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2018-56

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 (the "City") and DSW HOMES, LLC (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

Certificate of Compliance shall mean a certificate issued by the City and signed by the City's inspector stating that all Work has been duly inspected and found to comply with the City's 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 the Contractor and approved by the Homeowner and the Director in accordance with the Project Documents and the Guidelines.

City shall have the meaning given to it in the Preamble of this Agreement.

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 Progress Schedule.

Contractor shall mean the person or entity named in the Preamble of this Agreement, including its successors and assigns.

Contractor's Request for Payment shall mean that certain application and request for payment submitted by Contractor requesting a progress payment in accordance with the Progress Schedule.

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.

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 terms and conditions of the Project Documents related to the Property.

Guidelines shall mean the Home Repair Program (HRP) Guidelines or Home Repair Program Guidelines for 2015 Disasters (HRP-DR15) Guidelines, as applicable.

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.

Home Repair Program Guidelines shall mean those guidelines designed to address life, health, and/or safety hazards resulting from substandard conditions in a home owned and occupied by a low and moderate-income elderly and/or disabled person, a person with minor children and/or a homeowner providing full time care to disabled household members.

Home Repair Program Guidelines for 2015 Disasters (HRP-DR15) shall refer to the guidelines, adopted by City Council, by which the HCDD will administer a program which will provide home repair assistance to low- and moderate-income homeowners affected by the 2015 Memorial Day Flood and the 2015 October flooding.

Homeowner shall mean the owner/occupant of a single-family structure who qualifies for participation in the HRP.

Homeowner's 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 Plans and Specifications/Work Write-Up.

HUD shall mean the United States Department of Housing and Urban Development.

Notice to Proceed shall mean the written authorization issued by HCDD for the Contractor to proceed with Work.

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.

Progress 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.

Project shall mean the 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/Work Write-Up, Change Orders approved and executed by the Director, if any, the Guidelines, the Progress Schedule, the Notice to Proceed, the Certificate of Compliance, the Homeowner Acceptance Form, the Note, the Deed of Trust, 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 land located within the incorporated areas of the City, to be rehabilitated, constructed or reconstructed, as described in the Project Documents related to the Property. The Property shall be described in Exhibit A to the 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, pursuant to this Agreement, will perform Work on the Property at the request of Contractor.

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

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

Work shall mean the labor and materials necessary for Contractor to complete the construction, reconstruction or rehabilitation 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.

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 the Work Write-up or Plans and Specifications attached thereto. 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, 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 OTHER WORK UNLESS CHANGE ORDERS FOR ADDITIONAL WORK OR MATERIALS 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 additional work or materials for a Property over and above those specified in the Work Write-up or Plans and Specifications attached to the Tri-Party Agreement

Section 2.05 Surveys. For all construction and Reconstruction Projects, the Contractor shall develop 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 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 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 Homeowner's Property (including land, structures, and improvements) 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 MWSBE Compliance. Contractor shall comply with the City's Minority and Women Small Business Enterprise ("MWSBE") 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 12% of the value of this Agreement to MWSBEs. For purposes of this Section 3.05, the value of this Agreement includes the aggregate total of all of the Contract Prices for all Tri-Party Agreements executed by Contractor, including any Change Orders, thereto, authorized by the Director. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO"), and will comply with them.

Contractor shall ensure that all subcontracts with MWSBE subcontractors and suppliers contain the following terms:

1. _____ (MWSBE 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 OBO Director.

2. _____ (MWSBE 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 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. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the OBO Director. The OBO Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

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 $200,000.00. 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 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 $833,333.00 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, 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 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 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 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.

A. 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 performance bond is provided. If the Contractor is unable to provide a payment or performance bond, the City will 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 Progress 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.**

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 Request for Payment to the Director.

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. The City's review, verification and approval process may include field inspections at the Property.

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, the HCDD inspector will arrange and conduct a walk-through inspection of the Property together with the Homeowner and the Contractor. During the final inspection, the HCDD inspector will discuss the warranty and any other outstanding issues with the Homeowner. The HCDD 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 Contractor must schedule and complete the Work on the Punch List within five (5) days from the date of the walk-through inspection. 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 HCDD inspector, the HCDD Inspector will forward the Contractor's Request for Payment for the final payment to the appropriate City office for processing and payment. After the issuance of the Final Payment, the thirty day (30) retainage period shall begin. Upon the expiration of the thirty day (30) retainage 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 retainage 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 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 may be extended by one calendar day for each calendar day lost from such cause, provided that the Director approves the extension in writing. The Contractor must notify the Director 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 by a written change order executed by the Homeowner, Contractor and Director.

