



BOARD OF DIRECTORS REGULAR MEETING

August 11, 2022

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**HOUSTON LAND BANK
MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING
HOUSTON, TEXAS**

July 14, 2022

A regular meeting of the Board of Directors ("Board") of the Houston Land Bank ("HLB"), a Texas non-profit corporation created and organized by the City of Houston as a local government corporation pursuant to the Texas Transportation Code Annotated, Section 431.101, *et seq.*, and the Texas Local Government Code Annotated, Section 394.001 *et seq.*, was held at the Baker Ripley Building, 4450 Harrisburg Boulevard, 2nd Floor, Houston, Texas, on Thursday, July 14, 2022 at 12:00 p.m. Written notice of the regular meeting, which included the date, hour, place and agenda for the regular meeting, was posted in accordance with the Texas Open Meetings Act.

Board members in attendance were:

Tonzaino Bailey	Jesus DeAnda
Elaine Morales	Janae Ladet
Carol Galloway	Matt Zeis
Victor A. Mondragón	John David Vasquez

Board directors absent were: David Collins, Laurie Vignaud, Antoinette Jackson, Courtney Johnson Rose, and Pastor Steve Hall. Others in attendance included: Christa Stoneham, Chief Executive Officer/President of the HLB; Jennifer Allison, Vice President of Operations and Programs for HLB; Ivan Zapata, Manager of Real Estate and Acquisitions for HLB; Mark Glanowski (Paralegal) of Winstead PC, outside legal counsel for the HLB; Graciela Saenz, outside legal counsel for the HLB; Gonzalo Gonzalez, Vice President of Finance and Accounting for HLB; Ron Butler, Manager – Property Maintenance for HLB; Nick Foran of the HLB Advisory Board; Kellen Zale of the HLB Advisory Board; LaTosha Okoiron, In-house Legal Counsel and Compliance Director; Jahmeilla Hunter, Community Relations and Engagement Manager; Sharone Mayberry of Mayberry Homes; and Syed Rahman.

I. Call to Order and Roll Call

Chairman Zeis called this regular meeting to order at 12:05 p.m. A roll call of the Board members in attendance immediately followed. Chairman Zeis announced that a quorum of the Board was present.

II. Public Speakers

No public speaker registered to address the Board.

III. Swearing in of Board Members

- a. **Position Six: Dwantrina Russell (new appointment – City Council)**
- b. **Position Seven: Marilyn Muguerza (new appointment – City Council)**

c. **Ex-Officio: Lynn Henson (new appointment – Mayor's Office)**

The new appointees were not in attendance to be sworn in as required.

IV. Consideration and Adoption of Meeting Minutes

a. **June 9, 2022 Board Meeting**

Chairman Zeis noted that the minutes for the June 9, 2022 regular meeting of the Board of Directors were previously circulated for review and comment. He asked if there were any comments for discussion to such minutes. Hearing none, he requested a motion to approve and adopt such minutes as written.

Director Morales made a motion to adopt the minutes of the June 9, 2022 Board Meeting as written, which motion was then duly seconded by Director Ladet and passed with the unanimous vote of the Board.

V. Chairman's Greeting: Matt Zeis

Chairman Zeis thanked the Board members in attendance for volunteering and being available for this regular meeting.

VI. Committee Reports:

a. **Executive Committee: Matt Zeis, Chair**

Chairman Zeis then announced that he and Victor Mondragón met last week to discuss revising the pricing for HLB lots sold to its approved builders after reviewing comments from HLB staff, the approved homebuilders, and members of the community.

b. **Finance Committee: Laurie Vignaud, Chair**

Chairman Zeis noted that the Finance Committee did not meet this month. The monthly financial report is included in the meeting packet distributed to the Board.

1. **Monthly Financial Report**

Mr. Gonzalez reported that he has been working on the upcoming annual audit and completing the Fiscal Year 2022 numbers which will end on June 30, 2022.

c. **Partnership and Program Development Committee: Courtney Johnson Rose, Chair**

Director Johnson Rose was not in attendance, therefore Ms. Stoneham stated that the Partnership and Program Development Committee met to discuss the Yellow Cab site, the donation of a lot located in the Second Ward, and the EPA Brownfield grant update. She noted that Director Morales was the only other person in attendance for this Committee meeting. Ms. Stoneham announced that a community vision session is scheduled to take place tonight to discuss development of the Yellow Cab land with the interested community attendees.

d. **Real Estate Acquisition and Disposition Committee: Victor Mondragón, Chair**

Director Mondragón reported that the READ Committee met last week to discuss home builder sale prices, keeping up with inflation of construction costs, the plan for development of the Settegast lots, and whether or not to include garages to keep house prices down.

e. **Procurement and Oversight Committee: Jesus DeAnda, Chair**

1. **Procurements Overview**

Director DeAnda reported that the Procurement and Oversight Committee met last week to discuss the status of the outstanding procurements.

He then noted that the Lot Maintenance RFP closed on May 16, 2022 with seven responses being received. He noted that the approved contracts will be based on competitive bids versus the flat rate pricing under the previous contracts. HLB staff examined each of the responses and prepared its evaluation for approval by the Board. The RFP for bookkeeping and accounting services closed on May 6, 2022 and four responses were received. The Procurements Committee is waiting to hear back from the selected firm that it wishes to proceed to contract.

Lastly, Director DeAnda mentioned that procurements are being prepared for the solicitation design work of the former Yellow Cab site and for a consultant for the 501(c)(3) Fund.

VII. President's Report: Christa Stoneham, CEO/President

a. **Progress Report**

Ms. Stoneham stated that April, May and June complete the fiscal year of the HLB, which progressed on the strategic plan by 65% since January 2022 with regard to affordability options, lot inventory, and organizational excellence.

She then announced that there will be a meeting with the community tonight from 6pm – 8pm at the Avenue CDC building to discuss the development plan for the Yellow Cab site. HLB sent out over 600 meeting notices to addresses within the area of the old Yellow Cab business site. On August 2, 2022 HLB will reveal a draft of the site plan and then conduct additional meetings to prepare the final development plan to take to the community. She then mentioned that the Houston Business Journal recognized her for its 40 Under 40 business professional category. Also, Ms. Okiron was recognized by the Real Estate, Probate, Trust Law and Heirship Academy. Ms. Stoneham then noted that she will be attending the National Brownfields Conference in Oklahoma City next month.

Ms. Stoneham stated that the Fiscal Year 2023 Strategic Plan will begin in July 2022. The HLB staff has prepared goals and measurable benchmarks for the Strategic Plan for the Board's approval as listed on the Agenda for today's meeting. Such goals include the creation and marketing of the HLB Fund to accelerate investments in housing, community development, down payment assistance, and submitting applications for federal grants.

She then reiterated that the HLB's mission is to strategically acquire, dispose, and steward vacant, abandoned, and damaged properties and convert them into productive use and transform community development for the city of Houston. The HLB serves as a convener and implementer to promote and provide community development in Houston's low-to-moderate income communities. HLB creates policies and programs to stimulate the development of affordable housing, workforce housing, grocery stores and retail space.

Chairman Zeis asked Ms. Stoneham about the 55 homebuilder contractors that are out of compliance on their construction contracts. Ms. Stoneham reported that HLB has completed its auditing of the homebuilders that are out of compliance noting that some have been delinquent for two years. HLB staff will be sending letters to the delinquent contractors tomorrow to resolve the compliance problem.

VIII. Board Action Items

a. **Consideration and Possible Action to Adopt the Proposed Houston Land Bank Strategic Plan.**

Ms. Stoneham informed the Board that there are four targets for the Strategic Plan, the first of which is acquiring land, some of which may have a building structure on it that will need to be demolished. She mentioned that she will be in discussions with the Department of Housing and Urban Development to determine resources the HLB can tap into.

The second category will be further assisting homebuyers and homebuilders with subsidies to reduce housing construction costs and sale prices. Also, to provide educational resources to homebuyers from HLB partners.

The third category will be to work with Innovative One Solutions to remodel and repair existing houses and construction of pre-fabricated and/or modular houses.

The fourth category will concentrate on creative spaces which will involve working with community members on projects the community wishes to see. She mentioned that a local artist is interested in creating a mural project to reflect the history of the community.

Ms. Stoneham then stated that the next step will be to prepare an RFQ for a consultant to further complete the strategies and determine how much funds to request when working with partners.

Director Morales asked what the budget amount is for the fund raising consultant. Ms. Stoneham responded that \$30,000 has been budgeted for this consultant.

Director Galloway made a motion to adopt the proposed Strategic Plan which motion was duly seconded by Director Vasquez and passed with the unanimous vote of the Board.

b. Consideration and Possible Action to Award three New Lot Maintenance Contracts for Two-Year Terms not to exceed the FY2023 Budget, with opportunities to extend up to an additional option year.

1. AD Construction & Development Inc.
2. Smartscaping, LLC
3. Transteq Environmental Solutions Inc.

Ms. Stoneham announced that approval of this agenda item will authorize the HLB staff to execute contracts for Lot Maintenance Providers for the new contract term (August 1, 2022-July 31, 2024).

The current Lot Maintenance contracts terminated on June 30, 2022. The providers under that contract term were AD Construction & Development Inc., EA Professional Services Inc., Smartscaping and Trans Teq Environmental Solution, Inc. These providers began the contract term by servicing over 300 parcels. In order to facilitate new contracts, HLB was required to issue a Request for Qualifications.

The Lot Maintenance Services Request for Qualifications (RFQ) was issued on March 25, 2022, and responses were received from the following seven companies:

- AD Construction & Development Inc.
- AW & D Construction and Maintenance Services, LLC
- Cortez Landscaping, LLC
- Evolution Alignment, Inc.
- Hardy & Hardy Property Maintenance
- Smartscaping
- Trans Teq Environmental Solution, Inc.

Upon the closing of the RFQ, a three-person HLB staff evaluation panel was instituted to evaluate the submittals. Each panel member graded each submittal based on a 100-point scale created from the submission requirements of the RFQ, for a possible total of 300 points. The point allocation breakdown is as follows:

- Qualifications and Experience (65 points)
- Pricing/Rate Sheet (25 points)
- Alignment with HLB's Mission (10 points)

After evaluation of all submissions by each panel member and review of all submissions as an entire panel, the submittals were scored in points as follows:

- AD Construction & Development Inc. (288 points)
- AW & D Construction and Maintenance Services, LLC (81.5 points)
- Cortez Landscaping, LLC (136 points)
- Evolution Alignment, Inc. (225.5 points)
- Hardy & Hardy Property Maintenance (227.5 points)

- Smartscaping (275.5 points)
- Trans Teq Environmental Solution, Inc. (248 points)

Based on the submissions of the companies and the scoring of the panel, HLB staff recommended the following three companies to contract with contract for the new contract term:

1. AD Construction & Development Inc.
2. Smartscaping
3. Trans Teq Environmental Solution, Inc.

Upon approval of the proposed lot maintenance providers, HLB staff will engage each for contract execution.

Director DeAnda made a motion to approve the award of lot maintenance contracts to the three above-named entities for two-year terms with the opportunity to extend up to an additional option year, which motion was duly seconded by Director Vasquez and passed with the unanimous vote of the Board.

c. Consideration and Possible Action to Accept Real Estate Acquisition and Development Committee Recommendations of Contract Amendments for Maximum Sales Price Increase Requests under the HLB Traditional Homebuyer Program for the following Homes.

1. SXG Capital, LLC
 - i. 8000 Phillips (Acres Homes, Price Increase of \$52,488; Home Sales Price from \$212,000 to \$264,488, Tier I, 1,629 sq. ft.)
 - ii. 7800 Beckley (Acres Homes, Price Increase of \$52,488; Home Sales Price from \$212,000 to \$264,488, Tier I, 1,629 sq. ft.)
 - iii. 7312 Shotwell (Trinity Gardens, Price Increase of \$52,488; Home Sales Price from \$212,000 to \$264,488, Tier I, 1,629 sq. ft.)

Mr. Zapata announced that approval of this item will authorize staff to amend existing contracts to reflect the recommended revised sales prices. The application for contract amendment was reviewed, analyzed, and recommended by both the READ and Executive Committees. The table below denotes the details of each request and the new recommended sales price.

As both material and labor costs remain volatile, SXG Capital d/b/a Green Home Builders, has requested to revise its previously proposed plans and corresponding prices so that the same model is built on all lots as opposed to differing models. This request, like all other requests, was measured against the newly approved sales price frameworks of Low, Med, and High pricing. Based on the size [2 story, 3 bedroom/2.5 bathroom, 1629 SF] and specifications of the house, it fell into the High price range—which is from \$225 up to \$285k. As shown in the table below, these homes will be sold for \$264,488. The request and its supporting documentation were reviewed by staff and assessed against both current construction costs per square foot and the recently approved pricing ranges. The READ Committee met on June 29, 2022 to discuss the request, and its

recommendation was made available to the Executive Committee which met on July 7, 2022 and conducted its analysis, which made the final recommendations shown below:

No.	Builder	HCAD	Address	Area	Initial Price	Revised Price	Home Size (SF)	Approve
1	Green Home Builders	01625500 70012	8000 Phillips	Acres Homes	\$212,000	\$264,488	1,629	Yes
2	Green Home Builders	01626101 80044	7800 Beckley	Acres Homes	\$212,000	\$264,488	1,629	Yes
3	Green Home Builders	06602500 80797	7312 Shotwell	Trinity Gardens	\$212,000	\$264,488	1,629	Yes

Additionally, Mr. Zapata reported that these three houses were revised from 3 bedroom/2 bathroom to 4 bedroom/2 bathroom which also accounts for the requested increase in the sales price. Director Galloway made a motion to accept the contract amendments to increase the sales price on each of the three houses listed above, which motion was seconded by Director Vasquez and passed with the unanimous vote of the Board.

d. Consideration and Possible Action to Approve the Pricing Methodology for the Lot Prices under the HLB Traditional Homebuyer Program.

Mr. Gonzalez announced that approval of this item will authorize staff to revise pricing methodology for Round 7 and future rounds of Traditional Program Lot Sales to approved builders as proposed below.

Due to the continued increases in both land and construction costs in Houston, the HLB Board of Directors approved a new or revised final home sales price framework for its approved builders using Low, Med, and High pricing ranges. The price ranges were based on the sizes and set construction specifications of each category of proposed houses. Despite the expansion of the sales price framework, current construction costs continue to make it difficult for some of the home builders to produce the required specifications within the required price ranges. Therefore, HLB staff proposed a new pricing methodology for its lots in the Traditional Homebuyer Program. This should assist to alleviate the pressure on costs for the home builders and more importantly home prices for income qualified buyers.

In the prior rounds of lot sales (Rounds 1-6), HLB lot pricing to approved builders was based on the current price per square foot values for that specific neighborhood or sub-market as its starting point. Then based on the size of that particular lot and its current sub-market price per square foot, a base market value was determined for such lot. From that base market value, each lot was then further discounted based on its particular measures of construction or 'shovel readiness' and 'sale-ability' of a new house on that lot. Final lot sales prices to approved builders were on average approximately 40% less than the current market value.

