This Document is a product of the Residential Design and Construction Quality Assurance (CQA) Project which seeks to promote residential construction quality in Grenada. The project is financed by the Organization of American States (OAS) and the Canadian International Development Agency (CIDA). The Agency for Reconstruction and Development is a joint participant of the CQA project, and has prepared the document for use by Homeowners and Contractors.
PREFACE

This document is proposed as an advisory document to householders and small contractors TO ASSIST in structuring and finalization of engagement to undertake construction or repairs of a family residence. It is not intended to address construction of commercial or industrial buildings. Nor is it issued with any legal commitment of the authors. The information is strictly advisory and its use is voluntary and at the judgments of the parties involved.

As a general rule, both Householders and building Contractors are advised to commit to writing their agreements and mutual obligations and methods of settling disputes. The information and Sample Contract are issued to assist this process.

The document is in two parts:
✓ The first part provides a listing of guidelines and advice.
✓ The second part provides a sample of a contract.

The Sample contract can be used as is, or modified by the Parties as deemed necessary.
GUIDELINES TO A HOME CONSTRUCTION CONTRACT

The selection and use of a Contractor to build or repair a residence is a risky and an expensive undertaking. It is a major and serious business activity; and must be approached on the basis of a business contract relationship, not on the basis of friendship or family. Even if the contractor is your brother, friend or neighbour, your money and your safety are at stake. The House owner should request from the prospective Contractor two references, and then ask previous clients specific questions about the Contractor and his work performance, such as:

- What was the job? Was the work finished on time?
- Were you satisfied with the performance?
- Were you satisfied with the quality?
- Did he follow the Grenada Building Code & Guidelines
- Did the price change from the original quotations? If yes, why?
- Do you think that you received value for money?
- Would you recommend this Contractor?

The definition of the job is vital, and should be written into a Home Construction Contract. “Home construction contract” means a contract to build, remodel or repair a residence, including not only structural work but also electrical, plumbing and heating work; carpeting, tiling, window replacements; and other non-structural work. “Residence” means a dwelling with 3 or fewer living units and garages, if any.

Any home construction or repair contract must be in writing; and must be signed by both the home construction contractor and the homeowner householder. Both the Contractor and the Householder or lessee shall receive a signed original copy of the executed contract prior to any work performance. This basic contract must contain all aspects of what has been agreed between the Householder and the home construction Contractor. The Contract must contain at least the following elements:

1. The Parties. The names, addresses and phone numbers of both the home construction Contractor and the Householder;

2. Location. The location of the property upon which the construction work is to be done;

3. Work dates. Both the estimated date of commencement of work and the estimated date when the work will be substantially completed. The estimated date of commencement of work and the completion date may be changed if work cannot begin or end due to circumstances beyond the control of the Parties, including, but not limited to, the lack or readiness of the job site or the unavailability of building materials, etc.

4. “Substantially (practically) completed” must be defined in the contract document.
Substantial (or practical) completion is achieved when the contract work is sufficiently complete to allow the owner to occupy the building and use it for the use for which it was intended. The contractor may still be working in the building at this point.

5. Contract price. The estimate of the work should be detailed enough to indicate the components of the work. The Material List should be very detailed. The total contract price, including all costs to be incurred in the proper performance of the work, or, if the work is priced according to a “cost-plus” formula, the agreed-upon price and an estimate of the cost of labor and materials;

6. Payment. The method of payment should be defined and listed as part of the Contract. The Contract should indicate the points of periodic payments during construction. The Schedule of Payments must be linked to the completion of particular agreed stages of the construction. Payments should not be simply on the demand of the contractors. House Owner should retain a recommended 10% from each payment to be paid to the Contractor on satisfactory completion of the works.

7. Down payment. “Down payment” means all payments to a home construction Contractor upon the signing or execution of the home construction contract. Any down payment should be of a limited sum, the amount of which should be stated in the contract. If the House Owner undertakes to be directly responsible for the purchase of the construction materials, a schedule for such supply should be prepared.

8. Definition and Description of the work. A general description of everything that is to be included in the work; and include the materials to be used. The House Plan should be prepared and agreed by the House owner, or where required, approved by the Planning and Development Authority; and this must be referenced and should form part of the agreement. The Materials List must be referenced and form part of the Contract.

