

**City of Plano
Housing Rehabilitation Program
Contractor Participation Requirements and Agreement**

PURPOSE

The City of Plano, Texas offers a Housing Rehabilitation Program, funded by the U.S. Department of Housing and Urban Development (HUD) through the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Programs. The Housing Rehabilitation Program is administered by the Community Services Division, Neighborhood Services Department, City of Plano, located at 777 E. 15th Street, Plano, Texas.

The purpose of this Agreement is to outline in writing the expectations and parameters for contractors participating in projects funded by federal money from the Department of Housing and Urban Development. The Contractor must agree to the terms of participation herein as a pre-requisite for participation in the City of Plano's Housing Rehabilitation Program. Non-compliance may result in suspension or permanent debarment from the program.

Part I: CONTRACTOR CONTACT INFORMATION

Name: _____

Company Name: _____ **Tax ID No.:** _____

Address: _____

Telephone Number: _____ **Fax Number:** _____

Cell Number: _____ **E-mail:** _____

Part II: DEFINITIONS

1. **Acceptance.** "Acceptance" means the act by which the City, per Program Requirements, approves and the Owner assumes ownership of the Work performed under the Work Specifications and other Contract Documents.
2. **Addendum.** "Addendum" refers to the Housing Rehabilitation Construction Contract Addendum. It is made part of all Construction Contracts and includes mandatory Program Requirements.
3. **As-Built Drawings.** "As-Built Drawings," as used in this Agreement, means drawings submitted by the Contractor or Subcontractor at any tier to show the construction of a particular structure or Work as actually completed under the Work Specifications. "As-Built Drawings" will be synonymous with "record drawings."
4. **Bid.** "Bid" is an estimate or proposal of the total cost in labor, material and other resources necessary to complete Work on a Project. The Bid is developed by a person or company unrelated to the City. Said Bid is forwarded to the City as part of a competitive process to provide rehabilitation services.
5. **Bidder.** "Bidder" is the person or entity developing the Bid proposal.

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6. **City.** "City" refers to the City of Plano's Community Services division and/or its staff.
7. **Commitment Date.** The Commitment Date is the date the Owner the City executes Funding Agreement as the first requirement in receiving housing rehabilitation assistance.
8. **Completion.** "Completion" means that the Owner and the City find the Work acceptable and in a condition to serve its intended purpose.
9. **Construction Contract.** The "Construction Contract" is that document that is executed by the Contactor and Owner and outlines the terms and conditions of the Project.
10. **Contract Amount.** The term "Contract Amount" will mean the amount of Contractor's lump sum base bid proposal as accepted by the Owner in accordance with the Contractor's Proposal. In the case of a unit price Contract, Contract Amount will mean the sum of the product of all unit prices times the respective estimated final quantities of Work, for all base bid and alternates, as accepted by the Owner.
11. **Contract Documents.** "Contract Documents" will mean: any attachments, HUD Forms, Work Specifications, addenda and amendments referred to throughout the Construction Contract; and any additional documents listed in Part IV of this Agreement.
12. **Contractor.** "Contractor" will mean the person(s), partnership, or corporation who will perform the Work under the Rehabilitation Program and the Construction Contract. The Contractor is otherwise known as "Contractor" in the City's policies.
13. **Cost Reasonable(ness).** "Cost Reasonableness" is an estimate prepared by the Project Coordinator. All item selections included in the Cost Reasonableness are based on a value determination by the lowest installation cost; the lowest operating and maintenance costs; the longest life and proven durability; and the City's sustainability initiatives. While items being replaced will be similar, upgraded items will not be specified under Program Requirements. Primary consideration for replacement of existing components are cost, efficiency, availability and other Program objectives. Secondary consideration will be features that meet the Program objectives.
14. **Day(s).** Two types of Days are referred to throughout the Agreement and Program policies:
 - i. **Calendar Day.** A "Calendar Day" is any and every day of the year.
 - ii. **Working Day.** A "Working Day" means any day not including Saturdays, Sundays, or legal holidays.
15. **Draw(s).** A "Draw" is a periodic payment occurring during the construction period to a Contractor. The Draws are based on Work Specifications that have been approved by the Owner, the Inspector and the other Staff.

