



# Los Alamos County Home Renewal Program Construction Contract



This Construction Contract ("Contract") is made and entered into by and between \_\_\_\_\_ ("Owner") and \_\_\_\_\_ ("Contractor").

## RECITALS

\_\_\_\_\_ is a recipient of Home Renewal Program ("HRP") funds from Los Alamos County for the rehabilitation of the Owner's unit ("Unit") located at: \_\_\_\_\_

The purposes of the HRP program are to make energy conservation improvements which reduce the amount of gas and electricity used in the Unit; to make emergency repair improvements which remove a substandard condition which poses an immediate threat to the Unit's occupants; and to make general repair improvements which bring a Unit, or part of the Unit up to County Code, and/or make accessibility improvements that allow Seniors to safely remain in their Units and/or repair or replace exterior siding and stucco.

This Agreement is intended to comply with and fulfill the purposes of the Home Renewal Program.

Execution of this Agreement by the Contractor is a representation that the Contractor has visited the Owner's Unit, become familiar with local conditions under which the "Work" is performed and correlated personal observations with requirements of the Scope of Work and Contract Documents.

## IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

### ARTICLE 1. DEFINITIONS

A. **Contract Documents.** The Contract Documents consist of this Contract, including the Scope of Work in Exhibit 1, the HRP Housing Rehabilitation Standards and the NAHB Residential Construction Performance Guidelines, Fifth Edition, which are incorporated into these Contract Documents by reference and are fully a part of this Contract, and modifications issued after execution of this Contract.

### B. Modification.

(1) A written amendment to this Contract signed by both parties after obtaining the written approval of the Los Alamos Housing Partnership, Inc. ("LAHP")

(2) A written Change Order prepared by Los Alamos Housing Partnership, Inc. ("LAHP") and signed by the Owner and Contractor prior to construction. Change Orders shall not allow for an increase in the amount of this Agreement unless agreed to in writing by the Owner and LAHP.

C. **"Work".** The term "Work" means the construction and services required by the Contract Documents and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

D. **“Substantial Completion”** of Unit improvements shall occur when all required inspections by Los Alamos County Building Official and New Mexico Construction Industries Commission have passed and the Owner can utilize the Unit for its intended use, subject only to completion of minor punch-list items by the Contractor. For purposes of this Contract, minor punch list means ten (10) items or less.

ARTICLE 2. SCOPE OF “WORK”

The Contractor shall perform all “Work” on Owner’s Unit as provided in the Scope of Work included as Exhibit “1” and attached hereto and incorporated herein by reference.

ARTICLE 3. COMPENSATION AND METHOD OF PAYMENT

- A. The Owner shall pay the Contractor a Contract Sum not to exceed \$ \_\_\_\_\_, inclusive of all New Mexico gross receipts taxes, and as detailed in the Schedule of Values included as Exhibit 2. The Schedule of Values shall allocate the Contract Sum among the various portions of the Work. Payment will be made upon completion of “Work”, as determined by the LAHP. Contractor shall invoice for payment for “Work” on forms as determined by the LAHP.
- B. Based upon draw requests submitted to LAHP by the Contractor, LAHP may make progress payments to the Contractor. The period covered by each draw request shall be one calendar month. LAHP shall make payments within fifteen (15) business days after receipt and approval of all information required for the draw request, which shall include but may not be limited to the following:
  - (1) Inspection and Acceptance of “Work” by the LAHP.
  - (2) Inspections and Acceptance of “Work” by all public authorities having jurisdiction.
  - (3) Acceptance of “Work” by the Owner.
  - (4) Release of Liens for all applicable persons or entities on form provided by LAHP, to be signed by the Contractor.
  - (5) LAHP-provided draw request form signed by the Contractor and approved by LAHP in its sole discretion, itemizing the percentage completion of the Work and the associated costs in the amounts set forth in the Schedule of Values.
- C. When the Work reaches Substantial Completion, the Owner and LAHP shall inspect the Work and mutually agree on a punch list of items remaining to be completed. Contractor shall then submit a final draw request which sets forth all amounts due and remaining unpaid, minus one hundred fifty percent (150%) of the value of the punch list items remaining to be completed, in the sole discretion of the LAHP. Within twenty (20) business days after receipt and approval of all information required for the final draw request, LAHP shall make payment. Punch list items shall be completed by Contractor within fifteen (15) business days after submittal of the final draw request. Within five business (5) days of Contractor’s completion and Owner and LAHP acceptance of the punch list items, Owner shall pay Contractor the remaining amount due under the Contract and issue a Notice of Completion to the Contractor.