9. Warranty: The Contractor must be willing to agree to a warranty and to adherence to the Grenada Building Code & Guidelines.

10. Resolution of Disputes. The Contract must contain a clause indicating how disagreements or disputes would be settled. A statement allowing the parties the option to adopt choice of methods of resolving contract disputes. Choices available include Mediation, Adjudication; Arbitration, or the Court. Mediation is suggested as the preferred method of dispute settlement.

11. Change Orders: The Contract must provide for agreeing on changes to the construction works Plan as may be necessary.
Each Change Order to a home construction/repair Work Plan must be in writing and becomes a part of existing contract. All work shall be performed under the same terms and conditions as specified in the original contract unless otherwise stipulated. The Change Order must detail all changes to the original contract that result in a revision of the contract price and time. The previous contract price must be stated and the revised price shall also be stated. Both parties must sign the Change Order.

12. House Owner Representative: Householders who do not possess the technical knowledge of construction are advised to have someone of enough technical capability and house building experience to advise them or to act on their behalf to interface and settle technical issues with the contractor. Such a person should be cited in the contract as having the authority to act on behalf of the Householder. The Contract must indicate the identity of that person who must look after the interest of the householder and who must be given the authority to give or vary instructions to the Contractor during the construction phase.

13. Non-Performance: The house owner must protect himself against paying for labour that is slow, lazy or inefficient. It is safer not to pay the Contractor up front. Payments should be on the basis of performance and satisfactorily completed works The Contract must make provision for non performance on the part of the Contractor or of non-payment on the part of the Householder, and the particular rights the offended party may exercise as a consequence.

14. The Contract should deal with such issues as to whether “time is of the essence” in completing the contract. Also when the contract is considered to be completed e.g. “this contract will be considered completed upon approval of the homeowner or lessee, provided that approval cannot be unreasonably withheld.”

15. Other issues could include: whether the homeowner is entitled to damages if the work is completed later than estimated.

16. The Contract should address safety at the construction site, risks of injury, insurance, the removal of debris, etc.
A MODEL HOME CONSTRUCTION / REPAIR CONTRACT

SECTIONS

Contractor's General Obligations
Householder's Representative's Instructions
Supervision of the Works by the Contractor
Subcontracting of the Works
Possession, Commencement and Completion of the Works
Payment and Retention
Injury, Damage and Insurance
Termination
Settlement of Disputes
Appendix A
Appendix B - Schedule of Stage Payments
IN THE STATE OF GRENAADA

THIS AGREEMENT

Is made this................. day of the month of ................. in the Year .................

BETWEEN ..........................................................

Please Print Full Name

of ..........................................................

(Hereinafter called "the Householder")

On the one Part

AND ..........................................................

Please Print Full Name

of ..........................................................

(Hereinafter called "the Contractor")

On the other Part

Herein referred to jointly as “the Parties”

WHEREAS The Householder desires that certain building works namely
........................................................................... (hereinafter called "the Works")
be carried out at
...........................................................................

in accordance with

(i) the drawings numbered .......... to ........... inclusive approved by Planning and
    Development Authority Application No. ........
(ii) the drawings numbered .......... to ............ inclusive
(iii) the specifications
(iv) the schedule of works

All being annexed to and forming part of this Contract (hereinafter called "the Contract Documents"); and

WHEREAS The Contractor has agreed to construct and complete the said
Works for the sum of: $ ..............................................................
(Hereinafter called "the Contract Sum") ; and

WHEREAS The Parties have agreed to the Householder's appointment of the
Householder's Representative as named in Appendix A to this Agreement who shall
from time to time monitor the construction of the Works to ensure their compliance with
the Contract Documents and perform the duties as set out in these Conditions; and

NOW IT IS HEREBY AGREED as follows:
CONTRACTOR'S GENERAL OBLIGATIONS

1. In consideration of the payments to be made by the Householder to the Contractor under this Agreement, the Contractor shall, subject to the Conditions hereinafter stated, construct and complete the Works in accordance with the Contract Documents.

2. The Contractor/House Owner shall provide all necessary construction materials. The Contractor shall provide all plant, labour and skills for the proper construction and completion of the Works in accordance with the drawings and specifications.

