

THE STATE OF TEXAS

BID # S29-T23922

ORDINANCE # 2011-442(68-11)

CONTRACT # 4600011010

COUNTY OF HARRIS

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR THE HOUSING AND COMMUNITY DEVELOPMENT SINGLE FAMILY RECONSTRUCTION PROGRAM DISASTER RECOVERY (GROUP 1) ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas Home-Rule City and **DSW HOMES LLC** ("Contractor or Vendor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

City Purchasing Agent for the Director
of Housing & Community Development Department
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

DSW Homes LLC
1021 61st St., Suite 200, Bldg. B
Galveston, Texas 77551
Phone: 409-744-3400
Fax: 409-744-3404

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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- A. DEFINITIONS
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- M. CERTIFICATION REGARDING LOBBYING
- N. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

3.0 PARTS INCORPORATED:

3.1 The above described sections and exhibits are incorporated into this Agreement.

4.0 CONTROLLING PARTS:

4.1 If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

5.0 DEFINITIONS:

5.1 Certain terms used in this Agreement are defined in Exhibit "A".

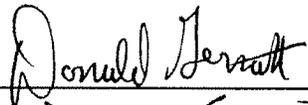
6.0 SIGNATURES:

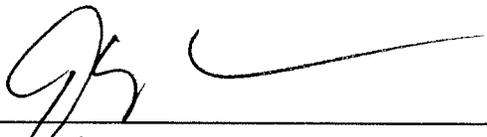
6.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):

DSW HOMES LLC

WITNESS (if not a corporation):

By: 
Name: DONALD GERRATT
Title: PRODUCTION MANAGER

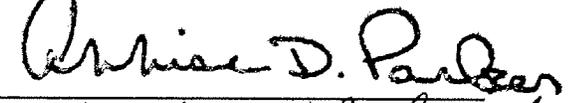
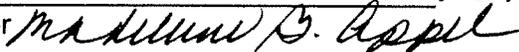
By: 
Name: JIM SCHUMER
Title: OWNER
Federal Tax ID Number: 27-1330085

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

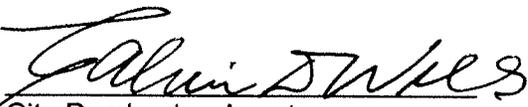
Signed by:

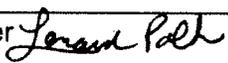

City Secretary


Mayor 

APPROVED:

COUNTERSIGNED BY:

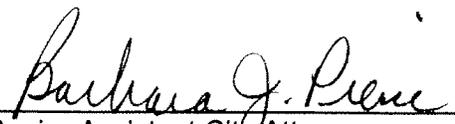

City Purchasing Agent


City Controller 

DATE COUNTERSIGNED:

6-24-11

This Contract has been reviewed as to form and has been found to meet established Legal Department criteria.


Senior Assistant City Attorney

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES:

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, equipment, transportation and supervision necessary to perform the services described in Exhibit "B."

2.0 INDEMNITY AND RELEASE:

2.1 RELEASE

PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

2.2 INDEMNIFICATION:

PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- 2.2.1 PRIME CONTRACTOR/SUPPLIERS AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-2.3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- 2.2.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND
- 2.2.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.
- 2.2.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR

YEARS AFTER THE AGREEMENT TERMINATES. PRIME CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

2.3 INDEMNIFICATION:

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

3.0 INDEMNIFICATION PROCEDURES:

3.1 Notice of Claims. If the City or Prime Contractor/Supplier receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

3.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

3.3 Defense of Claims

3.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.3.2 Continued Participation. If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

4.0 INSURANCE:

4.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All

policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide. Contractor shall maintain the following insurance coverage in the following amounts:

4.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$1,000,000 per occurrence; \$2,000,000 aggregate

4.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount

4.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.

4.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)

4.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30-day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

4.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or

4.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

5.0 WARRANTIES:

5.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

5.2 With respect to any parts and goods furnished by it, Contractor warrants:

5.2.1 that all items are free of defects in title, material, and workmanship,

5.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

5.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

5.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

6.0 LICENSES AND PERMITS:

6.1 Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

7.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

8.0 MWBE COMPLIANCE:

8.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **10%** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.

8.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

9.0 DRUG ABUSE DETECTION AND DETERRENCE:

9.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

9.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

9.2.1 a copy of its drug-free workplace policy,

9.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,

9.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."

9.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

- 9.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 9.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

10.0 ENVIRONMENTAL LAWS:

- 10.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.
- 10.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

11.0 CONTRACTOR'S PERFORMANCE:

- 11.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

- 12.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 12.2 Failure of Contractor to pay its employees as required by law shall constitute a default under this contract for which the Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 12.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

13.0 CONTRACTOR PAY OR PLAY PROGRAM:

- 13.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Exhibit "I".

- 13.2 The Pay or Play Program for various departments will be administered by the City of Houston Office of Business Opportunity's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

- 1.1 The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.
- 1.2 Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

2.0 TAXES:

- 2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF PAYMENT:

- 3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:

- 4.1 If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 LIMIT OF APPROPRIATION:

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of ~~\$-0-~~ to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

- 5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

- 5.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.0 CHANGES:

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

- 6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:
- 6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$25,000. A Change Order of more than \$25,000 over the approved contract amount must be approved by the City Council.

- 6.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
- 6.3.3 The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 6.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.
- 6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- 6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 CONTRACT TERM:

- 1.1 This Agreement is effective on the Countersignature Date and expires one (1) year after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED:

- 2.1 Contractor shall begin performance under this Agreement on the date specified in each Tri-Party Agreement between the Contractor, Homeowner and the Director of Housing and Community Development, in substantially the form attached hereto as Exhibit "K" and incorporated herein by reference.

3.0 RENEWALS:

- 3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for one successive one-year term on the same terms and conditions. If the Director of the City Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

4.0 TIME EXTENSIONS:

- 4.1 If the Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

5.0 TERMINATION FOR CONVENIENCE BY THE CITY:

- 5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.
- 5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.
- 5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY:

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:
 - 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors;
or
 - 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.3 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR:

- 7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.
- 7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS:

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR:

- 1.1 Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

2.0 FORCE MAJEURE:

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
 - 2.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and
 - 2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- 2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.**

3.0 SEVERABILITY:

3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

4.0 ENTIRE AGREEMENT:

4.1 This Agreement, including the Exhibits attached hereto, merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

4.2 In the event of a conflict between this Agreement and the Exhibits attached hereto, the one containing the most stringent requirements shall apply.

5.0 WRITTEN AMENDMENT:

5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS:

6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States (including but not limited to the Community Development Block Grant regulations set forth at Subpart K of 24 CFR Part 570 and those attached hereto under Exhibits "L", "M", and "N"), and all rules and regulations of any regulatory body or officer having jurisdiction.

6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES:

7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

8.0 NON-WAIVER:

8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS:

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT:

10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES:

11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

12.0 SURVIVAL:

12.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

13.0 PARTIES IN INTEREST:

13.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

14.0 SUCCESSORS AND ASSIGNS:

14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

16.0 REMEDIES CUMULATIVE:

16.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

17.0 CONTRACTOR DEBT:

17.1 If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefor.

18.0 PERFORMANCE BOND:

- 18.1 The Contractor shall furnish and maintain a performance bond in the amount of 100% of the total contract cost, renewable annually, which will be for a period not to exceed one year. If the City exercises its option to extend the agreement beyond the initial term of one year and the Contractor mutually agrees, the Contractor shall furnish a performance bond for each renewal year. However, the surety providing the performance bond for the initial term of the agreement shall be under no obligation to provide the performance bond for any renewal year. The bond shall be conditioned upon the Contractor's full and timely performance of this agreement and must be issued by a corporate surety authorized to write surety bonds in the State of Texas and in the form set out in Exhibit "J".
- 18.2 If the City exercises any option years, Contractor shall maintain a Performance Bond in the amount equal to 100% of the contract amount for the option year, as determined by the City Purchasing Agent or Director. The bond must be in substantially the form attached as Exhibit "J" and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.
- 18.3 The Contractor must deliver the Performance Bond or Clean Irrevocable Letter of Credit to the City Purchasing Agent of the City on or before the tenth (10th) day following the day this Contractor receives notification from the City of a possible award.

EXHIBIT "A" DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contractor Administrator" means the representative of the Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

EXHIBIT "B"
GENERAL SCOPE OF WORK

(Please refer to Work Write-up as referenced in the Tri-Party Agreement)

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"
MWBE REQUIREMENTS

ATTACHMENT "C"
CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled **"THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT"** and contain the following terms:

1. _____ (M/WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
2. _____ (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Affirmative Action Division at (713) 837-9000, 611 Walker, 20th Floor, Houston, Texas.