Beginning with the upcoming Round 7 Lot Sale and thereafter, HLB proposes to use a pre-determined sale price per lot as its starting point regardless of its size or current neighborhood price per square foot. The discounting measures and methodology would remain the same, but the starting point would change to a flat sale price of \$15,000 per lot based on the average current construction costs per square foot of \$155/square foot. \$155 x 1400 square foot home = \$217,000 plus \$15,000 for the lot results in a sales price of \$232,000 or just over the maximum price for Med range homes.

However, in Settegast the Round 3 Lot Sales final house sales prices were limited to \$180,000. In exchange for the maximum house sales price requirement, HLB sold its lots at a flat rate of \$6,500 per parcel regardless of size, construction readiness, or new home 'sale-ability.' Nevertheless, due to market forces, beginning with the Round 7 Lot Sales and thereafter, HLB proposes to reduce the lot sale price to \$1 for lots in Settegast and increase the final house sales price to \$190,000 with an option for a carport to keep the new houses in that area as affordable as possible. Mr. Gonzalez noted that this will impact HLB's cash flow and the subsidizing of these lots will need to be reevaluated as development continues.

Director Mondragón made a motion to approve this new pricing methodology for future lot sales under the HLB Traditional Homebuyer Program, which motion was duly seconded by Director Bailey and passed by the unanimous vote of the Board.

e. **Consideration and Possible Action to Purchase One Property Located in Fifth Ward in the Amount of \$6,000 under the Traditional Homebuyer Program (3309 Farmer, HCAD# 021-144-006-0004, 1,875 sq.ft.)**

Chairman Zeis announced that approval of this item will authorize staff to execute the contract to purchase approximately 1,872 square feet of land that is adjacent to other HLB properties in the 5th Ward. He mentioned that negotiations with the owner remain on going but wishes to allow staff to negotiate up to a certain amount rather than waiting until the next Board meeting to approve.

The owner of this lot approached HLB to potentially sell this lot located in the 5th Ward. However, the manner in which these lots were platted provided no right of way or access to a public street and/or road for this lot. Therefore, it is land locked. HLB pointed out the developmental difficulties with this property and therefore its value. Ultimately, the owner and HLB reached an agreement to purchase this land for \$6,000. Below are certain details of the transaction:

- o Address: 3309 Farmer
- o Legal Description: TRS 4A & 15C Block 6 Ingraham
- o HCAD ID#: 021 144 006 0004
- o Size: 1,875 Square Feet (SF)
- o Purchase Price: \$6,000 (\$3.20/SF)

Additional expenses anticipated for this proposed acquisition include approximately \$1,500 in due diligence costs (\$1,000 for surveying, \$350 for legal fees, \$150 in closing costs).

Director Galloway stated that the \$6,000.00 purchase price is high for such a small lot. Chairman Zeis noted that this lot will be combined with adjacent HLB lots for development of affordable houses. Ms. Stoneham mentioned that this lot was once a portion of an HLB lot but was separated by metes and bounds, therefore HLB is re-assembling these lots to create a larger lot to be able to construct the house.

Director Galloway made a motion to approve the contract to purchase the above subject lot located in the 5th Ward for the sale price of \$6,000.00 to be included into the inventory for the Traditional Homebuyer Program, which motion was seconded by Director Vasquez and passed with the unanimous vote of the Board.

f. **Discussion of the newly proposed revisions to the New Home Development Guidelines (NHDP), Master Contractor Agreement (MCA), and Tri-Party Agreement (TPA).**

Ms. Stoneham stated that the HLB staff reviewed the NHDP amended guidelines, the Tri-Party Agreement, and the Master Contract Agreement and prepared a list of comments to be considered. HLB will need to reconcile with the New Home Development Program with regard to AMI targets. Also, the Houston Community and Development Department (HCDD) is not open to the HLB Traditional Builder Program using 80% of AMI. HLB will use subsidies to bring the housing prices to affordable levels in the targeted Houston communities. She noted that the New Home Development Program is more concerned with producing housing product and obtaining access to the acquisition funds of HLB.

Chairman Zeis noted that under the Post Closing Agreement HLB would be responsible for selling the houses, however the HLB has no relationship with these home builders therefore this would not be appropriate. He mentioned that the NHDP is threatening continued future funding to HLB. The HCDD wants to raise its house sale price limit to \$250,000.00 using 120% AMI, however it does not appear this will reach the level of affordability intended. The Houston Housing Department is responsible for construction oversight.

Ms. Stoneham noted that there will be additional meetings to discuss the requested changes to the NHDP amended guidelines, the Tri-Party Agreement, and the Master Contract Agreement.

IX. Executive Session

Nothing to report.

X. Board Member Comments

Nothing to report.

XI. Adjournment

Chairman Zeis asked if there were any additional matters to be considered by the Board. Hearing none, the regular Board meeting adjourned at 12:58 p.m. upon the motion of Director Mondragón, which was duly seconded by Director Galloway and passed with the unanimous vote of the Board.

Minutes Prepared By:

Mark Glanowski (Paralegal) of Winstead PC and
Graciela Saenz of Law Offices of Graciela Saenz, PLLC

Signed on the _____ day of _____, 2022.

Secretary



Houston Land Bank

Balance Sheet
As of June 30, 2022

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
Chase-Operations - 8465	598,913.19
Money Market - Lot Acquisition - 7058	512,103.80
Money Market Unrestricted - 7066	2,969,186.29
MoneyMarket-Unrstr.C Resev 5577	18,028.02
Petty Cash	12.63
Unity National Bank PMM - 4992	237,337.37
Total Bank Accounts	\$4,335,581.30
Accounts Receivable	
Accts Receivable	603,172.90
Total Accounts Receivable	\$603,172.90
Other Current Assets	
Prepaid Expenses	
Prepaid Acquisition Costs	3,700.00
Prepaid Insurance	21,007.42
Prepaid Rent	3,900.00
Prepaid Subscription Services	11,291.15
Total Prepaid Expenses	39,898.57
Total Other Current Assets	\$39,898.57
Total Current Assets	\$4,978,652.77
Fixed Assets	
Equipment	12,005.12
xAccum. Depreciation	-7,528.04
Total Fixed Assets	\$4,477.08
Other Assets	
Earnest Fee	125,100.00
Investments Held For Sale	9,712,212.45
Security Deposit	4,875.00
Total Other Assets	\$9,842,187.45
TOTAL ASSETS	\$14,825,317.30



Houston Land Bank

Balance Sheet
As of June 30, 2022

	TOTAL
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	65,229.01
Total Accounts Payable	\$65,229.01
Other Current Liabilities	
Liabilities Due to HCDD	378,519.97
Liabilities Due to HLB	132,606.67
Payroll Liability	21,342.09
Total Other Current Liabilities	\$532,468.73
Total Current Liabilities	\$597,697.74
Total Liabilities	\$597,697.74
Equity	
Retained Earnings-1	12,680,661.00
Net Income	1,546,958.56
Total Equity	\$14,227,619.56
TOTAL LIABILITIES AND EQUITY	\$14,825,317.30



Houston Land Bank

Profit and Loss

July 2021 - June 2022

	TOTAL
Income	
Acquisition and Development Agreement	
Acquisition Proceeds	772,836.30
Disposition of Lots	504,520.00
Disposition Proceeds	67,925.80
Total Acquisition and Development Agreement	1,345,282.10
Administrative Fees	76,723.70
HLB Program Revenue	
Disposition Proceeds	480,624.00
Total HLB Program Revenue	480,624.00
Operations Agreement	1,767,912.74
Outside Sources Contributions	9,950.00
Total Income	\$3,680,492.54
GROSS PROFIT	\$3,680,492.54
Expenses	
Admin - Other	
Advertising & Marketing	7,377.75
Bank Service Charges	2,116.64
Company Insurance	
General Liability	25,020.43
Officers & Directors Liability	7,899.76
Property Insurance	11,952.64
Total Company Insurance	44,872.83
Computer and Internet Expenses	2,323.40
Conference & Meeting	1,447.06
Depreciation Expenses	2,401.08
Dues and Subscription	18,133.10
Filing Fees	284.10
Office Expenses	2,472.77
Leasing Office Equipment	3,166.02
Meals & Entertainment	1,457.84
Office Supplies	1,257.14
Postage and Delivery	505.49
Total Office Expenses	8,859.26
Rental and Lease Expense	49,725.00
Software Usage	55,273.91
Storage Rental	938.00
Telephone Expense	7,167.37



Houston Land Bank

Profit and Loss

July 2021 - June 2022

	TOTAL
Travel and Lodging Expenses	
Lodging Expense	1,047.86
Mileage Expense	1,328.77
Parking	10.00
Travel Expense	3,934.54
Total Travel and Lodging Expenses	6,321.17
Total Admin - Other	207,240.67
Employee Cost	
Health Insurance	74,200.91
Payroll Services Fee	1,829.66
Payroll Taxes	57,677.63
Retirement	13,866.63
Wages and Salary	757,589.52
Total Employee Cost	905,164.35
Legal Fees	96,129.04
Marketing and Promotional	883.63
Professional Services	
Accounting Fee	89,530.00
Audit Fees	14,500.00
Consulting Fee	230,687.65
Contract Work	945.76
Total Professional Services	335,663.41
Property Cost - Maintenance	
Property Expenses	
Clearing of Land Cost	10,350.00
Special Lawn Mowing	14,520.00
Standard Lawn Mowing	367,426.77
Total Property Expenses	392,296.77
Total Property Cost - Maintenance	392,296.77
Property Cost - Disposition HLB	
Clearing and Lawn Maintenance	2,183.79
Closing Cost	9,863.87
Construction of House	1,631.92
Lots COGS	41,806.84
Property Taxes	23,663.15
Survey and Appraisal Expenses	24,926.00
Utilities and Drainage Expenses	112.32
Total Property Cost - Disposition HLB	104,187.89



Houston Land Bank

Profit and Loss

July 2021 - June 2022

	TOTAL
Property Cost -Disposition NHDP	
Cleaning and Supplies	13,780.60
Clearing and Lawn Maintenance - NHDP	4,810.00
Land Trust Fee	3,500.00
Legal Fees - NHDP	29,624.10
Lots Sold - NHDP	
Initial Cost of Lot	88,408.62
Impairment on Lot Sold - (Contra)	-78,214.39
Total Lots Sold - NHDP	10,194.23
Marketing and Showcase	8,200.00
Property Taxes - NHDP	-4,800.02
Repair and Maintenance	1,208.25
Security and Secure Property Co	7,117.20
Soft Cost of Construction - NHDP	8,135.00
Water and Utilities	12,953.51
Total Property Cost -Disposition NHDP	94,722.87
Total Expenses	\$2,136,288.63
NET OPERATING INCOME	\$1,544,203.91
Other Income	
Interest Income	2,754.65
Total Other Income	\$2,754.65
NET OTHER INCOME	\$2,754.65
NET INCOME	\$1,546,958.56

Banking on the Future of Communities

Houston Land Bank: July President's Report



CHRISTA D. STONEHAM, CEO AND PRESIDENT

HLB Mission:

Strategically acquire, dispose, and steward vacant, abandoned, and damaged property into productive use to catalyze transformative community and economic development for the City of Houston.



I am passionate and committed to building prosperous, equitable, and resilient communities.



Report of the President & CEO to the Board of Directors

August 11, 2022

The Houston Land Bank team successfully kicked off the visioning session for our 1st large tract site, Project Yellow Cab. Approximately 50 Near Northside attendees expressed interest in highlighting the kitchen as the heart of the home. Additionally, the community shared a vision for a mixed-use facility inclusive of storefronts, safe and walkable green spaces, a grocery store, and a centralized community center. The second community meeting took place on August 2, 2022, where approximately 20 participants reviewed concepts from the 6.7-acre site. The community emphasized the need for a community center to connect with neighbors and hire locally to economically impact local residents.

The HLB Team also began sharing the strategies and aspirations from the 2022 adopted strategic plan by engaging with potential partners from Houston LISC, HUD, financial institutions, and the Acres Home Chamber of Commerce. Collaboration is key to leveraging the momentum and history of the organization; therefore, the Land Bank team also became professional members of the Urban Land Institute (ULI)-Houston Chapter and the Houston Chapter of the Commercial Real Estate Women (CREW) association. Access to partners in the real estate sector is essential to building comprehensive solutions.

In the coming weeks, the HLB Team will be attending the EPA National Brownfields Conference to learn best practices and connect with stakeholders who are passionate about addressing environmental justice. The EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

The team will continue to address long-standing environmental, housing, and economic disparities in low-income and minority communities in partnership with stakeholders from the public, private and non-profit sector.

Respectfully,

P.O. Box 131106, Houston, Texas 77219
281.655.4600

houstonlandbank.org

CEO AND PRESIDENT OUTCOMES

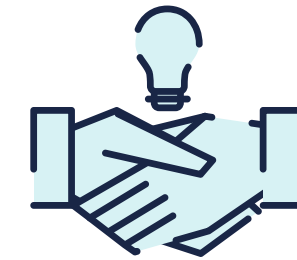
The monthly president's report serves as a showcase to highlight the priorities of the past month and includes a section touching on the focus for months to come. Below is a summary of the strategic priorities to assess, align and accelerate the growth of the Houston Land Bank's mission provided to the CEO by the HLB Board of Directors BOD).



ACQUIRE & ASSEMBLE

Implement a strategy to maintain subsequently increase the number of affordable housing units by identifying new properties and new partners

- Define HLB's core competencies to understand how we can become a conduit for public/private partnerships
- Begin a process to increase affordable housing stock and decrease barriers to affordability
- Streamline land bank processes to ensure the timely production of affordable housing
- Contribute to the continued success and growth of HLB's programs
- Start developing realistic financial models of typically affordable buyer transactions (ie, a capital stack demonstrating the buyer's /lender's positions, where subsidies come in, HLB's role, and any existing gaps)



PARTNERS & POLITICS

Cultivate a strong partnership between Houston Land Bank and the City of Houston Housing Department, Harris County, and Houston ISD

- Forge/reboot strong relationships with the mayor and new housing department leadership
- create priorities that include all stakeholders buy in
- align board and COH on the goals of HLB
- increase collaboration with the county
- work with COH to ensure success/output of NHDP



TEAMWORK & TALENT

Develop a strong, cohesive HLB team of talented people in the right roles that are energized, accountable, and appreciated while ensuring a smooth transition in leadership

- Retain and reinvigorate staff
- Clarify role and responsibilities
- Support strong team culture that encourages others to lead in their area of accountability
- Celebrate organizational and individual successes
- Supervise, guide, and mentor staff to meet priorities and goals
- Ensure crucial conversations with employees as needed
- Advance a culture that appreciates diversity within staff and organization



MEET & GREET

Demonstrate HLB's value to its partners in the broader Houston community

- Leverage opportunities to strengthen relationships with Harris County and Houston ISD
- Continue collaborations with affordable housing, community, and economic development organizations
- Cultivate whole neighborhood strategies to improve/ expand community engagement in HLB brand recognition



BOARD & OVERSIGHT

Establish a strong bond with the board collectively and nurture individual board relationships

- Prioritize engagement of the board to ensure a sense of commitment to the organization
- Communicate effectively to the board about organizational results, events and needs
- Help lead board meetings



ACQUIRE & ASSEMBLE



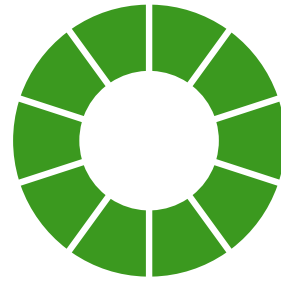
Progress

Action Steps

Progress

Update

Define and confirm HLB mission and goals with staff and board members. Identify SWOT, processes, and benchmarks for each HLB program



The FY22 Strategic Plan was adopted in July.