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- 16. Extra Work.** "Extra Work" will mean Work **not** covered by the Construction Contract Documents but may be required by the City and approved by the Owner and the City in writing *prior* to the Work being done by the Contractor, also known as a change order.
- 17. Facility.** "Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any Subcontractor, used in the performance of the Construction Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site will be deemed a facility except when the Administrator of the Environmental Protection Agency (EPA), or his/her designee determines that independent facilities are collocated in one geographical area.
- 18. Final Inspection.** The last inspection conducted by the City to ensure that all the Project Work Specifications are completed. Passed Final Inspections are considered the preliminary step beginning the Project closing and the warranty period.
- 19. Final Completion.** "Final Completion" will mean that all the Work Specifications have been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and Subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents (including but not limited to the Certificate of Final Completion, Certificate of Final Inspection, and Certificate and Release) have been executed and approved by the Owner, the Contractor and the City.
- 20. Hazardous Substance.** The term "Hazardous Substance" will mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a Hazardous Substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws") and as amended from time to time.
- 21. Housing Standards.** Housing Standards are those property standards utilized to determine whether a housing unit meets the Program requirements as determined by Program policies. They are utilized by the Project Coordinators: 1) in determining the condition of the Property prior to rehabilitation; 2) to ensure consistency in inspection; 3) as a baseline in writing up Work Specifications to include related labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Project whether temporary or permanent; and 4) during interim inspections prior to Project completion.

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22. **HUD Form.** Forms used for the purposes of tracking and reporting progress in certain U.S. Department of Housing and Urban Development (HUD) initiatives and that will be used, as applicable, to the HUD Housing Rehabilitation Projects administered by the City.
23. **Inspection.** An “Inspection” is a review of Work completed under the Construction Contract. It includes examining and testing, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to the Contract Documents and other Program Requirements. Inspections may also include initial inspections performed. Inspection may also include initial inspection performed to determine the condition of deficient Property components to assess Program eligibility.
24. **Inspector.** “Inspector” refers to any Building Inspector, the Housing Rehabilitation Project Coordinator or any other City staff Person completing Project inspections as outlined in the Program requirements.
25. **Owner.** “Owner” means the person(s) who has completed a housing rehabilitation application, is requesting housing rehabilitation assistance, is the owner(s) of the property being rehabilitated and is responsible for payment of the Note.
26. **Program, Program Requirements or Requirements.** “Program, Program Requirements or Requirements” will mean the policies and procedures established by the City to administer and manage the HUD Housing Rehabilitation Program, as required per federal, state and/or local law.
27. **Project.** “Project” will mean entirety of any rehabilitation, construction, testing, inspection and due diligence activity, including Work Specifications, necessary to complete the Project to be performed by the Contractor or any Subcontractors.
28. **Property.** “Property” will mean the real property and any improvements thereon, the subject of the Project that is located in the City of Plano, Collin or Denton County, Texas as more fully described in the Contract Documents.
29. **Property Standard(s).** “Property Standard(s)” will mean those identified in the Housing Rehabilitation Program’s Housing Property Standards policy.
30. **Quality Standards.** Unless specified in the Project’s Work Specifications, as a minimum measure of acceptable quality, the City will adopt the most recently published National Association of Homebuilders and the Remodeler’s Council’s publication “Residential Performance Guidelines for Professional Builders and Remodelers.”
31. **Reconstruction.** “Reconstruction” will mean demolishing and rebuilding a housing unit on the same lot in substantially the same manner. Reconstruction also includes replacing an existing substandard manufactured housing unit with a new or standard manufactured housing unit.

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- 32. Shop Drawings.** "Shop drawings" means drawings, submitted to the Owner by City Staff, the Contractor or any Subcontractor, showing in detail:
- i. the proposed fabrication and assembly of structural elements; and
 - ii. the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the Work required by the Work Specifications. The Owner may—with City approval—duplicate, use, and disclose in any manner and for any purpose Shop Drawings delivered under the Project.
- 33. Staff.** "Staff" will mean the City Community Services Department employees (i.e., Inspector, Community and Community Services Coordinator, the Housing Rehabilitation Supervisor and the Housing and Community Services Manager) that administer the Program as required.
- 34. Subcontractor.** "Subcontractor" will mean and include those retained by and having a direct contact with Contractor for performance of Work on the Project.
- 35. Testing.** "Testing" means that element of inspection that determines the properties or elements, including functional operation, materials, equipment, or their components, by the application and established scientific principles and procedures.
- 36. Warranty Escrow.** "Warranty Escrow" will refer to a percentage of the total Project Construction Cost held for a defined period during the Project Warranty period and released per the provisions in the Construction Contract between the Owner and Contractor.
- 37. Work.** "Work" refers to the Work Specifications identified by the City and approved by the Owner per the Construction Contract and Program Requirements.
- 38. Work Specification(s) or Specification(s).** A "Work Specification(s) or Specification(s)" is a document completed by the City that outlines the use of labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent on Qualified Projects.