ARTICLE 4. TERM

The “Work” to be performed under this Agreement shall commence on \_\_\_\_\_ and continue until Contractor reaches Substantial Completion by \_\_\_\_\_, unless sooner terminated by the mutual agreement of the parties or by operation of law.

#### ARTICLE 5. DELAY DAMAGES

- A. If the Contractor fails to complete the "Work" within the term stated under Article 4, delay damages shall be assessed against the Contractor at the rate of \$100 per calendar day of delay. Payment of damages for delay does not preclude recovery of actual damages for any other breach of this Agreement. Delay damages shall be withheld from final payment due to the Contractor.
- B. No damages shall accrue against the Contractor if any delay is due to unforeseeable causes beyond the Contractor's control and without his fault or negligence. Such causes include acts of God, fire, flood, riots, labor disputes, unusual delay in deliveries, unusually severe weather conditions and substantial defaults by subcontractors. The term of this Agreement shall be extended by Change Order by virtue of any delay due to said causes for such period of time the Contractor's "Work" is suspended by said causes.

#### ARTICLE 6. RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Contract and agrees to cooperate with the Owner and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner. Contractor further agrees to make best efforts to furnish at all times an adequate supply of workers, materials and equipment and to perform the "Work" in the best way and most expeditious and economical manner.

#### ARTICLE 7. CHANGE ORDER

- A. The Owner or the Contractor may request Change Orders. All changes must be requested in writing to the LAHP and approved in writing by the LAHP prior to beginning the work contemplated by the Change Order. Change Orders shall not allow for an increase in the amount of this Contract unless approved in writing by the homeowner and LAHP.
- B. All Change Order requests shall contain a detailed description of the proposed change in "Work" and an estimate of any additional time and cost required to complete the "Work", on the format prescribed by the LAHP.

#### ARTICLE 8. INSPECTIONS AND CODE COMPLIANCE

- A. All materials and workmanship shall be subject to tests, approvals and inspections by all appropriate entities as mandated by laws, ordinances, rules, regulations or order of public authorities having jurisdiction. Such tests, inspections and approvals shall be made at an appropriate time.
- B. All materials and workmanship shall be subject to inspections by the homeowner and LAHP. The Contractor shall provide prompt written notification to the homeowner and LAHP when "Work" is completed. Interim and final inspections shall be made by the LAHP and Owner when "Work" is completed and payment is requested.

#### ARTICLE 9. RELEASE OF LIENS

The Contractor shall obtain all release of liens from Subcontractors, laborers, suppliers or any other persons or entities performing the "Work" or furnishing materials and equipment and provide same to LAHP as part of a payment request.

## ARTICLE 10. COMPLIANCE WITH COUNTY CODES

The Contractor shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by "Work" performed under this Agreement and shall comply with all provisions of Los Alamos County Code Chapter 10 – Building and Building Regulations, Chapter 18 – Environment, particularly Article II – Nuisances and Article III – Noise; Chapter 22 – Fire Prevention and Protection; and Chapter 34 – Streets, Sidewalks and Other Public Places. If the Contractor violates Los Alamos Codes during the performance of the project and does not correct the violations, the Owner has the right to terminate the Contract.

