2015

Robert Tavares

Secured Investment Corp

5/21/2015



REHAB CONSTRUCTION LENDING HANDBOOK- Sample Contracts

**Suggested Items for Inclusion in GC Contracts**

Suggested Items Required for Inclusion in Borrowers Contracts with General Contractor’s

For better protection of the lender and the borrower, we would recommend that these clauses be inserted into all contracts between the borrower and the general contractor.

1. Progress Payment Submittal Requirements (Attachment to Agreement)
2. Change Order / Extra Work / Extended Schedule Notification to Lender
3. Contractor Performance/Replacement Clause – Failure To Perform
4. Lender Indemnification and Hold Harmless Agreement
5. Lenders Option to Verify Proposed Construction Costs
6. Additional Insured Requirements Naming Lender
7. Project Schedule (Attachment to Agreement)
8. Liquidated Damage / Acceleration Clause
9. Lenders Right to Enter Inspect Property
10. Lien Release Policy Clause

*Used by permission. Copyright © 2012 Construction Inspection Specialists. All rights reserved. Compliance with copyright restrictions requires that no part of this document may be reproduced in any form or by any means without the publisher’s prior written permission, except for brief quotations in critical reviews or articles.*

**Sample General Contractor Contract**

**IMPORTANT NOTICE LEGAL DISCLAIMER**

This sample Rehabilitation Construction Agreement is being provided for informational purposes only and should not be relied on as legal advice. Nothing herein constitutes the establishment of an attorney-client relationship between you and any attorney involved in the drafting of material included in this sample Rehabilitation Construction Agreement. This sample Rehabilitation Construction Agreement cannot and does not address the unique facts and circumstances of your specific situation and should not be relied on for your particular transaction. We make no claims, promises, or guarantees about the accuracy, completeness, or adequacy of any information contained in these sample contracts. Therefore, you should not use This sample Rehabilitation Construction Agreement without first obtaining the advice of a competent attorney. Finally, nothing contained in This sample Rehabilitation Construction Agreement should be construed to constitute a recommendation or endorsement of any organization (including Secured Investment Corp or Cogo Capital), product, service, law firm or attorney.

**GENERAL RELEASE AND WAIVER**

By utilizing this sample Rehabilitation Construction Agreement, you: (i) assume full responsibility for any loss, damage, or liability resulting from the use of This sample Rehabilitation Construction Agreement; and (ii) release the authors, Secured Investment Corp and Cogo Capital from any and all known or unknown claims, demands or causes of action that may arise, at any time, out of or relating to your use of this sample Rehabilitation Construction Agreement.

**REHABILITATION CONSTRUCTION AGREEMENT**

THIS REHABILITATION CONSTRUCTION AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (“Effective Date”), by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose address is ("Contractor”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Owner”). This Agreement is in a form approved by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Lender”).

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, Owner and Contractor agree as follows:

1. **Scope of Work; Property.**
   1. **Statement of Work.** Contractor agrees to construct and/or rehabilitate certain improvements described herein (“Improvements”) to that certain single family residence located on the Property (as defined below), for the Owner (the “Project”). Contractor will furnish and pay for all labor, equipment, tools, machinery, scaffolding, temporary utilities, consumable supplies, supervision, materials, and all taxes necessary to construct and complete the Project, in a workmanlike manner, the work described in the Construction Documents (as defined below) described in Section 1.5 (collectively, the “Work”), for the construction of the Improvements.

The Improvements shall (i) be constructed in substantial compliance with certain schematic drawings, if applicable (“Plans”); (ii) incorporate certain materials and equipment, and comply with certain procedures and requirements, if applicable (the “Specifications”); (iii) subject to Change Orders (as defined below) be completed for the Contract Price (as defined below); and (iv) subject to Force Majeure, be completed by the Completion Date as described in Section 1.2. Contractor shall perform the Work in compliance with the Construction Documents. Contractor agrees to perform all such modifications as are within the scope of the Work or reasonably necessary to complete the Work.

* 1. **Compliance with Applicable Laws.** Contractor shall fully comply (to the extent such compliance is within the applicable standards of care) with all applicable state, local, and federal statutes, ordinances, building codes, laws, rules, and regulations, the requirements of any governmental agency having jurisdiction, which apply to this Agreement and Contractor’s performance hereunder (collectively, the “Codes”) and permit reasonable inspection by any and all authorized inspectors.
  2. **Permits**. Contractor shall obtain and pay for all permits and licenses necessary for the completion and execution of the Work to be performed under this Agreement.
  3. **Notice to Proceed; Time of Performance.** Contractor shall not begin the Work until Contractor receives a written notice to proceed from the Owner, after which the Contractor shall begin the work within ten (10) calendar days of the date of said notice to proceed, and shall complete said work within \_\_\_\_\_\_\_\_\_\_\_\_ ( ) calendar days thereafter (“Completion Date”); *provided, however*, Owner acknowledges and agrees that the Work cannot begin until (i) Complete Plans and Specifications have been approved and initialed by both Owner and Contractor and (ii) Contractor has in its possession all appropriate building permits, licenses, and other necessary approvals for the commencement of the Work. The Contractor will proceed with the Work at such rate of progress to insure full completion before the Completion Date, it being expressly understood and agreed, by and between the Contractor and the Owner that the Completion Date described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work. Contractor acknowledges and agrees that time is of the essence with respect to completion of the Work set forth herein.

Subject to a Force Majeure and a mutually agreed upon extension of the Completion Date, if the Contractor fails to complete the Work on or before the Completion Date, the Contractor will be assessed a fine and be required to pay to the Owner an amount equal to and No/100 Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_) per day, as liquidated damages, for each day the Work is not substantially completed prior to the Completion Date. Contractor and Owner agree that, in the event the Work is not completed by the Completion Date, Owner will be damaged in an amount that is impossible to estimate and that the amount set forth above in this Section 1.2 is fair and reasonable in all respects. Contractor further acknowledges and agrees that the Owner shall have the right to retain out of any Draw (as defined below) all amounts described in this Section that Owner is entitled to.