ATTACHMENT "D"

**CITY OF HOUSTON
AFFIRMATIVE ACTION & CONTRACT COMPLIANCE
M/WBE UTILIZATION REPORT**

Report Period _____

PROJECT NAME & NUMBER: _____ AWARD DATE: _____

PRIME CONTRACTOR: _____ CONTRACT No.: _____

ADDRESS: _____ CONTRACT AMOUNT: _____

LIAISON/PHONE No.: _____ M/WBE GOAL: _____

M/WBE SUB/VENDOR NAME	DATE OF AA CERTIFICATION	DATE OF SUBCONTRACT	SUBCONTRACT AMOUNT	% OF TOTAL CONTRACT	AMOUNT PAID TO DATE	% OF CONTRACT TO DATE
Use additional pages if needed. Submit by the 15th day of the following month. Provide support documentation on all revenues paid to end of the report period to: M/WBEs to reflect up/down variances on contract amount						
Affirmative Action Division ATTN: Velma Laws 713-837-9018 611 Walker, 20 th Floor Houston, Texas 77002						

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, Jim Schomee OWNER as an owner or officer of
(Name) (Print/Type) (Title)
DSW Homes (Contractor)
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date 6/7/11

Contractor Name Jim Schomee / DSW Homes

Signature 

Title Owner

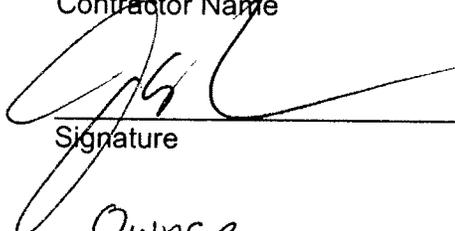
EXHIBIT "F"
**CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, Jim Schumer Owner
(Name)(Print/Type) (Title)

as an owner or officer of DSW Homes (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

Date 6/7/11

Jim Schumer / DSW Homes
Contractor Name


Signature

Owner
Title

**CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS**

I, _____
(NAME) (PRINT/TYPE)

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

DATE

CONTRACTOR NAME

SIGNATURE

TITLE

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION

I, Jim Schomer OWNER as an owner or officer of
 (Name) (Print/Type) (Title)
DSW Homes (Contractor or Vendor)
 (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20_____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
 Initials The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
 Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
 Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
 Initials performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

_____ From _____ to _____ the following test has occurred
 Initials (Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

_____ Any employee who tested positive was immediately removed from the City worksite
 Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
 Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

6/7/11
 (Date)

Jim Schomer
 (Typed or Printed Name)
[Signature]
 (Signature)

(Title)

**EXHIBIT "H"
FEES AND COSTS**

BID ITEM	DESCRIPTION	UNIT	UNIT PRICE
1	Option 1: 4914 Firnat Street, Houston, Texas 77016 - Provide supervision, labor, material and equipment necessary to demolish, clean/remove debris and construct a two (2) bedroom two bath (one bathroom in accordance with the Uniform Federal Accessibility standards Section 4.22) approx. 1,000 sq. ft. (slab on grade) Brick home on all four sides and attach a copy of your plan. This should include everything necessary to complete the structure and yard. This should include silt fence for E.P.A., form and final surveys, rough grading and full final grading (no trenches), trash to be piled in the front of the house and cleared on a daily basis. (Everything included for the entire construction of the house and lot will be 90 days turnkey).	1	\$73,885.00
1A	Progress Payment 1: Foundation Completed. To include survey, permits pulled, demolition of existing structure(s), plumbing roughed in, foundation poured, site rough grade and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,624.13
1B	Progress Payment 2: Frame Completed and Dried In. To include all exterior siding and brick, windows, doors, shingles, fascia, soffit, plumbing topped out with roof jacks and tubs, A/C roughed in and electrical roughed in. Houses should be approved for cover by City of Houston by all disciplines and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,624.13
1C	Progress Payment 3: Trims Complete. To include insulation and sheetrock, interior trim and doors, cabinets and countertops, appliances, paint interior and exterior, electric fixtures, mirrors, hardware, driveway, approach, private walks and A/C pad concrete work completed. 22.5% of Total House Price	1	\$16,624.13
1D	Progress Payment 4: Finished. To include 100% completion. Plumbing fixtures, all meters, all flooring, paint touched up, HVAC vents and units installed, appliances, yard final grade, sod and landscaping completed, all punch list items completed. 22.5% of Total House Price	1	\$16,624.13
1E	Progress Payment 5: Retention Payment. 30 days after house is complete the final payment will be paid. 10% of Total House Price	1	\$7,388.48
2	Option 1: 4518 Kingsbury, Houston, Texas 77021 - Provide supervision, labor, material and equipment necessary to demolish, clean/remove debris and construct three (3) bedroom two bath (one bathroom in accordance with the Uniform Federal Accessibility standards Section 4.22) approx. 1,500 sq. ft. (slab on grade) Brick home on all four sides and attach a copy of your plan. This should include everything necessary to complete the structure and yard. This should include silt fence for E.P.A., form and final surveys, rough grading and full final grading (no trenches), trash to be piled in the front of the house and cleared on a daily basis. (Everything included for the entire construction of the house and lot will be 90 days turnkey).	1	\$85,853.00
2A	Progress Payment 1: Foundation Completed. To include survey, permits pulled, demolition of existing structure(s), plumbing roughed in, foundation poured, site rough grade and trash piled neatly in front of house. 22.5% of Total House Price	1	\$19,316.93
2B	Progress Payment 2: Frame Completed and Dried In. To include all exterior siding and brick, windows, doors, shingles, fascia, soffit, plumbing topped out with roof jacks and tubs, A/C roughed in and electrical roughed in. Houses should be approved for cover by City of Houston by all disciplines and trash piled neatly in front of house. 22.5% of Total House Price	1	\$19,316.93
2C	Progress Payment 3: Trims Complete. To include insulation and sheetrock, interior trim and doors, cabinets and countertops, appliances, paint interior and exterior, electric fixtures, mirrors, hardware, driveway, approach, private walks and A/C pad concrete work completed. 22.5% of Total House Price	1	\$19,316.93
2D	Progress Payment 4: Finished. To include 100% completion. Plumbing fixtures, all meters, all flooring, paint touched up, HVAC vents and units installed, appliances, yard final grade, sod and landscaping completed, all punch list items completed. 22.5% of Total House Price	1	\$19,316.93
2E	Progress Payment 5: Retention Payment. 30 days after house is complete the final payment will be paid. 10% of Total House Price	1	\$8,585.28
3	Option 1: 8825 Bertwood Street, Houston, Texas 77016 - Provide supervision, labor, material and equipment necessary to demolish, clean/remove debris and construct a two (2) bedroom two bath approx. 1,000 sq. ft. (slab on grade) Brick home on all four sides meeting Texas Government Code 2306.514 requirements and attach a copy of your plan. This should include everything necessary to	1	\$72,978.00

	complete the structure and yard. This should include silt fence for E.P.A., form and final surveys, rough grading and full final grading (no trenches), trash to be piled in the front of the house and cleared on a daily basis. (Everything included for the entire construction of the house and lot will be 90 days turnkey).		
3A	Progress Payment 1: Foundation Completed. To include survey, permits pulled, demolition of existing structure(s), plumbing roughed in, foundation poured, site rough grade and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,420.05
3B	Progress Payment 2: Frame Completed and Dried In. To include all exterior siding and brick, windows, doors, shingles, fascia, soffit, plumbing topped out with roof jacks and tubs, A/C roughed in and electrical roughed in. Houses should be approved for cover by City of Houston by all disciplines and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,420.05
3C	Progress Payment 3: Trims Complete. To include insulation and sheetrock, interior trim and doors, cabinets and countertops, appliances, paint interior and exterior, electric fixtures, mirrors, hardware, driveway, approach, private walks and A/C pad concrete work completed. 22.5% of Total House Price	1	\$16,420.05
3D	Progress Payment 4: Finished. To include 100% completion. Plumbing fixtures, all meters, all flooring, paint touched up, HVAC vents and units installed, appliances, yard final grade, sod and landscaping completed, all punch list items completed. 22.5% of Total House Price	1	\$16,420.05
3E	Progress Payment 5: Retention Payment. 30 days after house is complete the final payment will be paid. 10% of Total House Price	1	\$7,297.80
4	Option 1: 8815 Spaulding Street, Houston, Texas 77016 - Provide supervision, labor, material and equipment necessary to demolish, clean/remove debris and construct a two (2) bedroom two bath approx. 1,000 sq. ft. (slab on grade) Brick home on all four sides meeting Texas Government Code 2306.514 requirements and attach a copy of your plan. This should include everything necessary to complete the structure and yard. This should include silt fence for E.P.A., form and final surveys, rough grading and full final grading (no trenches), trash to be piled in the front of the house and cleared on a daily basis. (Everything included for the entire construction of the house and lot will be 90 days turnkey).	1	\$74,603.00
4A	Progress Payment 1: Foundation Completed. To include survey, permits pulled, demolition of existing structure(s), plumbing roughed in, foundation poured, site rough grade and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,785.68
4B	Progress Payment 2: Frame Completed and Dried In. To include all exterior siding and brick, windows, doors, shingles, fascia, soffit, plumbing topped out with roof jacks and tubs, A/C roughed in and electrical roughed in. Houses should be approved for cover by City of Houston by all disciplines and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,785.68
4C	Progress Payment 3: Trims Complete. To include insulation and sheetrock, interior trim and doors, cabinets and countertops, appliances, paint interior and exterior, electric fixtures, mirrors, hardware, driveway, approach, private walks and A/C pad concrete work completed. 22.5% of Total House Price	1	\$16,785.68
4D	Progress Payment 4: Finished. To include 100% completion. Plumbing fixtures, all meters, all flooring, paint touched up, HVAC vents and units installed, appliances, yard final grade, sod and landscaping completed, all punch list items completed. 22.5% of Total House Price	1	\$16,785.68
4E	Progress Payment 5: Retention Payment. 30 days after house is complete the final payment will be paid. 10% of Total House Price	1	\$7,460.28
5	Option 1: 4208 Cortlandt Street, Houston, Texas 77018 - Provide supervision, labor, material and equipment necessary to demolish, clean/remove debris and construct a two (2) bedroom two bath approx. 1,000 sq. ft. (slab on grade) Brick home on all four sides meeting Texas Government Code 2306.514 requirements and attach a copy of your plan. This should include everything necessary to complete the structure and yard. This should include silt fence for E.P.A., form and final surveys, rough grading and full final grading (no trenches), trash to be piled in the front of the house and cleared on a daily basis. (Everything included for the entire construction of the house and lot will be 90 days turnkey).	1	\$74,363.00
5A	Progress Payment 1: Foundation Completed. To include survey, permits pulled, demolition of existing structure(s), plumbing roughed in, foundation poured, site rough grade and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,731.68
5B	Progress Payment 2: Frame Completed and Dried In. To include all exterior siding and brick, windows, doors, shingles, fascia, soffit, plumbing topped out with roof jacks and tubs, A/C roughed in and electrical roughed in. Houses should be approved for cover by City of Houston by all disciplines and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,731.68

