

LEAD HAZARD REDUCTION GRANT PROGRAM (Federal Lead)
MAINE LEAD PAINT HAZARD ABATEMENT PROGRAM (State Lead)

CONSTRUCTION CONTRACT

Project Funding: State Lead (Z267) State Lead (N261) Federal Lead Healthy Homes DHHS

Escrow Agent (CAA): _____ CAA Rep Name: _____
_____ CAA Rep Title: _____
_____ CAA Rep Phone: _____
Project Type: Single-Family Multi-Family CAA Rep Email: _____

Applicant: _____	Co-Applicant: _____
Address: _____	Address: _____
Property: _____	Contractor: _____
	Address: _____
	Contract Amount: \$ _____
	Contract Date: _____

1. PARTIES

This *Construction Contract* (“Contract”) is between the above-named Applicant (“Owner”) and above-named Contractor in connection with the above-named Property (the “Project”). The above-named Escrow Agent (“CAA”), in its capacity as authorized program agent of MaineHousing, executes the *Construction Contract* for the limited and sole purposes of (i) acknowledging the existence of the Contract, (ii) recognizing that it is granted certain rights under this Contract as Escrow Agent and in the event the CAA is also the Consultant, as defined herein, in connection with the Project, and (iii) acknowledging the execution of the Contract by Contractor and Owner. Owner and Contractor (collectively, the “Parties”) hereby agree as follows:

2. PROGRAM

The Owner has been selected to receive financial assistance under the MaineHousing Lead Hazard Reduction Grant Program (“Federal Lead” Program) and/or Maine Lead Paint Hazard Abatement Program (“State Lead” Program), collectively referred to as the “Lead Program,” to remediate lead-based paint hazards in the Owner’s home/apartment(s), and as a result, the Owner and the Contractor are entering into this Contract to complete lead remediation at the above address (the “Project”).

3. WORK

Contractor shall complete the work described in, and in accordance with, the following documents (the “Contract Documents”), which are incorporated herein by reference (the “Work”): (1) *Lead Contractor Standards and Conditions*, a copy of which is provided to the Owner and Contractor; and (2) *Lead Design Plan Specifications* prepared for the Project by a certified lead hazard design consultant (“Consultant”) (see Exhibit C attached).

4. WORK COMMENCEMENT/COMPLETION

- a. Interior Start Date: Contractor shall commence the portion of the Work involving interior portions of the Project on _____
- b. Interior End Date: Contractor shall complete the portion of the Work involving interior portions of the Project on _____
- c. Exterior Start Date: Contractor shall commence the portion of the Work involving exterior portions of the Project on _____
- d. Exterior End Date: Contractor shall complete the portion of the Work involving exterior portions of the Project on _____

5. COSTS

In consideration for completion of the Work and in accordance with the Lead Design Plan Specifications attached as Exhibit C, the CAA will pay Contractor up to the "Contract Total" set forth below for Work completed to the Owner's satisfaction:

PROJECT TOTAL	\$	\$	\$
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1. Radon remediation costs are \$1,200.00 max for single family homes and \$500.00 max per unit for multi-family/multi-unit buildings. Radon remediation is available to applicable projects funded with federal lead.

6. PAYMENTS

The Contractor and the Owner hereby acknowledge that, because the Owner is the recipient of Program funds due the Contractor under this Contract, funds shall be paid to the Contractor by MaineHousing through the CAA within 30 days of the CAA's receipt of all invoice and supporting materials received by the CAA from the Contractor. Payments the CAA issues to the Contractor depends on the size of the project. Advancing federal funds to Contractors is prohibited. Contractor should request payment for work completed and submit their request to the CAA with signed authorization from the Owner. Contractor's request for payment must include documentation that describes the scope and nature of the work for which the contractor is requesting payment. The CAA shall act as the "Escrow Agent". Contractor and Owner agree to comply with the terms of a Construction Escrow Agreement among the Escrow Agent, the Contractor and Owner.

If owner does not receive financing to cover the cost of the Contractor's bid, this Contract is null and void.

