

State of Texas

County of Harris

**MASTER CONTRACTOR AGREEMENT
CITY OF HOUSTON
Home Repair Program**

PREAMBLE

THIS MASTER CONTRACTOR AGREEMENT (this "Agreement") is made and entered into by and between **THE CITY OF HOUSTON**, a home-rule city organized under the laws of the State of Texas and principally situated in Harris County (the "City"), and **{INSERT NAME OF ENTITY}**, a **{INSERT STATE} {INSERT "for-profit" OR "non-profit", AS APPLICABLE} {INSERT TYPE OF LEGAL ENTITY}** (the "Contractor"), effective as of the date countersigned by the Controller of the City of Houston ("Countersignature Date").

In consideration of the mutual covenants and agreements contained in this Agreement, the parties agree that all contracts and projects entered into between the parties under the Home Repair Program ("HRP") will be governed by, and subject to the terms and provisions of this Agreement, and further agree as follows:

SECTION I

DEFINITIONS

Acceptance Form shall mean a written statement issued by the HCDD and signed by the HCDD's inspector and the Contractor, to be delivered to Homeowner for execution, stating that all Work has been satisfactorily completed in accordance with the Work Write-Up or Plans and Specifications.

Baseline Schedule shall mean the schedule of the Work to be performed by certain dates, as determined by the Contractor and approved by the Director in connection with a Project.

Certificate of Completion shall mean a certificate issued to Contractor by the Director after (i) verification that all Work has been completed in accordance with the Work Write-up or Plans and Specifications, as applicable, and (ii) all subcontractors have been paid for their work.

Certificate of Compliance shall mean a certificate issued by the City to Contractor and signed by a City inspector stating that all Work has been duly inspected and found to comply with the Building Code requirements set forth at:

<https://www.houstonpermittingcenter.org/code-enforcement/customer-assistance-code->

[development-cacd-section.html](#).

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

City shall have the meaning given to it in the preamble.

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

Contract Price shall mean the price to be paid by the City to the Contractor for the performance of the Work in connection with a particular 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 Baseline Schedule.

Contractor shall have the meaning given to it in the preamble, including its successors and assigns.

Contractor's Request for Payment shall mean that certain written application and request for payment submitted by Contractor, including supporting documentation as may be requested by HCDD and otherwise in form and substance acceptable to the Director, requesting a progress payment in accordance with the Baseline Schedule.

Director shall mean the Director of HCDD, or of such Department's successor entity, or their successor or designee.

Grant shall mean the funds made available to a Homeowner for Work done on Homeowner's Property under the Guidelines, which funds shall not be repayable to the City as long as the Homeowner complies with the Guidelines and terms and conditions of the Project Documents related to the Property.

Guidelines shall mean the Home Repair Program (HRP) Guidelines, as they may be amended from time to time, and the procedures adopted pursuant thereto.

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

Home Repair Program (HRP) shall mean the Home Repair Program administered by HCDD in accordance with the Guidelines.

Homeowner shall mean the owner/occupant of a single-family structure who qualifies for participation in the HRP. The Homeowner is not a party or third-party beneficiary to this Agreement and has no rights or obligations pursuant to this Agreement, except to the extent Homeowner is a third-party beneficiary pursuant to Section VII (Contractor's Warranties).

HUD shall mean the United States Department of Housing and Urban Development, or any duly constituted successor or designee thereof.

Notice to Proceed shall mean the written authorization issued by the Director for the Contractor to proceed with Work (as may be modified by a Change Order).

Plans and Specifications shall mean a detailed itemized list approved by the Director that provides instructions to the Contractor for the Work to be done on the Property, which may include drawings, as applicable and as may be changed by a Change Order.

Project shall mean the repairs, construction, Rehabilitation, or Reconstruction Work to be done on a property under the HRP. Each Project shall be subject to and governed by the terms and provisions of this Agreement and the Project Documents.

Project Documents shall mean, as applicable, this Agreement, the Tri-Party Agreement, the Plans and Specifications, the Work Write-Up, Change Orders approved and executed by the Director (if any), the Guidelines and the procedures adopted pursuant thereto, the Baseline Schedule, the Notice to Proceed, the Certificate of Compliance, the Deed of Trust, the Promissory Note, the Acceptance Form, and all other documents pertaining to, or executed in connection with the Project.

Property shall mean a traditional stick built, detached, single-family dwelling unit built upon the land located within the incorporated areas of the City to be repaired, rehabilitated, constructed, or reconstructed as described in the Project Documents related to the Property. A legal description of the applicable property shall be included in each Tri-Party Agreement.

Reconstruction shall refer to the demolition and re-building of a home on the same Property.