Video Two

Conduct property owner analysis by utilizing HCAD and GIS data in LMI area such as the Complete Communities. Identify surplus property owned by COH, Harris County, Houston Housing Authority, redevelopment authorities, TIRZ, and public entities. Prioritize the acquisition of tax delinquent parcels in high value neighborhoods



The HLB Team met with Grounded Solutions Network and BOD members to evaluate opportunities for funding. The Team prepared an acquisition analysis to explore fundraising scenarios

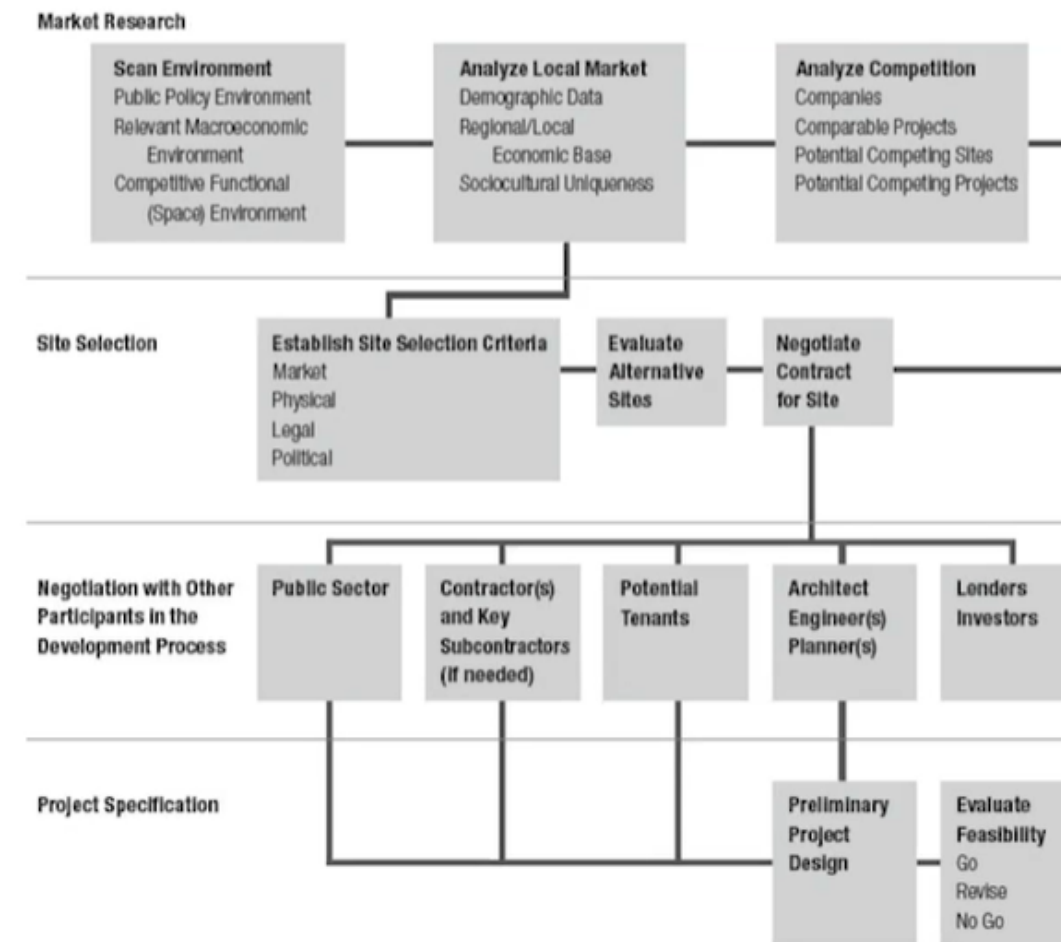
Create housing solutions and programs for all generations and Houstonians. Create "fast track" master permit procedure with COH.



The launch of the fast track system occurred in July 2022. The team is coordinating with HCDD team to align HLB builders

The Eight-Stage Model of Real Estate Development

Activities Involved in Refinement of the Idea



Source: "Real Estate Development – Principles and Process." Fifth Edition. Mike Miles, Laurence Netherton, and Adrienne Schmitz. Urban Land Institute (ULI). 2015.



TEAMWORK & TALENT



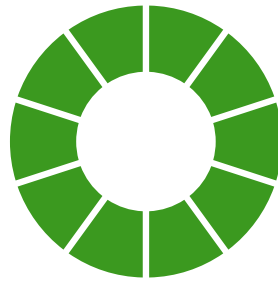
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Action Steps

Progress

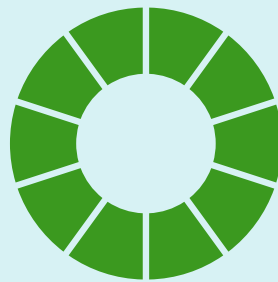
Update

Listen and learn to staff's strengths, goals and skills. Assess operational gaps and unfulfilled FTEs. Activate teambuilding activities. Determine HLB's SWOT with staff and . Identify resources needed for each team member



HLB Team has participated in ULI trainings for real estate development and proforma development.

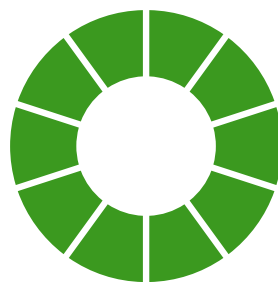
Schedule reoccurring meetings and mentorship trainings for all HLB staff. Schedule quarterly progress reports for HLB staff.



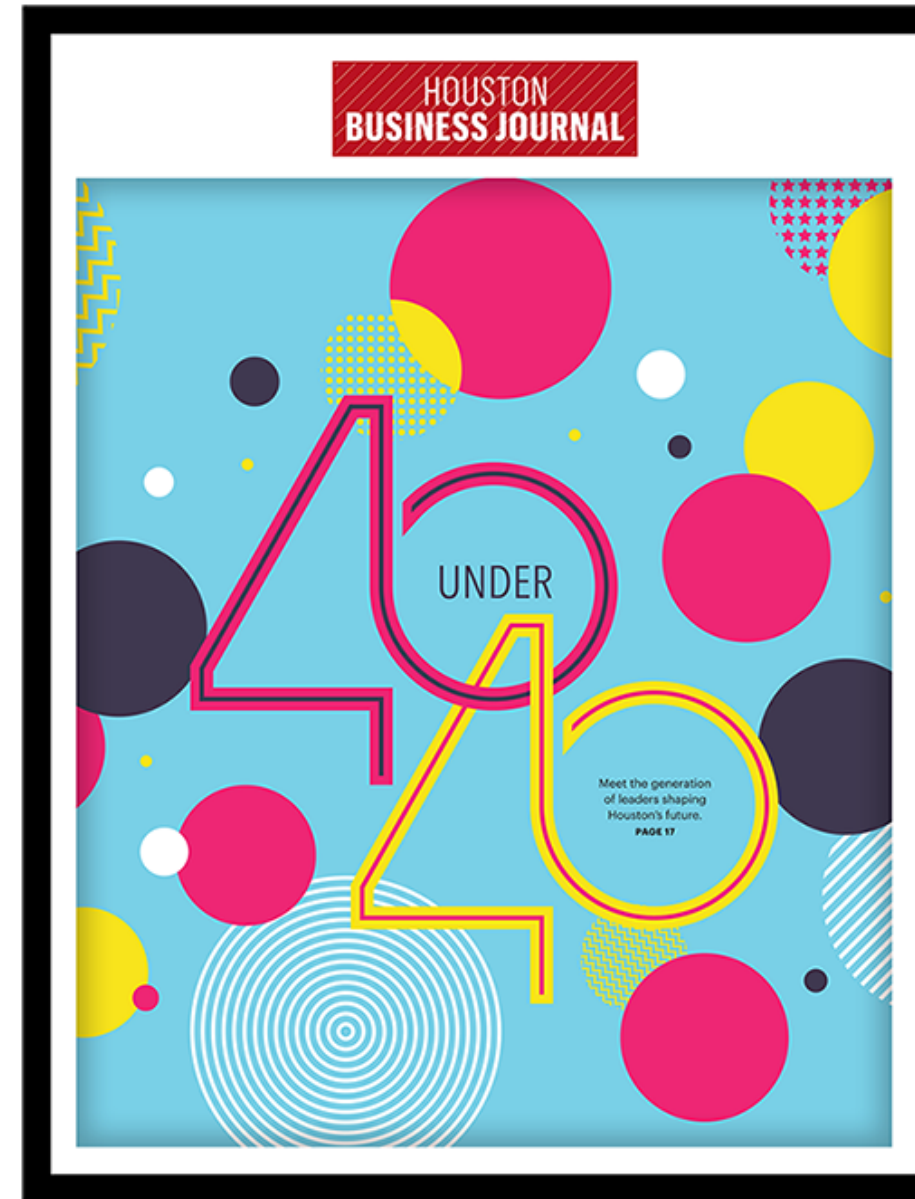
HLB Conference and Event Schedule will consist of the following

- August: EPA conference
- September: Reclaiming Vacant Properties Conference
- October: Texas APA, ULI conference, HAR symposium

Publicly spotlight milestones, mission, board members and staff



HLB CEO hosted a 40 under 40 honoree celebration to explain the HLB strategic plan and priorities to stakeholders.





BOARD & OVERSIGHT



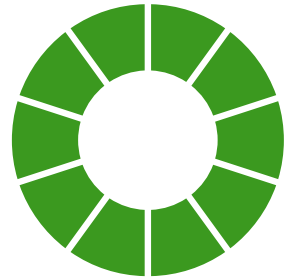
Progress

Action Steps

Progress

Update

Listen to Board's concerns and aspirations. Enhance transparency and increase understanding about productivity, policies, and operations. Make recommendations to tailor and fine-tune solutions such as acquisition and disposition policies. Evaluate and revisit the annual targets for acquisition and disposition



The FY 23 Strategic plan was approved in July 2022. Future reports will include the progress of goals and metrics such as meetings with financial institutions.

The HLB Team also sent a procurement for a RFQ for a fundraiser to help with the launch of the HLB Fund

Update 2022 plan of action and host HLB orientation. Purchase online engagement tools such as Menti to improve input and collaboration of board



The FY 22 plan was improved by 65% from January to June 2022.



Request for
Qualifications:
Fundraising Consultants

Houstonlandbank.org >

[Resources](#) >

[Procurements](#)



MEET & GREET



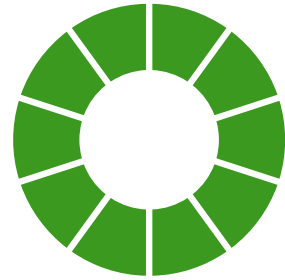
Progress

Action Steps

Progress

Update

Identify HLB lead and introduce HLB Team to community



The HLB Team kicked off Project Yellow Cab to align with the community's vision for the 6.7 acre site.

Host call to action and open house with potential aligned partners. Attend and present HLB mission at conferences, ULI luncheons, Bisnow, Houston Business Journal, etc



HLB CEO was selected as HBJ's 40 under 40 and aspires to amplify the mission and support of the HLB organization.

The CEO also made a presentation to the Acres Home Chamber of Commerce to explain the priorities and call to action for partnership amongst partners.





PARTNERS & POLITICS



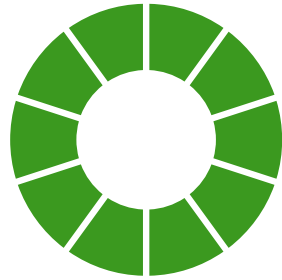
Progress

Action Steps

Progress

Update

Share 2022 HLB plan and quarterly updates with COH & HLB leadership



After the adoption of the strategic plan, the HLB CEO publicly shared amongst stakeholders HLB's strategies and priorities at the 40 under 40 honoree event

Identify aligned programs at Harris County, HISD and public entities



HLB Team has begun conversations with partners at METRO and HISD to evaluate aligned opportunities. HLB staff is meeting with Harris County to discuss a program which might be aligned in early childhood education

Establish a standard process for the transfer of surplus property at the City and County



The HLB Team found some potential properties are attempting to align with the appropriate parties, however next steps are still underway

THE COMMUNITY *Recreation/Mixed-Use*



Central



Linear



Pockets

Our Next Steps

Timeline for the upcoming quarter

Tasks	August	September
● HLB Team to attend EPA and Land Bank conferences	[Gold bar]	
● HLB team to procure fundraising and architecture consultant(s)	[Teal bar]	
● HLB aligned partner brainstorming sessions	[Green bar]	
● Project Yellow Cab meeting, NAC meeting, BAC meeting #2	[White bar]	[Dark Gray bar]



REQUEST FOR BOARD ACTION

Meeting Date: August 11, 2022

Agenda Item: Consideration and Possible Action to Adopt the newly proposed revisions to the New Home Development Program Guidelines (NHDP), Master Contract Agreement (MCA) & Tri-Party Agreement).

ACTION SUMMARY

Approval of this agenda item will authorize HLB Board of Directors to execute the following three agreements (***The New Home Development Program (NHDP) Guidelines, Master Contract Agreement(MCA), and Tri-Pary Agreement(TPA)***); all of which are necessary in order to move forward with the partnership between HLB and the City of Houston's Housing and Community Development Department (HCDD).

BACKGROUND/OVERVIEW (Background of each of the Three Agreements and Summary)

The New Home Development Program(NHDP) Guidelines were initially adopted July 25, 2018 with the first amendment adopted April 1, 2020.

This second amendment before you continues to further the goal of providing newly constructed, affordable single-family homes to Low-Moderate Income Homebuyers at 80% AMI or below. The program will be funded using TIRZ affordable housing set-aside funds, any related program income, and other non-federal funding that may be available.

Overall amendments to this 25 page document were related to (but not limited to):

- ✓ Agreement to Pre-Sale homes at 66% complete
- ✓ HCDD Down Payment Assistance including length of lien

Master Contract Agreement(MCA):

Overall amendments to this 26 page document were related to (but not limited to):

- ✓ Appliances installed
- ✓ Final inspection processes
- ✓ Builder timeline re: Correction of Work Under Warranty

Tri-Party Agreement(TPA):

Overall amendments to this 27 page document were related to (but not limited to):

- ✓ TREC Inspections
- ✓ Key Exchange and builder warranty start date

Should the Board of Directors approve this item, staff will continue its efforts in marketing, educating and supporting low to moderate buyers in homeownership.

THE CITY OF HOUSTON, HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT



SECOND AMENDED AND RESTATED NEW HOME DEVELOPMENT PROGRAM GUIDELINES

Version 3

Effective Date: _____, 2022

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Version	Date Adopted	Changes
1.0	July 25, 2018	New Home Development Program Guidelines
2.0	April 1, 2020	First Amended and Restated New Home Development Program Guidelines
3.0	_____, 2022	Second Amended and Restated New Home Development Program Guidelines

DRAFT

I. Definitions

100-Year Flood Plain: means land that is predicted to flood during a 100 year storm, which has a 1% chance of occurring in any given year, as determined by the United States Federal Emergency Management Agency (or FEMA).