* 1. **Property.** The Improvements will be constructed on that certain real property generally located at (*insert full address*) (the “Property”).
  2. **Construction Documents.** Contractor agrees to complete the Work in accordance with the Construction Documents, in accordance with the trade standards and practices for each trade used, and in accordance with all applicable requirements of the Codes. The intent of the Construction Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. Performance by Contractor shall be required to the extent consistent with the Construction Documents and reasonably inferable from them as being necessary to produce the indicated results. In addition to this Agreement, the “Construction Documents” consist of the following, which, together with written modifications made in the manner provided therein and issued subsequent to the execution of the Agreement, form the entire agreement between the parties:

**Exhibit A:** Contractor Bid

**Exhibit B:** Draw Schedule

**Exhibit C:** Project Schedule

**Exhibit D:** Plans, if any

**Exhibit E:** Specifications, if any

**Exhibit F:** Change Order Form

All of the above-referenced documents are incorporated into this Agreement by this reference with the same force and effect as if the same were set forth at length herein. If there is any conflict or discrepancy between the terms of the Construction Documents including, without limitation, the descriptions of the Work contained therein, or any conflict between the Construction Documents and applicable Codes, Contractor will provide Owner with notice of the conflict upon discovery. In the event of any conflict or discrepancy between various Construction Documents, the terms and provisions of the Agreement shall control over the remaining Construction Documents. In the event of any discrepancy between various Construction Documents, the dimensions contained in the Plans and Specifications shall take precedence over measurement by scale. A large scale drawing shall take precedence over the smaller. In any case of discrepancy, whether actual or suspected, between the figures, or the figures and the scale of the plans and specifications, the matter shall be submitted to the Owner within five (5) business days of discovery. The foregoing provisions include specification, typographical errors, and drawing notational errors where the intent is unclear. Should the Plans vary from the Specifications, then the Specifications shall govern.

The Plans and Specifications may be modified, limited or negated as the parties may subsequently agree in writing through Change Orders. It is specifically understood and agreed by the parties that Contractor is not responsible for and in no way endorses the accuracy or completeness of the Plans and Specifications to the extent they have been prepared by an independent architect, designer or other third party. The compliance of the Plans and Specifications with all applicable Codes, restrictive covenants or other conditions affecting the Property (including easements and zoning requirements) shall also be the Owner’s responsibility, unless such Plans and Specifications are provided by Contractor and not by an independent architect, designer or other third party. Unless otherwise specified, materials used by Contractor in construction of the Improvements shall be as prescribed in the Plans and Specifications. In the event specified materials are not reasonably available, or if the procurement of such item would cause undue delay in the progress of the Work, Contractor may substitute materials of comparable grade and quality. Owner acknowledges that these substitutions and/or changes may occur during construction and agrees that so long as the Improvements are substantially in compliance with the Plans and Specifications; acceptance of any such minor deviations will not be unreasonably withheld.

1. **Contract Price.** Owner agrees to pay Contractor the aggregate sum of and No/100 Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_) (the “Contract Price”) as consideration for the construction and completion of the Improvements and the performance of the Work, subject to adjustment for Change Orders, as more fully set forth herein.
2. **Draw Schedule.** Payments shall be made pursuant to Exhibit B attached to this Agreement. Contractor may use the initial payment for, among other things, initial construction or pre-construction expenses. Other than for the initial payment, Contractor shall present Owner with requests for the other payments (“Draws”) set forth in Exhibit B. Owner shall cause these payments to be made to Contractor within five (5) business days following the receipt of a request for a Draw. In the event of a payment delay, Contractor shall have the right to stop Work progress until payment is made and the Completion Date will be extended for each day of such delay. The final Draw (that portion of the Contract Price not paid by previous payments as well as any Change Orders) will be due and payable upon Substantial Completion (as defined below) of the Improvements. The existence of minor cosmetic repairs and adjustments may delay the payments due Contractor at that time.

Contractor agrees to accommodate the reasonable requests of the Lender. Owner acknowledges and agrees, however, that the loan documents that Contractor is asked to sign must be in a form reasonably acceptable to Contractor and that such documents will not alter the rights and obligations of the parties under this Agreement. Insofar as the relationship between Owner and Contractor is concerned, the terms and conditions of this Agreement shall not be superseded or modified by the Owner’s loan documentation unless the superseded or modified provision in this Agreement is identified, annotated and initialed by the parties.

1. **Access to Improvements During Construction for Owner and Owner’s Agents**. Contractor agrees that Owner and Owner’s agent (including the Lender), if any, may enter the Property and Improvements. Owner agrees that Owner and Owner’s agent (including the Lender), if any, must be accompanied by a Contractor representative. When Owner or Owner’s agent (including the Lender) chooses to enter the Property or the Improvements, and irrespective of Contractor’s presence on the Property or the Improvements and irrespective of the required permission required under this Section, OWNER AND OWNER’S AGENT AGREE TO RELEASE AND INDEMNIFY, DEFEND AND HOLD CONTRACTOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION (INCLUDING ATTORNEY’S FEES) ARISING IN FAVOR OF OWNER, OWNER’S FAMILY, GUESTS, OWNER’S AGENTS, OR OWNER’S LICENSEES AND INVITEES ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY OR IMPROVEMENTS IN ANY WAY OCCURRING OR INCIDENT TO THE CONDITION OF THE PROPERTY AND/OR THE IMPROVEMENTS. Owner also agrees to pay to Contractor the cost to repair all damages to the Improvements resulting from the entry on the Improvements of Owner and Owner’s Agent (including the Lender).

If during construction, Owner conducts periodic walk-through inspections, Owner agrees to timely apprise Contractor in writing if any aspect of construction has not been completed in substantial conformity with the Construction Documents. Failure by the Owner to reasonably object to the Work performed within any phase of construction (excluding a latent defect, if any) shall constitute an acceptance of that Work. Owner acknowledges and agrees, however, that it may be inappropriate and/or unreasonably expensive and time consuming to replace, re-fabricate or repaint a component that exhibits a minor defective condition. In such instances, Contractor, in its sole and absolute discretion, may (i) employ an alternate remedy to correct the deficiency in conformance with reasonable building practices, or (ii) conclude that the condition is within acceptable tolerances and take no corrective action.