3. The Contractor shall be responsible for adherence to the Grenada Building Code & Guidelines, and shall, entirely at his own cost and within a reasonable time, amend any errors arising from his own setting out of the Works or misinterpretation of the Contract Documents.

4. The Contractor shall comply with, make all applications required by and give all notices required by any statute, any statutory instrument, rule or order or any regulation or byelaw applicable to the Works and shall pay all fees and charges in respect of the Works legally recoverable from the Contractor and such fees or charges shall be deemed to be included in the Contract Sum.

5. The Contractor shall ensure that a copy of the drawings and specifications are on site at all times when work is in progress.

HOUSEHOLDER'S REPRESENTATIVE'S INSTRUCTIONS

6. The Householder's Representative may issue written instructions or oral instructions, provided such oral instructions are confirmed in writing by the Householder's Representative within three (3) days of the issue of the oral instructions. The Contractor shall comply with all such written or oral instructions.

7. The Householder's Representative may, without invalidating the Contract, instruct an addition to, omission from or other change in the Works. Any such instruction shall be valued by the Contractor who shall submit the value of such change in the Works to the Householder for agreement in writing, prior to proceeding with the change.

SUPERVISION OF THE WORKS BY THE CONTRACTOR

8. The Contractor shall at all reasonable times keep upon the Works a competent person in charge of the Works as named in Appendix A to this Agreement. The Contractor shall notify the Householder's Representative in writing if the named person in charge is being replaced.

SUBCONTRACTING OF THE WORKS

9. The Contractor shall not subcontract the Works or any part thereof without the written consent of the Householder which consent shall not be unreasonably withheld.
POSSSESSION, COMMENCEMENT AND COMPLETION OF THE WORKS

10. The Contractor shall take possession of the site on the date of possession stated in Appendix A to this Agreement.

11. The Contractor shall commence the Works on the date of commencement stated in Appendix A to this Agreement and shall regularly and diligently proceed with the Works in a good and workmanlike manner and shall complete the Works on or before the date of completion stated in Appendix A to this Agreement in accordance with the drawings and specifications.

12. The Householder's Representative shall allow, if requested by the Contractor in writing, reasonable extensions of time to complete the Works if delays are caused by circumstances beyond the Contractor's control.

13. The Householder's Representative shall certify the date when, in his opinion, the Works have been substantially completed. Substantial completion is achieved when the contract work is sufficiently complete to allow the householder to occupy the building and use it for the use for which it was intended.

14. If the Works are not completed by the date of completion or by any extended completion date fixed under Clause 12 hereof, then the Contractor shall pay to the Householder liquidated damages at the value per week stated in Appendix A to this Agreement for every week or part of a week during which the Works shall remain uncompleted.

15. The Householder's Representative and the Contractor shall jointly inspect the Works at the expiry of four (4) months from the date of substantial completion certified under Clause 13 hereof and the Householder's Representative shall identify and confirm in writing any defects which the Contractor shall make good within a reasonable time and at the Contractor's own expense.

PAYMENT AND RETENTION

16. The Householder's Representative shall certify the date when, in his opinion, each of the stages for payment has been completed. The Householder shall pay the Contractor the Contract Sum or such other sum as shall become payable hereunder at the times and in the manner specified in Appendix B to this Agreement. The Householder shall withhold a retention as specified in Appendix A to this Agreement from each payment and such retention shall be released in accordance with Clause 17 hereof.

17. On certification of substantial completion the Householder shall release one half of all retention monies held. The Householder's Representative shall certify the date when the Contractor's obligations under Clause 15 hereof have been discharged and the Householder shall release the other half of all retention monies held.
INJURY, DAMAGE AND INSURANCE

18. The Contractor shall be liable for, and shall indemnify the Householder against, and shall insure against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Works unless due to any act or neglect of the Householder.

19. The Contractor shall be liable for, and shall indemnify the Householder against, and shall insure against any expense, liability, loss, claim or proceedings in respect of any damage whatsoever to any real or personal property to the amount stated in Appendix A to this Agreement for any one occurrence insofar as such damage arises out of or in the course of or is caused by the carrying out of the Works unless due to any act or neglect of the Householder.

20. The Householder shall be responsible for insurance of the Works in progress and the Contractor shall not be liable for any loss or damage to the Works in progress arising from any events outside of the Contractor's control. The Contractor shall be liable for any loss or damage to the Works in progress arising from any events caused by the Contractor's negligence.