Rehabilitation shall mean restoring a Property to a habitable condition by removing life, health, or safety hazards.

Subcontractor shall mean any person or entity who performs Work on the Property pursuant to a valid, written subcontract with the Contractor that complies with this Agreement and the Tri-Party Agreement.

Survey shall mean a survey plat which identifies all relevant characteristics of a Property, including but not limited to improvements, easements, set-back lines and which includes a metes and bounds description and a statement of flood elevation of the Property.

Tri-Party Agreement shall mean the agreement among the Contractor, the City and the Homeowner, relating to Work to be done on a Property under the HRP.

Work shall mean the labor and materials necessary for Contractor to complete the construction of a residential structure under the terms of the Project Documents.

Work Write-up shall mean a detailed itemized list approved by the Director providing instructions to the Contractor for Work, as may be changed by a Change Order.

SECTION II

SCOPE OF SERVICES

Contractor's Duties.

In connection with each 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 Tri-Party Agreement, including, but not limited to, any Work Write-up or Plans and Specifications attached thereto (as may be modified by a Change Order). The Contractor shall supervise and direct the Work, and the Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement. Unless otherwise specifically provided herein or in the Tri-Party Agreement, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water (for its own consumption), heat (for its own consumption), utilities (for its own consumption), transportation, and other facilities and services necessary for the Contractor's sole use and consumption and for the proper execution and completion of the Work.

Section 2.02 Inception. The Contractor shall not begin the Work on any Project until the Contractor receives a Notice to Proceed from the Director.

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 ADDITIONAL WORK (as "Work" is defined in Section I) UNLESS CHANGE ORDERS FOR ADDITIONAL WORK ARE ISSUED IN ACCORDANCE WITH THIS AGREEMENT AND THE PROJECT DOCUMENTS.** All Change Orders approved and executed in conformance with this Agreement shall be made a part of Project Documents.

Section 2.04 Side Agreements. The Contractor shall not enter into any side agreements for Work for a Property that is not specified in the Work Write-up or Plans and Specifications attached to the Tri-Party Agreement.

Section 2.05 Surveys. For all Projects, the Contractor shall obtain a Survey of the Property to be completed by a registered surveyor, at Contractor's sole expense.

SECTION III

STANDARDS OF PERFORMANCE

In connection with each Project:

Section 3.01 Codes and Standards. Contractor shall perform all Work in conformance with all applicable laws, rules, regulations and building codes, the Plans and Specifications, and all 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 Director. 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 materials on the site and all Work until its completion. The Contractor shall bear the risk of loss for damage to a Property (including land, structures, and improvements thereon) due to equipment, vehicles, tools, or operations employed in the execution of the Work under the Work Write-up or Plans and Specifications, and due to exposure to the elements which results from the execution of the Work under the Work Write-up or Plans and Specifications. Except as otherwise provided in the Work Write-up or Plans and Specifications, 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 or Plans and Specifications, at the Contractor's sole 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 and liable to the City for the acts and omissions of his/her employees, agents, and subcontractors and their agents and employees.

Section 3.04 Damages. Without limiting any other provision of this Agreement or the other Project Documents, the Contractor shall be responsible and liable to the City for all actual damages incurred by the City resulting from the Contractor's failure to strictly comply with the terms and provisions of this Agreement and the other Project Documents. Such damages may be deducted and withheld from the amounts due Contractor under this Agreement and the other Project Documents in connection with a Project.

Section 3.05 MWBE Compliance. Contractor shall comply with the City's Minority and Women Business Enterprises ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least ___% of the value of this Agreement to MWBEs, consisting of ___% Minority Business Enterprises and ___% Women Business Enterprises ("Stated MWBE Goal"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the Stated MWBE Goal. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.

- A. For purposes of this paragraph, "Contract Year" means a twelve (12) month period during the term of the contract commencing on the Effective Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Contractor's MWBE participation level in a Contract Year

is less than the Stated MWBE Goal, then within 30 calendar days of the end of each Contract Year Contractor must provide a written explanation to both the Director and Office of Business Opportunity Director (“OBO Director”) of the following: (1) the discrepancy between Contractor’s MWBE participation level and the Stated MWBE Goal, (2) the reason for the discrepancy, and (3) Contractor’s good faith efforts (in accordance with the City’s policy) towards achieving the Stated MWBE Goal. As part of the good faith efforts assessment, the OBO Director may consider Contractor’s failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Contractor for said failures in accordance with Chapter 15 of the Code of Ordinances, OBO’s policies and procedures, and the City’s good faith efforts policy.

B. Contractor shall maintain records showing:

1. Subcontracts and supply agreements with Minority Business Enterprises;
2. Subcontracts and supply agreements with Women Business Enterprises;
3. Subcontracts and supply agreements with Small Business Enterprises (if any);
4. Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
5. Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.

C. Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

1. [INSERT Name of MWBE 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.
2. Within five (5) business days of execution of this subcontract, Contractor [prime contractor] and Subcontractor shall designate in writing to the City of Houston’s Office of Business Opportunity Director (“OBO 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, mailing address, phone number, and email address of such agent.

3. After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the Director for dispute resolution. The Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

Section 3.06 Site Visits. For the duration of construction activity, HCDD will conduct routine site visits to oversee the quality of work and to ensure that work progress is according to approved schedules. Identified issues will be addressed by the HCDD representative as appropriate or escalated for review and subsequent action(s) by HCDD Division Management.

SECTION IV

CONTRACT AMOUNT

In connection with each Project, the City agrees to pay the Contract Price to the Contractor, as detailed in this Section IV:

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 for each Project in an amount not to exceed \$250,000.00. Such payments are subject to the Allocated Funds provision and shall only be made from the Allocated Funds as provided in Section 4.04 below. 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 Baseline 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 a written change order request that includes the estimate for increases or decreases and an explanation of requested changes. The Director shall review the change order request to determine if the change is valid before authorizing. If the Director elects to authorize the change, the Director will compute the reduction from or addition to the Contract Price and will authorize the Change Order in writing. All Change Orders must be submitted and approved in writing. Contractor is not authorized to perform any additional Work and the City shall have no obligation to pay for any additional Work or change in the Work unless a Change Order is approved in writing by the Director. **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 Director.** Under no circumstances may the amount of the Contract Price,

plus Change Order exceed the maximum amount of assistance authorized under the Guidelines.

Section 4.04 Limit of Appropriation. The City's duty to pay money to the Contractor under this Agreement is limited in its entirety by this Section's provisions. 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 \$_____.00 to pay money due under this Agreement (the "Original Allocation").

- A. Contractor recognizes that, due to the nature of the HRP, it is not possible to specify the exact allocation of funds necessary for each participating Contractor or Project. More specifically, HCDD will select Contractor and set pricing for a Project in accordance with the Guidelines. Accordingly, it is impossible to ascertain how many Projects and related Tri-Party Agreements will be awarded to a contractor as a result of the bidding or assignment processes in the Guidelines. Funds appropriated and allocated for the HRP will fund the collective Tri-Party Agreements executed thereunder. The City's duty to pay money to Contractor for any Work completed while participating in the HRP is governed by the terms and conditions of each Tri-Party Agreement which Contractor is awarded, which contract amount shall not exceed \$250,000.00 without the written authorization of the City Council.
- B. In the event the total allocation is insufficient to compensate Contractor, Contractor may suspend its services at such time as the total allocation is expended, but shall resume such services, if and when authorized by the Director, upon transfer of funds by the Director or appropriation of additional funds by the City Council, when necessary.
- C. 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:
 - a. The City has not allocated supplemental funds or made a supplemental allocation for this Agreement unless the City has issued to the Contractor a Service Release Order, or a 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.

\$ _____.

D. The Original Allocation plus all supplemental allocations are the “Allocated Funds.” Pursuant to the terms of the ordinance approving this Agreement, the Director, in his sole discretion, may also reduce the amount of Allocated Funds under this Agreement, which reduction shall accordingly release the City’s obligation and liability under this Agreement for any amount in excess of the reduced amount of Allocated Funds. The City shall never be obligated to pay any money under this Agreement or any Tri-Party Agreement in excess of the Allocated Funds, as reduced, if any such reduction occurs. 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.

Section 4.05 Payment and Performance Bonds. The Contractor is required to obtain and provide to the City a statutory payment bond and a performance bond, each in an amount equal to the Contract Price, issued by a solvent company authorized to do business in the State of Texas, which is compliant with all legal requirements, as security for the faithful payment of all the Contractor’s obligations under this Agreement. In the event the Project costs exceed the contractual amount secured by the payment and/or performance bond originally issued by the Contractor” surety, the Contractor shall obtain a reissued payment and/or performance bond. The penal sum of the payment and performance bonds shall be equal to the Contract Price a’ specified in this Contract, or as otherwise specified by the Director. In the event that the Contractor has not provided payment and performance bonds, the Contractor will not be given Notice to Proceed and the Work will not begin until said payment and performance bonds are provided. If the Contractor is unable to provide a payment or performance bond (or reissued payment and/or performance bond, if applicable), the City may terminate either or both this Agreement, in part or in whole, and the respective Tri-Party Agreement(s) and choose another contractor.

SECTION V

PAYMENTS; MECHANIC’S LIENS

In connection with each 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 Baseline Schedule.