1. **Substantial Completion; Occupancy.** The Improvements will be deemed to be substantially completed when the Work or designated portion thereof is sufficiently complete in accordance with the Construction Documents so the Owner can rent out the Property in compliance with the Codes (“Substantial Completion”). Upon Substantial Completion of the Improvements Owner shall make the final Draw payment to Contractor, subject to offset as provided herein.
2. **Inspection of Improvements; Orientation.** Prior to renting out or selling the Property, Owner must schedule an inspection with a Contractor representative. The inspection under this Section will not be conducted until the Work is Substantially Completed. Owner must physically participate in the walk-though inspection. During the walk-though inspection, Owner and Contractor’s representative will thoroughly inspect the Improvements and complete a detailed check-off list. If Owner occupies the Improvements prior to an inspection with a Contractor representative, Owner may be deemed to have waived its rights under this Agreement with respect to warranty service. During the inspection, Owner and Contractor’s representative will note all defects, other problems or complaints of which Owner is aware or discovers during the inspection. This is Owner’s one and only opportunity to identify and have corrected any minor or cosmetic defects in the Improvements. Only those problems reported during Owner’s walk-though meeting will be corrected or repaired by Contractor as soon as possible thereafter, therefore, Owner is instructed to thoroughly inspect the Improvements during this walk-through. Once the Improvements are in Owner’s possession, Owner will be responsible for its care.

Any professional inspection obtained by Owner must be conducted during the time period which is not more than five (5) days nor less than two (2) days prior to the inspection, by appointment arranged with a Contractor representative. All professional inspectors retained by Owner must provide to Contractor a copy of the entire inspection report prepared by the inspector, and all corrections requested by the Owner based upon the professional inspection must be included in the inspection list prepared by Contractor and Owner during the inspection, or the requested corrections will not become the obligation of Contractor to correct.

Contractor’s final Draw payment may be delayed by Owner’s claim of any deficiencies in the Work. Owner shall have no obligation to make the final payment to Contractor until all items identified by Owner during Owner’s inspection have been cured to the satisfaction of Owner.

1. **Change Orders.** No alterations, additions or deletions will be made in the Work, unless agreed to in writing by Owner and Contractor pursuant to a “Change Order” in the form attached as to this Agreement as Exhibit F. This Agreement shall apply to all Change Orders. Upon receiving, from Owner, a written request for a change, detailing the nature of the changes to be made, Contractor shall present Owner with a Change Order setting for the changes including any additional costs of construction, additional Contractor’s fee, and any extensions to the Completion Date. If Owner signs and returns the Change Order together with the payment required under the Change Order within three (3) days after receipt of the Change Order from Contractor, it will become a binding attachment to this Agreement. Failure of Owner to approve Contractor’s proposed Change Order or a failure of the Owner to make the payment required in the Change Order within (3) three days after receipt shall constitute a rejection of the proposal. Owner shall pay for all agreed upon Change Orders including the additional Contractor’s fee to Contractor at the same time that the Owner delivers the executed Change Order to Contractor; a failure of the Owner to pay the amount at the same time as set forth in the Change Order will invalidate the Change Order and the Change Order will be of no force or effect. Contractor has no obligation to stop work while Change Orders are being discussed or exchanged. Should concealed or previously unknown conditions be encountered which are at variance with the conditions contemplated by the Plans and Specifications, the Contract Price shall be equitably adjusted by a Change Order to accommodate the modified scope of Work. Notwithstanding the foregoing, Owner agrees to execute and pay for Change Orders prepared by Contractor for changes in the Work (including any necessary increases to the Contract Price) that may be necessary to: (i) comply with applicable Codes; (ii) provide structural integrity to the Improvements; (iii) route electrical, mechanical or other systems included in the Work; (iv) avoid or correct any conditions which might result in defects or other warranty claims; (v) correct or cure any omissions in the Construction Documents or any conditions not completely or correctly represented in the Construction Documents such as unusual site conditions, subsurface soil conditions, topography, hazardous substances or materials, underground tanks, dump sites or ground water
2. **Insurance.**  The Contractor shall purchase and maintain such insurance as will protect Contractor, Owner and Lender from claims set forth below which may arise out of or result from the Contractor's execution of the Work, whether such execution be by Contractor or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall provide, and maintain, during the duration of the Work, a policy of Workers’ Compensation and General Liability Insurance for the protection of Contractor’s employees, the Property and the Lender. The amount of Commercial General Liability Insurance required for the Project shall be a minimum of $500,000.00 or $1,000,000.00 per occurrence.

Certificates of Insurance acceptable to the Owner and Lender shall be delivered to the Owner and Lender prior to the commencement of the Work. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least fifteen (15) days prior written notice has been given to the Owner and Lender.

Owner and Lender shall be named as additional insured on all applicable insurance policies maintained under this Section 8, as evidenced by a Certificate of Additional Insurance delivered to the Owner and Lender prior to commencing the Work.

1. **Contractor’s Additional Obligations.** Contractor accepts responsibility for the performance of all duties reasonably necessary to complete the Work and agrees that:
   1. Contractor may subcontract all or any portion of the Work to other contractors; *provided however*, that Contractor assumes full responsibility for acts or omissions of a subcontractor and the subcontractor’s agents, employees, and assigns and shall make good any damage sustained by Owner for any performance failure by such subcontractors.
   2. In constructing the Improvements and completing the Work, Contractor may rely on the Construction Documents as being complete and correct in all respects. Contractor shall promptly notify Owner of all errors, conflicts, or inconsistencies discovered with respect to the Construction Documents. CONTRACTOR DOES NOT WARRANT OR GUARANTEE ANY OF THE CONSTRUCTION DOCUMENTS WHICH HAVE BEEN PREPARED BY ANY PARTY OTHER THAN CONTRACTOR. CONTRACTOR WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE REPRESENTATIONS, DOCUMENTS, PLANS, SPECIFICATIONS, OR DESIGNS MADE BY AN ARCHITECT, ENGINEER, SURVEYOR, OR DESIGNER OTHER THAN CONTRACTOR WITH RESPECT TO ANY OF THE CONSTRUCTION DOCUMENTS. All changes or corrections causing additional expense or delays shall be administered as a Change Order as outlined above. Any Construction Documents or any supplements to the Construction Documents prepared by Contractor shall be the property of Contractor and shall not be used by Owner except for construction provided by Contractor. Owner acknowledges that minor changes may occur in the Work and agrees that so long as the construction of the Improvements is substantially in compliance with the Construction Documents, such minor deviations will be accepted.
   3. Contractor shall pay all costs related to the Work, except for Change Orders as described above.
   4. Contractor shall use all new materials in connection with the Work that are of a quality suitable for the intended purpose, except as otherwise specified in this Agreement or the Construction Documents.
   5. Contractor shall deliver the Improvements to the Owner free of all liens, claims, security interests or encumbrances that might have arisen from the performance of the Work, except the lien and security interest created by this Agreement or given to the interim construction lender.
   6. Prior to the receipt of any Draw, except an initial Draw; Contractor shall furnish to the Owner full and unconditional releases from any claim or mechanic’s lien for that portion of the work for which payment had been made by Contractor or any subcontractor.
   7. Contractor shall perform the Work in accordance with all applicable Codes and shall conform to the industry standards.
2. **Lead Based Paint and Asbestos.** The Contractor shall not use or subcontract to a contractor that uses lead-based paint having more then 6/100 of 1% lead content by weight in the performance of this Agreement.