Part III: TERMS AND CONDITIONS FOR PROGRAM PARTICIPATION

Any Contractor awarded and performing housing reconstruction, rehabilitation or repair Work on a Project funded with Community Development Block Grant (CDBG) and/or HOME Investment Partnership (HOME) monies Contractor agrees to the provisions listed herein.

- 1. Contractor Eligibility.** To be eligible to participate in Projects funded with CDBG and HOME funds, a general Contractor must satisfy at a minimum the following requirements:

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- A.** Must have been in business for at least six (6) years as a general Contractor in both new construction and rehabilitation and must submit a complete and acceptable Contractor's application with all required attachments, financial information and references as indicated on said form.
- B.** Must have the financial ability to perform a Project as evidenced by a letter of reference from a financial institution, copies of bank statements, balance sheets, cash flow statements and other financial information requested by the City.
- C.** Must provide evidence of ability to obtain necessary insurance coverage per the City's insurance requirements, this is to include certificate of liability insurance and the declaration page of each required insurance coverage.
- D.** Will immediately notify the City of Plano of any change in insurance status.
- E.** Must submit a current Certificate of Formation with the Secretary of State and maintain said certificate current as a condition for participation in the housing rehabilitation program or when bidding for or completing a project.
- F.** Will have and maintain a good credit record of a minimum credit report class of 3 or less out of the maximum 5 per Dunn and Bradstreet at all times during Program participation. ("5" being the highest risk level with "1" being the lowest.)
- G.** Will hold current all licenses and certifications mandated by industry, state and local standards and laws relative to the work required on awarded contracts.
- H.** Must not have a conflict of interest, as defined by City policies, with any City employee, officer or agent in the completion of any awarded contract.
- I.** Will maintain in Good Standing, as defined by the Housing Rehabilitation Program requirements, at all times.
- J.** Must not appear on HUD's excluded party list.
- K.** Be free from any civil or criminal lawsuit or judgment that would impede the Contractor's ability or company's ability to complete rehabilitation Work per the construction contract or any related Federal, State and City law.
- L.** have a history of good customer services as evidenced by references from customers, suppliers and subcontractors, which means that qualifying contractor will NOT have a history of excessive customer complaints due to failure to return calls, complete warranty repairs, utilizing poor quality material, completing work in an unprofessional workmanship manner, and poor subcontractor oversight.

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M. Note: Contractors having a bankruptcy less than five years from dismissal will be disqualified from bidding and prohibited from program participation.

2. Independent Contractor. Contractor covenants and agrees that he/she is an independent contractor and not an officer, agent, servant or employee of City or Owner; that Contractor will have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and will be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior will not apply as between City and/or Owner and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein will be construed as creating a partnership or joint enterprise between City and/or Owner and Contractor.

A. Appointment of Project Manager. During construction, the Contractor will supervise the Work, or have a competent superintendent/project manager supervise the Work with full authority to act on behalf of the Contractor. The Contractor will also provide adequate management of the Project to coordinate and expedite his/her work and that of his/her Subcontractors to ensure compliance with this Agreement and timely completion of the Work. During construction will lay out the Work and be responsible for all lines, levels, and measurements of all work executed under the construction contract. He/she will verify the figures before laying out the Work and will be held responsible for any error resulting from his failure to do so.

B. Subcontractor.

i. Subcontractor Approval by City. Contractor is responsible for confirming that its Subcontractors meet the City's qualification criteria before beginning any Work on the Project. Contractor will submit a proposed Subcontractor Utilization Report so that City may verify that proposed Subcontractors are not listed on HUD's debarred contractors' list before starting Work on the project.

ii. Contractor Oversight of Subcontractor. The Contractor will ensure that all Subcontractors will perform the Work in strict accordance with the drawings and Work Specifications, and are fully responsible for the acts and omissions of its Subcontractors. If the Subcontractor fails to perform per Work Specifications, it is the Contractor's responsibility to correct any deficiencies at the Contractor's cost.

