



CONSTRUCTION AGREEMENT

This Agreement is made on the _____ day of _____ >>><

BETWEEN:

>>>< of Post Office Box Number >>>< >>>< (the “**Employer**”) of the one part; **AND**

>>>< Constructions Limited of Post Office Box Number >>>< (the “**Contractor**”) of the other part.

WHEREAS the Employer is desirous of erecting a residential house on Plot >>>< >>>< (Land Reference Number >>>< District, and drawings with specifications describing the works to be done (the “**Works**”) have been prepared by the Architect and approved by the Employer marked “CC 1” (the “**Contract Drawings**”) and signed by or on behalf of the parties

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. For the consideration mentioned in the schedule hereto (the contract sum’) the Contractor shall subject to the conditions annexed hereto execute and complete the Works described on the Contract Drawings
2. The Employer shall pay the contract sum at the times and in the manner specified in the schedule and the conditions
3. This agreement includes the schedule the conditions and the Contract Drawings (the contract’).
4. In the conditions the term the “**Architect**” shall mean >>Name of architect << event of his death or disability another architect nominated by the Employer not being a person to whom the Contractor shall object for reasons considered to be sufficient by the arbitrator mentioned in the said conditions provided always that no person subsequently appointed



to be the Architect under this contract may disregard or overrule any decision or approval given or endorsed by the above named Architect.

- 5. Terms used in the schedule shall bear the meanings hereinbefore or in the conditions ascribed.
- 6. The proper law of this contract shall be the law of Kenya.

Schedule

Contract Sum means USD _____

Date for possession/mobilisation is 7 days from date of Agreement

Date for practical completion is 9 months from possession/mobilisation

Stage Payments:

- 35 per cent on possession/mobilisation
- 20 per cent on interim certificate
- 20 per cent on penultimate certificate
- 20 per cent on final certificate
- 5 per cent on certificate of making good defects

Items included are supply and installation of generator and landscaping

IN WITNESS WHEREOF the parties hereto have hereunto executed this Agreement on the day and year first hereinabove written:

Signed by the said >><<

in the presence of)

)

)

)

)

Signed by)



)
on behalf of the said >><<
CONSTRUCTIONS LIMITED)
in the presence of)
)
)
)
)

Drawn By:

>><<

Advocate

P. O. Box >><<



Conditions

The Contractor shall carry out and complete the Works in accordance with this contract, in accordance with the directions and to the reasonable satisfaction of the Employer or her Architect, who may at his discretion and from time to time issue further drawings, details, and/or written instructions, written directions and written explanations, in regards to:

Variations involving the alteration or modification of the design, quality or quantity of the Works or the addition or substitution of any work;

The removal from the site of any materials brought thereon under the contract and the substitution of any other materials therefore;

The removal and/or re-execution of any Works under the contract;

The amending and making good of any defects under the relevant clause;

Prime cost items and provisional sums.

The Contractor shall forthwith comply with and duly execute any work comprised in such instructions, provided that oral instructions, directions and explanations given to the Contractor shall, if involving a variation, be confirmed in writing and signed for within 3 days.

If compliance with such instructions as aforesaid, involves any variation, or if work executed by the Contractor consequent upon oral instructions, directions and explanations given to the Contractor upon the Works is subsequently proved and involves a variation, then such variation shall be dealt with under the relevant clause as an authorized variation and the value thereof added or deducted from the contract sum.

Regulations



The Contractor shall comply with and give notices required by any statute, regulations and by-laws of any municipal and/or other authority relating to the Works, or with whose systems the same are or will be connected, and he shall pay and indemnify the Employer against any fees or charges demanded by law thereunder in respect of the Works, provided that the said fees and charges, if not expressly included in the contract sum or stated by way of provisional sum, shall be added to the contract sum and be payable to the Contractor accordingly.

The Contractor, before making any variation from the Contract Drawings or specifications necessitated by compliance, shall give to the Employer written notice specifying and giving the reason for such variation and applying for instructions as in reference thereto. If the Contractor does not receive instructions within 3 days, he shall proceed with the work, conforming to the provision, regulation or by-law in question, and any variation necessitated as aforesaid shall be deemed a variation under the relevant clause and dealt with as such.

Materials

All materials and workmanship shall so far as procurable, be of the respective kinds described in the specifications and the Contractor shall upon the request of the Employer furnish her with vouchers to prove the materials comply therewith. The Contractor shall arrange for and/or carry out any test of the materials which the Employer may in writing require and the cost thereof shall be added to the contract sum, unless the test shows that the said materials and/or workmanship are not in accordance with this clause.

