

Please note: All sample contracts are provided for informational purposes and may be modified as needed for actual transactions.

SAMPLE - AWARD DISBURSEMENT AGREEMENT
(Housing Modifications Allowance)

The undersigned Guardians acknowledge that their rights under the Virginia Birth-Related Neurological Injury Compensation Act (the "Act") are set forth in Virginia Code Sections 38.2-5000 through 38.2-5021 and they have obtained the advice of legal counsel regarding the provisions of the Act before executing this Agreement. Further, the Guardians acknowledge and represent that they have read and understood all of the terms of this Agreement and that they have had the opportunity to seek advice from legal counsel regarding the terms of this Agreement before executing this Agreement.

THIS AWARD DISBURSEMENT AGREEMENT (this "Agreement"), is made by and between the VIRGINIA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION PROGRAM (the "Program"), and _____, (the "Guardians", whether one or more) on the following terms and conditions:

RECITALS

A. The Program is prepared to reimburse up to **\$0.00**, (the "Award") to or on behalf of the Guardians as parents (or other legal guardians) of the Beneficiary, _____, to be used by the Guardians to make improvements (the "Improvements") and/or provide handicapped accessible living space to that certain dwelling house (the "House") with an address of, _____ (the House and Improvements together referred to as the "Residence"), so that the Residence may continue to be used as a residence for the Guardians and the Beneficiary. **See Attached Draw Payment Schedule.**

C. The Program imposes certain conditions with respect to the disbursement of the Award to the Guardians in order to help ensure that the Improvements are properly and timely constructed and that the Award is spent for its intended purpose.

D. The parties hereto wish to set forth their agreement with respect to the disbursement of the Award.

AGREEMENT

NOW THEREFORE, for and in consideration of One Dollar (\$1.00), the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Program and the Guardians covenant and agree as follows:

_____ Parent/Guardian Initials

Section 1. The Award. In accordance with the terms of this Agreement, the Program will disburse to or on behalf of the Guardians a sum of money up to the full amount of the Award, for

SAMPLE

the purpose of constructing the Improvements, subject to the obligations of the Guardians set forth in this Agreement (the "Obligations").

Section 2. Use of Award Proceeds. The proceeds of the Award are to be used only (a) for the direct and indirect costs of the Improvements and/or handicapped accessible living space, which shall be constructed pursuant to a construction contract or existing plan submitted to and approved by the Program (the "Contract") which Contract shall have attached thereto as an exhibit final plans and specifications for the Improvements (the "Plans and Specifications"); and (b) for other costs shown on the Cost Breakdown (defined hereafter). To the extent the total costs for the Improvements as such costs are set forth on the Contract or any amendments thereto exceeds the amount of the Award, the Guardians shall be solely responsible to pay for the difference. Furthermore, any changes to the Contract (including the Plans and Specifications attached thereto as an exhibit) ("Change Orders") made at any time after approval of the Contract by the Program, which Change Orders shall not be permitted without the approval of the Program, shall be at the Guardians' own financial risk and the amount of the Award shall not be increased under any circumstances to cover additional costs resulting from Change Orders or otherwise.

Section 3. Disbursement of Award Proceeds. So long as there exists no Event of Default (as herein defined), the Program will disburse the proceeds of the Award as to construction costs in proportion to the progress of construction and as to costs other than construction costs as such costs are incurred, provided (a) the obligation of the Program to disburse proceeds shall be subject to the Program's reservation of the right to retain at all times funds that the Program deems sufficient to complete and pay for the Improvements and to pay for the other costs shown on the Cost Breakdown approved by the Program and (b) the Program shall be given at least five (5) business days' advance notice of each request for disbursement. Disbursements, which shall be limited to one (1) per month, shall be made by wiring or depositing the same to an account of the Guardians, or at the Program's election, by the issuance of one or more checks payable to the Guardians, the Guardians' counsel or title insurance company, the general contractor, subcontractors, materialmen, or any one or more of them. As a condition to its obligation to make the initial and each and every other disbursement of funds hereunder, the Program may require satisfactory evidence of the payment by the Guardians or the general contractor, as applicable, of all debts owing contractors, surveyors, engineers, architects, materialmen and the like for labor done or professional design or surveying services, or material furnished pursuant to any contract with respect to the Improvements.