## ARTICLE 11. CONTRACTOR'S WARRANTY

- A. The Contractor warrants that materials and equipment furnished under this Agreement shall be of good quality and new unless otherwise required or permitted in writing.
- B. The Contractor warrants that the "Work" shall be free from defects and shall be performed in a workmanship manner according to generally accepted construction methods in New Mexico and shall comply with the HRP Housing Rehabilitation Standards and the NAHB Residential Performance Guidelines, 5th Edition. "Work" not conforming to the requirements of this Contract and the Contract Documents, including substitutions not properly approved and authorized, shall be considered defective. The LAHP shall notify the Contractor in writing of any deficiencies in workmanship; or materials.
- C. The Contractor's warranty shall not extend to modifications or changes caused by the Owner or other third parties acting independently of the Contractor's instruction.
- D. The Contractor hereby assigns all assignable manufacturer's warranties to the Owner.
- E. All of Contractor's warranties shall be for a minimum period of 365 calendar days from the date of the Notice of Final Completion provided to the Contractor by LAHP. The Contractor shall respond and correct all deficiencies within twenty {20} days from receipt of the written notice, whether observed before or after completion of the "Work". The Contractor shall bear all costs of correcting such rejected "Work" or materials.
- F. Nothing contained in this Article 11 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under this Agreement. The establishment of a time period relates only to the specific obligation of the Contractor to correct the "Work" and has no relationship to the time within which the obligation to comply with this Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability.
- G. The Contractor shall provide a copy of his/her Warranty document as part of the response to the request for bids and shall review the Warranty document again with the Owner at the Pre-Construction meeting, prior to signing the Contract.

## ARTICLE 12. BREACH BY CONTRACTOR

12.1 In the event that Contractor commits a breach of any provision of this Contract, including without limitation, failure to perform all the Work in accordance with the Contract Documents or failure to promptly correct work which is not in accordance with the Contract Documents, following demand therefore by Owner, Owner may elect, in Owner's discretion, by giving written notice to Contractor, to (i) order Contractor to stop construction until such violation is cured, or (ii) terminate Contractor's services under this Contract, take possession of the Unit and all improvements constructed thereon, evict Contractor and any agents, servants, subcontractors, or employees of Contractor from the Unit, and complete improvements by whatever method Owner and LAHP deem expedient. This Section is subject to Contractor's right to cure any violation within thirty (30) days, or if the violation is such that it cannot reasonably be cured within thirty (30) days, that Contractor has taken substantial steps within the thirty (30) day period to cure the violation.

12.2 Contractor shall be responsible to Owner for acts and omissions of Contractor's employees and subcontractors, and their respective agents and employees, and other persons performing portions of the Work under a contract with Contractor.

## ARTICLE 13. TERMINATION

The Owner may terminate this Agreement if the Contractor:

- (1) Persistently or repeatedly refuses or fails to supply enough skilled workers or proper materials;
- (2) Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors.
- (3) Persistently disregards laws, ordinances, rules, regulations, orders of any public authority having jurisdiction; or
- (4) Otherwise is guilty of breach of this Agreement, as set forth in Article 12..

## ARTICLE 14. INDEMNIFICATION AND INSURANCE

A. The Contractor shall indemnify and hold harmless the LAHP and all of its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the "Work", provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom, but only to the extent caused in whole or in part by the negligent acts or omissions of the Contractor, subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

B. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Unit is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under this Agreement and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them; or by anyone for whose acts any of them may be liable.

- (1) Claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the "Work" to be performed;
- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

- (3) Claims for damages because of bodily injury; sickness or disease, or death or any person other than the Contractor's employees;
  - (4) Claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor; or (b) by another person.
  - (5) Claims for damages; other than to the "Work" itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
  - (6) Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle, and
  - (7) Claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph A of this section;
- C. Liability insurance coverage shall be in the amount of \$300,000 for bodily injury, each person; \$500,000 bodily injury, each occurrence; \$100,000 property damage, each occurrence; and \$2,000 medical payments, each person.
  - D. Certificates of Insurance shall be provided to the LAHP prior to commencement of the "Work" and LAHP and Los Alamos County shall be named as Additional Insured on these insurance policies.
  - E. Contractor shall procure from all of its subcontractors, contracts to indemnify Owner to the same extent as provided by Contractor in this Section.