C. Construction Contract Assignment and Subletting. The Contractor will not assign or sublet the Construction Contract without written consent of the Owner and the City. This will not prohibit the assignment of the Project proceeds to a bank or financial institution, nor will this provision preclude the Contractor from subcontracting parts of the work in accordance with the Program Requirements.

E. Employer Responsibilities. Compliance with employment laws is the responsibility of the contractor as an employer. For more information call 1-800-832-9243 or

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www.twc.state.tx.us. Any employment contract is strictly between the contractor and the worker.

3. Bid Process

The bidding/procurement process varies by the type of assistance for which an eligible Applicant has applied. Throughout this document, those provisions that pertain to specific Project types will be highlighted. The types of Project and assistance are detailed below.

A. Emergency Assistance

Emergency Assistance is defined as assistance provided to an eligible household for a Property deficiency that occurred, generally, within a 14-day period, and poses an immediate threat to the Household, and/or the structural integrity of the Property. Emergency Assistance is capped at \$10,000 (including change orders, service or inspection fees, if any) and will not exceed this amount. Repairs exceeding this amount will be denied.

Generally, Staff will forward the Contractor a Service Request outlining the details of Work required via e-mail or fax. The Contractor will be given access to the Property in order to inspect and provide an estimate, and submit to Staff. Once the estimate has been approved by Staff, the Contractor may commence work. Upon completion of the Work, as outlined and defined in this document, the Contractor submits an invoice to the Project Coordinator for payment.

B. Limited Repair, Gut Rehabilitation, and Reconstruction Assistance

Limited Repair, Gut Rehabilitation and Reconstruction Assistance provide repair assistance to eligible households for Property deficiencies that do not meet the criteria of an Emergency Assistance. Limited Repair, Gut Rehabilitation, and Reconstruction Assistance involve repairing extensive Property deficiencies (such as, siding and windows), and/or repairing severe structural deficiencies, such as collapsed load-bearing walls, water and sewer lines, and failed foundations.

After Owners have met the City's eligibility and underwriting criteria and after all third-party due diligence inspections have been completed by the City, City staff will generate a scope of work and related Work Specifications for Owner review. Once the Owners have agreed to the Work, a bid document will be forwarded to Contractors on the Housing Rehabilitation Program's list of pre-approved Contractors. The bid document will include date and time for Property walkthrough.

Contractors will be invited to attend a walkthrough to view the Scope-of-Work, and inspect the Property. At the walkthrough, Staff will be available to answer technical questions regarding the Scope-of-Work.

You are not permitted during the bid process to substitute different material or to offer homeowners lesser quality or type material than has been specified in the Work

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Specifications. Material substitutions are only permitted with City approval when the material originally specified is out-of-stock, no longer in production, or has been recalled by the manufacturer.

These program requirements ensure consistency and accuracy in generating comparable bids, fairness to all past and future housing rehabilitation clients, keeping project costs reasonable and project quality consistent, and efficiency in completing the project timely. Consequently, the city completes

After the walk-through, the Contractor will forward the bid (within the timeframe specified on the document) to the Owner, who will evaluate the bids and select the Contractor of his/her choice, provided that the Contractor is listed in the City's Pre-Approved Contractor. The Owner may only select a Contractor whose bid is no more and no less than 10% of the City's internal estimate. After the Owner has made his/her Contractor selection, he/she will forward the selected bid to the City, and notify the winning Contractor.

Keep in mind that no Contractor may bid if he/she is related to the Applicant by blood or marriage. Nor may a Contractor bid if he/she is undercontract to complete three housing rehabilitation Projects at the same time.

4. Owner Choice Selection.

Per Program Guidelines, **only** Property Owners approved for non-emergency Projects (i.e., Limited Repair, Gut Rehabilitation and Reconstruction) are given the opportunity to choose certain materials, which will be specifically outlined in the bid and contract documents. When such a choice is afforded in the Bid Document, the Owner Choice Selections are limited to the following conditions:

- A. Property Owners may only choose from the standard selections available to the winning Bidder and limited to:
 - i. **Colors** of cabinets, walls, floors, hardware, and exterior paint color;
 - ii. With respect to window replacements, grille patterns (simulated divided lites); and
 - iii. For built-in appliances, exterior **color** only.
- B. Owner Choice items will be documented in the City's Material Selection Form, which will be completed **prior** to execution of the Construction Contract and made as an attachment to said Contract.
- C. It is possible during construction that a selected item is no longer available (i.e., discontinued, or in back order). In such an event, construction will not be delayed and the Property Owner must choose another in-stock item. Property Owners will not delay in selection of the substitution. In the event the Property Owner does not select within the timeframe (no more than five Working Days from the date of **written** notification) afforded by the Contractor, the Contractor with City review and approval will make the selection. The newly selected item will not exceed the approved bid amount. Any

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subsequent changes to items originally selected at the beginning of the Project will be made as a Change Order in accordance with City program guidelines.