In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons, entities, and subcontractors supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR’S FAILURE TO MAKE THESE PAYMENTS.**

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Section 5.02 Progress Payments.

- A. Each progress payment will not exceed the cost set forth in the Baseline 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. The remaining ten percent (10%) shall be held by the City as retainage (a/k/a a “reservation” pursuant to Chapter 53 of the Texas Property Code, effective Jan. 1, 2022) (“Reserve”).
- B. All progress payments will be requested in accordance with the Baseline Schedule. When requesting each progress payment:
 - 1. Contractor must submit a Contractor’s Request for Payment to the Director in a reasonably timely manner, but in no event later than fourteen (14) days after the City’s approval of the respective completed construction milestone achieved for the Property for which the Contractor’s Request for Payment request is made. The City shall have no obligation to pay on an untimely submitted Contractor’s Request for Payment.
 - 2. Upon receipt of the Contractor’s Request for Payment, the Director will review and verify the Contractor’s Request for Payment. Upon the Director’s approval of the Contractor’s Request for Payment, it will be processed and payment made to the Contractor as soon as possible but in no event later than thirty (30) days from the date the Contractor’s Request for Payment is received by the Director.
 - 3. In the event the Contractor’s Request for Payment is rejected or disputed, the Contractor must submit a revised Contractor’s Request for Payment within fourteen (14) days from the City’s notification of rejection or dispute.
 - 4. The City’s review, verification and approval process may include field inspections at the Property and execution of waivers of mechanic’s, materialman’s, or other similar liens or encumbrances by the Contractor.
- C. If any mechanic’s, materialman’s, or other similar lien or encumbrance is filed against the Property, or the fixtures, materials, machinery and equipment to be used in the Project, Contractor must discharge the same (by payment, bonding, or otherwise) within fifteen (15) business days following written notice thereof from the Director.
- D. Contactor’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 Director.

Section 5.03 Final Inspection and Payment.

- A. Upon the HCDD’s Inspector being satisfied that all Work is complete, including any Change Orders, the HCDD inspector will arrange and conduct a walk-through

inspection of the Property with the Homeowner and Contractor. During the final inspection, the HCDD inspector will discuss the warranty and any other outstanding issues with the Homeowner. The HCDD inspector (in consultation with 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 Contractor must schedule and complete the Work on the Punch List within five (5) calendar days from the date of the walk-through inspection, which completion shall be no later than the expiration of the time period specified in the Notice to Proceed (as may be extended by a Change Order). When the Work on the Punch List is complete, the Contractor, the Homeowner and HCDD's inspector will verify that all such Work has been completed. Disputes concerning the items to be included in the Punch List shall be resolved in accordance with Section IX below.

- B. Upon completion of all Work on the Punch List and verification of the completion by the Contractor, the Homeowner, and the HCDD inspector, the signatories to the respective Tri-Party Agreement, shall execute the Acceptance Form. For the final payment, Contractor must submit a Contractor's Request for Payment to the Director in a timely manner, but in no event later than fourteen (14) days after the execution of the Acceptance Form. After the issuance of the Final Payment, the thirty-day (30) reservation period shall begin (pursuant to Chapter 53 of the Texas Property Code, effective Jan. 1, 2022). Upon the expiration of the thirty-day (30) reservation period, if no issues are found, and all mechanic's, materialman's, or similar liens filed against the Property, if any, have been discharged, the Reserve will be released to Contractor.

SECTION VI

TIME OF PERFORMANCE

Section 6.01 Time for Performance. The Work to be performed in connection with each Project shall commence on the date specified in the Notice to Proceed issued in connection with such Project. The Work shall be completed pursuant to the Baseline Schedule within the time period specified in said Notice to Proceed (as may be extended by a Change Order) and by or before the time period specified in the Notice to Proceed expires.

Section 6.02 Force Majeure. Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates,

economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

- A. This relief is not applicable unless the affected Party does the following:
 - 1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - 2. provides the other Party with prompt written notice of the cause (no later than 48 hours following the event causing delay) and its anticipated effect.
- B. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.
- C. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
- D. If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Agreement by giving 7 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 UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**
- E. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

Section 6.03 Liquidated Delay Damages. Time is of the essence for this Agreement. If Contractor fails to complete the Work by the expiration of the time period specified in the Notice to Proceed (as may be extended by a Change Order), the City will suffer harm, although the actual damages from that harm are difficult to estimate. Therefore, if Contractor does not complete the Work by the expiration of said time period, the Contractor shall pay to the City the amount stipulated below as liquidated damages. This amount is a reasonable forecast of just compensation for the harm to the City. Contractor shall pay the amount stipulated for each day of delay until the Work is complete. Liquidated damages are \$200.00 for each and every calendar day that the Work or any portion of the Work remains uncompleted after the expiration of the time period specified in the Notice to Proceed (as may be extended by a Change Order). The City may assess such liquidated damages even if a Project is terminated pursuant to its Tri-Party Agreement or this Agreement is terminated in part or in its entirety pursuant to Section X. The City may deduct the amount of said liquidated damages from the Contract Price. The parties further agree that the same amount of liquidated damages stated above shall be

paid by the Contractor to the City if any defect covered under warranty is not corrected within the time period set forth under Section VII.