#### ARTICLE 15. SUBCONTRACTORS

- A. The Contractor shall not subcontract any portion of the "Work" without the prior written approval of the LAHP.
- B. The Contractor shall not contract with a proposed person or entity whose name appears on the federal list of Debarred, Suspended or Ineligible Contractors.
- C. By written agreement, the Contractor shall require each approved Subcontractor, to the extent of the "Work" to be performed by the Subcontractor, to be bound by the terms of this Agreement and to assume toward the Contractor all obligations and responsibilities which the Contractor, by this Contract, assumes toward the Owner.

#### ARTICLE 16. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the LAHP.

#### ARTICLE 17. AGREEMENT

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the LAHP and Contractor, (2) between the LAHP and a Subcontractor, or (3) between any persons or entities other than the Owner and Contractor. The Owner shall be entitled to performance and enforcement of obligations under the Agreement.

## ARTICLE 18. SAFETY OF PERSONS AND PROPERTY

Contractor shall comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property for their protection from damage, injury or loss. Contractor shall erect and maintain, as required by existing conditions in the performance of this Contract, reasonable safeguards for safety and protection, including without limitation, danger signs and other warnings against hazards including lead based paint, promulgating safety regulations and notifying owners and users of adjacent properties and utilities. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, any of its subcontractors, or by anyone for whose acts they may be liable, except damage or loss attributable to acts or omissions of Owner and not attributable to the fault or negligence of Contractor.

Contractor shall take precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

18.1 Its employees in the Unit and other persons who may be affected thereby;

18.2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Contractor or Contractor's subcontractors;

18.3 Other assets at the Unit or adjacent thereto, including, without limitation, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction;

## ARTICLE 19. MISCELLANEOUS PROVISIONS

- A. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the "Work" under a contract with the Contractor.
- B. The Contractor shall not be relieved of obligations to perform the "Work" in accordance with the Contract Documents either by activities of the LAHP or by tests, inspections, or approvals required or performed by persons other than the Contractor.
- C. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, transportation, and other services necessary for proper execution and completion of the "Work", whether temporary or permanent and whether or not incorporated or to be incorporated in the "Work".
- D. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Agreement. The Contractor shall not permit employment of unfit persons not skilled in tasks assigned to them.
- E. The Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the "Work" which are customarily secured after execution of the Agreement and which are legally required when bids are received or negotiations concluded.
- F. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and orders of all public authorities having jurisdiction bearing on performance of the "Work".

## ARTICLE 20. ARBITRATION

Any controversy or claim arising out of or related to the Agreement or the breach thereof, shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

ARTICLE 21. WAIVER

No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms of this Agreement. The waiver by any party of a breach by the other party of any term, covenant, or condition shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition.

ARTICLE 22. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties hereto entered into this Contract as of the date and year first written above.

**OWNER:**

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

By: \_\_\_\_\_

**CONTRACTOR:**

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

By: \_\_\_\_\_

LICENSE NUMBER \_\_\_\_\_



**ACKNOWLEDGEMENT**

State of New Mexico)

) ss.

County of Los Alamos)

The foregoing instrument was hereby acknowledged before me this \_\_\_\_\_day of  
\_\_\_\_\_, 2016 by, Qualifying Grantee.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

**ACKNOWLEDGEMENT**

State of New Mexico)

) ss.

County of Los Alamos)

The foregoing instrument was hereby acknowledged before me this \_\_\_\_\_day of  
\_\_\_\_\_, 2016 by, Qualifying Grantee.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_