5C	Progress Payment 3: Trims Complete. To include insulation and sheetrock, interior trim and doors, cabinets and countertops, appliances, paint interior and exterior, electric fixtures, mirrors, hardware, driveway, approach, private walks and A/C pad concrete work completed. 22.5% of Total House Price	1	\$16,731.68
5D	Progress Payment 4: Finished. To include 100% completion. Plumbing fixtures, all meters, all flooring, paint touched up, HVAC vents and units installed, appliances, yard final grade, sod and landscaping completed, all punch list items completed. 22.5% of Total House Price	1	\$16,731.68
5E	Progress Payment 5: Retention Payment. 30 days after house is complete the final payment will be paid. 10% of Total House Price	1	\$7,436.28
6	Option 1: 2609 King Street, Houston, Texas 77026 - Provide supervision, labor, material and equipment necessary to demolish, clean/remove debris and construct a two (2) bedroom two bath approx. 1,000 sq. ft. (slab on grade) Brick home on all four sides meeting Texas Government Code 2306.514 requirements and attach a copy of your plan. This should include everything necessary to complete the structure and yard. This should include silt fence for E.P.A., form and final surveys, rough grading and full final grading (no trenches), trash to be piled in the front of the house and cleared on a daily basis. (Everything included for the entire construction of the house and lot will be 90 days turnkey).	1	\$74,763.00
6A	Progress Payment 1: Foundation Completed. To include survey, permits pulled, demolition of existing structure(s), plumbing roughed in, foundation poured, site rough grade and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,821.68
6B	Progress Payment 2: Frame Completed and Dried In. To include all exterior siding and brick, windows, doors, shingles, fascia, soffit, plumbing topped out with roof jacks and tubs, A/C roughed in and electrical roughed in. Houses should be approved for cover by City of Houston by all disciplines and trash piled neatly in front of house. 22.5% of Total House Price	1	\$16,821.68
6C	Progress Payment 3: Trims Complete. To include insulation and sheetrock, interior trim and doors, cabinets and countertops, appliances, paint interior and exterior, electric fixtures, mirrors, hardware, driveway, approach, private walks and A/C pad concrete work completed. 22.5% of Total House Price	1	\$16,821.68
6D	Progress Payment 4: Finished. To include 100% completion. Plumbing fixtures, all meters, all flooring, paint touched up, HVAC vents and units installed, appliances, yard final grade, sod and landscaping completed, all punch list items completed. 22.5% of Total House Price	1	\$16,821.68
6E	Progress Payment 5: Retention Payment. 30 days after house is complete the final payment will be paid. 10% of Total House Price	1	\$7,476.28

EXHIBIT "I"
PAY OR PLAY PROGRAM



FORM POP 2 (DOCUMENT 00630)

CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: DSW Homes (Contractor/Subcontractor) \$ _____ (Amount of Contract)

Contractor Address: 1021 61st Street, Galveston, TX 77551

Project No.: [GFS/CIP/AIP/File No.] _____

Project Name: [Legal Project Name] _____

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

[] Yes [x] No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including compliance for covered subcontractors' employees and contract labor, under the contract with the City.

[x] Yes [] No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors that meet or exceed the following criteria:
(1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and
(2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.

[] Yes [x] No Contractor agrees to pay on behalf of some covered employees and contract labor and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.

[] Yes [x] No If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed.

[x] Yes [] No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.

[x] Yes [] No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Table with 3 columns and 4 rows: Total No. Of Employees on City Job (2, 30), No. Of Employees-"Playing" (2, 0), No. Of Employees --"Paying" (0, 0), No. Of Employees "Exempt" (0, 0)

I hereby certify that the above information is true and correct.

[Signature]
CONTRACTOR (Signature)

6/7/11
DATE

Jim Schomer, OWNER
NAME AND TITLE (Print or type)

EXHIBIT "J"
PERFORMANCE BOND

THE STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HARRIS

§

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation, in the sum of _____ Dollars (\$) for the payment of which sum, well and truly to be made to the City of Houston and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Houston for _____

_____ all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of Contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of Houston or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, and the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Contract and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of Houston shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the City's benefit, and the City of Houston shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of Houston or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the City of Houston from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract.

If the Contract Price is greater than \$1.2 million and in the event that the City of Houston shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the sum of 10 percent of whatever amount may be recovered by the City in suit or legal proceeding, which sum of 10 percent is agreed by all parties to be indemnity to the City for the expense of or time consumed by its City Attorney, his assistants, and office force, and other cost and damage occasioned to the City. This amount of 10 percent is fixed and liquidated by the parties, it being agreed by them that the exact damage to the City would be difficult to ascertain.

This bond and all obligations created hereunder shall be performable in Harris County, Texas. This bond is given in compliance with the provisions of Article 5160, Revised Civil Statutes of Texas, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)
WITNESS: (if not a corporation)

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS: (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

This Ordinance and/or Contract have been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

Paralegal

EXHIBIT "K"
TRI-PARTY AGREEMENT (FORM)

The State of Texas

County of Harris

**SINGLE FAMILY HOME RECONSTRUCTION
TRI- PARTY AGREEMENT**

This Single Family Home Reconstruction Tri-Party Agreement (this "Agreement") is entered into between **City of Houston** (the "City"), _____ ("Homeowner") and _____ ("Contractor").

In consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

Section I – Definitions

Whenever used in this Agreement, the following words and terms shall have the meanings ascribed to them as follows:

Affordability Period shall mean the period that begins upon the date of this Agreement and ends on the Maturity Date, or as amended through a Note Amendment.

Certificate of Acceptance shall mean a written statement issued by the City and signed by the City's inspector to be delivered to Homeowner for execution stating that all Work has been generally completed in accordance with the Work Write-up.

Change Order shall mean an amendment to the Work and/or Contract Price submitted by Contractor and approved by Homeowner and the City in accordance with the Master Contractor Agreement and the SFHRP Guidelines.

City shall mean the City of Houston, and shall include its various departments, officers, agents and third party vendors.

Contractor shall mean the contractor who is selected to perform the Work on the Residence under the SFHRP. The Contractor selected to perform the Work on the Property is identified above in the first paragraph of this Agreement.

Director shall mean the Director of HCDD or any other person(s) that may be designated to perform the various functions assigned to the Director.

First Anniversary shall mean one year from the first day of the month following the date of the Unsecured Forgivable Promissory Note plus 120 days for construction.

Grant shall mean the form of financial assistance provided by the City to Homeowner for the purpose of reconstructing the Residence on the Property in accordance with the Work Write-up, the Master Contractor Agreement, this Agreement and the SFHRP Guidelines. The Grant is (i) in the amount of \$_____, (ii) a performance based, non-interest bearing grant, (iii) for a term beginning from the date of this Agreement and ending on the Maturity Date; provided no default has occurred under the documents executed in connection with the Grant and/or the Reconstruction, and (iv) to be prorated over the Affordability Period, with a corresponding reduction of 20% percent per year beginning on the First Anniversary and continuing annually until the Maturity Date. The Grant is further evidenced by an Unsecured Forgivable Promissory Note executed by Homeowner, payable to the City.

HCDD shall mean the City's Housing and Community Development Department.

HUD shall mean the U.S. Department of Housing and Urban Development and any successor government agency.

Maturity Date shall mean five years from the first day of the month following the date of the Unsecured Forgivable Promissory Note plus 120 days for construction.

Master Contractor Agreement shall mean the agreement between the City and Contractor selected to perform the Work in connection with the Reconstruction, and the terms and provisions of said Master Contractor Agreement are hereby incorporated into this Agreement. A copy of the Master Contractor Agreement applicable to this Agreement is attached as Exhibit "C". If a copy of the Master Contractor Agreement is not attached hereto, Master Contractor Agreement shall refer to the Master Contractor Agreement executed most recently prior hereto by the City and the Contractor.

Notice to Proceed shall mean the written authorization issued by the City for the Contractor to proceed with the Work set forth in the Work Write-up.

Plans and Specifications shall mean a detailed itemized list approved by the City that provides instructions to the Contractor for the Reconstruction to be done on the Residence under the SFHRP, which may include drawings as applicable. Plans and Specifications may be amended by authorized Change Orders.

Progress Schedule shall mean the schedule of the Work progress determined by the Contractor and approved by the City.

Property shall mean the land described in Exhibit "A" attached hereto and made a part hereof for all purposes, and all rights and appurtenances thereto; all improvements now or hereafter attached to the land or improvements, and all substitutions and replacements thereof and additions and successions thereto. The Property described herein is located at _____.