Access

The Contractor shall at all reasonable times, for the purpose of fulfilling its obligations under the contract, have access to any part of the Works already handed over to the Employer for occupation, including the right of passage through such occupied parts to reach other parts.

Variations



No variation shall vitiate this Agreement, or any error in description or in quantity or omission of items from the Contract Drawings or specifications which shall be corrected and deemed to be a variation required by the Architect.

All variations authorized in terms of the relevant clause shall be adjusted, the valuation being assessed on the basis of the valuation of similar work executed under similar conditions, provided that if omissions vary the conditions under which any remaining items of the Works are carried out, the cost of such remaining items shall be adjusted to compensate the Contractor for any additional expense involved.

Where work is not of a similar character or executed under similar conditions as aforesaid and this basis cannot be used or where the scope of Works is increased, a fresh quotation shall be prepared for such work.

The adjustment and valuation of the Works shall be completed before the expiry of 30 days after practical completion of the Works. All relevant documents shall be furnished to the Employer by the Contractor in good and sufficient to permit of compliance with this provision. Interim valuations shall be made, as necessary, in support of certificates issued under the relevant clause.

Final Works

The quality and quantity of the Works included in the contract sum shall be deemed to be that which is shown upon the contract drawings or described in the specifications.

Moveable Property

Any unfixed materials and goods, the value of which has been included in a certificate shall, upon payment thereof, become the Employer's property and shall not be removed without the authority in writing of the Employer except for use upon the Works.

Defects



Any defects in the workmanship and materials and any damage caused to the Works thereby, which may appear within the defects liability period of 60 days due to materials or workmanship not being in accordance with this contract shall be made good by the contractor at its own cost.

Within 14 days of expiry of the defects liability period, a schedule of defects which are required to be made good should be delivered to the Contractor. The Contractor shall forthwith commence the work required to be performed and shall complete the same within a reasonable period. The Contractor's liability to make good in terms of this sub-clause shall be restricted to the items specified in the said schedule.

Sub-contractors

All specialists and others executing any work or supplying and fixing any goods for which provisional sums are included in the specification, who may be nominated or selected by the Employer, are hereby declared to be sub-contractors employed by the Contractor ('nominated sub-contractors'). No nominated sub-contractor shall be employed upon or in connection with the Works against whom the Contractor shall make reasonable objection or, save where the Employer and the Contractor shall otherwise agree, who will not enter into a sub contract which provides:

That the nominated sub-contractor shall indemnify the contractor against the same obligations in respect of the sub-contract as the Contractor is liable for in respect of this contract, including claims under the Workman's Compensation Act and in respect of any negligence by the sub-contractor, its servants or agents, or misuse by it or them of any scaffolding or other plant, the property of the Contractor;

That payment in respect of any work, materials or goods comprised in the sub-contract, shall be due and payable by the contractor, only as provided for in the relevant clause;

That the provisions of these conditions governing prime cost amounts and provisional sums specified as such in relation to any works, materials or goods comprised in the sub-contract.



The sums directed by the Employer/Architect in terms of the relevant clause to be paid to nominated sub contractors for work, materials or goods comprised in the sub-contract shall be paid by the Contractor within 14 days of the date of payment by the Employer, as set out in the relevant clause, of the certificated which includes the value of the such work, materials or goods.

Where a nominated sub-contractor undertakes, in respect of work executed or goods supplied and fixed, any continuing obligation which extends beyond the completion of this contract, then such obligation shall, after the completion of this contract, be deemed to be ceded to the Employer for the unexpired portion of such undertaking, with effect from the date of completion.

Nominated sub-contractors

Where a nominated sub-contractor shall make default in any respect, the Contractor shall give written and registered notice to the nominated sub-contractor of the default, and if such default shall continue for 7 days after such notice, the Contractor, upon consultation with the Employer, shall determine the employment of the nominated sub-contractor under the sub-contract by written notice

Upon the determination of a nominated sub-contractor's employment, the Employer shall nominate or select another sub-contractor and instruct the Contractor to employ such selected sub-contractor as a nominated sub-contractor to carry out and complete the sub-contract works.

Any difference between the original sub-contractor sum (adjusted where necessary in terms of these conditions) and the total cost of carrying out the completing the sub-contract works shall be for the Employers account and shall be added or subtracted from the contract sum.

Indemnity

The Contractor shall indemnify the Employer against any liability, loss, claim or proceedings whatsoever, whether arising in common law or by statute, consequent on personal injuries to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Works unless due to any act or omission of the Employer or her servants or agents.