Section 6.04 Actual Damages. However, the foregoing provision as to liquidated damages constitutes an agreement by the City and the Contractor as to the minimum amount of damages the City will sustain in any event by reason of the Contractor's failure to complete the Work within the time specified in a Notice to Proceed (as may extended by a Change Order). The City may recover actual damages over and above the minimum amount that result from the Contractor's failure to begin the Work when ordered, carry it forward uninterruptedly after beginning, or complete it within the time specified and in strict accordance with the Plans and Specifications, Work Write-up, or Change Orders. The City shall have the right to deduct and withhold the amount of any and all damages, whether it be the minimum amount agreed upon or otherwise, from any monies owing the Contractor. The Homeowner's Grant is not reduced by the amount of the liquidated damages deducted from the payment(s) to the Contractor.

SECTION VII

CONTRACTOR'S WARRANTIES

Section 7.01 Warranty. Contractor expressly and unconditionally warrants to the City and the Homeowner that all Work performed under this Agreement shall be done in accordance with industry best practices, in a good and workmanlike manner, and in accordance with the standards of quality prevailing in Harris County, Texas for repair, rehabilitation, reconstruction, and construction services for similar projects at the time such services are performed. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement. This warranty includes, without limitation, any condition that may impair or tend to impair the safe and normal use, functioning or enjoyment of the Property and which results in any manner from all labor and/or materials used or supplied under the Project Documents for the 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.
- b. The warranty period shall commence on the date of issuance of the Certificate of Compliance for the Project and end: (a) 2 years thereafter for (x) appliances, (y) workmanship and materials, including but not limited to flooring and subflooring, and (z) a mechanical or delivery system, including electrical delivery systems, plumbing delivery systems, ventilation, heating and air conditioning systems, and (b) 10 years thereafter for the structural warranty, including without limitation 10 years for the foundation (pier and beam, slab, or otherwise), roof, and other major structural components of the home.

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- c. 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; and in the event that such repairs necessitate Homeowner to relocate for the duration of said repairs, Contractor shall pay for Homeowner's relocation expenses, including without limitation temporary accommodation for the duration of the repairs, moving expenses, storage, and additional transportation costs due to the relocation.
 - d. The Contractor shall furnish the Director and Homeowner with all manufacturer's and supplier's written guarantees, warranties and operating instructions covering materials and equipment furnished under the Project Documents for such Project, together with any documentation required for validation.
 - e. The Contractor warrants 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 and that no item or its use infringes any patent, copyright, or proprietary right.
 - f. Contractor warrants that each appliance is new and free of defects and blemishes, including, but not limited to, dents and scratches and that all appliances match in terms of color, finish, and displayed brand (for example, if the logo on the dishwasher is "GE," then the logos on the dryer, oven, refrigerator, and washing machine, etc., shall also be "GE." By way of counterexample, a dryer bearing the "Maytag" logo will not be considered to match a washing machine with the "Whirlpool" logo just because both are owned by the same Whirlpool parent corporation).
 - g. Contractor warrants that each replacement item or appliance is new and free of defects and blemishes, including, but not limited to, dents and scratches, in accordance with original equipment manufacturer's specifications, and are of a quality at least as good as the quality of the item which it replaces (when the replaced item was new) and that no item or its use infringes any patent, copyright, or proprietary right.
 - h. If the Contractor fails to timely complete the Work under the Project Documents, or fails to perform satisfactorily under this Agreement or any Notice to Proceed, the City may require Contractor, at its sole expense to (a) repair or replace defective or damaged materials; (b) refund payment for defective or damaged materials and accept the return thereof; and/or (c) take necessary action to ensure that future performance of Work conforms to the Agreement and applicable Notice to Proceed.
 - i. The Contractor agrees to include this Section's warranty provisions in all of the Contractor's subcontracts for Work under this Agreement. The

Contractor further acknowledges that it is not eligible for final payment until such warranties have been delivered to Director with such copy signed by the Director evidencing Director's receipt of such warranty policies.