- a. No monies will be disbursed up front in advance of the work. A sum of ten percent of the total Contract amount shall be withheld by the CAA until completion and approval of all work.
- b. Prior to issuing payment to the Contractor, the *Contractor Payment Request* form must be completed and approved/signed by the Contractor and the Owner. CAA must obtain a *Certificate and Release of Liens* for each payment being requested by the Contractor, prior to issuing payment.
- c. CAA must issue payment for work performed within thirty (30) calendar days of receipt of the contractor's invoice. This requirement applies to any and all work performed under the Program(s). Upon receipt of the Contractor's invoice, the corresponding Contractor Payment Request forms and Release of Liens, CAA will perform required inspections of the Contractor's work within this thirty day time period.
- d. The CAA shall act as the "Escrow Agent" and will hold the funds for the performance of this Contract.
- e. Contractor and Owner agree to comply with the terms of a *Construction Escrow Agreement* among the Escrow Agent, the Contractor and Owner, including:
 - i. *Certificate of Final Inspection* and *Final Payment Acknowledgment* (see Appendix Q) executed by the Owner and the appropriate Lead Inspector, as determined by the Escrow Agent;
 - ii. *Certificate and Release of Liens* (see Appendix I-B) executed by Contractor; and
 - iii. And any further documentation as may be required by the CAA under the *Lead Program Guidance and Procedures* (Lead Guide).

7. HAZARDOUS WASTE EXPENSES

Hazardous waste expenses that are incurred, including waste disposal costs included in the Work performed for the Project shall be billed at cost. In order to receive payment for hazardous waste expenses, Contractor must submit a copy of the invoice from the hazardous waste transportation and disposal company that includes the company's name, address, phone number, and cost of transportation and disposal. Failure to provide such an invoice may result in nonpayment.

8. ACCESS TO WORK; MAINTENANCE OF RECORDS

The Owner, the CAA and/or MaineHousing shall have the right to inspect the Project, including, without limitation all Work done and all materials, supplies, equipment and fixtures furnished, installed or stored in, on or about the Project premises, and all books, subcontracts, and records of Contractor, at all reasonable times, which inspections the Owner acknowledges are for the sole benefit of MaineHousing. *Note: Entry into an active abatement area is strictly prohibited by any person(s) unlicensed to do so.*

9. FAILURE TO PERFORM

Failure by Contractor to perform any Work under this Contract for a period of two (2) consecutive working days at any time after commencement of the Work or failure by Contractor to complete the portion of the Work involving interior portions of the Project by the Interior End Date, without written consent of Owner, shall constitute a breach of the Contract, and Owner may, by written notice, terminate the Contract, 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 Owner approval.

10. LIENS

The final payment due under the Contract shall not become due until the Contractor, delivers to the Owner a complete release of all liens arising out of the Contract and receipts in full; in lieu thereof and, if required in either case, an affidavit that, so far as he/she has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed. The Contractor may, however, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, for indemnification against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and attorney's fees.

11. PERMITS AND FEES

- a. 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.
- b. Permits, fees and licenses necessary for completion of the Work shall be procured and paid for by the Contractor. The Contractor shall give all notices and comply with all laws, ordinances, statutes and regulations bearing on the Work. The Contractor shall provide copies of all Work related permits and licenses to the Owner and CAA.

12. INDEMNITY

- a. The Contractor shall indemnify and hold harmless CAA, its agents and employees, MaineHousing, its agents and employees; the Owner, the Owner's agents and employees, and the Consultant working on the Project from and against all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, losses or expense (a) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- b. In any and all claims against the Owner, the Owner's agents or employees, or the Consultant working on the Project, CAA, its agents or employees, by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable

by or for the Contractor or any subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

13. INSURANCE

- a. Commercial General Liability Insurance. The Contractor shall procure and maintain during the life of the Contract, at its own cost, and show evidence to the Owner and CAA of Commercial General Liability Insurance, including special broad form property damage coverage, to protect it from claims and damages which may arise from operations under the Contract, whether such operations shall be performed by Contractor or by anyone directly or indirectly employed by it in the types and minimum amounts set forth below:

Description	Coverage	Each Occurrence
Commercial General Liability		\$1,000,000
Lead-Based Paint Liability		\$1,000,000
Owners & Contractor's Protective*		\$1,000,000
Pollution Occurrence Insurance		\$1,000,000
Property Damage	Vehicle Liability, including owned, hired, or non-owned	\$1,000,000
Employer's Liability	B.I./Death	\$1,000,000

*In the event the Contractor should employ subcontractors.