The Contractor shall also indemnify the Employer against any liability, loss, claim or proceedings consequent on the loss of or damage to any movable or immovable property arising out of or in the course of or caused by execution of the Works and due to any act or omission of the Contractor, its agents or servants; provided always that the term property for the purpose of the clause shall exclude the Works, any temporary works and materials and goods intended for incorporation therein.

Where the loss or damage results from risk insurable by a policy insuring fire, riot, strike, malicious damage and special perils as issued by a registered insurer, and regardless of the cause of such loss or damage, the Contractor does not indemnify the Employer against such loss or damage, to any structure/s being altered or added to in pursuance of this contract or any parts of the Works handed or taken over by or for the benefit of the Employer before the completion of the Works as a whole or any property belonging to the Employer or for which the Employer is responsible contained in such structure/s or part/s or against any consequence of any such loss or damage.

The Employer shall indemnify the Contractor's sub-contractors against any loss or damage in the circumstances referred to in the foregoing clause.

The Contractor shall insure and shall remain insured under a Contractor's All Risk Policy until completion of the Works and on request shall provide the Employer with a statement from the insurance company concerned or its agents that such insurance has been affected. The public liability policy shall contain clauses indemnifying the Employer against risks arising out of the execution of the contract.

Works

The Works (including the temporary works defined hereafter) and the materials and goods intended for incorporation in the Works and placed on or adjacent to the site shall be at risk of the Contractor for all risks of loss or damage howsoever caused, except where a part or parts thereof are to be required to be handed over for occupation before completion of the Works as a whole, in which event the employer shall carry those risks.

Notwithstanding the provisions of clause 14.2, the Contractor shall not be liable for any loss or damage to the Works, materials or goods:



11.1.1.1 Caused by any expected peril as hereinafter defined,

11.1.1.2 Occurring after the date of practical completion, or if earlier, the date on which the works are handed over to, or taken part into use or occupation by or for the benefit of the Employer in whole or part.

For the purpose of the clause

11.1.2.1 The terms “all risks” includes, but is not restricted to the risks of loss or damage by any act or omission of the Contractor or any sub-contractor or the Employer or the agent or servant of any them and the party at risk in terms of this clause shall have no right to recover any part of such loss or damage from any other party by reason of such act or omission.

11.1.2.2 The expected perils are:

Any consequence whether direct, indirect, proximate or remote of war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, uprising, insurrection, military or usurped power or martial law or state of siege or any other event or cause which determines the proclamation or maintenance of martial law or state of siege; or of confiscation, nationalization, or requisition or destruction or damage by or under the order of any government de jure or de facto or of any public or local authority.

Any latent defect in any materials or goods specified in the contract documents, provided that the Contractor shall and hereby does cede to the Employer any right of action that may exist against the supplier and/or manufacturer of such materials or goods.

The Works, temporary works, materials and goods referred to shall be insured, and the policy kept in force until the completion of the Works. Should any part/s of the Works be handed over for occupation before practical completion such insurance shall be taken out by the Employer and should the Employer wish to increase the amount for which the Contractor insures, this shall be done at the cost of the Employer.



The term temporary works” shall mean framework and other constructional equipment, including temporary structures especially designed and constructed for the project and not intended for re-use on other projects.

Costs

The cost of reinstatement of any loss or damage not at the risk of the Contractor shall be borne and paid by the Employer.

Where the Employer carries the risk in terms of this contract, the cost of reinstatement shall be measured and valued in terms of the agreement and all payments due to the Contractor shall be included in the payment certificate.

Where the Contractor carries the risk in terms of this contract and where reinstatement takes place, any insurance moneys in respect of such reinstatement shall be held in trust for the benefit of the Contractor and paid out in accordance with the certificates.

Where reinstatement of damage is required, the Contractor shall complete the Works with due diligence and a reasonable extension of time shall be granted.

Possession

Possession of the site shall be given to the Contractor on or before the date stated in the schedule to the agreement and the Contractor shall thereupon and forthwith begin the Works and regularly proceed with, bring to practical completion and hand over the whole part/s of the Works, on or before the date stated in the said schedule, conditions permitting and subject nevertheless to the provisions for extensions of time hereinafter contained.