Acquisition and Development Agreement: The Amended and Restated Acquisition and Development Agreement, dated May 5, 2020, between the City of Houston (“City”) and the Houston Land Bank (“HLB”) (approved by City Council pursuant to Ordinance No. 2020-279) and as may be further amended, providing for the development of new single-family homes on land owned or acquired by HLB and the sale of the completed homes to eligible homebuyers under the New Home Development Program (“NHDP” or “Program”).

Affordability Period: A period of time a Homebuyer is required to live in a home purchased under the Program as their primary residence, as stated in the Section entitled “Recapture Restrictions” in these NHDP Guidelines (“Guidelines”). (See below).

Affordability Restrictions. Land use restrictions, included in either the purchase agreement, loan agreement, or deed of trust related to the NHDP Note, that require the household income of a Homebuyer, a CLT Improvements Buyer, or their respective transferee be at or less than the Low-Moderate Income.

AMFI: Area Median Family Income, as determined by HUD for the City of Houston -The Woodlands-Sugar Land MSA.

CLT: An existing community land trust, such as the HCLT or one to be created, operating in the City, organized as a Texas nonprofit corporation under Texas Business Organizations Code §22.001(5) and/or any applicable section of the Local Government Code, and approved by HCDD for participation in the Program.

CLT Ground Lease: A ground lease of CLT Land to a CLT Improvements Buyer from a CLT that owns the land, with terms intended to preserve the affordability of such land and improvements.

CLT Improvements: The improvements located on CLT Land that will be conveyed to Homebuyer and that are located on CLT Land leased to a CLT Improvements Buyer pursuant to a CLT Ground Lease.

CLT Improvements Buyer: A Homebuyer of the CLT Improvements on CLT Land that is leased from an CLT pursuant to a CLT Ground Lease having terms intended to preserve the affordability of such improvements.

CLT Improvements Buyer Subsidy: The reduction in the sales price and market value of the improvements on CLT Land that are sold to a CLT Improvements Buyer and subject to the requirements in the CLT Ground Lease, the requirement that the property remain affordable for at least 99 years and the restrictions on the gain which the CLT Improvements Buyer may receive if such buyer sells the improvements to another qualified CLT Improvements Buyer.

CLT Land: Land that may be conveyed without charge by HLB to a CLT, subject to use restrictions and with a requirement that the CLT lease the land to a CLT Improvements Buyer subject to

requirements that are intended to preserve the affordability of the land and improvements for at least 99 years.

CLT Subsidy: The difference between (i) the proceeds that the City would receive from the sale of both the CLT Improvements and CLT Land to a Homebuyer and (ii) the proceeds that the City would receive from the sale of CLT Improvements to a CLT Improvements Buyer and the conveyance of the CLT Land to a CLT.

Completed Property: A Non-Strategic Property and the completed improvements thereon.

Contractor: An entity to which the City provides funding for the construction of new homes to be sold under the Program.

Director: The Director or Interim Director of HCDD or their designee.

Floodway: means a channel and adjacent areas under water during the overflow of water caused by flooding.

Grant: The grant of Tax Increment Reinvestment Zone ("TIRZ") Affordable Housing Funds to be advanced from the City to HLB, pursuant to the Grant Agreement, for certain costs to acquire and maintain land for Affordable Housing purposes and to cover acquisition and maintenance costs and other related costs related to the Property acquired under the Program.

Grant Agreement: The Land Assembly and Development Grant Agreement between the City and HLB, dated August 31, 2018 (as amended by three amendments, respectively, on: January 3, 2020, pursuant to Ord. 2019-674, approved by City Council on September 4, 2019; May 5, 2020, pursuant to Ord. 2020-330, approved by City Council on April 22, 2020; and March 1, 2021, pursuant to Ord. 2021-145, approved by City Council on February 24, 2021), as it may be further amended from time to time by the parties thereto.

Homebuyer: shall mean a Homebuyer(s) whom HCDD has approved to purchase a Property or CLT Improvements, as applicable, developed under the Program pursuant to these Guidelines.

Housing and Community Development Department (HCDD): The City department that administers federal, state, and local funding for affordable housing and economic development projects.

Housing and Urban Development (HUD): The Federal Department that manages and establishes regulations and rules for housing funds, including, but not limited to CDBG, CDBG-DR, and HOME.

Houston Community Land Trust (HCLT): An existing community land trust operating in the City, organized as a Texas Nonprofit corporation under Texas Business Organizations Code 22.001 (5) and/or any applicable section of the Local Government Code.

Houston Land Bank or HLB: a Texas local government corporation created pursuant to Tex. Transp. Code Ann. §431.101.

Low-Moderate Income: A household/family having an income equal to or less than 80% of the AMFI established by HUD by Metropolitan Statistical Areas.

Master Contractor Agreement: Agreements to be executed between the City and each Contractor that sets forth the terms and conditions applicable to their participation in the Program.

New Home Development Program (NHDP) Loan: The loan from the City to the Homebuyer subject to the Affordability Period and recapture provisions.

Net Proceeds: The sale price of a Property minus (i) the amount applied to repay any purchase money loan created by a lien having priority over the City's deed of trust and (ii) any bona fide closing costs paid by the Homebuyer related to such sale.

Non-Strategic Properties: Single family lots purchased for affordable housing for the Program that are not to be considered a Strategic Property (see definition below).

Post-Completion Agreement: Agreement that may be entered between HLB and Contractor where Contractor will be responsible for all costs of insuring, maintaining, and securing the Completed Property (the "**Carry Costs**") until the Completed Property is transferred to HLB to (i) sell to a Homebuyer or (ii) sell to HCLT or a CLT for a CLT transaction.

Pre-sale of Homes: Entering into a purchase agreement with a Homebuyer to sell a specific home prior to construction completion.

Program Funds: Funds that have been duly appropriated or allocated to the Program.

Project: The construction of a new single-family home under the Program.

Project Documents: The Tri-Party Agreement, the Master Contractor 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 Homebuyer's Acceptance Form, and all other documents pertaining to or executed in connection with the Project.

Project Funding: Any and all governmental and private funds used to pay for hard and soft costs to carry out the construction of a new single-family home.

Property: Unless otherwise specified, the land and improvements of each lot of real property designated for sale to Homebuyers under the Program.

Real Estate Brokerage Service: A licensed third-party brokerage service that will market, list, and sell properties to Homebuyers.

Real Estate Professional: Persons employed by the Real Estate Brokerage Service who are licensed to represent buyers and sellers in real estate transactions.

Recapture Restrictions. Restrictions providing that if a Homebuyer fails to comply with the Affordability Requirements or any other requirement of the NHDP Loan, the Homebuyer will be

required to repay funds to the City, and that if the related Property is sold, the Homebuyer will be required to pay the Net Proceeds to the City.

Strategic Properties: Properties that, due to a larger size (e.g. lot portfolios) and/or current or prior usage (e.g. tracts that are currently, or were previously, operated as multifamily residential projects) are intended to be acquired for multifamily affordable housing purposes and may be recharacterized for use as single-family properties.

Substantial Completion: The stage in the progress of construction work when such work is sufficiently complete in accordance with contract documents and only punch list items or adjustments are pending to be completed.

TIRZ (Tax Increment Reinvestment Zone) Affordable Housing Set-Aside: TIRZ's designated under Section 311.005(a)(4) of the Tax Code, where the population of the county exceeds 3.3 million, must contribute at least one-third of the tax increment of the zone toward the provision of affordable housing, during the term of the zone. These funds, collectively, are referred to as TIRZ Set-Aside funds.

Tri-Party Agreement: An agreement entered by the City, HLB, and a Contractor for funding and construction of specific homes developed through the Program.

II. Introduction and Authority

The objective of the City's New Home Development Program (the "Program" or "NHDP") is to provide newly constructed, affordable single-family homes for Low-Moderate Income Homebuyers. These Second Amended and Restated New Home Development Program Guidelines (these "Guidelines"), as they may be further amended, supersede the previous versions of the guidelines and govern the implementation of the Program. The Program will be funded using TIRZ affordable housing set-aside funds, any related program income, and any other non-federal funding that may be available.

HCDD staff will administer the Program on behalf of the City. The Director has approval authority for administrative matters related to the Program.

III. Acquisition Process

- A.** HLB and the City have entered into an Acquisition and Development Agreement in which the HLB agrees to acquire certain properties at the City's expense and to set aside, at the City's request, certain properties previously acquired.
- B.** HLB will use funds on hand or in the Acquisition Funding Account or advanced by the City pursuant to the Grant Agreement and HLB's policies and procedures, including customary due diligence, subject to the reasonable approval of the Director, defined duties and responsibilities of the respective parties for the acquisition and development of such lots, and funding availability to acquire single family lots.
- C.** HLB will hold said properties for the development of single-family homes for the NHDP. The NHDP single-family homes will be constructed by HCDD and sold by HLB to Homebuyers or sold by HLB to HCLT or a CLT to sell the CLT Improvements to a CLT Improvements Buyers who will enter a CLT Ground Lease with HCLT or an CLT.
- D.** HLB will hold title for such properties until resale and the City will reimburse HLB for all reasonable costs associated with acquisition and maintenance of these properties pursuant to the Acquisition and Development Agreement.

IV. Property Considerations

A. Lots for Construction

All homes built under the Program will be within the property tax jurisdiction of the City.

B. Environmental Review

HLB shall provide a title report to HCDD. Then HCDD shall perform an environmental review and provide an environmental report on each property (including Phase I and, if necessary, a Phase II).

C. Flood Plain

Construction of newly built Single-Family Homes will not be built in a Floodway, or within a 100-Year Flood Plain.

V. Construction of Homes

A. New Home Development

HCDD will coordinate development of properties and will cover all eligible costs associated with the development and construction of new single-family homes, including installation of security features, fencing, alarm system and motion sensor lights to all new homes constructed (this additional scope of work will deter vandalism and theft of new homes). During construction, a contractor hired by HCDD will be responsible for construction and costs of such security devices, utilities, and lighting. After construction is complete, HLB will initially cover (and subsequently invoice HCDD for) the costs of such security devices, utilities, and lighting unless the contractor has agreed to pay such expenses.

The City will enter into a Tri-Party Agreement with a Contractor and HLB for the construction of each new home. Prior to the execution of the Tri-Party Agreement and the commitment of funds, the Contractor shall sign a Master Contractor Agreement which will include requirements related to the work performed under the Tri-Party Agreement. Any new construction, construction budgets and plans will be approved by the Director.

At the time the City enters into a Tri-Party Agreement, HLB will execute and record a deed of trust in favor of the City securing a non-recourse promissory note in the amount of the cost of construction of the home. The note will be deemed satisfied, and the deed of trust will be released when the Completed Property or CLT Improvements, as may be applicable, are sold to the Homebuyer pursuant to the Acquisition and Development Agreement.

The Contractor will be responsible for obtaining all necessary permits and construction documents. The Contractor will also be responsible for identifying the site-specific cost items to be included in its budgeted soft and hard costs for construction. HCDD will develop independent cost estimates with industry-standard software to ensure cost reasonableness. All contractors will be subject to a construction schedule and liquidated damages for exceeding approved construction schedule. Contractors are also subject to the withholding of a reserve (10% of project cost) pursuant to Section 53.101 of the Texas Property Code, as amended, which may be drawn if contractor is not in compliance.

Post-Completion Agreement: It is anticipated that Contractors may enter into Post-Completion Agreements with HLB to address all reasonable requests for repairs or maintenance, theft, or damages related to vandalism following the completion of the Project until the closing of its sale to a Homebuyer. HLB will be responsible for maintaining the Property and insuring the homes so that there is no gap in insurance coverage. The contractor will be responsible for all warranty claims related to the correction of any defects that arise out of defective workmanship or construction materials that appear after completion until the end of the warranty period of the Completed Property. (All charges are subject to determination of cost reasonableness and City approval.)

B. Funding of Construction Work and Soft Costs

Program funds shall be made available to pay for all eligible hard and soft costs up to amounts indicated in the approved construction budget.

- Fees and Interest Payments

Subject to the written approval of the Director, reasonable and customary fees and interest payments for lines of credit and construction loans secured by the contractors may be eligible costs for reimbursement by the City and will be counted toward the total cost basis of the development of the property. HCDD will review these costs to determine if they are eligible for reimbursement.

- Performance and Payment Bonds

Contractors will be responsible for obtaining performance and payment bonds and builder's risk insurance, in accordance with, or in addition to, the terms of their Master Contractor Agreement and Tri-Party Agreement.

VI. Contractor Assignment And Standardized Pricing Guidelines

- A. **Introduction.** HCDD may use either: (1) the standard bid award method (as used exclusively prior to the effective date of these Guidelines) in which NHDP Contractors bid on a NHDP Project, or (2) the Contractor assignment method to assign NHDP Contractors to Projects without requiring a separate bidding process for each home.

Initially, HCDD will evenly distribute Projects among the Contractors. To determine additional NHDP Project assignments, HCDD will track, evaluate, and grade the Contractor's NHDP Projects according to the criteria set forth in the Project Documents, including, but not limited to, Contracts, Pre-Construction, Construction, and Finance as further detailed in the scorecard, attached hereto as Exhibit A, as may be amended. HCDD will determine the extent to which a Contractor will be assigned additional Projects, if any, based on the (i) results of the scorecard(s), (ii) Contractor's capacity, and the quality and timeliness of Contractor's work. The volume of work allocated to a Contractor depends on a comprehensive analysis of the actual measurable performance in completing the activities in a timely and satisfactory manner in accordance with these Guidelines and programmatic and contractual requirements.

- B. **Construction Plan Options.** Either of the construction plan options may be used with the standard bid award method or Contractor assignment method.

Option 1: HCDD Single-Family Standardized Plans

HCDD will secure the services of an Architectural firm to prepare standardized house plans and will be responsible for the cost associated with the standardized plans. These plans will consider local design features and characteristics that are common within a certain geographical area.

A standardized price per square foot will be developed from HCDD's cost reasonableness analysis. Also developed at this time will be standard unit costs for design alternates such as

accessible entry ramps, accessible bathrooms, elevation requirements and site-specific activity pricing such as demolition and debris removal.

Option 2: Contractor-Supplied Plans

Each Contractor will supply their own set of design plans and specifications that are compliant with the HCDD Single-Family NHDP design standards and specifications as specified in Request For Qualifications (RFQ) . The plans shall be presented on 11"x17" sheets with no specific builder identifiers.

The Contractors will submit price proposals for each plan type and HCDD price estimates will be used to develop a standard price per square foot.

Since the plans will vary by Contractor, the price proposals and HCDD price estimates will be used to develop a standard price per square foot. Each Contractor-supplied plan will then be assigned a standard price using the standard square foot price for that floor plan type. Additionally, standard unit prices will be developed for design alternates such as accessible entry ramps, accessible bathrooms, elevation requirements and site-specific activity pricing such as demolition.