Reconstruction shall mean the demolition, if required, and the rebuilding of the Residence on the Property, plus increases pursuant to Change Orders. The reconstructed Residence must be functionally equivalent to the structure being replaced, but may be larger or smaller than the original Residence depending on the needs of the family occupying the reconstructed Residence.

Residence shall mean the single family detached dwelling currently located on, or to be reconstructed on the Property.

SFHRP shall mean the CDBG Disaster Recovery Program being implemented by the City pursuant to Contract No. 70090001 between the City and the Texas Department of Housing and Community Affairs for Hurricane Ike/Dolly Funding under the Consolidated Security Disaster Assistance and Continuing Appropriations Act of 2009.

SFHRP Guidelines shall mean the Hurricane Ike Single Family Repair Guidelines adopted by HCDD and approved by the Texas Department of Housing and Community Affairs.

Subcontractor shall mean any person or entity who, pursuant to this Agreement, will perform Work at the Residence at the request of Contractor.

TDHCA shall mean the Texas Department of Housing and Community Affairs.

Unsecured Forgivable Promissory Note shall mean the Unsecured Forgivable Promissory Note in the amount of the Grant executed by Homeowner and payable to the City.

Work shall mean the labor and the materials necessary to complete the Reconstruction required under this Agreement, the Work Write-up and related documents.

Work Write-up shall mean the form that specifies and quantifies the Work to be done on the Residence in connection with the Reconstruction under the SFHRP, and includes the Plans and Specifications.

Section II – Certifications and Representations by Homeowner

Homeowner certifies, represents, and/or acknowledges:

- A. Homeowner is the owner and occupant of the Residence.
- B. Homeowner has fee simple title to the Property.
- C. The Property is free and clear of all liens, encumbrances and encroachments.
- D. Taxes on the Property are paid current.

- E. Homeowner's annual income does not exceed 80% of the median income for the City as published by HUD from time to time.
- F. Homeowner has voluntarily applied for and has been selected to participate in the City's SFHRP for Reconstruction and understands and agrees to the terms and conditions contained in this Agreement.

Section III – Covenants and Agreements by Homeowner

Homeowner covenants and agrees to the following:

- A. **Homeowner has and does hereby authorized the City to act on behalf of Homeowner with Contractor in connection with the Reconstruction and acknowledges that the Contractor will be selected in accordance with the SFHRP Guidelines.**
- B. Homeowner agrees that the City and Contractor may enter and leave the Residence or the Property at all reasonable times. The City, Contractor, and their respective employees may use the common areas and roadways of Residence or the Property, together with all facilities, equipment, improvements, and services provided in connection with the Residence or the Property.
- C. Homeowner shall be required to own and occupy the Property as Homeowner's primary residence during the Affordability Period in order to fully discharge Homeowner's responsibility under the SFHRP, the Grant and the Unsecured Forgivable Promissory Note.
- D. Homeowner shall allow annual monitoring of the Property during the Affordability Period, including without limitation site visits from HUD, HCDD, TDHCA and any other governmental agency that has provided a source of funding for the SFHRP, which may include verification of Homeowner's identity and requests for other information that is not private or confidential.
- E. Homeowner shall respond to any letters from the City sent to the Property within 30 days.
- F. Homeowner shall maintain hazard insurance, and flood insurance if applicable, in accordance with applicable city, state and federal laws and regulations, and as may be required in this Agreement or any related document. In the event, Homeowner fails to maintain the hazard insurance required by this paragraph, or fails to notify any transferee of the Property of such insurance requirements, and the Property is damaged by a disaster, then Homeowner may not be eligible for future disaster relief assistance from the agencies of the City or the

State of Texas; however, if the Homeowner resides in a floodplain and fails to maintain flood insurance, then the Homeowner will not be eligible for any further federal disaster relief assistance from the agencies of the City or the State of Texas. Homeowner shall also satisfy any additional insurance requirements set forth in the Unsecured Forgivable Promissory Note.

- G. The assessed value of the Property will in all likelihood increase as a result of the Reconstruction, causing an increase in property taxes and property insurance. **Homeowner accepts all responsibility for the payment of taxes and insurance on the Property as reconstructed under the SFHRP, and for declaring the Property as Homeowner's homestead to take advantage of any homestead exemption for the Property.**

Section IV – Terms and Agreements with Regard to the Grant

Homeowner understands, agrees and acknowledges the following:

- A. The Grant is equal to the cost of the Reconstruction. The Grant shall not be subject to interest accrual. Homeowner will not be obligated to repay the Grant to the City unless a Default (defined below) occurs. The outstanding balance of the Grant shall be reduced by 20% per year beginning on the First Anniversary and continuing annually until the Maturity Date.

During the Affordability Period, Homeowner must occupy the Property as Homeowner's primary residence and shall satisfy all other occupancy requirements set forth in the Unsecured Forgivable Promissory Note.

- B. The following occurrences shall constitute an event of default ("Default"):
- a. Homeowner gives false or inaccurate information in connection with the application for assistance under the SFHRP; or
 - b. Homeowner, any spouse of Homeowner, any co-homeowner or its heirs fail to perform any covenant or agreement contained in this Agreement or any related document, including, without limitation, the Unsecured Forgivable Promissory Note.
- C. In the event of Default, the City will notify Homeowner (or Homeowner's successor under the provisions of this section), in writing of the occurrence of such Default to the extent provided under the Unsecured Forgivable Promissory Note.
- D. In the event the Default is not timely cured, the City may exercise any remedies available at law or in equity, including without limitation demanding the repayment of the outstanding balance of the Grant and the Homeowner (or Homeowner's successor, to the extent provided by this Agreement or any

related document, including, without limitation the Unsecured Forgivable Promissory Note shall be obligated to repay the outstanding balance of the Grant to the City.

Section V – Terms and Agreements with Regard to the Work

The parties hereto understand, agree and acknowledge the following:

- A. The City shall pay Contractor, for the performance of the Work the amount of 00/100 Dollars (\$) (the "Contract Price"). Any changes in the Contract Price shall only result from authorized Change Orders. The Contract Price shall be paid in the form of progress payments, which will be submitted according to the Progress Schedule.
- B. The Work to be performed under this Agreement shall commence on the date specified in the Notice to Proceed. The Work shall be completed within the time period outlined in the Notice to Proceed.
- C. The Work shall be generally done in accordance with the Work Write-up that is attached to this Agreement as Exhibit "B".
- D. **The Work may include the demolition of the existing residence and other structures, outbuildings, and garages located on the Property. By executing this Agreement, Homeowner hereby authorizes the City to demolish any such residence, structures, outbuildings and garages, as deemed necessary by the City.**
- E. No Grant proceeds may be used for soft costs, including legal expenses and insurance premiums (except as allowed under the SFHRP Guidelines).
- F. The Work performed shall be in conformance with the applicable building codes, the Plans and Specifications, and any manufacturer's recommendations.
- G. Disbursement of the funds for the Work shall not exceed the amount specified in this Agreement plus any Change Orders which have been properly authorized and approved in accordance with the SFHRP Guidelines.
- H. Payment shall only be made for Work that has been completed by the Contractor and authorized and approved by the City.
- I. Homeowner is not allowed to: (i) perform any form of voluntary labor; or (ii) cover any part of the costs of the Work, such as the purchase of materials or the direct hiring of a Contractor or serve as his or her own Contractor during the time between the date of this Agreement and the date of the Certificate of Acceptance.

- J. Work shall not commence on the Property until a Notice to Proceed is issued by the City.
- K. Homeowner must attend a mandatory pre-construction conference prior to the commencement of Work on the Property.
- L. After the Contractor has completed the Work under this Agreement, including any Change Orders, the City shall arrange a walk-through inspection of the Residence by the Homeowner, the City inspector and the Contractor. During the walk-through, the City's inspector shall make a list of items ("Punch List") which Homeowner, Contractor and the City determine are in need of correction or completion. Disputes concerning the items to be included in the Punch List shall be resolved in accordance with Section VIII below.
- M. The City will issue a Certificate of Acceptance after (i) verification that all Work has been generally completed in accordance with the Work Write-up; (ii) all subcontractors have been paid for their work; and (iii) obtaining a written Certificate of Completion.
- N. The Certificate of Acceptance will be provided to Homeowner for signature upon the Work being generally completed in accordance with the Work Write-up.

Section VI – Contractor's Duties

Contractor understands, agrees and acknowledges the following:

- A. The terms, conditions and provisions of the Master Contractor Agreement are hereby incorporated into this Agreement in their entirety. The Contractor shall perform all of the services and furnish a list of all materials needed, labor and equipment necessary to complete the Work described in the Work Write-up.
- B. The Contractor shall not begin the Work until the Contractor receives a written Notice to Proceed that has been approved in writing by the City.
- C. All Work to be performed and all performance specifications are identified in this Agreement, including the Master Contractor Agreement and all Exhibits attached hereto and incorporated herein by reference. **THE CONTRACTOR SHALL PERFORM NO OTHER WORK UNLESS CHANGE ORDERS FOR ADDITIONAL WORK OR MATERIALS ARE ISSUED IN ACCORDANCE WITH THIS AGREEMENT.** All properly approved and executed Change Orders or modifications shall be made a part of this Agreement.
- D. All Change Orders must be approved in writing by the City, Homeowner, and Contractor in accordance with the SFHRP Guidelines.