Contractors shall comply with the provisions of 29 CFR Part 1926(“OHSA”), governing the protection of workers disturbing lead painted surfaces. These provisions include, but are not limited to the following:(i) the contractor shall contact the inspector for the Owner and Lender before disturbing any surfaces painted with lead paint to document the content of lead on all painted surfaces to be disturbed; (ii) shall conduct air quality monitoring when appropriate for the type of activity todetermine the level of worker protection required by OHSA. If air quality monitoringresults exceed 30 ug/cu. For an 8-hour period, then worker blood testing and monitoring requirements provided in OHSA shall apply; (iii) shall provide personal protective equipment, including a respirator program, as isappropriate to the type of job as required by OHSA; (iv) shall provide proper containment of the work site and clean the work site not less than daily to contain lead dust; (v) shall make proper facilities available for worker hygiene when entering or exiting awork area; (vi) shall provide for appropriate signage indicating the presence of a lead hazard whenconducting work activities; (vii) shall ensure that specialized cleaning of containment areas is complete beforereoccupancy by the occupant of the Property. For activities that remove identified leadhazards, the Contractor shall ensure that specialized cleaning is adequate to meetclearance standards adopted by HUD and local or state Departments of Health.

The Contractor shall not use following methods to remove paint that is, or may be, lead-based paint:(i) open flame burning or torching; (ii) machine sanding or grinding without a high-efficiency particulate air (“HEPA”) localexhaust control; (iii) abrasive blasting or sandblasting without HEPA local exhaust control; (iv) heat guns operating above 1100 degrees Fahrenheit or charring the paint; (v) dry sanding or dry scraping, except dry scraping in conjunction with heat guns orwithin 1.0 ft. of electric outlets, or when treating defective paint spots totaling no morethan 2 sq. ft. in one interior room or space, or totaling no more than 20 sq. ft. on exterior surfaces; (vi) paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with the regulations of the Consumer Product SafetyCommission at 16 CFR 1500.3 and/or other hazardous chemical in accordance with theOccupational Safety and Health Administration regulations at 29 CFR 1910.1200 or1926.59, as applicable to the work.

The contractor shall comply any Codes governing environmental hazards and their remediation.

1. **Clean Up**. Contractor shall regularly remove debris and waste materials from the Property resulting from the Work. Prior to discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor shall remove from the Property all construction equipment, tools, surplus materials, waste materials and debris.
2. **Subcontractors.** Work not performed by Contractor with its own forces shall be performed by subcontractors retained by Contractor. Contractor agrees to bind every subcontractor and material supplier (and require every subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Construction Documents as they apply to the subcontractor’s and material supplier’s portions of the Work and as are reasonably necessary for the subcontractor and material supplier to execute its portion of the Work. Contractor agrees that it shall pay all its subcontractors on time and obtain lien releases from all subcontractors from time to time as required for funding by Lenders or investors and upon completion of a subcontractor’s work or delivery of supplies or materials.
3. **Guaranty**. The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year from the date of final inspection. The Contractor warrants and guarantees for a period of one (1) year from the date of final inspection of the Work that all Work and Improvements are free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects. The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the Owner may, after giving thirty (30) days’ notice to the Contractor, do so and charge the Contractor the cost thereby incurred. The Owner shall hold the Lender harmless should the Contractor not return to correct defects covered under this warranty. The Lender will, in no way, guarantee that any defects due to faulty materials or workmanship will be corrected and will not ask any other government agency to cover the cost of correcting such defects.
4. **Indemnification; Release.** Contractor shall defend, indemnify and hold Owner and Lender and each of Owner and Lender’s agents, members, managers and representatives, from and against any and all liability, claims, damages, losses, costs and expenses (including attorneys’ fees), injuries or deaths to any persons, and for loss of or damage to the Property or Improvements arising under or by reason of this Agreement, including, but not limited to: (i) Contractors violation of any Codes; (ii) as a result of any act, omission or conduct or breach of this Agreement of or by Contractor; or (iii) from defective work by Contractor.

Contractor shall defend, indemnify, and hold Owner and Lender and each of Owner and Lender’s agents, members, managers and representatives, from and against any and all claims of lien on the Property by any subcontractor, supplier and/or vendor. In the event that a lien is placed on the Property by a third party, Contractor shall immediately resolve the situation, or if the situation cannot be resolved, Contractor shall provide a lien release bond to release the lien within thirty (30) days of Owner receiving notice of the lien. Neither securing the lien release nor posting of a bond shall relieve the Contractor of any duties and responsibilities under this Agreement. The cost of any premiums associated with such bonds shall be the sole responsibility of the Contractor and shall not be part of or cause an increase in the Contract Price. If the Contractor fails to secure release of or bond off a construction lien, the Owner has the right, but not the obligation, to settle any such claim by direct payment to the claimant if the Owner determines, in its sole discretion, that such payment is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner for such payment. If Contactor does not reimburse Owner, the Owner has the right to offset any progress payment (including the final payment) by all costs and expenses (including attorneys’ fees) incurred by Owner in releasing or obtaining a bond for said lien.

1. **Default.**
   1. **Default by Contractor.** Default by Contractor. Contractor will be in default upon either (i) Contractor’s failure to make payments to contractors or vendors supplying material for the Work; (ii) a breach by Contractor of a covenant or agreement contained in this Agreement; or (iii) Contractor’s filing of a voluntary petition in bankruptcy, making an assignment for the benefit of any creditor, being adjudicated a bankrupt or insolvent, or applying for or consenting to the appointment of a receiver, trustee or liquidator of all or a substantial part of Contractor’s assets. If Contractor commits such an event of default, prior to exercising any remedy granted by this Agreement or by law, Owner shall deliver notice of default to Contractor. If an event of default is not cured within thirty (30) days after delivery of the written notice, Owner may exercise any remedy granted by this Agreement or by applicable law. Upon the occurrence of an event of default by Contractor and the expiration of the thirty (30) day cure period, Owner may (but shall not be obligated to), without prejudice to any other available right or remedy, terminate this Agreement, seek specific performance of this Agreement by Contractor, pursue any other remedies available to Owner under this Agreement or as provided by law, or any combination of the foregoing.