Section 4. Conditions Precedent to Disbursement of Award. Prior to funding any portion of the Award, the Guardians will deliver to the Program or its counsel for approval, the following:

_____ Parent/Guardian Initials

A. The Contract and the Plans and Specifications, and evidence satisfactory to the Program that the Contract and the Plans and Specifications have been approved by the general contractor and all government agencies having jurisdiction that are required to grant approval.

B. A cost breakdown (the "Cost Breakdown") on a form acceptable to the Program, certified by the Guardians to be correct to the best of the Guardians' knowledge, showing the costs of the Improvements and/or accessible living space and the sources for the payment of such costs, should such costs exceed the amount of the Award. The costs on such Cost Breakdown shall be verified by fixed cost contracts and subcontracts as to those items of cost which can be so verified, and, as to those costs not capable of such verification, by reasonable estimates. The Cost Breakdown shall also include a "contingency" amount satisfactory to the Program.

C. "Builder's Risk Completed Value" insurance policy showing the Guardians and the Program as additional loss payees and evidence of other insurance as customarily carried and any other casualty or liability insurance coverage reasonably requested by the Program.

D. Proof of Flood Insurance if required under the Flood Disaster Protection Act of 1973.

E. Copies of all building and other governmental permits and approvals required for construction of the Improvements.

F. Such other items as the Program or the Program's counsel may reasonably request.

Section 5. Guardians' Obligations. Guardians covenant to do the following:

A. Ensure the construction of the Improvements in a good workmanlike manner and in complete conformity with the Plans and Specifications;

B. Furnish the Program, as often as may be reasonably requested, with full information on the status of the construction of the Improvements;

C. Pay, when due, all taxes, assessments, levies, and charges upon the Residence; provided, however, that Guardians shall have the right to contest any such taxes, assessments, levies or charges provided that the same be contested in good faith by appropriate proceedings;

D. Furnish to the Program, promptly upon request, any document, paper statement, receipted bill, lien waiver or affidavit which the Program reasonably deems necessary or useful in connection herewith.

Parent/Guardian Initials

E. Make requests for draws not later than five (5) business days before each draw is desired, on the Program's Draw Request form, accompanied by the general contractor's requisition for payment, which must be acceptable to the Program and approved and certified by the Program's inspector, it being understood that:

1. The Program may at any time for any reason withhold any advance for a period of seven (7) business days for investigation of the status of the Improvements, including an inspection by an inspector selected by the Program;

2. The Program may require any information pertinent to the Improvements /handicapped accessible living space and available or known to the Guardians to be provided before making any advance, whether or not directly pertaining to the Guardians' affairs;

G. Accept disbursements in accordance with the Program's draw schedule;

H. Use the Residence as the primary residence of the Guardians and the Beneficiary.

I. Keep the Residence free from any liens arising out of any work performed on, or materials furnished to, the Residence, or arising from any other obligation incurred by the Guardians, except such liens as the Program shall reasonably agree to in advance. If any mechanic's, materialmen's or other lien is filed against the Residence and/or the land underlying the Residence, such lien shall be discharged by the Guardians within ten (10) days thereafter, at the Guardians' sole cost and expense, by the payment thereof or by filing any bond required by law. If the Guardians fail to discharge any such lien, the Program may, at its option, discharge the same and treat the cost thereof as reimbursement payable immediately by the Guardians upon demand thereof; it being expressly covenanted and agreed that such discharge by the Program shall not be deemed to waive or release the default of the Guardians in not discharging the same.