- E. The Contractor agrees not to enter into any side agreements for additional work on the Residence or materials over and above those specified in this Agreement or the Work Write-up, where labor is to be performed or material is to be supplied or installed prior to the issuance of a Certificate of Acceptance.

Section VII – Contractor’s Warranties

Contractor agrees and warrants the following:

- A. Contractor expressly and unconditionally warrants and guarantees all of the Work performed in connection with the Reconstruction in accordance with and for the periods set forth in Section 430.001 of the Texas Property Code. In the event said section of the Texas Property Code is revoked, the standards and periods as now provided will continue to apply to the Reconstruction. This warranty includes, without limitation, any condition that may impair or tend to impair the safe and normal use, functioning or enjoyment of the Residence and which results in any manner from any and all labor and/or materials used or supplied under this Agreement.
 - (i) The warranty shall not be construed to limit or in any way modify any warranties or guarantees placed upon any material, appliances, fixtures or devices by their manufacturers, or any components for which a longer period of warranty is provided or required under the Contract.
 - (ii) The warranty period shall commence on the date of the Certificate of Acceptance.
 - (iii) The Contractor shall repair or replace, free of cost or charges to the City or the Homeowner any defects that arise out of defective workmanship or materials which appear within the warranty period, whether or not the materials or equipment are guaranteed by the manufacturer or supplier.
 - (iv) The Contractor shall furnish the City with all manufacturer’s and supplier’s written guarantees, warranties and operating instructions covering materials and equipment furnished under this Agreement together with any documentation required for validation.
- B. In the event that Contractor is notified of a defect that has arisen during the warranty period, Contractor shall begin to correct the defect within 10 days after receipt of notification and shall complete the correction of the defect as soon as possible without additional compensation. Notice of the defect must be given during the warranty period.

Section VIII – Dispute Resolution

Homeowner and Contractor agree to submit in writing disputes concerning the quantity, quality, completion or sufficiency of Work performed or materials supplied to the HCDD. The parties may appeal in writing determinations of the HCDD to the Director. Homeowner and HCDD disputes may also be appealed in writing to the Director.

Section IX – Address and Notice

A. Unless otherwise provided in this Agreement, all notices including any communications, request, reply or advice shall be in writing. If mailed, notice shall be deemed the date that it is deposited in the United States mail. Notices given in any other manner shall be effective the date received by the party to be notified.

B. Notice shall be made to the following physical addresses:

To City: **CITY OF HOUSTON**
 601 SAWYER, SUITE 400
 HOUSTON, TEXAS 77007
 ATTN: SFHRP

To Contractor: _____

To Homeowner: _____

C. Each party shall have the right to change its respective address or addressee for notice under this Agreement, provided that at least ten (10) days written notice is given of such new address to the other party.

Section X – Assignment and Amendment

- A. This Agreement shall not be assigned without the prior written approval of the City and the Director. Contractor may subcontract the Work, however Contractor shall remain liable for the Work, unless an assignment is approved by the City in writing.
- B. All amendments to this Agreement shall be written, executed by the parties, and approved by the Director. Any amendment which does not comply with this provision will be without effect.

Section XI – Miscellaneous

- A. In the event of the death of a Homeowner prior to issuance of a Notice to Proceed, this Agreement will be null and void. However, the Director may authorize disbursements of SFHRP funds for obligations incurred by or on behalf of the Homeowner prior to the Homeowner's death.
- B. Assistance can be revoked by the Director if the Residence is partially destroyed prior to completion of the Work and it is determined that the Residence cannot be reconstructed within the limits of the SFHRP, less proceeds previously disbursed or obligated, plus any available insurance proceeds.
- C. The Director may allow funds to be disbursed in the event that the Residence is partially destroyed prior to the completion of the Work if it has been determined that the Residence can be reconstructed within the limits of the SFHRP, less proceeds previously disbursed or obligated, plus any available insurance proceeds. The amount of financial assistance will be reduced to the extent that insurance proceeds, if any, are available to cover the Work. All such insurance proceeds shall be disbursed to the City on behalf of the Homeowner to be advanced for the Reconstruction or other repairs to the Residence in accordance with this Agreement.
- D. The City will be responsible for recommending relocation assistance to the Homeowner on an as needed basis. The City will determine if the Reconstruction will impose a hardship on the Homeowner and/or be detrimental to an existing medical condition. Homeowner may be provided temporary relocation assistance. The City will first establish if the Homeowner has relatives or friends that the Homeowner can reside with during the performance of the Work. As a last resort, the City may place the Homeowner in a moderately priced apartment located in the same geographical area. Homeowner shall work with the City in an effort to keep relocation costs at a minimum. The City will be responsible for making arrangements for and paying

the expenses of relocation.

- E. Homeowner agrees that the City is not responsible for the Reconstruction or repair of any conditions of the Residence that are not addressed in the Work Write-up.
- F. **HOMEOWNER HEREBY RELEASES AND DISCHARGES AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FROM ALL LIABILITY AND CLAIMS FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY, SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO THE RECONSTRUCTION AND WORK PERFORMED PURSUANT TO THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY SOLE OR CONCURRENT NEGLIGENCE OF CONTRACTOR, ANY SUBCONTRACTOR OR THE CITY. HOMEOWNER HEREBY RELEASES THE CITY FROM ALL FINES, DEMANDS, JUDGEMENTS, LIABILITIES OR CLAIMS ARISING BY REASON OF OR IN CONNECTION WITH THE ACTUAL OR ALLEGED ERRORS, OMISSIONS OR NEGLIGENT ACTS OF CONTRACTOR OR ANY SUBCONTRACTOR RELATING TO THE RESIDENCE, PROPERTY, RECONSTRUCTION OR WORK.**
- G. The City's rights, remedies and recourse granted in the Unsecured Forgivable Promissory Note, this Agreement or any related document shall be cumulative and concurrent, may be pursued separately, successively and concurrently against Owner, Contractor or any other responsible party, or the Property, at the City's sole discretion, and any proceeding under the Unsecured Forgivable Promissory Note, this Agreement or any related document, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
- H. This Agreement, as defined under the Preamble, including documents incorporated herein by reference and attachments hereto, contains the agreement of the parties relating to the subject matter hereof and is a full and final expression of the agreement between the parties.
- I. This Agreement is subject to all laws of the United States of America, the State of Texas, charter and ordinances of the City and all rules and regulations of any regulatory body or office having jurisdiction and in particular, without limitation, the federal regulations codified at Title 24, Code of Federal Regulations (CFR) Part 570 or 24 CFR Part 92.
- J. In the event the terms contained herein should conflict with the terms and conditions of the Unsecured Forgivable Promissory Note, the Unsecured Forgivable Promissory Note shall control.

IN WITNESS WHEREOF, the Homeowner, Contractor and the City have executed this Agreement on this _____ day of _____, _____.

CITY OF HOUSTON:

JAMES D. NOTEWARE
DIRECTOR, HOUSING AND
COMMUNITY DEVELOPMENT
DEPARTMENT

COUNTERSIGNED:

DATE OF COUNTERSIGNATURE:

CITY CONTROLLER

APPROVED AS TO FORM:

Sr. Assistant City Attorney

Homeowner:

Contractor:

Exhibit List

Exhibit A – Legal Description of Property

Exhibit B – Work Write-up

Exhibit C – Master Contractor Agreement

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
WORK WRITE-UP

EXHIBIT C
MASTER CONTRACTOR AGREEMENT

State of Texas

County of Harris

**MASTER CONTRACTOR AGREEMENT
CITY OF HOUSTON
HURRICANE IKE SINGLE FAMILY HOME REPAIR PROGRAM**

PREAMBLE

THIS MASTER CONTRACTOR AGREEMENT (this "Agreement") is made and entered into by and between THE CITY OF HOUSTON (the "City") and _____ (the "Contractor").

In consideration of the mutual covenants and agreements contained in this Agreement, the parties agree that all contracts and projects entered into for an Identified Project between the parties under the SFHRP will be governed by, and subject to the terms and provisions of, this Agreement so long as a copy hereof is attached as an exhibit to the Tri-Party Agreement pertaining to the applicable Identified Project, provided that if a copy of a Master Contractor Agreement is not attached to a Tri-Party Agreement which provides for the attachment thereof, the Master Contractor Agreement executed most immediately prior thereto by the City and the Contractor shall be applicable thereto, and further agree as follows:

SECTION I

DEFINITIONS

Certificate of Acceptance shall mean a written statement issued by the City and signed by the City's inspector to be delivered to a Homeowner for execution stating that all Work has been generally completed in accordance with the Work Write-up for an Identified Project.

Change Order shall mean an amendment to the Work and/or Contract Price pertaining to an Identified Project, submitted by Contractor and approved by a Homeowner and the City in accordance with the Project Documents and the SFHRP Guidelines.

City shall mean the City of Houston, and shall include its various departments, officers,

employees, legal representatives, agents and third party vendors.

Competitive Sealed Proposal shall refer to the project delivery method authorized by Subchapter H of Chapter 271 of the Texas Local Government Code and required in connection with Reconstruction Projects under the SFHRP.

Contract Price shall mean the price to be paid by the City to the Contractor for the performance of the Work in connection with an Identified Project. Any changes in the Contract Price shall only result from authorized Change Orders. The Contract Price shall be paid in the form of progress payments in accordance with the Progress Schedule.

Contractor shall mean the contractor designated in the introductory paragraph of this Agreement. For Reconstruction Projects, the Contractor shall be selected utilizing the Competitive Sealed Proposal method, with sealed work plans and specifications in accordance with applicable laws and procedures, including the SFHRP Guidelines.