5. City Payments to Contractor. Contractor payments are contingent upon the conditions outlined below:

- A. Owner Maintaining Eligibility to Receive Funding.** The Contractor understands that the Owner must continuously meet all funding underwriting criteria established under the HUD Program. Should the Owner lose Program funding eligibility during the construction of the Project, the Owner will be responsible for direct payment to the Contractor for all unpaid invoices and/or incomplete work.
- B. Availability of HUD Funding.** In the event HUD ceases to fund the CDBG and/or HOME programs during the Project, the Owner will be responsible for direct payment to the Contractor for any unpaid Work completed under the Project.
- C. Compliance with the Agreement and Program Requirements.** In the event of Owner default of any provisions of the Owner Funding Agreement with the City or any Program Requirements, the City will cease funding for the Project and the Owner will be directly responsible for all Project costs to the Contractor.
- D. Compensation.** The Contractor acknowledges and agrees that Compensation paid to Contractor will consist of the Construction Amount noted in the approved Bid plus approved written change orders less liquidated damages provided for in the Housing Rehabilitation Addendum. Payment is made by the City, on behalf of the Owner, to the Contractor. Funding for the Project is provided per the Program Requirements and as specified in HUD's Community Development Block Grant (CDBG) and/or HOME Investment Partnership Program (HOME)
- E. Payment Procedure.** Payment to the Contractor will occur only after the Owner and City approve the completed Work and the Compensation amount and in accordance with the procedures outlined herein.
 - i. Type of payments.** The Contractor may choose payment in the form of Draws or One Final Payment as more fully described below.
 - a. Interim Payments (Draws).** Contractors will be limited to a total of five draws per job. Five Percent (5%) of the contract price will be retained in each draw, which will be used as Warranty Escrow and as outlined herein.
 - b. Final Payment.** One Final Payment will be paid as specified in the Contract Amount plus approved, written change orders, less liquidated damages and other fees provided for in the Addendum, and less the five percent (5%) warranty escrow, as defined above. For final payments, the following information be submitted to the Project Coordinator:

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- Building permit “finals” from the Building Inspection Department;
- Copies—for the City’s Project file—of all manufacturers’ warranties for materials and parts used on Project, including, but not limited to, appliances, roofs, foundation repairs, and HVAC that have been forwarded to the Owner;
- Executed copy of lien waivers and Section 3 documents (as appropriate);
- Executed copy of the Final Owner’s Acceptance;
- Final invoice, draw request and completed Lien Waivers from all subcontractors involved in the Project; and
- Section 3 documents.

ii. Process.

- a. Approval for Payments and Contractor Payment Request.** The Contractor will forward to the Project Coordinator an invoice for completed Work for which he/she would like to receive compensation. The City and the Owner will inspect all completed Work. If the Property passes inspection, the Contractor will complete the Contractor Draw Request Form. Passing inspection includes a passed inspection on permitted items, a passed inspection by the Project Coordinator, and Owner satisfaction with the completed items. Otherwise, the Contractor will address those items appearing on the Owner’s lists, and Programs Housing Punch List. No payment will be made until:

- all items on both punch lists have been completed;
- a completed Reconstruction/Rehabilitation Draw Request has been submitted;
- the appropriate signatures on said forms are included;
- the respective Contractor’s invoice and cost/specification breakdown are attached to the draw request; and
- for final payments, any additional documents (i.e., lien waivers, Section 3 information, warranty paperwork, releases) requested by City staff have been submitted.

After the completion of items immediately above (5.E.ii.a.), the Project Coordinator will complete a “Final Inspection Report” and calculate the Incentive Pay and Liquidated Damages and submit the final draw and invoice to the Housing Rehabilitation Supervisor for property inspection and final payment approval. Note: All fees resulting from late completion of a project or additional clearance tests must be paid directly to the City **prior** to submission of an invoice and not deducted from the final invoice.

- b. Invoice Information.** When submitting an invoice to our office for payment, the invoice must have a description of the items that have been completed. The invoice will include the following information: Owner’s name and address, Housing Rehabilitation Project number, the work description items that have

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been fully completed, the amount of draw for that particular invoice and project purchase order number, and project number . Payment will only be made for items that have been approved, fully completed, and have passed inspection.