If Owner receives notice of any lien or claim for labor or materials furnished to Contractor for which, if established, Owner of the Property might become liable, though primarily chargeable to Contractor, Owner shall have the right to retain out of any Draw an amount sufficient to reasonably indemnify Owner against such lien or claim. However, Contractor shall have the right to contest in good faith the validity of such lien or claim. If Contractor fails to discharge any such lien or claim, any amounts expended by Owner for the payment of any liens or claims shall be credited against the Contract Price. If Contractor does discharge such lien or claim, the full amount withheld by Owner will be paid to Contractor upon written notice from Contractor to the Owner.

* 1. **Default by Owner**.Owner will be in default if either (i) Owner unreasonably delays or unreasonably interferes with Contractor in the execution of the Work; (ii) Owner fails to perform any other covenant or agreement contained in this Agreement; or (iii) Owner, or any person liable for the payment or performance under this Agreement, files a petition in bankruptcy, makes an assignment for the benefit of any creditor, is adjudicated a bankrupt or insolvent, or applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of their or its assets. If Owner defaults under this Agreement, prior to exercising any remedy granted by this Agreement or by law, Contractor shall deliver written notice of default to Owner. If the event of default is not cured within thirty (30) days after delivery of such written notice, Contractor may (i) terminate this Agreement and seek recovery of any damage suffered by Contractor, including, but not limited to, payment for all materials, labor, profit, overhead and fees with respect to the Work; (ii) discontinue performance of this Agreement and the Work; (iii) seek specific performance of this Agreement by Owner; (iv) file and foreclose any Contractor’s and mechanic’s lien granted in connection herewith.

1. **Independent Contractor Status.** Contractor shall be and is an independent contractor and the relationship of Contractor and Owner shall not be viewed as a joint venture, partnership or any other relationship.
2. **Force Majeure.** 
   1. **General**. Neither party shall be held responsible for any delay or failure of performance to the extent that such delay or failure is caused by a Force Majeure (as defined below), but only if, and to the extent: (i) such circumstance is not within the reasonable control of the party affected; (ii) such circumstance, despite the exercise of reasonable, diligent efforts and pursuit of reasonable, alternative measures, cannot be prevented, avoided, or removed by such party; and (iii) such event materially adversely affects (in cost and/or time) the ability of the affected party to fulfill its obligations under this Agreement.
   2. **Obligations Upon Occurrence of Force Majeure**. The party claiming the benefit of excusable delay hereunder shall: (i) promptly notify the other party of the circumstances creating the failure or delay and provide a statement of the impact on such party of the Force Majeure event; and (ii) use all reasonable efforts to avoid or remove the effects of the Force Majeure event.
   3. **Definition**. “Force Majeure” means fires, strikes, riots, embargos, explosions, earthquakes, floods, wars, water, the elements, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation facilities, acts or omissions, or suppliers of raw materials, or other similar causes beyond a party’s control, but only to the extent that a party’s actual performance is impaired whether or not similar to the foregoing.
3. **Dispute Resolution.**
   1. **In General**. Except as set forth in the last sentence of this section, any dispute, controversy, claim or difference concerning or arising out of this Agreement or the rights or performance of any party under this Agreement (each, a “Dispute”) will be resolved by the procedure set forth in Section 18.2. The procedure set forth in Section 18.2, however, will not be deemed to preclude either party from immediately seeking an injunction in any court of competent jurisdiction pursuant to its rights to injunctive relief under this Agreement.
   2. **Dispute Resolution Procedure**. If a Dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the Dispute first through direct discussions. If the Dispute cannot be settled through direct discussions, the parties shall endeavor to settle the Dispute by mediation before recourse to any binding dispute resolution procedures.

If neither direct discussions nor mediation successfully resolve the Dispute, the parties agree that they will resolve any Dispute arising out of or relating to this Agreement through binding arbitration. The Arbitration shall be before a single neutral arbitrator and conducted pursuant to the Construction Industry Rules of the American Arbitration Association, unless the parties mutually agree otherwise. Notwithstanding, the parties are not obligated to use the services of the American Arbitration Association if they mutually agree to a different procedure. To initiate arbitration, a written demand for arbitration shall be filed with the other party to the Agreement within a reasonable time after the Dispute or claim as arisen, but in no event after the applicable statute of limitations has run. If the other party is unresponsive or otherwise refuses to voluntarily engage in arbitration, the party demanding arbitration may commence suit to compel arbitration pursuant to 9 U.S.C.§ 4, or similar state statute, in any court with jurisdiction over the parties. If the parties are unable to agree on an arbitrator, either party may petition a court to appoint an arbitrator pursuant to 9 U.S.C. § 5 or similar state statute. The arbitration award shall be final and binding on the parties and judgment upon the award may be confirmed in any court having jurisdiction.

The prevailing party in any Dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration shall be entitled to recover from the other party reasonable attorneys’ fees, costs and expenses incurred by the prevailing party in connection with such arbitration, including but not limited to any costs and fees of suit to compel arbitration and/or to confirm any arbitration award.

The award in any arbitration will be final and binding upon the parties. A judgment upon an award rendered in arbitration may be entered in any court of competent jurisdiction. The venue for any mediation or arbitration under this Agreement will be in County, .