VII. Pricing of Homes and Homebuyer Assistance Programs

It is the intent of the Program to develop homes that are affordable to Low-Moderate Income Homebuyers. The final sales price of a home will be its after-construction market value determined by HLB and based on comparable home prices in the specific area to determine fair market prices.

Completed Property Purchases: Completed Properties will be sold based on a current appraised value determined by HLB and approved by HCDD. Homebuyers who purchase a Completed Property may receive assistance from the City through the NHDP or another homebuyer assistance program operated by the City or other entities. The Program Applicant must meet the minimum loan or financing requirement of \$100,000.00 to receive the NHDP Loan. Program applicants must disclose all non-NHDP financial assistance that they have applied for, received, or plan to apply for or receive (from the City or otherwise). Applicants must promptly update HCDD as to any change in the status of any and all new and pre-existing non-NHDP financing. In the event that a Homebuyer receives financial assistance from another program or source, the City shall reduce its funding accordingly. The NHDP may provide a loan (the "NHDP Loan") to Homebuyers that will not bear interest, that will be secured by a lien that is subordinate to the first-lien mortgage securing a bank loan, and whose payment will be deferred until the end of the Affordability Period, at which time it may be forgiven. The amount of the NHDP Loan is based on the difference between the sales price of the home and the maximum amount of the first lien loan (minimum of \$100,000) for which the Homebuyer has qualified, (based on a 30-year term, level payments, and fixed market rate interest) and that will provide affordable payments to the Homebuyer. Unless otherwise approved in writing by the Director, the NHDP Loan amount may not exceed \$50,000.00. An example of the amount of subsidy permitted is:

Home Sales Price	\$250,000.00
<u>First-Lien Mortgage</u>	<u>- \$220,000.00</u>
NHDP Loan is	\$ 30,000.00

CLT Transactions: In a CLT transaction, HLB will sell the CLT Improvements to a CLT Improvements Buyer. HLB will convey the CLT Land to HCLT or an CLT subject to restrictions that are intended to preserve the affordability of the land and CLT Improvements for at least 99 years. The CLT or HCLT will lease the CLT Land to the CLT Improvements Buyer through a CLT Ground Lease that will keep the CLT Land owned by HCLT or an CLT and the CLT Improvements owned by a CLT Improvements Buyer, or permit the transfer of the CLT Improvements to an income-qualified household, subject to the execution of a new lease and a limit on the return on the CLT Improvements Buyer's investment. The sales price of the CLT Improvements will reflect the impact of the CLT Ground Lease, the affordability requirement, and the limit on the return on the CLT Improvements Buyer's investment. The CLT or HCLT will hold title to the CLT Land, and the CLT Improvements Buyer will pay an administrative fee to HCLT or the CLT and be responsible for general maintenance.

VIII. Post-Completion of Homes Constructed

A. Post-Completion Responsibilities.

Upon completion of the improvements in accordance with the construction contract, the Completed Property shall be owned by HLB subject to the terms of the Acquisition and Development Agreement. HLB shall maintain, secure, and insure (the cost of which, subject to available funds, shall initially be paid out of HLB's operational budget) the Completed Properties, in accordance with its customary policies and procedures from the time of acquisition of such property, or its designation as a Final Designated Property (as defined in the Acquisition and Development Agreement) until the closing of the sale thereof in accordance with the Acquisition and Development Agreement. HCDD shall reimburse HLB for such costs periodically or at the time of sale, subject to the terms of the Acquisition and Development Agreement.

B. Damages and Repairs.

All requests for repairs and damages to a Completed Property until closing of its sale to a Homebuyer shall be performed in a manner that does not initiate activation of any homeowner or other warranties. HCDD and HLB will use their best efforts to have the Contractor who performed the initial work on a Completed Property to also perform the repairs. The cost of such work shall be eligible for reimbursement, subject to the terms of the Acquisition and Development Agreement.

C. Transfer of Homes

HCDD and HLB will work together to coordinate the following post-completion activities:

- i. Transfer Notification- HCDD will notify HLB a minimum of two weeks in advance that a subject property will be accessible to HLB for marketing and sale.
- ii. Substantial Walkthrough- the stage in the progress of work when the work or designated portion thereof is sufficiently complete in accordance with contract documents with the exception of a punch list of minor items to complete.
- iii. Punchlist- The list items or adjustments that are pending to be corrected before the home can be transferred.
- iv. Transfer- The transfer of the home, keys, warranties, insulation letters, and the responsibility of the home from HCDD to HLB.

IX. Program Marketing and Marketing and Sales of Homes

Program Marketing

The marketing of the New Home Development Program will be conducted by HCDD unless otherwise delegated to HLB or a CLT. If delegated to HLB or a CLT, HCDD intends to provide necessary funding to promote the Program.

Marketing and Sale of Homes

The marketing and sale of the homes under the Program may be implemented through the following: HLB, HCLT or CLT community outreach programs, marketing personnel and the services of Real Estate Professionals, and the NHDP.

A. Responsibility for Marketing and Sales

HLB and HCLT or a CLT will secure the services of a Licensed Real Estate Brokerage Professional to work with their staff to market and sell the homes. HLB and HCLT or an CLT will be fully responsible for marketing the NHDP homes and selling such homes to Homebuyers.

B. Marketing Plan

HCDD, HLB, and HCLT or an CLT are committed to affirmatively furthering fair housing through its affirmative marketing policies. Affirmative marketing goals are to ensure that outreach and communication efforts reach eligible homebuyers from all racial, ethnic, national origin, religious, familial status, the disabled, "special needs," and gender groups.

Pre-Sale of Homes

Pre-sale of homes, by which a Homebuyer may contract to purchase a home that is under construction, provided that the closing shall occur following the completion of the home, will be allowed for HLB to minimize the Carry Costs associated with the time a home is completed to the time a home is sold to a Homebuyer.

Guidelines for pre-sale of homes:

- Builder documents will be provided to HLB by HCDD before the sale of a home.
- Marketing for pre-sale of homes will be allowed at any time after construction starts.
- Marketing for pre-sale of homes may be done with the aid of illustrations of elevations, floor plans, and any available drawings that are specific to the homes to be pre-sold.
- Potential pre-sale homebuyers must sign a disclosure form confirming that they are aware that the pre-sold homes will be constructed in accordance with the construction drawings and material specifications that are stipulated in the construction contract. Potential pre-sale homebuyers will be presented with a copy of the applicable construction contract as an exhibit to their purchase contract.
- HLB and HCLT (or CLT, if applicable) will maintain a shared list of potential pre-sale homebuyers and the specific home that is being considered for final sale to each homebuyer.
- The potential pre-sale homebuyer who submits all required documentation first, will have the first opportunity to purchase the home, provided the potential homebuyer meets NHDP eligibility requirements.
- NHDP staff will inform HLB a minimum of two weeks before the substantial walkthrough will take place

Prior to marketing the first completed home, the Real Estate Professional must obtain written approval from HLB (or a CLT, if applicable) and HCDD for a program marketing plan. The marketing plan will include the following elements:

- Methods of affirmative outreach to diverse residents in compliance with HCDD affirmative marketing policies.
- Methods of advertising homes for sale, including, but not limited to, Multiple Listing Services, advertising, flyers, etc.
- Flyers, advertising and listings regarding income qualifications of buyers and financing being offered to buyers must be available in approved languages.
- Method and timing of prequalifying prospective buyers, in terms of income eligibility and eligibility for mortgage financing.
- Policy for managing a waiting list of potential buyers.
- Applicable disclosure statements to be given and explained to Homebuyers prior to signing purchase agreements and at closing.
- Applicable form of purchase contract.
- Provisions for establishing and adjusting sale prices.

X. Homebuyer Eligibility

All Homebuyers must meet income criteria to be eligible for assistance under the Program. To meet the income eligibility requirement for homes developed by HCDD using TIRZ funds, an applicant's household must be at or less 80% of the AMFI for the City of Houston-The Woodlands-Sugar Land MSA, as annually published by HUD¹.

HCDD staff will determine household income based on the HUD definition described in the Code of Federal Regulations, Title 24 – Housing and Urban Development – Section 5.609 – Annual Income (24 CFR 5.609) known as “Part 5”.

In addition to the income criteria above, each Homebuyer must meet the following eligibility requirements:

- Complete an eight-hour certified Homebuyer Education Course through a HUD-approved counseling agency.
- Must be able to obtain a 30-year fixed-rate level-payment mortgage, whose payments shall be affordable to the Homebuyer, for the portion of the purchase price not covered by the NHDP Loan, whose amount shall be subject to the Director's Approval. The program does not accept adjustable-rate mortgages (ARM) or seller-financed mortgages. Applicant must meet the minimum loan or financing requirement of \$100,000 to receive the NHDP Loan.
- Must agree to occupy the Home as their principal residence for the Affordability Period.
- Must agree to a lien to be placed on the Property to secure the NHDP Loan.
- Must agree to the Affordability Restrictions and other restrictive use covenants included in the purchase agreement, loan agreement or deed of trust related to the NHDP Loan.
- Must also agree to an annual monitoring of the residence performed by the HCDD staff to ensure that the Homebuyer is living in the home as their primary residence and complying with the restrictive covenants.

¹ Visit the following link for the latest Area Median Family Income <https://www.huduser.gov/portal/datasets/il.html>

- Must receive income certification eligibility, which will be provided by the HCDD staff when the request is formally made in writing.
- Liquid assets² for the household cannot exceed \$30,000.
- Applicant and co-applicant must provide supporting documentation of legal guardianship for all minor household members ages 17 or younger.
- Eligibility is valid for 90 days from the date the applicant is determined to be income-eligible. If contracts are not signed within 90 days of that date, applicant may submit a written request for a one-time, 90-day extension, which HCDD may grant on a case-by-case basis at its' discretion. Income-eligible determination is subject to appeal by the applicant pursuant to Section XVII below.
- Must be a first-time Homebuyer³, if interest in an inherited property or sole ownership is determined, the Homebuyer must file a Quit Claim Deed to relinquish ownership or sale the property.
- All household members (including applicant and co-applicant) 18 years of age or older must be current on payment for child support, or on an approved payment plan.
- All household members (including applicant and co-applicant) cannot be registered sex offenders. This requirement is still applicable when a spouse is listed in the household composition and not as a co-applicant.

XI. Recapture Restrictions IN GENERAL

The NHDP Loan will be used to fill the affordability gap for the Homebuyers who purchase completed properties. The NHDP Loan will be repayable, in whole or in part, until the end of the Affordability Period. The Director, by written notice to the Homebuyer, may declare the NHDP Loan to be due and payable, subject to recapture requirements, at sale or at transfer of title (except thru heirship, as described below). The Director may accelerate the promissory note following an uncured event of default, such as the failure to pay taxes, maintain insurance, or adhere to the applicable restrictive covenants in the Land Use Restriction Agreement.

² Generally, liquid assets are those readily convertible to cash (including but not limited to savings/checking accounts, certificates of deposit, cash equivalents, stocks, bonds, money market instruments or any other non-retirement investments or assets that are not tax-deferred. 'Liquid assets' will exclude savings held in a tax-deferred retirement account (e.g. Pension, 401(K), IRA, etc.), and college savings plan (e.g. 529 account). Specific details of the definition of 'liquid assets' may vary according to the guidelines of the specific homebuyer assistance program operated by the City.

Waivers may be granted to this requirement in situations where the applicant is (1) near retirement (within two years or less), (2) retired, (3) permanently disabled where the applicant's ability to work is severely diminished and the applicant is solely dependent on liquid assets to pay for basic living expenses. Waiver authorizations must be provided in writing, citing the justification for the waiver, signed and dated by the Director, and maintained in the client's file. Waiver requirements will be assessed annually. Applicant's liquid assets shall not exceed \$30,000 at the time of eligibility determination and prior to closing. This requirement will be enforced if an applicant has to be recertified every six months. Specific requirements regarding waivers may vary according to the guidelines of the specific homebuyer assistance program operated by the City.

³ *First-time homebuyer* means an individual and his or her spouse who have not owned a home during the three-year period prior to purchase of a home with assistance under the American Dream Downpayment Initiative (ADDI) described in [subpart M of 24 CFR Part 92](#). The term first-time homebuyer also includes an individual who is a displaced homemaker or single parent, as those terms are defined in this section. An individual shall not be excluded from consideration as a first-time homebuyer on the basis that the individual owns or owned, as a principal residence during the three-year period, a dwelling unit whose structure is not permanently affixed to a permanent foundation in accordance with local or other applicable regulations or is not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with the codes for less than the cost of constructing a permanent structure.

The City places a sale restricted, forgivable lien on homes that it repairs or builds to encourage the Homebuyer to continue to live in the property for a specified period. There is no interest on the lien. If the Homebuyer lives in the home for the full length of the Affordability Period, the City forgives the lien. If the Homebuyer sells or moves during that period, the City forgives a prorated portion of the lien based on the length of time the Homebuyer complied with the occupancy requirement. If the Homebuyer becomes deceased, their heirs can fulfill the remainder of the Affordability Period provided such transferee is eligible under these Guidelines and continues to adhere to the Affordability Restrictions for the remainder of the period. (See Below).

Homebuyers who fail to comply with the Affordability Requirements, the restrictive covenants required by the NHDP or any other requirement of the NHDP Loan, will be required to repay funds to the City in accordance with the terms of the loan documents. More particularly, if the residence is sold or foreclosed during the Affordability Period, a payment in an amount equal to the lesser of (i) the unpaid deferred principal under the NHDP Loan or (ii) the net proceeds resulting from the sale or foreclosure of the home shall be immediately due and payable to the City upon demand by the City.

DEATH OF THE HOMEBUYER

If the Homebuyer receiving any type of assistance under the NHDP becomes deceased before the closing of the sale of the home, the co-applicant or other adult household member(s) listed on the Program application must be approved by HCDD to participate in the Program as the new applicant of the household. If no co-applicant and/or adult household member is listed on the Program application, HCDD will be unable to proceed with the sale of the home.

If the Homebuyer receiving a loan or other financial assistance under the Program becomes deceased after the sale of the home or during the Affordability Period, the surviving heir(s) can request one of the following options:

Loan Payoff

To repay the NHDP Loan or to sell the home and repay the NHDP Loan, subject to the recapture requirements of the Program, according to the terms established in the Program deed of trust and promissory note.

Modification of the NHDP Loan

To allow surviving heir(s) to assume the original terms of the NHDP Loan and reside in the home as their principal residence, the proposed modification of the NHDP Loan, subject to the approval of the Director, will require the surviving heir(s) to be determined by HCDD to be eligible to participate in the Program at the time of modification of the NHDP Loan. If the surviving heir(s) is determined to be ineligible for the Program, HCDD will require repayment of the NHDP Loan.

Table: Rate of Forgiveness of NHDP Loans

Amount of Assistance	Length of Lien	Annual Reduction Rate*
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Less than \$20,000	2.5 Years	40%
\$20,001 - \$40,000	5 Years	20%
\$40,001 - \$50,000	10 Years	10%
\$50,001 and above	15 Years	6.67%

* Subject to the written consent of the Director, the NHDP Loans may be subject to an annual reduction. If the reduction is implemented, the lien will be forgiven at a set percentage rate for each full year the buyer resides in the home.

In the event of inconsistency or conflict between the provisions of these Guidelines and those of an assistance program (operated by the City or otherwise) used by a Homebuyer, the more restrictive provisions shall apply.