Section 6.03 Liquidated Delay Damages. The Contractor and the City agree that a breach of this Contract as to completion time will cause damage to the City, but further agree that such damage cannot be accurately measured. Therefore, the Parties agree that $100.00 shall be subtracted from the Contract amount 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, or as extended by a change order pursuant to Section 6.02. 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 7.03.

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, or as extended by a change order pursuant to Section 6.02. 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 Work Order 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 that all Work performed under this Agreement shall be done in a good and workmanlike manner, and in accordance with the standards of quality prevailing in Harris County, Texas for rehabilitation, construction and reconstruction 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 1 year thereafter for a warranty covering workmanship and materials, 2 years thereafter for a warranty covering a mechanical or delivery system, including electrical delivery systems, plumbing delivery systems, ventilation, heating and air conditioning systems, and 10 years for the structural warranty, including without limitation 10 years for major structural components of the home.

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.

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.

f. Contractor warrants that each replacement item is new, 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.

g. 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.

Section 7.02 Correction of Work under Warranty. In the event that Contractor is notified by the Director or Homeowner of a defect that has arisen during the warranty period, Contractor shall begin to correct the defect within 10 business days after receipt of notification and shall complete the correction of the defect within 10 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, 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 Contact 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:

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

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	• Statutory for Workers' Compensation

Employer's Liability	• Bodily Injury by Accident $500,000 (each accident) • Bodily Injury by Disease $500,000 (policy limit) • 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	• 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	• $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	• 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	• $1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

8.2 **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.

8.3 **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.

8.4 **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies except Professional Liability, Worker's Compensation, and Builder's Risk must name the City as an Additional Insured. The Contactor waives any claim or right of subrogation to recover against the City, its 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.

8.5 **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).

(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 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 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 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 his 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. 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/HCDD**
601 SAWYER, SUITE 400
HOUSTON, TEXAS 77007
ATTN: HRP

To Contractor: DSW HOMES, LLC
502 20TH STREET
GALVESTON, TEXAS 77550

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 ITS 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, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY 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 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 Force Majeure. The Contractor shall not be responsible for delays in performance beyond the control of the Contractor, including without limitation, fires, floods, labor disputes, epidemics, abnormal weather conditions, delays in receiving materials or machinery, or acts of God.

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 Owner's Acceptance Form, and then the Guidelines.

Section 14.10 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.

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.

Signature page follows

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.

CONTRACTOR

By: _____
Name: Jim Schumer
Title: President

ATTEST/SEAL:

_____
CORPORATE SECRETARY

COUNTERSIGNED:

_____
CITY CONTROLLER

APPROVED:

_____
DIRECTOR, HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT

CITY OF HOUSTON

_____
Brenda L. Murphy
MAYOR

ATTEST/SEAL:

_____
CITY SECRETARY

COUNTERSIGNATURE DATE

3-16-18

APPROVED:

_____
CHIEF PROCUREMENT OFFICER
STRATEGIC PURCHASING DEPARTMENT

APPROVED AS TO FORM:

_____
SENIOR ASSISTANT CITY ATTORNEY

4600014686
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 an 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: _____
Name: Paul Judson
Title: VP Purchasing & Estimating

ATTEST/SEAL:

By: _____
Name: Maggie Toler
Title: Corporate Controller

CITY:
CITY OF HOUSTON, TEXAS

By: _____ 12/20/18
Mayor

ATTEST/SEAL:
Signed by:

_____
City Secretary Assistant

APPROVED:
Keith W. Bynam
On Behalf Of:
Director, Housing and Community Development Department

Candace M Gambrell for JK
Chief Procurement Officer

COUNTERSIGNED BY:

_____
City Controller

DATE COUNTERSIGNED: 12-21-18

APPROVED AS TO FORM:

_____
Sr. Assistant City Attorney
L.D. File No. 0291700073003