Section 6. Program's Liability. THE PROGRAM HAS NO LIABILITY IN CONNECTION WITH THE RESIDENCE OR THE CONSTRUCTION OR COMPLETION OF THE IMPROVEMENTS, AND HAS NO OBLIGATIONS HEREUNDER OR OTHERWISE, EXCEPT TO ADVANCE THE AWARD AS HEREIN AGREED. THE GUARDIANS ACKNOWLEDGE AND HEREBY ACCEPT THE SOLE RESPONSIBILITY FOR THE SELECTION OF THEIR OWN CONTRACTOR, MATERIALS, SUPPLIES AND EQUIPMENT TO BE USED IN THE CONSTRUCTION, NEGOTIATING THE TERMS OF THE CONSTRUCTION CONTRACT, ENSURING THAT THE PROVISIONS OF THE CONSTRUCTION CONTRACT ARE COMPATIBLE WITH THE TERMS HEREOF, ANY COSTS INCURRED IN CONNECTION WITH THE CONSTRUCTION OF THE IMPROVEMENTS IN EXCESS OF THE AMOUNT OF THE AWARD, AND THE COSTS OF ANY CHANGE ORDERS.

_____ Parent/Guardian Initials

THE PROGRAM ASSUMES NO RESPONSIBILITY FOR THE COMPLETION OF THE IMPROVEMENTS ACCORDING TO THE PLANS AND SPECIFICATIONS OR FOR THE CONTRACT PRICE. ALL INSPECTIONS BY THE PROGRAM OR ITS REPRESENTATIVES ARE FOR ITS BENEFIT, AND THE GUARDIANS SHOULD NOT RELY ON SUCH INSPECTIONS REGARDLESS OF THE CIRCUMSTANCES.

Section 7. Events of Default. The occurrence of any of the following events shall be considered an Event of Default hereunder:

- A. The Guardians shall fail to perform according to the terms of this Agreement;
- B. The Guardians shall cause or permit a breach or default under any term, condition, provision, warranty, contingency, requirement or representation made in this Agreement, provided, however, that should the breach be incapable of immediate cure, Guardians shall have 30 days after notice to cure the same;
- C. The Guardians shall suffer or permit abandonment of work on the Project for twenty-one (21) consecutive days without notification to the Program in writing indicating a valid reason which the Program shall find acceptable;
- D. The Guardians, or either of them, shall attempt to convey all or any portion of their ownership interest in the Residence without first having obtained the express written consent of the Program.

Upon the occurrence of an Event of Default, the Program's obligation to make any further disbursements of the Award shall at the option of the Program cease immediately and without notice to any party, and the Program shall not be under any obligation to resume making disbursements of the Award until such Event of Default has been cured to the satisfaction of the Program.

_____ Parent/Guardian Initials

Section 8. Notices. All written notices required or permitted by this Agreement may be delivered in person, or sent by certified mail, return receipt requested (postage prepaid) to the Program or the Guardians at the addresses set forth below or at such other address as a party may designate from time to time by notice given in accordance with the terms of this Section. The Guardians shall be deemed to have received notice if such notice is delivered or served at the Residence.

The Program:
The Virginia Birth-Related
Neurological Injury Compensation Program
7501 Boulders View Drive
Suite 210
Richmond, Virginia 23225

The Guardian:
Name of Parents/Guardians
Address 1 of Parents/Guardians
Address 2 of Parents/Guardians

Section 9. Governing Law. This Agreement shall be construed under the laws of the State of Virginia.

Section 10. Severability. Any provision of this Agreement that is prohibited by, or unlawful or unenforceable under Virginia law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions of this Agreement.

Section 11. Amendments. This Agreement may be amended only by a writing signed by all of the parties hereto.

Section 12. Entire Agreement. This Agreement constitutes the entire agreement between the parties. No oral statements made by either shall be binding on such party.

**[Remainder of page intentionally left blank.
Signatures on following page.]**

_____ Parent/Guardian Initials

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

THE PROGRAM:

The Virginia Birth-Related Neurological Injury Compensation Program

By _____,
_____, Claims Manager

THE GUARDIANS:

<Names>

_____ Parent/Guardian Initials