TERMINATION

21. If the Contractor shall without reasonable cause wholly suspend the carrying out of the Works or fail to proceed regularly and diligently with the said Works then the Householder’s Representative shall give the Contractor written notice to remedy the default and if such default continues for a period of seven (7) days thereafter the Householder may terminate the employment of the Contractor by written notice.

22. If the Householder fails to pay the Contractor any of the amounts properly due within seven (7) days of the date certified under Clause 16 or Clause 17 hereof then the Contractor shall give the Householder written notice to remedy the default and if such payment is not received by the Contractor within seven (7) days thereafter then the Contractor may terminate his employment by written notice.

23. In the event of termination of Works by reason of frustration or non-performance of the Contract, the Contractor shall submit to the Householder's Representative a valuation of the Works completed for agreement. If no agreement can be reached within fourteen (14) days of the Contractor's submission either party shall refer the matter to the Grenada Mediation Center for settlement through mediation.

24. Any sums payable to the Contractor under Clause 23 hereof arising out of termination in accordance with Clause 21 hereof shall be paid at the completion of the Works or within six (6) months after the termination whichever period is the shorter. Any sums payable to the Contractor in accordance with Clause 23 hereof arising out of termination in accordance with Clause 22 hereof shall be paid to the Contractor within seven (7) days of the ascertainment of the amounts due.
25. Any sums due to the Householder under Clause 23 hereof arising out of termination in accordance with Clause 21 hereof shall be paid to the Householder within seven (7) days of the ascertainment of the amounts due. Any sums payable to the Householder in accordance with Clause 23 hereof arising out of termination in accordance with Clause 22 hereof shall be paid to the Householder within six (6) months after the termination,

SETTLEMENT OF DISPUTES

26. If any dispute or difference of any kind whatsoever shall arise between the Householder or the Householder’s Representative and the Contractor, at any time after execution of this Contract, arising out of or in connection with this Agreement or the construction of the Works, then the Parties agree to refer the dispute or difference to the Grenada Mediation Centre for the appointment of a Mediator to mediate a settlement, and both Parties agree to accept the settlement arrived at through mediation.

WARRANTY

27. In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the Grenada Building Code & Guidelines; constructed in a skillful manner and fit for habitation or appropriate use.

AS WITNESS the hands of the parties hereto,

Signed for and on behalf of the Householder

.......................................................................

in the presence of

.......................................................................

Signed for and on behalf of the Contractor

.......................................................................

in the presence of

.......................................................................
APPENDIX A

1. Householder's Representative: ……………………………………………………………
   (Third Recital)
   Or ………………………………………………………………………
   ………………………………………………………………………

2. Person in charge of Works: …………………………………………………………………
   (Clause 8)
   Or ………………………………………………………………………
   ………………………………………………………………………

3. Date of Possession of Site: …………………………………………………………………
   (Clause 10)

4. Date of Commencement of Works: ………………………………………………………
   (Clause 11)

5. Date of Completion of Works. ……………………………………………………………
   (Clause 11)

6. Liquidated Damages per week: …………………………………………………………
   (Clause 14)

7. Retention Percentage: ………………………………………………………………
   (Clause 16)

8. Value of Insurance: …………………………………………………………………
   (Clause 19)
APPENDIX B

SCHEDULE OF STAGE PAYMENTS

STAGE 1
Signing of this Agreement $..........................

STAGE 2
Completion of the entire Substructure up to and including
the Ground Floor slab $..........................

STAGE 3
Completion of the Superstructure at Ground Floor level up to
and including the First Floor slab or the Roof beams $..........................

STAGE 4
Completion of the Superstructure at First Floor level up to and
including the Roof beams $..........................

STAGE 5
Completion of the Roof structure and coverings $..........................

STAGE 6
Completion of the internal and external rendering and
the installation of all windows and doors $..........................

STAGE 7
Completion of all fixed furniture and fittings $..........................

STAGE 8
Substantial Completion of the Works $..........................

TOTAL CONTRACT SUM
$.................................................................................................................................

It is hereby agreed that these Stage Payments DO NOT REPRESENT payments on the basis of
the exact value of the quantity of work done but rather represent a system of payment to assist
the expedition of the Works.