- j. If, at the time of sale of the Project to a Homeowner, any of the warranty periods set forth in Section 7.01(b) above have lapsed, Contractor shall elect to either (1) extend such warranties to commence as of the date of such sale and run for the periods of time set forth in such Section 7.01(b) or (2) obtain, at Contractor's expense, an extended warranty issued by an entity acceptable to and to the benefit of Homeowner and in form and substance customarily issued in similar sales and with warranty coverage substantially similar to the warranties and time periods set forth in Section 7.01(b) above. Contractor shall make such election on or before the date of such sale, and failure of Contractor to timely elect (1) or (2) shall be deemed an election under clause (1) above.

Section 7.02 Correction of Work under Warranty. In the event that Contractor is notified by the Director or Homeowner, if applicable, of a defect that has arisen during the warranty period, Contractor shall begin to correct the defect within 5 business days after receipt of notification and shall complete the correction of the defect within 5 days thereafter, unless Contractor receives a written authorization from the Director to extend the correction period, but in no event longer than 30 days from receipt of notice of the defect. Contractor shall correct all warranty items within the time frames set forth above, free of cost or charges to the City or the Homeowner, if applicable, 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 7.03 Survival of Warranty Provisions. The terms of this Section VII shall expressly survive the termination of this Agreement. Contractor's failure to address any defect in compliance with Section 7.02 above may, at the Director's discretion, result in a monetary offset from funds owed to the Contractor by the City under any open Master Contractor Agreement, Tri Party Agreement or any other existing contracts or agreements between the Contractor and the City, to cover the amount of funds necessary for the City to correct any defect not corrected by the Contractor under a warranty.

SECTION VIII

INSURANCE

At all times during the term of this Contract and any extensions thereto, the Contractor shall provide and maintain in full force and effect at all times the following insurance and endorsements. Such insurance is described as follows:

Section 8.01 Risks and Limits of Liability. The Contractor shall maintain the following insurance coverages in the following amounts.

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<input type="checkbox"/> Statutory for Workers' Compensation
Employer's Liability	<input type="checkbox"/> Bodily Injury by Accident \$500,000 (each accident) <input type="checkbox"/> Bodily Injury by Disease \$500,000 (policy limit) <input type="checkbox"/> Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage; contractual liability, with no residential exemptions or exclusions	<input type="checkbox"/> Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate
Automobile Liability	<input type="checkbox"/> \$1,000,000 combined single limit for bodily injury and property damage for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
A hazard insurance policy on a builder's all risk or special causes of loss policy form, with a broad form named insured and loss payable endorsements	<input type="checkbox"/> loss payable endorsements shall insure the Work, and all materials and supplies purchased with advances hereunder against all risks and losses, as well as an allowance for occupancy by a Homeowner if Homeowner is remaining in the structure during repairs.
Excess Liability Coverage for Commercial General Liability and Automobile Liability	<input type="checkbox"/> \$1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

Section 8.02 Insurance Coverage. At all times during the term of this Contract and any extensions or renewals, the Contractor shall provide and maintain insurance coverage that meets the requirements of this Agreement. Prior to beginning performance under the Agreement, at any time upon the request of the Director, or each time coverage is renewed or updated, the Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. The Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. The Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. The Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

Section 8.03 Form of insurance. The form of the insurance shall be approved by the Director and the City's City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City

from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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 Best's Key Rating Guide.

Section 8.04 Required Coverage. The City shall be an Additional Insured under this Agreement, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. The Contractor waives any claim or right of subrogation to recover against the City and their respective officers, agents, or employees, and each of Contractor's insurance policies must contain coverage waiving such claim. Each policy, except Workers' Compensation, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, the Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.

Section 8.05 Notice. CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, the Contractor shall provide other suitable policies in order to maintain the required coverage. If the Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend the Contractor from any further performance under this Agreement and begin procedures to terminate for default.

SECTION IX

DISPUTE RESOLUTION

For purposes of this Section IX, "Project Manager" means the person the Director designates to monitor the progress of Contractor's performance under this Agreement. Except as may otherwise be provided by law, a dispute that (1) does not involve a question of law; (2) arises during the performance of this Agreement; and (3) is not resolved between the Project Manager and Contractor, must be handled as described below:

- A. The Project Manager shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.
- B. If Contractor desires to appeal a decision of the Project Manager, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within 7 working days following receipt of the Project Manager's original decision. The

Director shall provide Contractor with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

SECTION X

TERM AND TERMINATION

Section 10.01 Contract Term

- A. This Agreement is effective on the Countersignature Date and shall remain in effect until three (3) years thereafter, unless sooner terminated under this Agreement ("Initial Term"), provided, however, that this Agreement shall automatically be extended for the term of any Tri-Party Agreement executed pursuant hereto until completion of the Work thereunder.
- B. If the Director, at his or her sole discretion, makes a written request for renewal to Contractor (with a copy of the request sent to the City's Chief Procurement Officer "CPO") at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement is renewed for up to 2 successive one-year terms upon the same terms and conditions.

