

4600014691
2020-1095

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

**FIRST AMENDMENT TO THE MASTER CONTRACTOR AGREEMENT
CITY OF HOUSTON
HOME REPAIR PROGRAM**

This **FIRST AMENDMENT** to the Master Contractor Agreement (“First Amendment”) is made and entered into on the date countersigned by the City Controller between the **CITY OF HOUSTON, TEXAS** (the “City”), a municipal corporation and home-rule city of the state of Texas, principally situated in Harris County, Texas and **MAYBERRY HOMES, INC.** (“Contractor”), a CORPORATION doing business in Texas. The City and Contractor are each a “Party” to the Agreement (as defined below) and this First Amendment and are collectively referred to as the “Parties.”

RECITALS:

1. Pursuant to Ordinance No. 2018-56, the City and Contractor entered into a Master Contractor Agreement, Contract No. 4600014691 (“Agreement”), to provide housing construction, reconstruction or rehabilitation services under the City’s Home Repair Program to alleviate life, health or safety hazards at eligible single-family home residences according to the Home Repair Program guidelines.
2. The City and Contractor now desire to amend the Agreement to 1) incorporate emergency repair and substantial gut rehabilitation services; and 2) increase the maximum project cost cap.
3. NOW, THEREFORE, for and in consideration of mutual covenants, agreements, and benefits to the Parties, the City and Contractor agree as follows:

SECTION I

That the definitions of “Certificate of Compliance” and “Project” under “Section I Definitions” be amended to read as follows:

“**Certificate of Compliance** shall mean a certificate issued by the City and signed by the City’s inspector that all Work has been duly inspected and found to comply with the City’s Building Code requirement set forth at <https://www.houstonpermittingcenter.org/code-enforcement/customer-assistance-code-development-cacd-section.html>. This requirement shall be required for emergency repair Work on a case-by-case basis.”

“**Project** shall mean the emergency 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.”

SECTION II

That “Section 4.01 Contract Price” be amended to be read as follows:

“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 Progress Schedule.”

SECTION III

That Subsection (A) of “Section 4.04 Limit of Appropriation Subsection” be amended to read as follows:

“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, Contractor will bid on a Housing Rehabilitation, construction or Reconstruction Project along with other contractors in the HRP. Accordingly, it is impossible to ascertain how many Projects and resulting Tri-Party Agreements each contractor will be awarded as a result of the bidding process. All funding will fund the collective Tri-Party Agreements performed by way of the HRP. 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 dollar amount of each Tri-Party Agreement shall not exceed \$200,000.00 for Substantial Gut Rehabilitation Work (as defined in the Tri-Party Agreement) or \$250,000.00 for Reconstruction Work. The City must receive written authorization from the City Council to exceed allowable costs in a Tri-Party Agreement in the event (i) the total Project costs for Substantial Gut Rehabilitation Work exceed \$200,000.00, (ii) the base Reconstruction costs (excluding any additional site-specific costs) exceed \$200,000.00 and/or (iii) the total Project costs for Reconstruction exceed \$250,000.00.”

SECTION IV

That “Section 4.05 Payment and Performance Bonds” be amended to read as follows:

“Section 4.05 Payment and Performance Bonds. With the exception of emergency repair Work, the Contractor is required to obtain and provide to the City a payment

bond and 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. The Contractor shall be required to obtain a reissued payment and/or performance bond in the event the Project costs exceed the contractual amount secured by the payment and/or performance bond originally issued by the Contractor's surety. The penal sum of the payment and performance bonds shall be equal to the Contract Price as specified in this Contract, or as otherwise specified by the Director."

SECTION V

That the heading for "Section 7.01 Warranty" be amended to be read as "Section 7.01 Warranty (construction/Reconstruction/Rehabilitation Work only)."

SECTION VI

That the Section VII be amended to add the section stated below and that the headings of "Section 7.02 Correction of Work under Warranty" and "Section 7.03 Survival of Warranty Provisions" be read as "Section 7.03 Correction of Work under Warranty" and "Section 7.04 Survival of Warranty Provisions," respectively:

"Section 7.02 Warranty of Fitness of Equipment and Materials (emergency repair Work only). Contractor represents and warrants that all equipment and materials used in the repair work and made a part of the repairs or placed permanently in connection therewith, will be new unless otherwise specified in this Agreement or Tri-Party Agreement, of good quality, free of defects, adequate for their intended purpose therein. It is understood between the parties hereto that all equipment and materials not so in conformity are defective. The warranty period shall commence on the date of completion of the Project or the issuance of the Certificate of Compliance for the Project, as applicable, and end ninety (90) days thereafter. The manufacturer shall cover the equipment and material during the warranty period. The Contractor shall cover the labor during the warranty period."

SECTION VII

Except as specially provided above, no additional or amendments to the Agreement are made or intended hereby, and the Agreement, as amended hereby, remains in full force and effect.

Remainder of Page Intentionally Left Blank; Signature Page Follows

The Parties have executed this First Amendment in multiple copies, each of which is an original. Each person signing this First Amendment represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this First Amendment and the performance of such Party's obligations under the Agreement and this First Amendment have been duly authorized and that the Agreement and this First Amendment is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties agree that each Party may sign and deliver this Agreement electronically of 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:
MAYBERRY HOMES, INC.

By: DocuSigned by:
Sharone Mayberry
F5F585B8C189454...

Name: Sharone Mayberry
Title: President/CEO

ATTEST/SEAL:

By: DocuSigned by:
Aileen Mayberry
59457038C3E0467...

Name: Aileen Mayberry
Title: Corporate Secretary

THE CITY OF HOUSTON, TEXAS

By: [Signature]
Brenda Berhan
Mayor

ATTEST/SEAL:

By: [Signature]
City Secretary **Interim**

APPROVED:

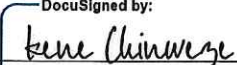
DocuSigned by:
Tom Melasland
Director, Housing and Community Development

COUNTERSIGNED:

[Signature]
City Controller [Signature]

DATE COUNTERSIGNED: 12-29-2020

APPROVED AS TO FORM:

DocuSigned by:

Senior Assistant City Attorney
L.D. File No.