1. **Notices.** Wherever this Agreement requires that one party provide the other party a written notice, such notice may be provided by any of the following methods: (a) personal delivery; (b) certified U.S. Mail to the address provided above; and (c) e-mail with read receipt, or similar, to the address provided below the party’s signature. Any notices sent under this Agreement shall be sent to the Lender.
2. **Miscellaneous.**
   1. **No Assignment**. Except to the extent that Contractor may subcontract Work under this Agreement, neither party has the right to assign this Agreement.
   2. **Attorneys’ Fees**. In the event of any arbitration, suit, or action is instituted related to this Agreement, including without limitation the construction, interpretation or governance of this Agreement or its terms, its validity, enforceability, scope, or subject matter, the substantially prevailing party will be awarded from the substantially non-prevailing party its, his, her or their reasonable attorney fees and costs, in addition to costs and expenses provided by statute or otherwise, incurred for prosecution, defense, consultation, or advice in connection with such action. The amount of such recovery of attorney fees and costs will be such sums as the arbitrator or court may adjudge reasonable as attorney’s fees at arbitration, litigation, hearing, trial, or on appeal from judgment, order, or decree. The provisions of this Section will survive termination of this Agreement.
   3. **Waivers**. Any waiver by either party of any breach of any term of condition of this Agreement shall not be deemed a waiver of any other breach of such term or condition, nor shall the failure of either party to enforce such provision constitute a waiver of such provision or of any other provision, nor shall such action be deemed a waiver or release of any other party for any claims arising out of or connected with this Agreement. No waiver shall be effective unless in writing and signed by the party against whom such waiver is sought.
   4. **Governing Law**. This Agreement shall be governed by, interpreted, and construed in accordance with the laws of the State of .
   5. **Agreement of Parties**. This Agreement constitutes the sole and entire agreement between the parties with respect to the subject matter hereof. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. This Agreement expresses the full and final agreement of the parties and incorporates and supersedes all prior and contemporaneous negotiations and agreements. This Agreement may not be modified except by writing executed by the parties hereto. All exhibits to this Agreement are incorporated into this Agreement by this reference.
   6. **Interpretation**. Unless otherwise explicitly set forth in this Agreement, any decision, election, consent, or other approval may be made within the sole discretion of the party making such decision, election, consent, or other approval. The terms “day” or “days” as used herein shall mean calendar day or days. As used herein, the term “business day” or “business day” shall mean a day other than a Saturday, Sunday or day on which banking institutions in the city of , are authorized or required by law or executive order to be closed. If this Agreement requires any act to be done or action to be taken on or by a date which is not a business day, that act or action will be deemed to have been validly done or taken if done or taken on the next succeeding business day. The terms “includes”, “including” or “include” as used herein shall be interpreted as being non-exclusive and shall be read to mean, respectively, “includes without limitation, “including, without limitation” and “include without limitation.” The headings used throughout this Agreement have been inserted for convenience of reference only and do not constitute matters to be construed in interpreting this Agreement. Words of any gender used in this Agreement will be construed to include any other gender, and words in the singular number will be construed to include the plural, and vice versa, unless the context requires otherwise. The words “herein,” “hereof,” “hereunder,” and other similar compounds of the word “here” when used in this Agreement refer to the entire Agreement and not to any particular provision or section.
   7. **Additional Actions**. Each party hereby agrees to execute and deliver all such other documents or instruments and to take any action as may be reasonably required in order to effectuate the transactions contemplated by this Agreement.
   8. **Severability**. If for any reason any provision of this Agreement is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Agreement will not be affected and such provision will be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced.
   9. **Time is of the Essence**. Time is of the essence with each provision of this Agreement.
   10. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature (including, but not limited to, DocuSign) by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if an originally hand signed original had been received.

[***Remainder of page intentionally left blank***]

**SIGNATURE PAGE**

**TO**

**REHABILITATION CONSTRUCTION AGREEMENT**

|  |  |
| --- | --- |
| **OWNER:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *Name of Entity*  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (*State of Domesticity and Entity Type*)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **CONTRACTOR:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *Name of Entity*  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (*State of Domesticity and Entity Type*)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| ***Approved as to form:***  **LENDER:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *Name of Entity*  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (*State of Domesticity and Entity Type*)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

**Exhibit A  
Contractor Bid**

**Exhibit B  
Draw Schedule**

**Draw Schedule**

The draw schedule shall be paid according to the following schedule.

|  |  |  |
| --- | --- | --- |
| **Total Contract Price:** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | **Percentage of Contract Price** | **Schedule of Payment** |
| **Initial Payment:** |  |  |
| **Total Contract Price Balance:** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| **[INSERT]** |  |  |
| **[INSERT]** |  |  |
| **[INSERT]** |  |  |
| **Draw upon Substantial Completion:** |  |  |

The final draw is subject to adjustment as set forth in the Rehabilitation Construction Agreement.

The draws do not include any payments for Change Orders, which must be paid at the time of the Change Order and pursuant to the Rehabilitation Construction Agreement.

|  |  |
| --- | --- |
| **OWNER:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *Name of Entity*  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (*State of Domesticity and Entity Type*)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **CONTRACTOR:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *Name of Entity*  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (*State of Domesticity and Entity Type*)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Exhibit C  
Project Schedule**

**Exhibit D  
Plans, if any**

**Exhibit E  
Specifications, if any**

**Exhibit F  
 Change Order Form**

**CHANGE ORDER**

This Change Order by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is ("Contractor”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Owner”). This Change Order is hereby incorporated into such Rehabilitation Construction Agreement dated by and between Owner and Contractor.

If Owner signs and returns this Change Order *together with the payment required under the Change Order* within three (3) days after receipt of the Change Order from Contractor, it will become a binding attachment to the Construction Contract. Any Owner party (e.g. husband or wife) may sign this Change Order as agent for the other, and that signature of one Owner shall be binding on the other. Failure of Owner to approve this Change Order or a failure of the Owner to make the payment required in this Change Order within (3) three days after receipt shall constitute a rejection of the proposal in this Change Order.

1. The Rehabilitation Construction Agreement is hereby changed as follows:

1. The Contract Price is hereby [ ] increased [ ] decreased by the following amount: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If the Contract Price is increased, then the payment shall be made to Contractor upon delivery of this executed Change Order to Contractor. If the Contract Price is decreased, then the decrease will be made to the final Draw payment.
2. This Change Order shall extend the Completion Date by \_\_\_\_ calendar days.
3. This change order may be executed in counterparts.