Contractor's Application for Payment shall mean that certain Application and Certificate for Payment submitted by Contractor requesting a progress payment in accordance with the Progress Schedule. Such Contractor's Application for Payment shall reflect the cost for the portion of the Work that has been completed by Contractor, shall include the notarized signature of the Contractor and otherwise be in form and substance acceptable to the City.

Director shall mean the Director of HCDD or any other person(s) that may be designated to perform the various functions assigned to the Director.

HCDD shall mean the City's Housing and Community Development Department.

Homeowner shall mean an owner of a Residence that qualifies under the SFHRP for the Rehabilitation or Reconstruction of its Residence located on the Homeowner's Property.

Homeowner's Property shall mean the land of a Homeowner, all rights and appurtenances thereto; all improvements now or hereafter attached to the land or improvements, and all substitutions and replacements thereof and additions and successions thereto.

HUD shall mean the U.S. Department of Housing and Urban Development and any successor government agency.

Identified Project shall mean the Rehabilitation or Reconstruction of a specified Residence located on a specified Homeowner's Property pursuant to the SFHRP. Each such Identified Project shall be subject to and governed by the terms and provisions of this Agreement and the Project Documents.

Notice to Proceed shall mean the written authorization issued by the City for the Contractor to proceed with the Work set forth in the Work Write-up for an Identified Project.

Payment Request shall mean the form prepared, signed and submitted to the appropriate City office by the City's inspector requesting a progress payment to the Contractor. The Payment Request shall reflect the value of the completed and approved portion of the Work on the specified line items by trade, the total of the line-item cost of all portions of the completed Work by trade listed, the retainage amount and the resulting amount of the progress payment.

Plans and Specifications shall mean a detailed itemized list approved by the City that provides instructions to the Contractor for an Identified Project, which may include drawings as applicable. Plans and Specifications may be amended by authorized Change Orders.

Progress Schedule shall mean the schedule of the Work determined by the Contractor and approved by the City in connection with an Identified Project.

Project Documents shall mean this Agreement, the Tri-Party Agreement, the Plans and Specifications, the Progress Schedule, the Notice to Proceed, the Certificate of Acceptance, and all other documents pertaining to, or executed in connection with, an Identified Project.

Reconstruction or Reconstruction Project shall mean the demolition, if required, and the rebuilding of a Residence on a Homeowner's Property, plus increases pursuant to Change Orders. A reconstructed Residence must be functionally equivalent to the structure being replaced, but may be larger or smaller than the original Residence depending on the needs of the family occupying the reconstructed Residence.

Rehabilitation or Rehabilitation Project shall mean those repairs required to remove all life, health, or safety hazards to a Residence on a Homeowner's Property, plus increases pursuant to Change Orders.

Residence shall mean a single family detached dwelling located on, or to be reconstructed on a Homeowner's Property.

SFHRP shall mean the CDBG Disaster Recovery Program being implemented by the City pursuant to Contract No. 70090001 between the City and the Texas Department of Housing and Community Affairs for Hurricane Ike/Dolly Funding under the Consolidated Security Disaster Assistance and Continuing Appropriations Act of 2009.

SFHRP Guidelines shall mean Hurricane Ike Single Family Repair Guidelines adopted by HCDD and approved by the Texas Department of Housing and Community Affairs.

Subcontractor shall mean any person or entity who, pursuant to this Agreement, will perform Work at a Residence at the request of Contractor.

Survey shall mean an identification of all relevant characteristics of a Homeowner's Property, including but not limited to a Homeowner's Property location, the improvements location and the metes and bounds description of a Homeowner's Property.

Tri-Party Agreement shall mean the tri-party agreement by and between a Homeowner, Contractor and the City governing, and executed in connection with, an Identified Project.

Work shall mean the labor and the materials necessary to complete an Identified Project pursuant to the Project Documents.

Work Write-up shall mean the form that specifies and quantifies the Work to be done in connection with an Identified Project, and includes the Plans and Specifications.

SECTION II

SCOPE OF SERVICES

Contractor's Duties.

In connection with each Identified Project:

Section 2.01 General. The Contractor shall perform all of the services and furnish all materials, labor and equipment necessary to complete the Work described in the Work Write-up.

Section 2.02 Inception. The Contractor shall not begin the Work until the Contractor receives a Notice to Proceed.

Section 2.03 Scope. All Work to be performed and all specifications pertaining thereto will be identified in the Project Documents. **CONTRACTOR SHALL PERFORM NO OTHER WORK UNLESS CHANGE ORDERS FOR ADDITIONAL WORK OR MATERIALS ARE ISSUED IN ACCORDANCE WITH THIS AGREEMENT AND THE PROJECT DOCUMENTS.** All properly approved and executed Change Orders shall be made a part of Project Documents.

Section 2.04 Side Agreements. The Contractor agrees not to enter into any side agreements for additional work or materials for a Residence over and above those specified in the Work Write-up, where such labor is to be performed or material to be supplied or installed prior to the issuance of a Certificate of Acceptance.

Section 2.05 Surveys. For all Reconstruction Projects, the Contractor agrees to cause a survey of the Homeowner's Property to be completed by a registered surveyor, at Contractor's sole expense.

SECTION III

STANDARDS OF PERFORMANCE

In connection with each Identified Project:

Section 3.01 Codes and Standards. Contractor shall perform all Work in conformance with the applicable building codes, the Plans and Specifications, and any manufacturer's recommendations. To the extent of conflict between any of the foregoing codes and standards and the Plans and Specifications, the more restrictive shall apply. Contractor shall obtain and pay all fees for all necessary building permits and inspections required by the City and furnish a copy of same to the City. If modification of the Work Write-up is required to comply with the codes and standards, then the parties shall negotiate and agree to a modification of the Work Write-up by Change Order.

Section 3.02 Protective Measures. The Contractor is responsible for the care and safekeeping of all Work until its completion. The Contractor shall bear the risk of loss for damage to a Homeowner's Property (including land, structures, and improvements) due to equipment, vehicles, tools, or operations employed in the execution of the Work under Work Write-up, and due to exposure to the elements which results from the execution of the Work under the Work Write-up. Except as otherwise provided in the Plans and Specifications or the Work Write-up, upon completion of the Work, the Contractor shall clear and remove all surplus materials, equipment, refuse, dirt, or rubbish that has resulted from the performance of the Work under the Work Write-up, at the Contractor's expense. The Contractor shall also leave a Homeowner's Property in a "broom-clean" condition at the end of each workday if the unit is occupied during the Work.

Section 3.03 Acts and Omissions. The Contractor shall be responsible to the City for the acts and omissions of his/her employees, agents, and subcontractors and their agents and employees.

SECTION IV

CONTRACT AMOUNT

In connection with each Identified Project:

Section 4.01 Contract Price. The City shall pay the Contractor the Contract Price for the performance of the Work described in the Project Documents. Any changes in the Contract Price shall only result from authorized Change Orders. The Contract Price shall be paid in the form of progress payments, which will be submitted and disbursed according to the Progress Schedule.

Section 4.02 Bid Price. The Contractor's bid price will be binding on the Contractor for a minimum period of at least 90 days from the date the bid is received by the City.

Section 4.03 Change Orders. If the Contractor determines that a change in the Work or Contract Price is required, the Contractor may submit an estimate for increases or decreases due to such change. The City shall review the requested change. If the City elects to authorize the change, the City will compute the reduction from or addition to the Contract Price due to said change and will authorize such change in writing by the issuance of a Change Order. The Contractor will not, and shall not have any obligation to, perform any change in the Work until a Change Order has been authorized and issued by the City. Under no circumstances may the amount of the Contract Price, plus Change Orders exceed the maximum amount of assistance authorized under the SFHRP Guidelines.

SECTION V

PAYMENTS

In connection with each Identified Project:

Section 5.01 General. The sole obligation of the City with regard to payment of the Contract Price shall be limited to compensation for the Work as specified in the Project Documents as such Work or portion thereof is completed in accordance with the Progress Schedule.

Section 5.02 Progress Payments

A. Each progress payment will not exceed the cost set forth in the Progress Schedule for the portion of the Work which has been completed and approved by the City as provided below, and shall be limited to ninety (90%) percent of said cost.

B. All progress payments will be requested in accordance with the Progress Schedule. When requesting a progress payment:

1. Contractor must submit a Contractor's Application for Payment.
2. The City's inspector will:
 - i. review the Contractor's Application for Payment,
 - ii. perform a field inspection of the Identified Project,
 - iii. prepare a field report in which the City's inspector determines whether the portion of the Work completed has been satisfactorily completed in accordance with the Project Documents, and the value of the satisfactorily completed portion of the Work,
 - iv. sign the Contractor's Application for Payment as evidence of the City's inspector's approval of such portion of the Work completed,
 - v. prepare and sign a Payment Request authorizing payment of the progress payment requested by the Contractor. The Payment Request shall reflect the value of the completed and approved portion of the Work on the specified line items by trade, the total of the line-item cost of all portions of the completed Work by trade listed, the retainage amount and the resulting amount of the progress payment. The completed Payment Request must be submitted to the Contractor for review and signature, and
 - vi. forward the fully executed Payment Request to the appropriate City office for processing and payment, which payment will be made to the Contractor within ten (10) days from the date of the Payment Request (except for the final payment).

Section 5.03 Final Inspection and Payment.