XII. Monitoring

A. Homebuyer Loan

Sale or Transfer of Property

If a Property is sold or transferred (except thru heirship), the Director may declare, by written notice to the Homebuyer, the unpaid balance of the NHDP Loan to be due and payable.

Monitoring

HCDD reserves the right to periodically monitor each Property sold under the Program to determine (i) if the Property was transferred or sold during the Affordability Period or (ii) if the Homebuyer has defaulted on any requirement of the Program. The following sources of verification may be used:

- Title report
- Lien and homeownership search in the applicable County Clerk's Office online records
- Homeownership verification in applicable tax office appraisal records
- Certification from homeowner of compliance
- Documentation verifying residency of home (current utility bill etc.)
- Documentation of deceased homeowner.

Releases of Liens

The release of liens will be issued once a Homebuyer has successfully complied with all the terms and conditions of the NHDP Loan and has completed the Affordability Period (or repaid the balance of the NHDP Loan).

Verification of Insurance

If required, property insurance and/or flood insurance must be maintained throughout the Affordability Period and must be furnished upon request.

- **Payment of Taxes**
Property taxes must be paid before they are delinquent, and evidence of payment

must be furnished upon request.

- First Mortgage Compliance
Defaults and foreclosures under any first lien mortgage on the Property will also be a default under the NHDP Loan and Homebuyer may be required to periodically certified that no default or foreclosures have occurred or be noticed from a first lien holder.

XIII. Proceeds of Sale

At the closing of a sale of a Completed Property, CLT Improvements, or a Strategic Property, as applicable, HLB or HCLT, a CLT, as applicable, will convey the Property, pursuant to a Purchase and Sale Agreement ("PSA"), at the price set forth in the PSA and the proceeds from the sale will be distributed as follows:

a. All closing costs (including title insurance policy premiums) of HLB, as seller, will be paid to the appropriate parties entitled thereto; and

b. All remaining proceeds will be distributed first to HLB in an amount equal to (x) any sales fee charged by the CLT, which shall be subject to the Director's consent and which HLB will pay to the CLT, and a Sales Administrative Fee (as determined pursuant to the Acquisition and Development Agreement) and (y) the total of all commercially reasonable costs incurred by HLB with respect to the purchase, maintenance and sale of the Completed Property or Strategic Property, including (i) (aa) the acquisition costs, due diligence costs and transactional costs related to the acquisition of an Acquired Property ("**Acquired Property Sale Reimbursement**"), or, (bb) the Market Value at Sale of a Final Designated Property ("**Final Designated Property Sale Payment**") the amount determined under (aa) or (bb), as applicable, being the "**Property Sale Payment**"), regardless of whether such acquisition costs were previously paid by the Grant or from the Acquisition Funding Account pursuant to the Acquisition and Development Agreement, and (ii) all carrying costs incurred by HLB not previously reimbursed, if any, following the acquisition or designation of such property pursuant to the Acquisition and Development Agreement until its sale, (including, without limitation, costs incurred during such time period that have not been previously reimbursed to insure, clear, maintain, secure, and market the property, legal fees, costs of third party inspectors hired by HLB to perform construction oversight during the construction and marketing of a Completed Property and other carrying costs), excluding any costs that have previously been paid to HLB, including, without limitation, those previously paid as ADA Program Delivery Costs or Carry Costs, as defined in the Acquisition and Development Agreement, (the "**Maintenance and Marketing Sale Reimbursement**"), which, excluding the Acquired Property Sale Reimbursement, may be used to fund HLB's operations for Affordable Housing Purposes in accordance with the terms of this Agreement. HLB will utilize the Acquired Property Sale Reimbursement received pursuant to this Agreement to acquire property to provide affordable housing, and, subject to the approval of the Director, for other affordable housing purposes.

c. The balance of such proceeds will be distributed to the City to reimburse it for the costs of construction and other costs incurred by the City during the construction period (the City might not receive full reimbursement for all such costs. Any unreimbursed costs shall be deemed to have been spent to provide affordable housing). The amount distributed to the City may reflect the impact of the following

- i. The amount by which the cost to acquire, construct and maintain a Completed Property (including CLT Land with CLT Improvements) exceeds its market value ("**Development Subsidy**");
- ii. The amount of any loans or grants made by the City to a Homebuyer of the Completed Property ("**CLT Improvements Buyer Subsidy**");
- iii. The amount of the CLT Improvements Buyer Subsidy; and
- d. The amount of any loans or grants made by the City to a CLT Improvements Buyer so that the payments on any first lien mortgage used to acquire the CLT Improvements will be affordable to the CLT Improvements Buyer (defined above as the "**CLT Improvements Buyer Subsidy**").
- e. The costs to be paid pursuant to (a) through (d) above shall only be paid from the proceeds of the sale of the applicable property and the City shall not fund a shortfall from any other source, provided that HLB may invoice the City for reimbursement of Carrying Costs, which amounts shall be paid to HLB, subject to available funds from the Grant pursuant to the Grant Agreement and further subject to the requirements set forth in the Acquisition and Development Agreement.

XIV. Regulatory Considerations

The NHDP will be designed and implemented in compliance with cross-cutting federal statutes and regulations when applicable, including, but not limited to:

A. Americans with Disabilities Act (ADA)

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state, and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of telecommunications device for the deaf (TDD)/telephone relay services. HCDD takes affirmative steps to ensure that people with disabilities have equal access to the programs offered by HCDD, and that any services are delivered in the most integrated manner possible. HCDD's mandate to conform to the requirements of ADA flows down to every stakeholder, including Vendors, Contractors, and Developers.

B. Fair Housing Act

The federal Fair Housing Act prohibits the discrimination in all housing transactions based on race, color, national origin, sex, religion, handicap, or familial status (having children under the age of 18). HCDD enforces the Fair Housing Act by ensuring that all grantees, and/or Contractors meet the applicable Fair Housing and Affirmative Marketing requirements, provide a marketing plan, and report on compliance in accordance with the Fair Housing Act and the associated on HCDD's website, where applicable. The Affirmative Marketing Plan must comply with applicable Fair Housing Laws and demonstrate how HLB will affirmatively further fair housing.

Homebuyers that feel they have been discriminated against can contact:

U.S. Department of Housing & Urban Development – Fair Housing & Equal Opportunity

Discrimination inquiries and/or complaints
800-669-9777 (Voice)

1-800-927-9275 (TTY)
HUD Local 713-718-3199 (Ask for a
FHEO)
www.hud.gov/offices/fheo

Texas Workforce Commission

Civil Rights Division
1-888-452-4778 (Voice)
1-800-735-2989 (TTY)

City of Houston Fair Housing Hotline

832-394-6200 ext. 5

C. Access to Records (State of Texas – City)

The availability of records is subject to the exceptions to public disclosure set forth in the Texas Public Information Act, Chapter 552 of the Texas Government Code, (“TPIA”). TPIA requests must be made in writing to the City’s Public Information Officer and will be processed in accordance with the procedures set forth therein.

D. Fraud, Waste and Abuse

The City will assess the NHDP program, processes and standard operating procedures from an anti-fraud, waste, and abuse perspective. The City will provide anti-fraud training to program staff. Anyone with information regarding known or suspected misappropriation of funds or resources is encouraged to report the information to the City by sending an electronic report via email to the following email address housingfraud@houstontx.gov.

E. Conflicts of Interest

The Program requires compliance with all applicable conflict of interest provisions, including but not limited to federal, state, and local statutes, laws, regulations, ordinances, and other requirements including but not limited to the Texas Local Government Code Chapters 1714, 1765, and 5536; Chapter 36, Sections 36.027 and 36.088 and Chapter 39, Section 39.029 of the Penal Code; Article VII, Section 4 of the City Charter¹⁰; Chapter 14, Article II, Section 14-18311, Chapter 15, Article III, Sections 15-112 (as amended by City Ordinance No. 2021-4413), 15-5514, & 15-

⁴ <https://statutes.capitol.texas.gov/Docs/LG/htm/LG.171.htm>

⁵ <https://statutes.capitol.texas.gov/docs/lg/htm/lg.176.htm>

⁶ <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.553.htm>

⁷ <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.36.htm#36.02>

⁸ <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.36.htm#36.08>

⁹ <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.39.htm#39.02>

¹⁰ https://library.municode.com/tx/houston/codes/code_of_ordinances/178617?nodeId=CH_ARTVIICICO_S4REUPMECO

¹¹

https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=COOR_CH14CISE_ARTIIRU_DIV15RU15.DIACGE_S14-183VICEST

¹² https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=COOR_CH15CO_ARTIINGE_S15-1PUPOPINCOPEINCI

¹³ https://library.municode.com/tx/houston/ordinances/code_of_ordinances?nodeId=1066559

¹⁴ https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=COOR_CH15CO_ARTIIICOPR_S15-55COIN

5615 and Chapter 18, Article I, Section 18-316 of the City of Houston's Code of Ordinances, Executive Order 1-2817, A.P. 2-22¹⁸, and the HCDD's latest Conflict of Interest Policy #01-040.

Program staff will be required to disclose any relationship with an applicant or contractor. Applicants in this program will submit a completed and signed Conflict of Interest Disclosure Form with the application noting any potential conflicts of interests with city employees. Program staff, sub-grantees, program administrators, and contractors who disclose such relationship are placed in roles where there are no opportunities for them to display favoritism or collude to financially or otherwise benefit, themselves, the applicant, or the contractor. For example, a customer service representative may not perform work on an application of family. For the purposes of this regulation, "family" is defined to include spouse, parents, mother-in-law, father-in-law, grandparents, siblings, brother-in-law, sister-in-law, and children of an official covered under the CDBG conflict of interest regulations at 24 CFR 570.48(h).

The NDHP will establish safeguards to prohibit employees, officers, and agents from using their position for a purpose that is, or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. HCDD may require disclosure of any potential conflict of interest to the governing body of the locality, to the recipient's legal counsel, and as otherwise may be appropriate.

F. Confidentiality/Privacy

The Program is committed to protecting the privacy of all individual stakeholders, including the public and those individuals working on the program. The program's policies describe how information is to be handled and protected. The purpose of this privacy policy is to establish when and under what conditions certain information relating to individuals may be disclosed.

The data collected for the Program may contain personal information on individuals that is covered by applicable federal and state laws, regulations, and rules. Effective September 1, 2019, the Texas Public Information Act makes confidential the personal identifying information of any person who applies for federal or state disaster funding. These laws provide for confidentiality and restrict the disclosure of confidential and personal information. Unauthorized disclosure of such personal information may result in personal liability with civil and criminal penalties. The information collected may only be used for limited official purposes:

- Program staff may use personal information throughout the award process to ensure compliance with program requirements, reduce errors, and mitigate fraud and abuse.
- Independent auditors, when hired by the City to perform a financial or programmatic audit of the program, may use personal information in determining program compliance with all applicable State and local law.
- HCDD may disclose certain personal information provided in accordance with the City's personal information policies and procedures. HLB, HCLT, a CLT, and any other organizations assisting HCDD in executing the NHDP must comply with all state and local regulations.

¹⁵ https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=COOR_CH15CO_ARTIICOPR_S15-56ETVAGUPR
https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=COOR_CH15CO_ARTIICOPR_S15-56ETVAGUPR

¹⁶ https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=COOR_CH18ETFIDI_ARTIINGE_S18-3STCO

¹⁷ <https://www.houstontx.gov/execorders/1-28.pdf>

¹⁸ <https://www.houstontx.gov/adminpolicies/2-22.pdf>

G. Record Keeping, Retention and File Management

HCDD has established recordkeeping and retention requirements for the Developer and Contractor agreements for the purposes of maintaining records to adhere to program requirements and applicable federal, state, and local regulations including, but not limited to Texas Gov Code Chapter 5219, City of Houston Code of Ordinance Chapter 2, Article II, Division 520, and HCDD Procedure #21-018.

The HCDD Records Management Program seeks to ensure that:

- HCDD complies with all requirements concerning records and records management practices under federal and state regulations;
- HCDD has the records it needs to support and enhance ongoing business and citizen service, meet accountability requirements, and community expectations; and
- These records are managed efficiently and can be easily accessed and used for as long as they are required.

Minority Women Small Business Enterprises

It is the policy of the City to stimulate the growth of local minority, women, and small business enterprises by encouraging the full participation of these business enterprises in various phases of city contracting. Contracting departments are responsible for ensuring contractors make a good faith effort to meet minority participation goals. Goal-oriented contracts requirements are based on construction contracts more than \$1,000,000 or the supply of goods or non-personal or non-professional services more than \$100,000.

The HCDD has an MWSBE goal applicable to a Contractors participation in the program, according to the terms of the Master Contractor Agreement. Progress made towards meeting MWSBE goals will be counted based on participation credits of companies certified through the City of Houston, Office of Business Opportunity. If a project is not federally funded, other City MWSBE requirements may be imposed.

XV. Property Insurance

The Homebuyer shall maintain property insurance, and, if applicable, flood insurance in accordance with city, county, state, and federal laws and regulations, and as may be required in these Guidelines or any related Program Document. If the Homebuyer fails to maintain the property insurance required by this Program or fails to notify any transferee of the Property of such insurance requirements, and the Property is damaged by a future disaster, then the Homebuyer's property **may not** be eligible for future assistance.

If an insurance check is received for damages to a Program Property in the amount of \$10,000 or more, the progress of repairs to the Property may be monitored by the City and, under certain

¹⁹ <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm>

²⁰ https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTIVCIRE_DIV5MUREMA

circumstances, the insurance proceeds may be deposited in an escrow account maintained by the City or the senior lender.

XVI. Close-Out

Upon completion of a Program activity and closure of a Project under the Program, a close-out audit will commence which includes reimbursement of funds to the City from the proceeds of sale, compliance with the Affordability Period and a release of lien.

XVII. Complaints and Appeals Process

Complaints

The HCDD welcomes feedback and complaints from any member of the public. Complaints are accepted in writing or over the telephone. Complaints will be responded to in writing within fifteen (15) business days, as practicable.

Mailing Address

Housing and Community Development Department
2100 Travis St., 9th Floor
Houston, TX 77002
Attn: Planning & Grants Management

Email Address

HCDDComplaintsAppeal@houstontx.gov

Telephone

(832) 394-6200

HCDD Business Hours

Monday through Friday
8:00 AM to 5:00 PM

Appeals

All program participants have the right to appeal a determination made by the HCDD regarding their file within thirty (30) days of the notice of determination. Appeals are only accepted in writing. To be considered complete, an appeal must include:

- Project address
- Project number (if applicable)
- Date of appeal
- Nature of appeal

HCDD recommends, but does not require, using the Appeal Form to ensure a timely response and decision. The Appeal Form is available on our website and at our office during normal business hours.