Section 10.02 Termination With Cause.

- A. If Contractor defaults under this Agreement, the Director may terminate this Agreement in its entirety or as to a Project for cause or allow the Contractor to cure the default as provided below. Default by the Contractor occurs under any of the following circumstances:
 - 1. If any warranty or representation made by the Contractor in this Agreement is at any time false or misleading in any respect;
 - 2. If Contractor neglects to perform the Work in connection with any 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 a Project;
 - 3. 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;
 - 4. If Contractor fails to perform any of its duties under this Agreement or the Project Documents; or
 - 5. If Contractor violates any law or ordinance.
- B. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor (with a copy of the notice to the CPO) describing the default and the termination date of the Agreement in its entirety or as to a Project. The Director,

at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the 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 Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing, with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services and Work under this Contract, and promptly cancel all orders or subcontracts chargeable to this Agreement.

- C. If the City terminates this Agreement in its entirety or as to a Project for cause, the City may take possession of the Project site or sites and utilize any and all materials and appliances provided under the respective Project Documents that 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 a Project for cause or by taking possession of the site or sites.
- D. In case of termination of this Agreement in its entirety or as to a Project for cause pursuant to this subsection 10.02, the Contractor shall not be entitled to receive any payment for any Project until the Work for such Project is completed. Upon completion of any such Project, the Contractor shall be given any balance of the Contract Price less any damages, including, but not limited to, liquidated damages, and less the amount of expenses incurred by the City in finishing the Work for such Project, including any costs in addition to or in excess of those originally contemplated in the Project Documents for such Project. If the cost in completing the Work for any such Project is greater than the original Contract Price, the Contractor shall pay the difference to the City upon ten (10) days written demand.

Section 10.03 Termination Without Cause. The City may terminate this Agreement at any time in its entirety or as to a Project without cause by giving five (5) days' written notice to the Contractor, with a copy of the notice to the CPO. In case of termination of this Agreement in its entirety or as to a Project without cause pursuant to this subsection, the Contractor shall submit its final statement for all Work performed through the date of termination for the respective Project or, in the case of the termination of this Agreement in its entirety, for all Projects under this Agreement, which shall be payable in the manner provided in Section V of this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION WITHOUT CAUSE, 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 AGREEMENT), IT MAY

HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION WITHOUT CAUSE.

Section 10.04 Acceptance of Inferior Work. In connection with any Project, the Director may accept Work that appears to be incorrect if, in the Director's opinion, it is impractical to have the Work corrected. In such case, the Director does not waive the defect, but rather may deduct a reasonable amount for the loss sustained from the Contract Price for said 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 10.05 Cessation of Work. Upon receipt of a notice to terminate from the Director, the Contractor shall discontinue all Work under this Agreement and all Project Documents for each Project, unless the notice specifies a later termination date or that specific Work be completed prior to termination.

Section 10.06 Authority. An approval by the Director or by any other employee or agent of the City, that is not specifically authorized herein, 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.

Section 10.07 Remedies. If the Contractor fails to timely complete the Work under the Project Documents, or fails to perform satisfactorily under the Project Documents, the Director may require Contractor, at its sole expense to (a) repair or replace defective or damaged materials; (b) refund payment for defective or damaged materials and accept the return thereof; and/or (c) take necessary action to ensure that future performance of Work conforms to the Agreement and applicable Project Documents.

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 the provisions hereof.

SECTION XI

ADDRESS AND NOTICE

Section 11.01 Notice. Unless otherwise provided in this Agreement, all notices including any communication, request, reply or advice shall be in writing. If mailed, notice shall be deemed effective the date that it is deposited in the United States mail, postage prepaid, registered, or certified mail, return receipt requested. Notices given in any other manner shall be effective the date received by the party to be notified.

Section 11.02 Addresses. Notice shall be made to the following physical addresses:

To City: **CITY OF HOUSTON**
Housing and Community Development Dept.
2100 Travis St., SUITE 900
HOUSTON, TX 77002
ATTN: HRP

With copy to: City of Houston
900 Bagby, 4th Floor
Houston, TX 77002
ATTN: City Attorney

To Contractor: _____

Section 11.03 Change in Address. 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 XII

ASSIGNMENT AND AMENDMENT

Section 12.01 Assignment. This Agreement shall not be assigned without the prior written approval of the Director. The Contractor may subcontract the Work, however the Contractor shall remain liable for the Work unless an assignment is approved by the Director in writing.

Section 12.02 Amendment. 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 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. Any amendment that does not comply with this provision will be without effect.