**SIGNATURE PAGE**

**TO  
CHANGE ORDER**

IN WITNESS WHEREOF, the parties have executed this change order effective as of the last date set forth below under the signatures

|  |  |
| --- | --- |
| **OWNER:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *Name of Entity*  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (*State of Domesticity and Entity Type*)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **CONTRACTOR:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *Name of Entity*  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (*State of Domesticity and Entity Type*)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

***Private Lender***

***Pre-Construction Discussion Items***

1. Building Permit requirements

2. Additional Insured requirements – (general & subcontractors)

3. Project Plan Set availability, if any

4. Quality control is the contractor’s responsibility to adhere to specifications

5. Subcontractor’s contact information list for lien waiver tracking

6. Progress payment submittal requirements

a. Spreadsheet format with requested line item levels of completion

b. Lien waiver releases

c. Invoices for stored materials, services, etc

d. Design changes that may impacts costs

e. Contingency line item impacts

f. Progress Schedule changes

g. Copy of building permit cards

h. Inspection dates within 48 hours of request

i. It’s safe to assume that “If it’s not seen, it’s not going to be funded”

7. Discussion of project schedule, date of agreed work completion

8. Who has authority to approve project changes?

# List of

# Subcontractors



|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | | | | | | |
| Project Name: | | |  | | Date: | |  | |
| Project Address: | | |  | | Project #: | |  | |
| General Contractor: | | |  | | Contractor’s Phone: | |  | |
| Address: | | |  | | Contact: | |  | |
|  | | | | | | | | |
| Subcontractor Information | | | | | | | | |
| **Trade** | **Company** | | **Address** | | **Cell Phone** | | **Representative** | |
| Grading |  | |  | |  | |  | |
| Foundation |  | |  | |  | |  | |
| Termite |  | |  | |  | |  | |
| Framing |  | |  | |  | |  | |
| Roofing |  | |  | |  | |  | |
| Electrical |  | |  | |  | |  | |
| HVAC |  | |  | |  | |  | |
| Plumbing |  | |  | |  | |  | |
| Drywall |  | |  | |  | |  | |
| Windows |  | |  | |  | |  | |
| Doors |  | |  | |  | |  | |
| Tile |  | |  | |  | |  | |
| Carpet |  | |  | |  | |  | |
| Hardwood |  | |  | |  | |  | |
| Cabinetry |  | |  | |  | |  | |
| Appliances |  | |  | |  | |  | |
| Interior Trim |  | |  | |  | |  | |
| Fireplace |  | |  | |  | |  | |
| Ext. Veneer |  | |  | |  | |  | |
| Ext. Trim |  | |  | |  | |  | |
| Driveways |  | |  | |  | |  | |
| Landscaping |  | |  | |  | |  | |
| Irrigation |  | |  | |  | |  | |
| Dumb Waiter |  | |  | |  | |  | |

# List of Subcontractors/ Insurance Coverage



|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | | | | | |
| Project Name: | | |  | | Date: | |  |
| Project Address: | | |  | | Project #: | |  |
| General Contractor: | | |  | | Contractor’s Phone: | |  |
| Address: | | |  | | Contact: | |  |
|  | | | | | | | |
| Listing of Subcontractor/Insurance Coverage | | | | | | | |
|  | **Subcontractor** | | **General Liability** | | **Workman’s Compensation** | | |
|  | Subcontractor Company | | Company | | Company | | |
|  |  | | Dates | | Dates | | |
|  | Contact | | Coverage | | Coverage | | |
|  | Tax ID Number | |  | |  | | |
|  | Subcontractor Company | | Company | | Company | | |
|  |  | | Dates | | Dates | | |
|  | Contact | | Coverage | | Coverage | | |
|  | Tax ID Number | |  | |  | | |
|  | Subcontractor Company | | Company | | Company | | |
|  |  | | Dates | | Dates | | |
|  | Contact | | Coverage | | Coverage | | |
|  | Tax ID Number | |  | |  | | |
|  | Subcontractor Company | | Company | | Company | | |
|  |  | | Dates | | Dates | | |
|  | Contact | | Coverage | | Coverage | | |
|  | Tax ID Number | |  | |  | | |
|  | Subcontractor Company | | Company | | Company | | |
|  |  | | Dates | | Dates | | |
|  | Contact | | Coverage | | Coverage | | |
|  | Tax ID Number | |  | |  | | |
|  | Subcontractor Company | | Company | | Company | | |
|  |  | | Dates | | Dates | | |
|  | Contact | | Coverage | | Coverage | | |
|  | Tax ID Number | |  | |  | | |

# List of Subcontractors/ Insurance Coverage



|  |  |  |  |
| --- | --- | --- | --- |
|  | **Subcontractor** | **General Liability** | **Workman’s Compensation** |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |

# List of Subcontractors/ Insurance Coverage



|  |  |  |  |
| --- | --- | --- | --- |
|  | **Subcontractor** | **General Liability** | **Workman’s Compensation** |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |
|  | Subcontractor Company | Company | Company |
|  |  | Dates | Dates |
|  | Contact | Coverage | Coverage |
|  | Tax ID Number |  |  |

Contractor’s Payment Submittal Package Requirements



***“THE REHAB PROJECT”***

***INVESTOR SUBMITTAL REQUIREMENTS***

***FOR***

***PROGRESS PAYMENT CONSIDERATION***

1. COMPLETED PROGRESS PAYMENT REQUEST SPREADSHEET
2. CURRENT INVOICES/RECEIPTS (W/CORRESPONDING LINE ITEM NUMBERS)
3. LIEN DOCUMENTS (W/CORRESPONDING LINE ITEM NUMBERS)
4. POTENTIAL PROJECT SCHEDULE/COST CHANGES DETAILED
5. COPIES OF CURRENT PERMIT CARD

Invoice Log For

Draw Request

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | | | | | | | | |
| Project Name: | |  | | | Draw #: | | |  | | |
| Project Address: | |  | | | Date: | | |  | | |
| Contractor: | |  | | | From: | | |  | | |
|  | | | | | | | | | | |
| Details | | | | | | | | | | |
| **Line**  **Item #** | Vendor/Subcontractor | | **Item Description** | Invoice Date | | Invoice # | Invoice Amount | | Amount Requested | Payment Method/Comments: |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
|  |  | |  |  | |  |  | |  |  |
| **TOTAL** |  | |  |  | |  |  | |  |  |

**Waiver Release**

**Instructions**

**Conditional and Unconditional Waiver and Release Forms**

**General Principles:** No lien release is binding unless the claimant executes (signs) and delivers a waiver and release. If signed by the claimant or his or her authorized agent, the signed form is effective to release:

* the owner;
* the construction lender; and
* the surety (in the case of a payment bond).

**Be careful:** paying your contractor (and/or getting a release from your contractor) does not guarantee that other claimants, like subcontractors and suppliers, are paid. A claimant is a person who, if not paid, can file a lien on your home.