Mailing Address

Housing and Community Development Department
2100 Travis St., 9th Floor
Houston, TX 77002
Attn: Planning & Grants Management

Email Address

HCDDComplaintsAppeal@houstontx.gov

HCDD Business Hours

Monday through Friday
8:00 AM to 5:00 PM

DRAFT

EXHIBIT A

Construction Management Team Contractor Scorecard

Contractor:	Tier:	Date:	
Applicant Name:	Duration:	GC Representative:	
Applicant ID:	HCCD PM:	HCCD DM:	
Address:	HCCD Director:		

Scoring Methodology: Contractor performance is evaluated throughout the life of the Project starting from execution of the Tri-Party Agreement ("TPA") through Final Payment. Each Division Area that holds key interactions with the Contractor over the life of the Project will report on the performance of the Contractor specific to their line of oversight. The following Expectations, or Scoring Criteria, were created from language derived from the Master Contractor Agreement ("MCA"), TPA, and advisement from Single Family Division Management. The Score Card is divided into FOUR sections representing the FOUR involved Division Areas over the life of the Project.

#	Criteria	Input	Comments
1	Is the Contractor a civilly registered in the System of Award Management?	Yes	
2	Was the Tri-Party Agreement executed in a timely manner by Contractor's authorized signatories (within 3 business days)?	Yes	
3	Did the Contractor timely deliver bond documentation (within 7 business days)?	Yes	
4	Did the bond documentation meet legal and contractual requirements for approval?	Yes	
5	Did the Contractor timely submit their annual Certificate of Authority and Authorized Signatures?	Yes	
Section Score:			100%

#	Criteria	Input	Comments
6	Did the Contractor get permits from appropriate jurisdictions in accordance with the Project Documents (as defined in the MCA)?	Yes	
7	Does Contractor's Work Write-up (as defined in the TPA and MCA) meet requirements in the Project Documents, including the statement of work specifications (is form 11.17 Work Write-up filled out correctly)?	Yes	
8	Did Contractor's design meet all applicable laws, regulations, requirements in the Project Documents, and permitting requirements for the Project?	Yes	
9	Did the Contractor communicate in a timely manner with the City's representatives regarding issues that were being resolved by regulatory agencies?	Yes	
10	Did the Contractor communicate and provide in a timely manner the required notices to the City's representatives regarding the status of the permits?	Yes	
11	Did Contractor provide satisfactory MWSBE Participation and Utilization Plan for Project Scope?	Yes	
12	Did the Contractor submit complete permit applications within the timeframe specified in the Project Documents?	Yes	
Section Score:			100%

#	Criteria	Input	Comments
13	Did Contractor begin the Work on the date, or within the timeframe, specified in the Notice to Proceed ("NTP")?	Yes	
14	Did Contractor submit Stormwater Prevention Plan (SWPP) and complete requirements per plan on site?	Yes	
15	Did Contractor properly mobilize with adequate resources on commencement date?	Yes	
16	Did 33% of construction activities run concurrent or ahead of the Baseline Schedule (as defined in the TPA and MCA)?	Yes	
17	Were no issues or corrective actions required at Interim Inspection?	Yes	
18	Did Contractor adequately and timely address any issues documented at Interim Inspection prior to next scheduled inspection?	Yes	
19	Did midpoint construction (TI) activities run concurrent or ahead of the Baseline Schedule?	Yes	
20	Were no issues or corrective actions required at Midpoint Inspection?	Yes	
21	Did 66% of construction activities run concurrent or ahead of Baseline Schedule?	Yes	
22	Did final construction activities run concurrent or ahead of Baseline Schedule and complete within the time period outlined in the NTP?	Yes	
23	Were no issues or corrective actions required at Final Inspection?	Yes	
24	Was Contractor present and on time for scheduled Program Inspections?	Yes	
25	In the event of delays claimed to be due to force majeure, did Contractor comply with the relevant provisions of the TPA and MCA and submit action plans for HCCD approval to make up lost time and get back on track with the Baseline Schedule?	Yes	
26	Were Punch List construction activities completed in a timely manner without deficiencies?	Yes	
27	Did Contractor adhere to approved original Plans and Specifications/Work Write-up in accordance with the Project Documents (including approved Change Orders, if any)?	Yes	
28	Did Contractor install correct materials to scope and manufacturers' specifications?	Yes	
29	Did Contractor install correct quantities as per scope of work?	Yes	
30	Were no Stop-Work-Orders issued due to Contractor's performance?	Yes	
31	Did the Project pass CoH Code Inspections?	Yes	
32	Did Contractor address issues documented at Final Inspection prior to Punch List Inspection?	Yes	
33	Were Punch List items addressed in a timely manner pursuant to the Project Documents? (And did the Final Walk-Through Punch List not exceed 8 items that needed correction?)	Yes	
34	Were Contractor installations aligned with Program expectations for quality of craftsmanship, technique and expertise as set forth in the Project Documents?	Yes	
35	Were installed appliances of the same brand and free of defects or blemishes?	Yes	
36	Did Contractor installations align with HUD's Housing Quality Standards (HQS)?	Yes	
37	Did Contractor maintain a clean and orderly worksite?	Yes	
38	Did Contractor meet OSHA Compliance, utilized appropriate PPE, and have 0 recordable incidents during the Project?	Yes	
39	Did Contractor maintain professional and socially responsible conduct resulting in 0 community complaints? (E.g., Obstructing street, profanity, unkept worksite, etc.)	Yes	
40	Did Contractor meet financial obligations to its subcontractors and suppliers in a timely manner (no liens filed on the Property)?	Yes	
Section Score:			100%

#	Criteria	Input	Comments
41	Were the Complete 33% Contractor's Request for Payment submitted in less than 4 Days?	Yes	
42	Were the Complete 33% Contractor's Request for Payment submitted in less than 8 Days?	Yes	
43	Were the Complete 33% Contractor's Request for Payment submitted in less than 14 Days?	Yes	
44	Did Contractor fulfill all Program requirements and expectations for MWSBE at 33%?	Yes	
45	Did Contractor fulfill all Program requirements and expectations for Section 3 at 33%?	Yes	
46	Were the Complete 66% Contractor's Request for Payment submitted in less than 4 Days?	Yes	
47	Were the Complete 66% Contractor's Request for Payment submitted in less than 8 Days?	Yes	
48	Were the Complete 66% Contractor's Request for Payment submitted in less than 14 Days?	Yes	
49	Did Contractor fulfill all Program requirements and expectations for MWSBE at 66%?	Yes	
50	Did Contractor fulfill all Program requirements and expectations for Section 3 at 66%?	Yes	
51	Were the Complete 100% Contractor's Request for Payment submitted in less than 4 Days?	Yes	
52	Were the Complete 100% Contractor's Request for Payment submitted in less than 8 Days?	Yes	
53	Were the Complete 100% Contractor's Request for Payment submitted in less than 14 Days?	Yes	
54	Did Contractor fulfill all Program requirements and expectations for MWSBE at 100%?	Yes	
55	Did Contractor fulfill all Program requirements and expectations for Section 3 at 100%?	Yes	
56	Were the Invoices and Contractor's Request for Payment forms accurate in their amounts and descriptions?	Yes	
57	Did Contractor submit all the required supporting documentation to process their payments?	Yes	
58	Was Contractor compliant with rules and regulations applicable to the Project's Program?	Yes	
Section Score:			100%
Total Average Score:			100%

State of Texas

County of Harris

**MASTER CONTRACTOR AGREEMENT
CITY OF HOUSTON
New Home Development 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 {NAME OF ENTITY}, a {STATE} {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 New Home Development Program ("NHDP") 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, stating that all Work has been satisfactorily completed in accordance with the Work Write-Up or Plans and Specifications.

Acquisition and Development Agreement shall mean that certain Amended and Restated Acquisition and Development Agreement dated May 5, 2020, by and between the City and Landowner (approved by City Council pursuant to Ordinance No. 2020-279) and as may be further amended. The terms and provisions of the Acquisition and Development Agreement are hereby incorporated into this Agreement.

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 Landowner 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 Landowner 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 new construction and Reconstruction Projects under the NHDP.

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 or Interim Director of HCDD, or of such Department's successor entity, or their duly empowered designee.

Guidelines shall mean the applicable New Home Development Program (NHDP) Guidelines, as they may be amended from time to time, and the procedures adopted pursuant thereto for a program to provide newly constructed, affordable single-family homes for low- and moderate-income homebuyers.

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

Homebuyer shall mean a person that HCDD has approved to purchase the Property and improvements under the NHDP, pursuant to the Guidelines. The Homebuyer 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 Homebuyer 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.

Key Exchange shall mean the date that Contractor transfers the keys and possession of the Project to Landowner.

Landowner shall mean Houston Land Bank (a Texas local government corporation created pursuant to TEX. TRANSP. CODE ANN. § 431.101), the owner of the land on which a new single-family home is to be built pursuant to the NHDP.

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.

Project shall mean the construction of a new single-family home under the NHDP. 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 the land, within the incorporated areas of the City, on which a new single-family home is to be built 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.

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 Landowner, relating to Work to be done on a Property under the NHDP.

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.

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.

Section 3.03 Acts and Omissions. The Contractor shall be responsible and liable to the City and the Landowner 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 and the Landowner for all actual damages incurred by the City and the Landowner 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 ___% 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 for dispute resolution. 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 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 \$0.00 to pay money due under this Agreement (the "Original Allocation").

- A. Contractor recognizes that, due to the nature of the NHDP, 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 New Construction 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 NHDP 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 NHDP 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 and to the Landowner 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. 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. 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, 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 AND THE LANDOWNER 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 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 liens 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 Contractor, Landowner, and the Homebuyer (if applicable). During the final inspection, the HCDD inspector will discuss the warranty and any other outstanding issues with the Landowner and Homebuyer (if applicable). The HCDD inspector (in consultation with the Homebuyer, if applicable) 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 Landowner, and the Homebuyer (if applicable) 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 Landowner, the Homebuyer (if applicable) 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 within the time period specified in said Notice to Proceed (as may be extended by a Change Order,). Before the time period specified in the Notice to Proceed expires, the Work shall be completed pursuant to the Baseline Schedule.

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 be 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.

SECTION VII

CONTRACTOR'S WARRANTIES

Section 7.01 Warranty. Contractor expressly and unconditionally warrants to the City and the Landowner 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 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 the Key Exchange 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.
- c. The Contractor shall repair or replace, free of cost or charges to the City, the Landowner or the Homebuyer (if applicable) 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 Homebuyer to relocate for the duration of said repairs, Contractor shall pay for Homebuyer'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, Landowner, and Homebuyer (if applicable) 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 Homebuyer, 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 Homebuyer 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 Homebuyer, 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, the Landowner or the Homebuyer, 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 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:

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.
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 and the Landowner shall be an Additional Insured under this Agreement, and all policies except Professional Liability and Worker's Compensation must name the City and the Landowner as an Additional Insured. The Contractor waives any claim or right of subrogation to recover against the City, the Landowner 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 that this agreement shall also remain in effect for the term of any Tri-Party Agreement executed pursuant hereto.
- 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: NHDP

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") AND THE LANDOWNER, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "LANDOWNER") 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 OR THE LANDOWNER'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S OR THE LANDOWNER'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY OR THE LANDOWNER 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 AND THE LANDOWNER 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, THE LANDOWNER'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, THE LANDOWNER'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 AND THE LANDOWNER 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 AND THE LANDOWNER TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS THIS RELEASE AND INDEMNITY TO THE CITY AND THE LANDOWNER.

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 or the Landowner'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, the Landowner and the Homebuyer, 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 (as between the City and Landowner only) the Acquisition and Development Agreement, then Tri-Party Agreement, then Exhibit A (Property Description), then Exhibit B (Plans and Specifications/Work Write-Up and any authorized Change Orders), 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.

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. _____
File Path: _____

The State of Texas

County of Harris

**NEW HOME DEVELOPMENT PROGRAM
CONSTRUCTION TRI-PARTY AGREEMENT**

This Construction Tri-Party Agreement ("Agreement") among the City of Houston, a home-rule city organized under the laws of the State of Texas and principally situated in Harris County("City"), Houston Land Bank, a Texas local government corporation created pursuant to TEX. TRANSP. CODE ANN. § 431.101 ("Landowner"), and {ENTITY NAME}, a {STATE} {TYPE OF LEGAL ENTITY} ("Contractor"), is effective on the date it is countersigned by the City of Houston Controller ("Countersignature Date").

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

Section I - Definitions

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

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

Acquisition and Development Agreement shall mean that certain Amended and Restated Acquisition and Development Agreement dated May 5, 2020, by and between the City and Landowner (approved by City Council pursuant to Ordinance No. 2020-279 and as may be further amended. The terms and provisions of the Acquisition and Development Agreement are hereby incorporated into this Agreement.

Affordability Period shall mean the period during which a Homebuyer must comply with the terms of the NHDP Guidelines (as defined below). The period begins upon the date of the closing of the sale of the Property to the Homebuyer and ends on the Maturity Date.

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 the Work.

Certificate of Completion shall mean a certificate issued to Landowner 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 Landowner 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.houstonpermittedcenter.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 the Work, submitted by Contractor and approved by the Director in writing in accordance with the Project Documents and the Guidelines. However, since a Change Order is not an amendment to this Agreement itself, the approval of the Landowner is not required.

Contract Price shall mean the price to be paid by the City to the Contractor for the performance of the Work. 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.

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

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

Countersignature Date shall have the meaning given to it in the Preamble.

Deed of Trust shall mean the deed of trust from the Landowner to a trustee for the benefit of the City to secure payment of the Promissory Note.

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

Disaster shall mean an event or force of nature that has catastrophic consequences, including, but not limited to, an avalanche, earthquake, flood, forest fire, hurricane, lightning, tornado, tsunami, or volcanic eruption.

Guidelines shall mean the applicable New Home Development Program (NHDP) Guidelines, as may be amended, and the procedures adopted pursuant thereto for a program to provide newly constructed, affordable single-family homes for low- and moderate-income homebuyers.

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

Homebuyer shall mean a person that HCDD has approved to purchase the Property and improvements under the NHDP, pursuant to the Guidelines. The Homebuyer 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 Homebuyer 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.

Key Exchange shall mean the date that Contractor transfers the keys and possession of the Project to Landowner.

Master Contractor Agreement shall mean the agreement between the City and Contractor dated effective _____. The terms and provisions of the Master Contractor Agreement are hereby incorporated into this Agreement.

Maturity Date shall mean the date which is determined from the date of the closing of the sale of the Property to the Homebuyer and shall be determined by the Director based on the amount of assistance provided to the Homebuyer by the City.

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.

Project shall mean the construction of a new single-family home under the NHDP, as described in the Project Documents.

Project Documents shall mean, as applicable, this Agreement, the Master Contractor 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 Work.

Promissory Note shall mean the non-recourse Promissory Note in the amount of the Contract Price executed by Landowner and payable to the City. The terms and provisions of the Promissory Note are hereby incorporated into this Agreement.

Property shall mean the land, within the incorporated areas of the City, on which a new single-family home is to be built as described in the Project Documents related to the Property. The Property described in Exhibit "A" herein is located at_____.

Subcontractor shall mean any person or entity who performs Work on the Property pursuant to a valid, written subcontract with the Contractor that is in compliance with this Agreement and the Master Contractor Agreement.

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 the Work.

Section II - Certifications and Representations by Landowner

Landowner certifies and represents the following:

- A. To the best of Landowner's knowledge, Landowner has fee simple title to the Property.
- B. To the best of Landowner's knowledge, the Property is free and clear of all liens.
- C. To the best of Landowner's knowledge, there are no delinquent unpaid taxes on the Property.
- D. Landowner has obtained all forms and levels of insurance required to be obtained by Landowner under the Acquisition and Development Agreement.