SECTION XIII

INDEMNIFICATION AND RELEASE

CONTRACTOR 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. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION

DIRECTLY OR INDIRECTLY RELATED TO THEIR RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY 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;
- B. 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
- C. 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 EXPIRES.

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 Independent Contractor. Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, subcontractors or agents for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes, and all worker's compensation benefits coverage, if any.

Section 14.02 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 14.03 Survival. Contractor shall remain obligated to the City and the Homeowner, if applicable, 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 Project Documents and the indemnity and warranty provisions.

Section 14.04 NOT USED.

Section 14.05 Record Keeping and Audit. All original records pertinent to this Agreement shall be retained by the Contractor for three (3) years following the date of termination of this Agreement, or of submission of the final close-out report by the Director, whichever is later, except any litigation, claim or audit that is started before the expiration of the three-year period and extends beyond the three-year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved, or until the expiration of any minimum record retention requirement required by law, whichever is greater.

- A. The Contractor, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to Contractor's records at reasonable times to the City, its employees, or its agents for the purposes of inspection, review, audit or monitoring of the funds awarded under this Agreement or the Tri-Party Agreement, by City personnel and other personnel duly authorized by the City. "Reasonable" shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the City. To the extent that the Contractor uses the services of subcontractors and consultants in the performance of Contractor's duties and obligations under this Agreement, this Subsection A shall be included in any subcontract or consultant agreement.
- B. 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 Recipient's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.
- C. The Contractor shall keep in close contact with the Director and shall notify the City if any contact information or Project circumstance changes. The Director shall issue official letters, call official meetings, and require documentation to be submitted on a periodic basis. Contractor shall respond in writing to the Director within ten (10) business days of the date of any written or oral inquiry by the

Director to ensure Project timelines are met, and compliance with local, state and federal government requirements is achieved.

- D. If all required documentation and cooperation are not provided by the Contractor to the Director, the Director may withhold further payments until such documentation and cooperation are completed, or the Director may take such other action as specified in this Agreement.
- E. The Contractor shall respond in writing to the Director within ten (10) business days of the date of any written or oral inquiry by providing such additional Project updates or information as may be requested by the Director.

Section 14.06 Applicable Law and Venue. 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 and the State requirements under Chapter 311 of the Texas Tax Code. The venue for any litigation relating to this Agreement is in Harris County, Texas.

Section 14.07 No Quantity Guarantees and Non-Exclusivity.

- A. This Agreement does not create an exclusive right in Contractor to perform all services concerning the subject of this Agreement. The City may procure and execute contracts with other contractors for the same, similar or additional services as those set forth in this Agreement.
- B. The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Contractor through this Agreement; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Agreement.

Section 14.08 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 14.09 Priority of Documents. If there is a conflict between any of the Project Documents, such conflict shall be resolved in the following order of precedence: first the Tri-Party Agreement, then Exhibit A (Property Description), then Exhibit B (Plans and Specifications/Work Write-Up and any authorized Change Orders), then the Promissory Note, then the Deed of Trust, then this Master Contractor Agreement, then the Notice to Proceed, then the Certificate of Compliance, then the Acceptance Form, and then the Guidelines.

Section 14.10 Compliance with Certain State Law Requirements.

- A. *Anti-Boycott of Israel.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- B. *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- C. *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
- D. *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies or to a foreign terrorist organization.

Section 14.11 Zero Tolerance Policy for Human Trafficking and Related Activities. The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Contractor shall immediately notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement.

Section 14.12 CONTRACTOR'S DEBT. IF THE 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 THE CONTRACTOR HAS INCURRED A DEBT, THE CONTROLLER SHALL IMMEDIATELY NOTIFY THE DIRECTOR IN WRITING. IF THE 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 THE CONTRACTOR UNDER THIS AGREEMENT, AND THE CONTRACTOR WAIVES ANY RECOURSE THEREFOR. THE CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

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Section 14.13 SIGNATURE AUTHORITY. The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

CONTRACTOR

By: _____
Title: _____

ATTEST/SEAL:

CORPORATE SECRETARY

Additional Signature Page Follows

This instrument is executed effective as of the date of the countersignature by the Controller of the City of Houston, as set forth below.

SEAL/ATTEST:

CITY OF HOUSTON, TEXAS

City Secretary

Sylvester Turner, Mayor

APPROVED:

COUNTERSIGNED:

Keith W. Bynam, Director
Housing and Community Development
Department

Chris Brown, Controller

APPROVED:

COUNTERSIGNATURE DATE:

Chief Procurement Officer
Strategic Procurement Division

APPROVED AS TO FORM:

Senior Assistant City Attorney

LD No. _____

HighQ/Real Estate (Groups)/Housing/DCEA/HRP_Master_Contractor_Agreement