Hutchinson; State of Maine v. Joel David Poirier; State of Maine v. Joel D. Poirier and Poirier Construction Company, Inc.; State of Maine v. Maine Coast Log Homes, Timber Pine Construction, and Mark A. Holmes; State of Maine v. Jeffrey C. Scott, d/b/a Molunkus Stream Construction; State of Maine v. CBS Enterprises (Kimberly Mark Smith and David J. Blais), State of Maine v. Frederic Weinschenk d/b/a Ric Weinschenk Builders Inc.; State of Maine v. Stephen Lunt d/b/a Lakeview Builders, Inc.; State of Maine v. Bob Burns d/b/a Better Homes; State of Maine v. Albert H. Giandrea d/b/a AG’s Home Quality Improvements, Inc.; State of Maine v. Al Verdone; State of Maine v. Mikal W. Tuttle, d/b/a MT Construction, DMI Industries, and MT Construction, Inc.*

Written Contracts Are Required

For all home construction and home improvement projects over \$3,000, Maine law requires a written contract with a specific provision that prohibits payment up front of more than one third of the contract price. When a contractor asks you for any money up front, make sure that the money is being used to purchase materials for your project. Ask for receipts and for a lien waiver from subcontractors. A model contract that meets State law can be found in Chapter 18 of the Maine Attorney General's Consumer Law Guide. Go to

http://www.maine.gov/ag/consumer/law_guide_article.shtml?id=27938

Be Careful with Construction Loans

If a lender is financing your construction project, make sure that you know your lender and that you understand how your loan proceeds will be disbursed and how subcontractors will be paid.

Home Contractors Complaints Received by the Attorney General

For a listing of home contractors the Attorney General's Consumer Mediation Service has received complaints against, go to:

<http://www.maine.gov/ag/consumer/complaints/index.shtml>

State of Maine v. Thomas Cuccia; State of Maine v. Noah Stanley and NS Paving, LLC; State of Maine v. Justin Parker; State of Maine v. Lushie Stanley and Commercial Paving of Maine, Inc.; State of Maine v. Ervin Morrison II et al.; State of Maine v. National Bath Systems, LLC d/b/a Bath Fitter; State of Maine v. Lawrence Ryea d/b/a Purvis Paving, Inc.; State of Maine v. Scott LeClair et al.; and State of Maine v. Home Depot U.S.A., Inc. and THD At Home Services, Inc. Maine District Attorneys have obtained criminal theft convictions against home contractors *Malcolm Stewart (State of Maine v. Castle Builders, Inc. et al (PDF))*, *Harold Soper (State of Maine v. Harold Soper (PDF))*, and *Mikel Tuttle (State of Maine v. Mikel W. Tuttle (PDF))*.

Even when civil or criminal lawsuits have been successful, the State has been unable to collect a significant portion of the court-ordered payments because the builders are bankrupt, judgment-proof, or have left the state. Therefore, we strongly recommend that you research a contractor's record before you begin any construction project.

Your Home Construction Rights

Chapter 17 of the Maine Attorney General's Consumer Law Guide explains your rights when constructing or repairing your home. Chapter 18 of the Consumer Law Guide is a model home construction contract that meets the statutory requirements for any home construction contract over \$3,000. Go to http://www.maine.gov/ag/consumer/law_guide_article.shtml?id=27938

As of September 1, 2006, this entire statement must be an addendum to any home construction contract for more than \$3,000, as required by 10 M.R.S.A. Chapter 219-A