Section III - Covenants and Agreements by Landowner

Landowner covenants and agrees to the following:

- A. Landowner agrees that the City and Contractor may access the Property at all reasonable times for performance of the Work. The City, Contractor, and their respective employees may reasonably use the common areas and roadways of the Property and services provided in connection with the Property for the performance of the Work, the costs of such services to be paid by Contractor as part of the Contract Price.
- B. Landowner and the City shall cooperate to sell the Property, pursuant to the Acquisition and Development Agreement, to a Homebuyer who shall agree to own and occupy the Property as Homebuyer's primary residence during the Affordability Period, except as otherwise agreed to in writing by the Director.
- C. When the Property is sold to a Homebuyer, Landowner and the City shall cooperate to see that the sales proceeds are disbursed pursuant to the Acquisition and Development Agreement. Following such sale and disbursement, Landowner shall have satisfied its obligations under the Acquisition and Development Agreement related to the Property, and the City shall promptly execute a release of the Deed of Trust and of Landowner's non-recourse liability under the Promissory Note.
- D. Landowner shall maintain, or cause to be maintained, the levels of insurance on the Property required by the Acquisition and Development Agreement and shall include the City as an additional named insured. If Landowner fails to maintain the insurance required by this paragraph, and the Property is damaged by a Disaster, then Landowner may not be eligible for future disaster relief assistance from City. All such costs and expenses shall be reimbursed to Landowner as provided in the Acquisition and Development Agreement.

Section IV - Intentionally Omitted

Section V - Terms and Agreements with Regard to the Work Contract Term

The parties hereto understand, agree and acknowledge the following:

- A. The City shall pay Contractor, for the performance of the Work up to the amount of ("Contract Price"). Any changes in the Contract Price shall only result from authorized Change Orders. The Contract Price shall be paid in the form of progress payments, which will be submitted according to the Baseline Schedule.
- B. The Work to be performed under this Agreement shall commence on the date specified in the Notice to Proceed (as may be extended by a Change Order). The Work shall be completed within the time period outlined in the Notice to Proceed. (as may be extended by a Change Order).
- C. The Work shall be done in accordance with the Plans and Specifications or Work Write-Up that is attached to this Agreement as Exhibit "B". The Work Write-Up or Plans and Specifications may be amended only by authorized Change Orders.
- D. **The Work may include the demolition of an existing residence and other structures, outbuildings, and garages located on the Property. By executing this Agreement, Landowner hereby authorizes the City to demolish any such residence, structures, outbuildings and garages, as deemed necessary by the City.**
- E. No portion of the Contract Price may be used for soft costs, including legal expenses and insurance premiums (except as allowed under the Guidelines or the procedures adopted pursuant thereto).
- F. The Work shall be performed in a good and workmanlike manner in conformance with all applicable laws, rules, regulations and building codes, the Plans and Specifications, and all manufacturer's recommendations.
- G. The City's Disbursement of the funds for the Work shall not exceed the amount specified in this Agreement plus any Change Orders which have been properly authorized and approved in accordance with the Guidelines.
- H. The City shall make payments only for Work that has been completed by the Contractor and authorized and approved by the Director.
- I. Neither Landowner nor any Homebuyer is allowed to do the following during the time between the date of this Agreement and the date the Acceptance Form has been executed by all parties: (i) perform any form of voluntary labor on the Property; (ii) cover any part of the costs of the Work on the Property, such as the purchase of materials or the direct hiring of a Contractor; (iii) enter into any side agreements for labor or materials on the Property, regardless as to whether they are specified in the Work Write-up or Plans and Specifications attached to the this Agreement; or (iv) serve as his, her, or its own contractor or subcontractor performing the Work on the Property.

- J. The Contractor shall not commence the Work until a Notice to Proceed is issued.
- K. 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.
- L. After the Contractor has completed the Work, including any Change Orders, HCDD staff shall arrange a walk-through inspection of the Property by an HCDD inspector and the Contractor. During the walk-through, the HCDD inspector shall make a list of items ("Punch List") that Contractor and the HCDD determine are in need of correction or completion. Landowner and its inspectors, if any, may, but are not obligated or required to, attend the walk-through inspection. Disputes concerning the items to be included in the Punch List shall be resolved in accordance with Section IX below.
- M. All work identified in the Punch List shall be scheduled and completed by Contractor, to the satisfaction of HCDD staff in their sole discretion, within five (5) calendar days after 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). Disputes concerning the completion of Punch List items shall be resolved in accordance with Section IX below.
- N. The cost for completion by Contractor of the items set forth in the Punch List shall not exceed the lesser of (i) the amount permitted to be charged therefor under the Project Documents or (ii) another amount agreed upon between HCDD and Contractor.
- O. Director will issue a Certificate of Completion to the Contractor 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.
- P. Contract Term: This Agreement is effective on the Countersignature Date and shall remain in effect for two (2) years after the Acceptance Form is signed by all parties; provided that in the event that the Master Contractor Agreement is terminated, this Agreement shall terminate at the same time.
- Q. Termination With Cause
- (i) If Contractor defaults under this Agreement, the Director may terminate this Agreement or allow the Contractor to cure the default as provided below. Default by the Contractor occurs under any of the following circumstances:

- a. If any warranty or representation made by the Contractor in this Agreement is at any time false or misleading in any respect;
 - b. 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;
 - c. 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;
 - d. If Contractor fails to perform any of its duties under this Agreement or the Project Documents; or
 - e. If Contractor violates any law or ordinance.
- (ii) 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.
- (iii) If the City terminates this Agreement for cause, the City may take possession of the Project site and utilize any and all materials and appliances provided under the respective Project Documents that are located on the site 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 for cause or by taking possession of the site.
- (iv) In case of termination of this Agreement for cause pursuant to this Section V, subsection Q, 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.

R. Termination Without Cause

- (i) The City may terminate this Agreement at any time 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 without cause pursuant to this subsection, the Contractor shall submit its final statement for all Work performed through the date of termination, which shall be payable in the manner provided in Section V of the Master Contractor Agreement.
- (ii) 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 VI - Contractor's Duties

Contractor understands, agrees and acknowledges the following:

- A. The terms, conditions and provisions of the Master Contractor Agreement are hereby incorporated into this Agreement in their entirety. The Contractor shall perform all of the services and furnish to the Director a list of all materials needed, labor and equipment necessary to complete the Work.
- B. All Work to be performed and all performance specifications are identified in this Agreement, including the Master Contractor Agreement and all Exhibits attached hereto and incorporated herein by reference. **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, THE MASTER CONTRACTOR AGREEMENT, AND THE PROJECT DOCUMENTS.** All Change Orders approved and executed in accordance with this Agreement shall be made a part of this Agreement.
- C. All Change Orders must be approved in writing by the Director and Contractor in accordance with the Guidelines.

- D. The Contractor agrees not to enter into any side agreements for work on the Property or materials other than those specified in this Agreement, the Work Write-up, or the Plans and Specifications .
- E. Prior to beginning performance under the Master Contractor Agreement with respect to the Property, at any time upon request of the City or Landowner, or each time coverage is renewed or updated, Contractor shall furnish to the City or Landowner current certificates of insurance, endorsements, all policies or other policy documents evidencing the insurance coverages required to be maintained by Contractor under the Master Contractor Agreement showing the City and Landowner as a named additional insured or loss payee, as applicable, as provided in the Master Contractor Agreement.
- F. 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 to and approved in writing by the Director. Contractor is not authorized to perform any Work that is not specified in the Work Write-up or Plans and Specifications, and the City shall have no obligation to pay for any such 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 in writing.** Under no circumstances may the amount of the Contract Price, as may be changed by Change Order(s), if any, exceed the maximum amount of assistance authorized under the Guidelines and Master Contractor Agreement.
- G. Liquidated 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 the Project is terminated pursuant to this Agreement or the Master Contractor Agreement is terminated in part or in its entirety pursuant to Section X of the Master Contractor Agreement. 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 VII - Contractor's Warranties

Contractor agrees and warrants to the City and Landowner the following:

- A. Contractor expressly and unconditionally warrants and guarantees that all of the 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 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.
- (i) The warranty shall not be construed to limit or in any way modify any warranties or guarantees placed upon any material, appliances, fixtures or devices by their manufacturers, or any components for which a longer period of warranty is provided or required under the Project Documents.
 - (ii) The warranty period shall commence on the date of the Key Exchange 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 a home.
 - (iii) The Contractor shall repair or replace, free of cost or charges to the City or the Homebuyer 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 Homebuyer to relocate for the duration of said repairs, Contractor shall pay for Homebuyer'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.
 - (iv) The Contractor shall furnish the Director, Landowner, and Homebuyer (if applicable) with all manufacturer's and supplier's written guarantees,

warranties and operating instructions covering materials and equipment furnished under this Agreement together with any documentation required for validation.

- (v) 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.
 - (vi) Contractor warrants that each replacement item is new and free of defects or blemishes, 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.
 - (vii) 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.
 - (viii) The Contractor agrees to include this Section's warranty provisions in all of the Contractor's subcontracts for Work under this Contract. 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 to evidence Director's receipt of such warranty policies.
- B. If Contractor is notified by the Director, the Landowner or the Homebuyer 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, the Landowner or the Homebuyer, regardless of whether the materials or equipment are guaranteed by the manufacturer or supplier. Notice of the defect must be given during the warranty period.
- C. If, at the time of sale of the Project to a Homebuyer, any of the warranty periods set forth in Section 7.01(b) of the Master Contractor Agreement 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 Homebuyer 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) of the Master Contractor Agreement. 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 VIII – Sales Facilitation

A. With respect to each construction of new single-family homes under the Program (each a "Project"), commencing on the date that such Project has been completed to the stage that all exterior walls thereof have been sheet rocked and the roof of the Project installed and in any event no earlier than 66% completion, all in accordance with the Project Documents the following shall apply:

B. HLB (and its broker and other designated marketing personnel, collectively referred to herein as "**Sales Personnel**") shall have the right to show the Project to Homebuyers or prospective homebuyers during the following "Walk-Through Hours": (i) 9:00 a.m. to noon on Saturday mornings, (ii) 3:00 p.m. to 5:00 p.m. on Friday afternoons, and (iii) such other times as may be designated by HLB's Sales Personnel by email or text message, subject to Contractor's approval thereof, which approval shall not be unreasonably withheld, conditioned, or delayed by Contractor. If Contractor fails to reply to an HLB request within two (2) days after receipt of any such designated time(s), Contractor shall be deemed to have approved same and HLB's Sales Personnel shall send a confirming email or text message to the Contractor and may proceed to show the Project as if Contractor had provided explicit approval.

Section IX - Dispute Resolution

Contractor shall submit to the Director in writing any disputes arising out of this Agreement.

For purposes of this Section VIII, "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 - Address and Notice

A. 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.

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

To City: **CITY OF HOUSTON**
Housing and Community Development Dept.
2100 Travis Street, Suite 900
Houston, TX 77002
ATTN: NHDP

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

To Contractor:

ATTN:

To Landowner: Houston Land Bank
P.O. Box 131106
Houston, TX 77219
ATTN: Mathew Zeis
Telephone: 281-655-4600
Fax: 281-655-4600

With Copy to: Winstead PC
600 Travis Street, Suite 5200
Houston, Texas 77002
Attn: K. Gregory Erwin
Telephone: 713-650-2781
Fax: 713-650-2400

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

Section XI - Assignment and Amendment

- A. This Agreement shall not be assigned without the prior written approval of the Director. Contractor may subcontract the Work; provided, however, that Contractor shall remain liable for the Work, unless an assignment is approved by the Director in writing.
- B. 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), the Contractor, and Landowner. 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. This provision does not apply to Change Orders, which only need to be submitted by the Contractor and approved by the Director in writing in accordance with the Project Documents and the Guidelines.

Section XII - Miscellaneous

- A. 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 workers compensation benefits coverage, if any.
- B. Revocation. This Agreement can be revoked by the Director, with the approval of the Landowner, if the Property is partially destroyed (as determined by the Director) prior to completion of the Work and it is determined that the Property cannot be rehabilitated or reconstructed within the limits of the NHDP, less proceeds previously disbursed or obligated, plus any available insurance proceeds.
- C. Destruction. In the event that the Property is partially destroyed prior to the completion of the Work and the Director determines that the Property can still be rehabilitated or reconstructed within the limits of the NHDP, then to the extent that insurance proceeds exceed the costs to cover such portion of the Work, the Contract Price will be reduced.
- D. 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 Chapter 311 of the Texas Tax Code. The venue for any litigation relating to this Agreement is in Harris County, Texas.
- E. 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 (as between the City and Landowner only) the Acquisition and Development Agreement, then this Tri-Party Agreement, then Exhibit A (Property Description),

then Exhibit B (Plans and Specifications/Work Write-Up and any authorized Change Orders), then the Master Contractor Agreement, then the Notice to Proceed, then the Certificate of Compliance, then the Acceptance Form, and then the Guidelines.

- F. 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 provisions.
- G. 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:
 - i. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - ii. 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.
- H. Record Keeping. All original records pertinent to this Agreement shall be retained by the parties hereto for three (3) years following the date of termination of this Agreement, 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.

[Signature Pages Follow]

DRAFT

IN WITNESS WHEREOF, 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.

ATTEST/SEAL:

CITY OF HOUSTON

City Secretary

Mayor

APPROVED:

COUNTERSIGNED:

Director
Housing and Community Development
Department

Controller

COUNTERSIGNED DATE:

APPROVED AS TO FORM:

Senior Assistant City Attorney
LD No.: _____
Z:

LANDOWNER:

Houston Land Bank

Print Name: _____

Title: _____

CONTRACTOR:

[INSERT CONTRACTOR]

Print Name: _____

Title: _____

Exhibit List

- Exhibit A — Legal Description of Property
- Exhibit B — Plans and Specifications/Work Write-Up
- Exhibit C — Master Contractor Agreement
- Exhibit D — Memorandum of Agreement
- Exhibit E — Promissory Note
- Exhibit F — Deed of Trust
- Exhibit G — Land Use Restriction Agreement

Signature Page to Tri-Party Agreement

DRAFT

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

DRAFT

EXHIBIT B
PLANS AND SPECIFICATIONS/ WORK WRITE-UP

DRAFT

**EXHIBIT C
MASTER CONTRACTOR AGREEMENT**

DRAFT

**EXHIBIT D TO TRI-PARTY AGREEMENT
NEW HOME DEVELOPMENT PROGRAM**

MEMORANDUM OF AGREEMENT

[The Memorandum of Agreement follows this page.]

**EXHIBIT E TO TRI-PARTY AGREEMENT
NEW HOME DEVELOPMENT PROGRAM**

PROMISSORY NOTE

[The Promissory Note follows this page.]

**EXHIBIT F TO TRI-PARTY AGREEMENT
NEW HOME DEVELOPMENT PROGRAM**

DEED OF TRUST

[The Deed of Trust follows this page.]

**EXHIBIT G TO TRI-PARTY AGREEMENT
NEW HOME DEVELOPMENT PROGRAM**

LAND USE RESTRICTION AGREEMENT

[The Land Use Restriction Agreement follows this page.]