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2018-0936

**AMENDMENT NO. 1 TO
MASTER CONTRACTOR AGREEMENT**

This **AMENDMENT NO. 1 TO MASTER CONTRACTOR AGREEMENT** ("Amendment No. 1") is made on the Countersignature Date of the City Controller ("Effective Date") affixed to this Amendment No. 1 by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city of the State of Texas, and **DSW HOMES, LLC** ("Contractor").

RECITALS:

WHEREAS, pursuant to Ordinance No. 2018-56, passed and adopted by the City Council of the City of Houston ("City Council") on January 24, 2018, City Council authorized and approved a form of a Master Contractor Agreement ("Original Agreement Form") for use with the City of Houston Home Repair Program ("HRP"); authorized a list of twelve contractors ("Authorized Contractors") that may participate in the HRP; authorized and approved the form of a Home Repair Program Rehabilitation and Reconstruction Tri-Party Agreement ("Tri-Party Agreement") to be executed by the City, a Contractor and owner or occupant of a single-family structure who qualifies for participation in the HRP; authorized the Mayor to execute the Original Agreement with each Contractor and related Tri-Party Agreements; appropriated and allocated the sum of \$10,000,000.00 out of the Tax Increment Reinvestment Zone Affordable Housing Fund to be used in connection with the aforementioned agreements, totaling \$833,333.33 per Master Contractor Agreement between the City and an Authorized Contractor, with a maximum contract amount of \$10,000,000.00; and

WHEREAS, as authorized by Ordinance 2018-56, the City and the Contractor, as an Authorized Contractor, executed a Master Contractor Agreement ("Original Agreement"), dated effective March 16, 2018, in the Original Agreement Form; and

WHEREAS, pursuant to Ordinance No. 2018-84, passed and adopted by City Council on February 7, 2018, City Council authorized an amendment to Ordinance No. 2018-56 to allocate an additional \$8,200,000.00 in Community Development Block Grant ("CDBG") funds and \$10,800,000.00 in CDBG-Disaster Recovery 2015 (CDBG-DR15) funds (collectively the "Additional Funds"), thereby increasing the amounts available under the Original Agreement from \$833,333.33 to up to \$2,416,666.67, to allow the Contractors and the Original Agreement to be used in both the Home Repair Program (repair/construction/reconstruction) and for Single-Family Home Development (new construction); and to increase the maximum amount up to \$29,000,000 for all the contracts, agreements or other undertakings collectively approved and authorized under Ordinance No. 2018-56, as amended by Ordinance No. 2018-84; and

WHEREAS, pursuant to Ordinance No. 2018-936, passed and adopted by City Council on November 28, 2018, City Council (i) de-appropriated \$9,935,050.00 of the TIRZ Funds ("De-appropriated TIRZ Funds"); (ii) amended Ordinance 2018-56 to reflect the de-appropriation of the De-appropriated TIRZ Funds; (iii) amended Ordinance 2018-84 (a) to provide that \$9,935,050.00 of the Additional Funds will replace the De-appropriated TIRZ Funds that were previously

appropriated to pay costs incurred pursuant to the HRP Agreements “up to \$833,333.33” per HRP Agreement; (c) replaced all but one reference to “up to \$2,416,666.67 per agreement” with “up to \$1,583,333.33 per agreement”, to reflect the de-appropriation of the De-appropriated Funds; (d) reduced the maximum amount of the contracts approved and authorized thereby from \$29,000,000.00 to \$19,064,950.00, to reflect the de-appropriation of the De-appropriated Funds and (e) approved and authorized in the form of this Amendment No. 1 to Master Contractor Agreement; and

WHEREAS, the City and the Contractor now desire to amend the Original Agreement to clarify the funding sources and the programs under which the Contractor is authorized to perform Work;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, agreements, and benefits contained in this Amendment No. 1, the City and Contractor agree as follows:

ARTICLE 1.

Section I of the Original Agreement is hereby amended to delete and replace the following definitions in their entirety as indicated below:

“Guidelines shall mean the Home Repair Program (HRP) Guidelines or Home Repair Program Guidelines for 2015 Disasters (“HRP-DR15 Guidelines”), which HRP-DR15 Guidelines may also be referred to as the CDBG-DR15 Program Guidelines, as applicable.”