- b. Worker's Compensation Insurance. Contractor shall procure and maintain, at its own expense, and show evidence to the Owner and CAA of Worker's Compensation coverage, as well as Employer's Liability Coverage, for their employees, including employees engaged in hazardous work. All such policies which are in any way related to the Work and which are secured and maintained by the Contractor shall include clauses requiring that each underwriter shall waive all its right of recovery under subrogation or otherwise against the Owner.
- c. Deductible Amount. The Contractor will reimburse the Owner and hold the Owner harmless for the cost of any losses for which it is responsible and to which a deductible amount may apply. The deductible amount in any such policy may not exceed Twenty Five Hundred Dollars (\$2,500) without the written consent of the Owner and either MaineHousing or CAA.
- d. Certificate of Insurance. The Contractor will provide Owner with either certificates of insurance or certified copies of the applicable policies, showing that it has complied with these provisions, and such certificates shall provide that thirty (30) days' written notice of non-renewal, material modification, or cancellation must be given to the Owner and MaineHousing or its duly authorized agent prior to the effective date of such non-renewal, material modification, or cancellation.
- e. Owner as Additional Insured. The Owner shall be named as an additional insured in all such policies.
- f. Subcontractors. All subcontractors shall provide the insurance coverage described below:

Description	Coverage	Each Occurrence
Commercial General Liability		\$500,000
Property Damage		\$500,000
Vehicle Liability, including owned, hired, or non-owned	B.I./Death	\$1,000,000
Worker's Compensation		Maine statutory limits

14. CLEANING UP

The Contractor shall at all times keep the Project premises free from the accumulation of waste materials or rubbish; and, at the completion of the Work, Contractor shall remove all rubbish from and about the Project and all tools, scaffolding and surplus materials and shall leave the Project "Broom Clean". In case of failure to comply by the Contractor, the Owner may perform the clean-up and deduct the cost from any monies due the Contractor.

15. RELOCATION OF TENANTS

The CAA shall be responsible for the relocation of occupants during construction activities, including, but not limited to the provision of temporary living accommodations in accordance with the applicable relocation requirements contained in the Lead Guide. In the event that temporary housing becomes unavailable, CAA shall provide a minimum 48 hour notice prior to the Work Start Date to the Contractor, and Owner and Contractor shall establish a new Project Start Date.

16. COOPERATION WITH CONTRACTOR

The Owner shall cooperate with Contractor to facilitate performance of the Work, including the reasonable movement of household furnishings away from the Work area. Owner shall permit Contractor to make reasonable use of existing utilities for the performance of the Work and such use shall be at the expense of the Owner. Owner shall be responsible for obtaining permission from abutting property owners to move work people and materials onto abutting properties for the purposes of completing the Work. Owner shall also ensure that no other contractor will interfere with Contractor's work. If the Owner or an unauthorized general contractor breaches Contractor's containment or otherwise causes lead contamination of an area already cleaned by the Contractor, the re-testing and re-cleaning of the contaminated areas shall be at the expense of the Owner. Furthermore, any duly authorized agent of MaineHousing shall not be obligated to release any funds to the Owner until such time as the Owner has re-cleaned and re-tested the areas that have been re-contaminated by the Owner or the Owner's general contractor.

17. ASSIGNMENT

Contractor shall not assign this Contract nor delegate its duties hereunder without the written consent of the Owner and MaineHousing.

18. PROJECT MONITORING

Contractor and subcontractors will be monitored by the Program CAA or MaineHousing. The CAA, Consultant or MaineHousing has the authority to monitor the Work and to ensure that the project is being performed in accordance with this Contract and the *Lead Design Plan Specifications* attached as Exhibit C. Consultant has the authority to direct Contractor to remedy any unsafe or illegal work practice and to ensure that the lead-based paint hazard control process is being performed in accordance with the Occupational Health and Safety Administration Lead in Construction Standards (29 CFR 1926.62), and in accordance with applicable United States Department of Housing and Urban Development guidelines and Maine Department of Human Services regulations. In the event of a dispute between Program CAA and Contractor, MaineHousing shall have the authority to determine the dispute and Consultant's decision shall be final. Both the Contractor and the Program CAA should describe the dispute in their daily logs and inform MaineHousing of the decision.

19. WARRANTY

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new, fit for the purposes for which they are intended and of merchantable quality, unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage of defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

20. RELEASE AND HOLD HARMLESS

Owner 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 and 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.