A. Upon the City's Inspector being satisfied that all Work is complete, the City's inspector will arrange and conduct a walk-through inspection of the Residence together with the Homeowner and the Contractor. During the final inspection, the City's inspector will discuss the warranty and any other outstanding issues with the Homeowner. The City's inspector and the Homeowner will make a list of items that are in need of correction or completion, based upon the Project Documents (the "Punch List"). The City's inspector will provide the Homeowner and Contractor with a copy of the Punch List. The Contractor will schedule and complete the Work on the Punch List within five (5) days of receipt thereof. When the Work on the Punch List is complete, the Contractor, Homeowner and City's inspector will verify that all such Work has been completed.

B. Upon completion of all Work on the Punch List and verification of the completion by the Contractor, the Homeowner and the City's Inspector, the City's Inspector will forward the Payment Request for the final payment to the appropriate City office for processing and payment, which final payment, including the 10% retainage, will be made to

the Contractor after thirty (30) days from the date of the Payment Request.

SECTION VI

TIME OF PERFORMANCE

Section 6.01 Time for Performance. The Work to be performed in connection with each Identified Project shall commence on the date specified in the Notice to Proceed issued in connection with such Identified Project. The Work shall be completed within the time period specified in said Notice to Proceed.

Section 6.02 Major Forces. If performance by the Contractor is prevented or delayed as a direct result of unusual climatic conditions, riot, insurrection, fire, act of nature, or operation of law, the allotted time for the completion of the Work for each Identified Project may be extended by one calendar day for each calendar day lost from such cause, provided that the City approves the extension in writing. The Contractor must notify the City in writing of the delay and the reason or reasons for the delay within three (3) days after the beginning of such delay. All such extensions shall be documented with a Change Order.

Section 6.03 Liquidated Delay Damages. The Contractor and the City agree that a breach as to completion time for an Identified Project under the Project Documents will cause damage to the City, and that such damage cannot be accurately measured. Therefore, the parties agree that \$100.00 shall be subtracted from the Contract Price for each and every calendar day that the Work or any portion of the Work remains uncompleted after the expiration of the time period set forth in the Notice to Proceed, or as extended.

SECTION VII

CONTRACTOR'S WARRANTY

Section 7.01 Warranty. Contractor expressly and unconditionally warrants and guarantees all of the Work performed in connection with an Identified Project in accordance with and for the periods set forth in Section 430.001 of the Texas Property Code. In the event said section of the Texas Property Code is revoked, the standards and periods as now provided will continue to apply to the Work. This warranty includes, without limitation, any condition that may impair or tend to impair the safe and normal use, functioning or enjoyment of the Residence and which results in any manner from any and all labor and/or materials used or supplied under the Project Documents for such Identified Project.

A. The warranty shall not be construed to limit or in any way modify any warranties or guarantees placed upon any material, appliances, fixtures or devices by their manufacturers, or any components for which a longer period of warranty is provided or required under the Project Documents for such Identified Project.

B. The warranty period shall commence on the date of the Certificate of Acceptance for such Identified Project.

C. The Contractor shall furnish the City with all manufacturer's and supplier's written guarantees, warranties and operating instructions covering materials and equipment furnished under the Project Documents for such Identified Project, together with any documentation required for validation.

Section 7.02 Correction of Work under Warranty. In the event that Contractor is notified of a defect that has arisen during the warranty period, Contractor shall begin to correct the defect within 10 days after receipt of notification and shall complete the correction of the defect as soon as possible free of cost or charges to the City or the Homeowner, whether or not the materials or equipment are guaranteed by the manufacturer or supplier. Notice of the defect must be given during the warranty period.

SECTION VIII

INSURANCE

The Contractor agrees to maintain sufficient insurance to protect him from claims under worker's compensation acts, if required by law, other employee benefits acts, and from personal liability for damages to property which may arise both out of and during any Work performed under Project Documents for an Identified Project, whether the work is performed by the Contractor, the City, or anyone directly or indirectly employed by either. The Contractor must maintain at a minimum the insurance coverage and limits as set out below, unless said limits are reduced in the discretion of the Director and the City Attorney of the City of Houston:

Workers' Compensation

Statutory Limits

Commercial General Liability
Including Contractor's Protective
Liability, Broad Form Property

Combined single limit of \$1,000,000 each
occurrence, subject to general aggregate
\$2,000,000; Products and Completed
Operations

Damage, Contractual Liability,
Bodily Injury, Personal Injury,
and Products and Completed
Operations (for a period of
one year following completion
of the Work under the Project
Documents for each Identified
Project)

\$1,000,000 aggregate

Automobile Liability Insurance
(for vehicles Contractor uses in performing under these Guidelines, including Employer's Non-Owned and Hired Auto Coverage)

\$1,000,000 combined single limit

SECTION IX

DISPUTE RESOLUTION

Contractor agrees to submit disputes concerning the quantity, quality and completion or sufficiency of Work performed or materials supplied to the HCDD. The parties may appeal determinations of the HCDD to the Director.

SECTION X

TERMINATION

Section 10.01 Termination With Cause.

A. The City may terminate this Agreement in its entirety or as to an Identified Project for cause by giving written notice to the Contractor under any of the following circumstances:

1. If Contractor neglects to perform the Work in connection with any Identified Project properly, or in a timely manner, or refuses or neglects to supply proper or sufficient materials or workmen, or fails to perform any provision of any of the Project Documents pertaining to an Identified Project;
2. If Contractor is adjudged bankrupt, makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of insolvency;
3. If Contractor fails to make prompt payment to any Subcontractor for material or labor; or
4. Contractor violates any public law or ordinance.

B. If the City terminates this Agreement in its entirety or as to an Identified Project for cause, the City may take possession of the Identified Project site or sites and utilize any and all materials and appliances to be provided under the respective Project

Documents which are located on the site or sites to finish the Work. The City shall not prejudice any of the City's rights or remedies under this Agreement or the respective Project Documents, or by law, by terminating this Agreement in its entirety or as to an Identified Project for cause or by taking possession of the site or sites.

C. In case of termination of this Agreement in its entirety or as to an Identified Project for cause pursuant to this subsection, the Contractor shall not be entitled to receive any payment for any Identified Project until the Work for such Identified Project is completed. Upon completion of any such Identified Project, the Contractor shall be given any balance of the Contract Price less any damages and less the amount of expenses incurred by the City in finishing the Work for such Identified Project, including any costs in addition to or in excess of those originally contemplated in the Project Documents for such Identified Project. If the cost in completing the Work for any such Identified Project is greater than the original Contract Price, the Contractor shall pay the difference to the City upon ten (10) days written demand.

Section 10.02 Termination Without Cause. The City may terminate this Agreement in its entirety or as to an Identified Project without cause by giving written notice of said termination to the Contractor. In case of termination of this Agreement in its entirety or as to an Identified Project without cause pursuant to this subsection, the Contractor shall submit his final statement for all Work performed through the date of termination for the respective Identified Project or, in the case of the termination of this Agreement in its entirety, for all Identified Projects under this Agreement, which shall be payable in the manner provided in Section V of this Agreement.

Section 10.03 Acceptance of Inferior Work. In connection with any Identified Project, the City may accept Work that appears to be incorrect if, in the City's opinion, it is impractical to have the Work corrected. In such case, the City does not waive the defect, but rather may deduct a reasonable amount for the loss sustained from the Contract Price for said Identified Project. This subsection is not intended to limit the right of the City to recover additional damages as may be permitted under this Agreement, the respective Project Documents or by law.

Section 10.04 Cessation of Work. Upon receipt of a notice to terminate from the City, the Contractor shall discontinue all Work under this Agreement and all Project Documents for each Identified Project, unless the notice specifies a later termination date or that specific Work be completed prior to termination.

Section 12.02 Amendment. All amendments to this Agreement shall be written, executed by the parties, and approved by the Director. Any amendment which does not comply with this provision will be without effect.

SECTION XIII

INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY (AS DEFINED IN THIS AGREEMENT) HARMLESS FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO THE CONTRACTOR'S PERFORMANCE UNDER THE THIS AGREEMENT AND THE PROJECT DOCUMENTS, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- A. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THIS AGREEMENT.

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS THIS RELEASE AND INDEMNITY TO THE CITY.

SECTION XIV

MISCELLANEOUS

Section 14.01 Cumulative Remedies. The City's rights, remedies and recourse granted in this Agreement and the Project Documents shall be cumulative and concurrent, may be pursued separately, successively and concurrently against the Contractor or any other responsible party at the City's sole discretion, and any proceeding under this Agreement or any of the Project Documents, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

Section 14.02 Entire Agreement. This Agreement, as defined in the introductory paragraph hereof and the Project Documents, including documents incorporated herein and therein by reference and the attachments hereto and thereto, contain the entire agreement of the parties relating to the subject matter hereof and is a full and final expression of the agreement between the parties.

Section 14.03 Applicable Law. This Agreement is subject to all laws of the United States of America, the State of Texas, charter and ordinances of the City and all rules and regulations of any regulatory body or office having jurisdiction and in particular, without limitation, the federal regulations codified at Title 24, Code of Federal Regulations (CFR) Part 570 or 24 CFR Part 92.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement in duplicate originals, each having full force and effect on ___ day of _____, 20__.