“Home Repair Program Guidelines for 2015 Disasters (HRP-DR15), which may also be referred to as the **CDBG-DR15 Program Guidelines**, as applicable, shall mean the guidelines adopted by City Council as developed by HCDD for the administration of a HRP-DR15 Program to provide home repair assistance to low- and moderate-income homeowners affected by the 2015 Memorial Day Flood and the 2015 October flooding.”

“Project shall mean the construction, Rehabilitation, Reconstruction and new construction Work to be done on a Property under the Guidelines, as applicable. Each Project shall be subject to and governed by the terms and provisions of the Project Documents.”

ARTICLE 2.

The Original Agreement is further amended to delete the first paragraph of Section 4.04 under Article IV and to replace it to read as follows:

“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/or allocated (i) \$833,333.33 in Tax Increment Reinvestment Zone (“TIRZ”) funds (the “Original TIRZ Allocation”), which was de-appropriated and/or de-allocated pursuant to Ordinance 2018-936, passed and adopted by City Council on November 28, 2018 (“Deallocation Effective Date”); (ii) up to \$683,333.33 in Community Development Block Grant (“CDBG”) funds (the

“Original CDBG Allocation”); and (iii) up to \$900,000.00 in CDBG Disaster Recovery 15 (“CDBG-DR15”) funds (the “Original CDBG-DR15 Allocation”). Prior to the Deallocation Effective Date, the term “Original Allocation” shall refer to the Original TIRZ Allocation. After the Deallocation Effective Date, the term “Original Allocation” shall refer to an amount not to exceed \$1,583,333.33, being the sum of the Original CDBG Allocation plus the Original CDBG-DR15 Allocation, to pay money under this Agreement.

ARTICLE 3.

The Original Agreement is hereby further amended to delete Section 14.06 of the Original Agreement and replace it with a new Section 14.06 which reads as follows:

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 over CDBG and CDBG-DR15 Programs, in particular, without limitation, the federal regulations codified at 24 CFR Part 570, 2 CFR Part 200, Public Law 114-113 (enacted 12/18/2015), Public Law 115-31, Section 421 enacted 5/5/17, Federal Register Notice 81 FR 39687, effective 6/17/2016, and Federal Register Notice 82 FR 36812, effective 8/7/2017. The venue for any litigation relating to this Agreement is in Harris County, Texas.

ARTICLE 4.

Article XIV under the Original Agreement is hereby amended to add a new Section 14.13 entitled “Governance of Projects” to read as follows:

Section 14.13 Governance of Projects. The parties agree that all contracts, agreements and projects entered into between the parties for Work under the Home Repair Program (“HRP”) Guidelines and HRP-Disaster Recovery 15 (“HRP-DR15”) Guidelines, after the Effective Date of Amendment No. 1, will be governed by, and subject to the terms and provisions of Amendment No. 1. After the Effective Date of Amendment No. 1, all references to the “Agreement” contained in the Original Agreement shall hereinafter include Amendment No. 1. All Projects commenced by Contractor prior to the Effective Date of Amendment No. 1 will be governed by the Master Contractor Agreement and Tri-Party Agreements approved by City Council under Ordinance No. 2018-56.

ARTICLE 5.

This Amendment No. 1 is to be read and construed as one with the Original Agreement and related Tri-Party Agreements. If a conflict or inconsistency between the Original Agreement/related Tri-Party Agreements and this Amendment No. 1 arises, then this Amendment No. 1 shall control. Except as amended by this Amendment No. 1, all other terms and conditions of the Agreements, shall remain unchanged and in full force and effect.

The Parties agree to execute this Amendment No. 1 in multiple copies, each of which will be an original.

CONTRACTOR:
DSW HOMES, LLC

By: [Signature]
Name: Paul Judson
Title: VP Purchasing & Estimating

ATTEST/SEAL:

By: [Signature]
Name: Maggie Piter
Title: Corporate Controller



CITY:
CITY OF HOUSTON, TEXAS

By: [Signature]
By: Amanda Washburn 12-20-18
Mayor

ATTEST/SEAL:

Signed by: [Signature]
City Secretary **Assistant**

APPROVED:

[Signature]
on Behalf of:
Director, Housing and Community Development
Department

[Signature]
Chief Procurement Officer

COUNTERSIGNED BY:

[Signature]
City Controller [Signature]

DATE COUNTERSIGNED: 12-21-18

APPROVED AS TO FORM:

[Signature]
Sr. Assistant City Attorney
L.D. File No. 0291700073003