To be effective, the waiver and release forms must follow substantially one of the forms set forth in [Civil Code Section 3267](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=civ&group=03001-04000&file=3258-3267). The four forms are:

1. **Conditional Waiver and Release Upon Progress Payment**

Use this form when the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a progress payment and the claimant has not been paid. This form is useful when the claimant has not been paid yet, but will be paid out of a progress payment that is not the final payment. This conditional waiver and release is only effective if the claimant is *actually paid*. This release does not cover all items. See the "[Conditional Waiver And Release Upon Progress Payment](http://www.cslb.ca.gov/Resources/GuidesAndPamphlets/LienReleaseFormConditionalWaiverProgress.asp)" form for more information.

1. **Unconditional Waiver and Release Upon Progress Payment**

Use this form when the claimant is required to execute a waiver and release in exchange for or in order to induce payment of a progress payment and the claimant asserts in the waiver that he or she has in fact been paid the progress payment. This release does not cover all items. See the "[Unconditional Waiver And Release Upon Progress Payment](http://www.cslb.ca.gov/Resources/GuidesAndPamphlets/LienReleaseFormUnconditionalWaiverProgress.asp)" form for more information.

1. **Conditional Waiver and Release Upon Final Payment**

Use this form when the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a final payment and the claimant has not been paid. This release is only binding if there is evidence of payment to the claimant. Evidence of payment may be demonstrated by:

* + the claimant's endorsement on a single check or a joint payee check which has been paid by the bank upon which it was drawn; or
  + written acknowledgment of payment given by the claimant.

See the "[Conditional Waiver and Release Upon Final Payment](http://www.cslb.ca.gov/Resources/GuidesAndPamphlets/LienReleaseFormConditionalWaiverFinal.asp)" form for more information.

1. **Unconditional Waiver and Release Upon Final Payment**

Use this form when the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment *and* the claimant asserts in the waiver he or she has in fact been paid the final payment. See the "[Unconditional Waiver and Release Upon Final Payment](http://www.cslb.ca.gov/Resources/GuidesAndPamphlets/LienReleaseFormUnconditionalWaiverFinal.asp)" form for more information.

**Caution:** in the case of a conditional release, the release is only binding if there is evidence of payment to the claimant. Evidence of payment may be demonstrated by:

* the claimant's endorsement on a single check or a joint payee check which has been paid by the bank upon which it was drawn; or
* Written acknowledgment of payment given by the claimant.



**Conditional Waiver**

**& Release Upon**

**Progress Payment**

Civil Code 3262(d) (1)

**Upon receipt** by the undersigned of a check from **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** in the sum of **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** payable to **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic’s lien, stop notice or bond right the undersigned has on the job of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** located at **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** to the following extent.

**This release** covers a progress payment for all labor, services, equipment or materials furnished only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic’s lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Before any receipt of this document relies on it, said party should verify evidence of payment to the undersigned.

**Executed** on this day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 .

**Company Name**

**By**

**Signature Title**

NOTE: This form complies with the requirements of Civil Code Section 3262(d)(1). It is to be used by a party who applies for a progress payment when the progress check has not yet cleared the bank. This release only becomes effective when the check, properly endorsed, has cleared the bank.



**Conditional Waiver**

**& Release Upon**

**Progress Payment**

Civil Code 3262(d) (1)

**Upon receipt** by the undersigned of a check from **(Maker of Check)** in the sum of **$(Amount of check)** payable to **(Payee of check)** and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic’s lien, stop notice or bond right the undersigned has on the job of **(Owner)** located at **(Job Description)** to the following extent.

**This release** covers a progress payment for all labor, services, equipment or materials furnished only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic’s lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Before any receipt of this document relies on it, said party should verify evidence of payment to the undersigned.

**Executed** on this day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 .

**Company Name**

**By**

**Signature Title**

NOTE: This form complies with the requirements of Civil Code Section 3262(d)(1). It is to be used by a party who applies for a progress payment when the progress check has not yet cleared the bank. This release only becomes effective when the check, properly endorsed, has cleared the bank.

**SUBCONTRACTOR & MATERIAL SUPPLIER**

**Progress Payment Release Form**

SUBCONTRACTOR or SUPPLIER: Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Invoice: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Job: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Job No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| SUBCONTRACT OR P.O. AMOUNT: APPROVED CHANGE ORDERS:  REVISED CONTRACT AMOUNT: WORK COMPLETED TO DATE : |  |
|  |
|  |
|  |
| LESS PREVIOUSLY BILLING:  CURRENT BILLING: LESS RETENTION 10%: NET AMOUNT DUE: |  |
|  |
|  |
|  |

**CONDITIONAL WAIVER AND**

**RELEASE UPON PROGRESS**

The undersigned does hereby acknowledge that upon receipt by the undersigned of a check from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the sum of \_\_\_\_\_\_\_\_ and when the check has been properly endorsed and has been paid by the bank upon which it was drawn, this document shall become effective to release pro tanto any and all claims, mechanic's or material men's lien, equitable lien, stop notice, or claim rights which the undersigned has on the above referenced job.

This release covers final payment for all labor, services, equipment, materials furnished and/or claims through \_\_\_\_\_\_\_\_\_.

NOTICE: BEFORE ANY RECIPIENT OF THIS DOCUMENT RELIES ON IT, SAID PARTY SHOULD VERIFY EVIDENCE OF PAYMENT TO THE UNDERSIGNED.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF \_\_\_\_\_\_\_\_\_\_\_\_ THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_

Subscribed and sworn before me this

\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_

Notary Public:

**UNCONDITIONAL WAIVER AND RELEASE UPON PAYMENT**

The undersigned does hereby acknowledge that the undersigned has been paid and has received progress payments from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the sum of $\_\_\_\_\_\_\_ for labor, services, equipment or materials furnished to the above referenced job and does hereby release pro tanto any and all claims, mechanic's or material men's lien, equitable lien, stop notice, or bond claim rights which the undersigned has on the above referenced job. This release covers progress payments for labor, services, equipment, materials furnished and/or claims through this \_\_\_ day of \_\_\_\_\_\_\_ only and does not cover any retention or items furnished after that date.

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID USE A CONDITIONAL RELEASE FORM.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

Signature \_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Subscribed and sworn before me this**

**\_\_\_\_\_**day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

Notary Public:



**Acknowledgement**

**of Receipt**

I , \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the undersigned do hereby acknowledge and affirm the receipt of the COGO Capital Rehab Construction Lending Handbook in its entirety on the date set forth below.

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

Name Printed Date

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

Signature