CONTRACTOR:

By: _____

Name:

Title: _____

EXHIBIT "L"
CDBG PROGRAM STANDARDS AND REQUIREMENTS

CDBG PROGRAM REQUIREMENTS

SECTION 1

Title VI of The Civil Rights Act of 1964

The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) ("Title VI") and with Title 24 Code of Federal Regulations (CFR) Part 1, which implements Title VI. In accordance with Title VI, no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives federal financial assistance. The Contractor will immediately take any measures necessary to comply with Title VI. If any real property or structure thereon is provided or improved with the aid of federal financial assistance, this clause shall obligate the owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. [24 CFR § 570.601]

SECTION 2

Section 109 of The Housing and Community Development Act of 1974

The Contractor shall comply with Section 109 of the Housing and Community Development Act of 1974 ("Section 109") and implementing federal regulations, 24 CFR § 570.602, issued pursuant to Section 109. No person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds. Section 109 also prohibits discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to any otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). [24 CFR § 570.602]

SECTION 3

Environmental Standards

Contractor understands that it does not assume the environmental responsibilities located at 24 CFR § 58. [24 CFR § 570.604]

SECTION 4

National Flood Insurance Program

A. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject

to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.

B. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement. [24 CFR § 570.605]

SECTION 5

Displacement, Relocation, Acquisition

Contractor understands that projects funded hereunder are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655); and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA. [24 CFR § 570.606]

SECTION 6

Section 3 Of The Housing And Urban Development Act Of 1968

(a) The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u, "Section 3") applies to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000, the Contractor shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City.

(b) The Contractor will comply with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Agreement. The Contractor certifies and agrees that there is no contractual or other disability which would prevent compliance with these requirements.

(c) The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(d) The Contractor will include or have included a Section 3 clause in every subcontract for work in connection with the project. The Contractor shall, at the direction of the City, take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of this Section 3 clause. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR § 135. The Contractor shall not let any subcontract unless the subcontractor has provided the Contractor with a preliminary statement of ability to comply with the requirements of this Section 3 clause.

(e) Compliance with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the project. These provisions are binding upon the City, its contractors and subcontractors, their successors and assigns. Failure to fulfill these requirements shall subject the City, its contractors and subcontractors, their successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided.

(f) The Contractor shall have completed, signed and delivered a Voluntary Compliance Form (provided by the City) to the Director prior to the execution of this Agreement.

SECTION 7

Executive Order 11246, as amended by 12086

The Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

- C. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor set forth at 41 CFR § 60.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of the U.S. Department of Labor, or as otherwise provided by law.
- G. The Contractor will include provisions similar to paragraph A through F in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon subcontractors or vendors. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. [24 CFR § 570.607]

SECTION 8
Lead-Based Paint Poisoning Prevention Act

This contract may be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the implementing regulations at 24 CFR § 35, together with the Federal Lead-Based

Paint Regulation, effective September 15, 2000, implementing Title X of the Housing and Community Development Act of 1992. Specifically, this contract may be subject to the provisions for the elimination of lead-based paint hazards pursuant to said regulations, and the Contractor may be responsible for all required inspections and certifications. [24 CFR § 570.608]

SECTION 9

Use Of Debarred, Suspended, Or Ineligible Contractors or Subrecipients

(a) The Contractor shall not employ, award contracts to, or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status under provisions of 24 CFR § 24 or under the authority of the City.

(b) The Contractor shall not use CDBG funds for any contract for the construction, alteration or repair of the project funded under this agreement with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, that is identified by the Office of the United States Trade Representative as discriminating against U.S. firms in conducting procurement for public works projects. This restriction covers, without limitation, all architectural, engineering and construction services, and includes all products or goods, except construction equipment or vehicles used during the construction, alteration or repair which do not become part of a delivered structure, product or project. [24 CFR § 570.609]

SECTION 10

Uniform Administrative Requirements And Cost Principles

The Contractor shall comply with the policies, guidelines, and requirements of 24 CFR § 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally-Recognized Indian Tribal Governments," and OMB Circular numbered A-110, now codified at 24 CFR Part 84, A-87, and A-122 and A-133 as applicable, as they relate to the acceptance and use of Federal funds. The applicable sections of 24 CFR Parts 84 and 85 are set forth at 24 CFR § 570.502. [24 CFR § 570.610]

SECTION 11

Conflict Of Interest

A. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 24 CFR § 84 and 85 respectively, shall apply. In all cases not governed by 24 CFR § 84 and 85, the following shall apply:

In all cases not governed by 24 CFR § 84 and 85, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities pursuant to §570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455.

- (i) In accordance with **24 CFR § 570.611**, no persons described in paragraph (ii) (below) who exercise or have exercised any functions with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to CDBG assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- (ii) The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, or subrecipient under which receives funds under the CDBG grant agreement with HUD. **[24 CFR § 570.611]**

SECTION 12
Executive Order 12372

Contractor understands that implementing regulations at 24 CFR § 52 are applicable to planning or construction of water or sewer facilities only, and that such regulation does not impart any responsibility upon it, rather the regulation imposes the Executive Order Review Process upon the City when funds are proposed for activities subject to review.

[24 CFR § 570.612]

SECTION 13
Eligibility for Certain Resident Aliens

Contractor understands that certain newly legalized aliens, as described in 24 CFR § 49, are not eligible to apply for benefits under activities meeting the requirements of section § 570.208 (a) that either (1) have income eligibility requirements limiting the benefits exclusively to low and moderate income persons or are targeted geographically are otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of application.

Contractor further understands that this restriction applies to covered activities funded under the Housing and Community Development Act of 1974, as amended; and that "benefits" under this section means financial assistance, public services, jobs, and access to new rehabilitated housing and other facilities made available under covered activities funded by the Community Development Block Grant Program. Benefits do not include relocation services and payments to which displaces are entitled by law. Furthermore, these restrictions apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section. Compliance can be accomplished by obtaining certification as provided in **24 CFR § 49.20**. **[24 CFR § 570.613]**

SECTION 14
Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the Contractor for purposes of meeting program requirements are confidential and the Contractor agrees that they shall not be made available to any individual or organization, other than an agency of the United States Government, without the prior approval of the City.

SECTION 15
Court Actions

The Contractor agrees to give the City immediate notice in writing of any actions or suits filed and prompt notices of any claims made against the City, the Contractor, or any of the parties involved in the implementation and administration of this Agreement.

SECTION 16
Records For Audit Purposes

Without limitation to any other provision of this Agreement the Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires for **four years** from the expiration date of the Agreement unless a longer period is required under **24 CFR § 570.502**. The Contractor will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained.

SECTION 17
Compliance With Clean Air And Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended (42 U.S.C. 7400 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.) and the regulations of the Environmental Protection Agency, **40 CFR § 15**. In compliance with the regulations, the Contractor agrees that:

A. No facility to be utilized in the project or program is listed on the list of Violating Facilities issued by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.

B. The Contractor will comply with all the requirements of section 114 of the Clean Air Act, as amended, (42 U.S.C. 7414) and section 308 of the Federal Water Pollution Control Act.

as amended, (33 U.S.C. 1318) pertaining to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308, and all regulations and guidelines issued thereunder.

C. As a condition for the award of this Agreement, the Contractor shall give prompt notice to the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized is under consideration to be listed on the EPA List of Violating Facilities.

D. The Contractor will include or cause to be included the requirements contained in paragraphs A through C of this clause in every lower-tier nonexempt contract and will take such action as the City may direct as a means of enforcing such provisions.

In no event shall any amount of the funds provided under the Agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act.

SECTION 18

Architectural Barriers Act and The Americans with Disabilities Act

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 for residential structures, and Appendix A to 41 CFR Part 101-19, Subpart 101-19.6. for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 25, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable-- that is, easily accomplished and able to be carried out without much difficulty or expense. [24 CFR § 570.614]

SECTION 19
Audit Requirements

a. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available to review and audit as described hereinabove at Section 16. Contractor further understands that limited scope audits can and may be required by the City for Non-Federal entities that expend less than \$500,000. If the City requires such limited scope audits, same shall be performed in accordance with Office of Management and Budget (OMB) Circular A-133 - "Audits of States, Local Governments, and Non-Profits" which rescinds Circular A-128, Audits of State and Local Governments (codified at 24 CFR Part 45) and it supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions, issued April 22, 1996 (codified at 24 CFR Part 44).

b. Single Audit - Contractor further understands that Non-Federal entities that expend \$500,000 or more a year in Federal awards shall have a single audit conducted pursuant to A-133, except when they elect to have a program-specific audit pursuant to and as described in A-133. Prior arrangements must be made to conduct such audit. Once the Contract is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

SECTION 20
Labor Standards/Davis-Bacon Act

To the extent applicable, Contractor shall comply with the federal wage requirements for federally-assisted construction projects pursuant to the Davis-Bacon Act, as amended.
[24 CFR § 570.603]

EXHIBIT "M"
CERTIFICATION REGARDING LOBBYING

EXHIBIT "M"
CERTIFICATION REGARDING LOBBYING

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds, other than Federally appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Owner or Contractor

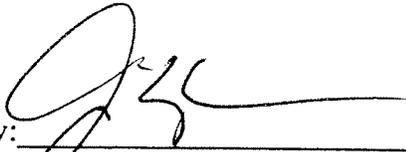
Date

6/7/11

By:

Name:

Title:


Jim SCHUMER

OWNER

EXHIBIT "N"
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

CERTIFICATION REGARDING

DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The undersigned certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- (b) Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000.00 or imprisonment for up to five (5) years, or both.

Jim Schumpe Owner
Type Name & Title of Authorized Representative

[Signature]
Signature of Authorized Representative

8/7/11
Date

I am unable to certify to the above statements. My explanation is attached.