Force Majeure

If the Works be delayed by reason of an act of God, force majeure, inclement weather, civil commotion, labour strike or lock out affecting any of the trades employed upon the Works, instructions from the Employer! Architect in pursuance of the relevant clause, directions given by the Employer consequential upon disputes with owners or occupiers of neighbouring premises, or in consequence of the Contractor not having received in due time necessary instructions from the Employer for which it shall have specifically applied in writing, delay or default on the part of nominated sub-contractors, or in the supply of



prime cost items in respect of either or both of which the Contractor has taken all practical steps to avoid or reduce, work of others engaged by the Employer on work not included in the Contract, or delay due to any other causes beyond the control of the Contractor; then in such case the Employer shall allow a fair and reasonable extension of time for the completion of the Works.

Termination

If the Contractor, after receipt of written notice from the Employer issued in terms of this clause calling upon it to do so fails to start the execution of any lawful direction or instruction given by the Employer, within such time being not less than 7 days which may be given in such notice, or if it fails to carry out such direction or instruction with reasonable skill, diligence and expedition, the Employer may, without prejudice to any right she may have to determine the employment of the Contractor, employ and pay others to do the whole or part of what fails to be done in terms of such lawful direction or instruction.

If the Contractor shall make default by wholly suspending the Works before completion without reasonable cause, or fails to proceed with the Works with reasonable diligence, or refuses or to a substantial degree persistently neglects after written notice from the Employer to remove defective work or improper materials; then if such default continues for 28 days after written notice to the Contractor from the Employer specifying the same, the Employer may without prejudice to any other rights herein contained, thereupon by written notice determine the employment of the Contractor, provided that such notice shall not be given unreasonably or vexatiously, and shall be void if the Employer is at the time of the notice in breach of contract.

Delay

If the Employer does not pay the Contractor within the period provided and thereafter for 7 days after written notice from the Contractor fails to pay the amount due on any certificate, or if the Employer interferes with or obstructs the issue of any certificate, or if her estate is sequestered as insolvent or, if part or substantially the whole of the Works, other than work in respect of defects delayed under the provisions of clause 13, the Contractor may by written notice to the Employer determine its employment under this contract and thereupon without prejudice to the accrued rights of either party, their respective rights and liabilities shall be as follows:



The Contractor shall with all reasonable dispatch remove from the site all its goods, machinery and plant, and give facility for his sub-contractors so also to do.

The Contractor shall be paid by the Employer:

The contract value of the Works completed at the date of such determination as aforesaid;

The value of the Works commenced and executed, but not completed at the date of such determination, the value being ascertained mutatis mutandis in accordance with the provisions;

The cost of materials or goods ordered and delivered for the Works paid for by the Contractor, or of which it is legally bound to accept delivery, and on such costs being paid by the Employer the same shall become her property;

The reasonable cost of removal;

Any loss or damage caused to the Contractor owing to such determination as aforesaid; provided that, in addition to all other remedies, the Contractor upon the said determination may take possession of and have a lien upon all unfixed materials and/or goods intended for the Works, which may have become the property of the Employer under this contract, until payment of all moneys due to the Contractor from the Employer.

Prime Cost

“Prime Cost” items in the specifications are for goods to be obtained by the Contractor under such conditions as the Employer shall instruct. Such goods shall be fixed by the Contractor and shall at the settlement of the accounts be dealt with as follows:

The contract sum shall be adjusted by omission of all such Prime Cost amounts, and the addition of the sums actually paid by the Contractor in respect thereof, but excluding any trade discount or allowances. Where the Contractor has incurred expense for special packing or special carriage, it shall be allowed for the same as part of the sums actually paid by it,



The same shall apply to provisional amounts dedicated to artists and nominated sub-contractors.

The Contractor shall permit the execution of work, not provided for in the specifications, by artists, craftsmen, or other like specialists engaged by the Employer. Every such person shall be deemed to be a person for whom the Employer is responsible and not to be a nominated sub-contractor.

Interim Certificate

The Contractor shall prepare an interim certificate, a penultimate certificate and a final certificate stating the amount due to it and shall be entitled to payment of such amount within 14 days of the date of the certificate, the amount being a reasonable estimate of the total value of the Works duly executed and of the materials and goods delivered upon the site for use in the Works

Arbitration

If any dispute or difference shall arise between the Employer and the Contractor, either during progress or after completion of the Works or after determination of the employment of the Contractor under this Agreement, as to abandonment or breach of contract, construction of the contract or any other matter or thing arising thereunder, or as to the withholding by the Employer of any certificate to which the Contractor may claim to be entitled, then such dispute shall be referred to arbitration by a single arbitrator in accordance with the Arbitration Act (Cap 49 of the Laws of Kenya) or any statutory modification or re-enactment thereof.