21. COMPLIANCE

- a. The Contractor and all sub-contractors will comply in all respects with all applicable federal, state and local laws and regulation, including, without limitation, those relating to “hazardous materials”, as defined herein.
- b. The term “hazardous materials” shall mean any substance, material, or waste which is or becomes regulated by any governmental authority, including, but not limited to: (i) petroleum; (ii) friable or non-friable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a “hazardous substance”, pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a “hazardous waste”, pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; (vi) those substances, materials or wastes defined as a “hazardous substance”, pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments or replacements to that statute or any other similar statute, rule, regulation or ordinance now or hereafter in effect; or (vii) any “hazardous waste”, “hazardous substance” or “chemical substance or mixture” or similarly regulated substances or material as such phrases are defined in or regulated pursuant to any applicable state or local law, regulation or ordinance governing the generation, storage, discharge, transportation or disposal of the same.
- c. The Contractor, at its own expense, will promptly take all actions which may be necessary to abate, remove, clean up, and otherwise cure any violation of environmental laws caused by any hazardous materials used, generated, released, discharged, stored, or disposed of in connection with the Project and which were either brought onto the Project site or employed by the Contractor in connection with the Project. The Contractor shall not be responsible for hazardous materials present on the site or in the building at the time of the commencement of the Project, unless the Contract Documents impose such an obligation upon Contractor.
- d. Contractor will defend, indemnify and hold the Owner, the CAA, and MaineHousing harmless from any cost, expense, claims or liability resulting from violations of any environmental laws hereunder by Contractor or any subcontractor.

22. CHANGES IN SCOPE OF WORK

Neither the Owner nor the Contractor shall make any changes in the plans and specifications developed by the Consultant, or changes by altering or adding to the Work contemplated, or orders for extra work which will result in a net construction cost increase, or will change the design concept, or will result in a construction cost decrease of more than 2% of the Contract amount without the prior written approval of MaineHousing.

23. 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** _____

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

Notwithstanding any reference to MaineHousing and/or the CAA contained herein, Owner and Contractor recognize and acknowledge that MaineHousing, its agents and employees are not parties to this Contract. Contractor and Owner shall have no claim against MaineHousing or any person acting on its behalf for any action taken pursuant to this Contract.

It is further understood between the parties hereto that Owner has agreed to the selection of all contractors, subcontractors, material men, as well as all others furnishing services or materials to the Project and MaineHousing has, and shall have, no responsibility whatsoever for them or for the quality of their materials or workmanship. MaineHousing's sole function is that of program coordinator and to distribute Lead Program Grant funds in accordance with Program guidelines as may be promulgated by MaineHousing. Owner shall have no right to rely on any procedures required by MaineHousing, because such procedures are for the protection of MaineHousing.

Owner and Contractor agree, both jointly and severally, to indemnify and hold harmless MaineHousing its agents and employees from and against any and all liability, suits, actions, and claims for property damage and/or personal injury (including death) arising directly or indirectly from the execution of the Work or otherwise under this Contract.

25. COMPLETE AGREEMENT

This Contract represents the entire and integrated agreement between Owner and Contractor. No changes, modifications, nor amendments in the terms and conditions of this Contract shall be effective, unless reduced to writing, signed by duly authorized representatives of Owner and Contractor, and approved by MaineHousing.

26. GOVERNING LAW; GENDER

This Contract shall be governed by the laws of the State of Maine. Any noun or pronoun, when used herein, shall mean the singular or plural and the masculine or feminine, as the context requires.

27. MAINE ATTORNEY GENERAL ADVISORY

Owners 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/housing/home_construction.shtml or contact the Attorney General's Office by mail or phone at: 6 State House Station, Augusta, ME 04333 (207) 626-8800 / TTY # 711. By signing below, Owner acknowledges he/she has read the attached Maine Attorney General Home Construction warning Addendum.

IN WITNESS WHEREOF, the Owner, Contractor and CAA hereto have caused this Contract to be duly executed on the Contract Date written above.

OWNERS

Signature of Owner

Date

Signature of Co-Owner

Date

CONTRACTOR

Signature of Contractor Representative

Date

Contractor Representative Name

CAA

Signature of CAA Representative

Date

CAA 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/index.shtml>

Always Check Contractor 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.

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 Contractor 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/housing/home_construction.shtml
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. CBS Enterprises (Kimberly Mark Smith and David J. Blais), Default Judgment in CBS Enterprises, 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.* The Androscoggin County District Attorney has obtained a theft conviction against home contractor *Harold Soper. State of Maine v. Harold Soper*. Even when our law suits have been successful, we have been unable to collect a significant portion of the judgments because the builders are bankrupt, judgment proof, or have left the state. 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.