Moreover, draw request must be signed by the Contractor, Owner, and the Project Coordinator, prior to submission to our offices for payment. With respect to Contractor signature, only persons fully authorized and given authority to sign documents on behalf the Contractor may sign and submit invoices, and execute contract documents.

- c. Payment Timelines.** In order to give the Project Coordinator adequate time to review the list of items completed, check inspections and contract percentages, etc. you are required to present a copy of your invoice with a completed Draw Request to the Project Coordinator no later than 10:00 AM Thursday. The Project Coordinator will review the invoice for compliance with policy and to verify that items being invoiced are completed and have passed Building Inspection. If discrepancies are found, the Project Coordinator will communicate the discrepancies by e-mail. Corrected original invoices with the Owner and Contractor signatures will be forwarded to the Project Coordinator for his/her signature and approval no later than 8:30 AM Friday.

City will inspect the property on Friday mornings for payment approval. If the City finds the items completed satisfactorily, the City will mail the check the following Friday. If only a part of the items requested for payment are completed, the Contractor will submit a revised invoice to include only those items that passed the City's inspection.

For any original invoices received after the Thursday deadline, the Contractor risks delaying his/her payment until the subsequent City payment cycle. When Contractor payments are received timely, our goal is to have Contractors' checks mailed the following Friday after a request for payment is submitted.

- F. Warranty Escrow.** Warranty Escrows apply only to approved, non-emergency Projects, specifically, Limited Repairs and Gut Rehabilitation Projects, and projects that do not require bonding. Contractor acknowledges and agree that City will hold five (5%) percent of the compensation due for Rehabilitation Project construction cost and five (3%) percent of the compensation due for Reconstruction Project—provided the project costs are less than \$150,000—construction cost in escrow for a period of six (6) months from the date the Owner Work Acceptance (OWA) form is executed. Bonding, rather than Warranty Escrow, will be required for Reconstruction Projects with project costs at \$150,000 or greater.

All Warranty Escrow funds will be calculated on a line-item completed per draw basis.

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Contractor further acknowledges and agrees that full compensation for the Project will include any and all remaining escrow balances which will be paid by City no more than fourteen (14) days after the expiration of the Warranty Escrow period.

Contractor agrees that funds held in escrow will be paid according to the following schedule:

i. Six Months after execution of OWA. Six months after execution of the Owner Work Acceptance (OWA) City will pay contractor the 5% (3% for Reconstruction projects less than \$150,000) held in escrow. **IF** City has not received any warranty complaints from the Owner and there are no unresolved, pending, or ongoing warranty disputes resolutions. Should Contractor have any ongoing, unresolved or pending dispute resolutions, City will roll the 5% (3% for Reconstruction projects less than \$150,000) due to the end of the twelve (12) month Warranty Period.

ii. Twelve Months after execution OWA. Twelve months after execution of the Owner Worker Acceptance (OWA) City will pay the Contractor any monies retained in escrow, provided the City has not received any warranty complaints from the Owner and there are no unresolved, pending, or ongoing warranty disputes resolutions.

iii.Note: In order to ensure that you received timely warranty payments as outlined above, you must forward the warranty invoice to City at the end of the Project. The warranty payments will include the amounts due the Contractor per the percentages detailed herein. The date and amount on the Warranty Escrow invoice is calculated as follows:

- a. 180 days after the completion of the Work, and the amount invoiced will be equal to 5 percent of the total contract (including change orders)

6. Scope of Work and Materials.

A. Work Specifications. The Contractor will perform all construction Work in the repair of the Owner Property in accordance with the Work Specifications prepared by City and approved by the Owner.

B. Site Investigation and Conditions Affecting the Work.

i. Examination of All Relevant Matters. The Contractor warrants and represents prior to making a Bid on any Project, that it fully examined the Property, the condition of any existing structures and/or improvements on the Property, all repair requirements of the Owner and all construction matters including those stipulated in any Work Specifications and Construction Documents, and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:

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- a. conditions bearing upon transportation, disposal, handling, and storage of materials;
 - b. the availability of labor, water, electric power, and roads;
 - c. uncertainties of weather, river stages, tides, or similar physical conditions at the site;
 - d. the conformation and conditions of the ground; and
 - e. the character of equipment and facilities needed preliminary to and during Work performance.
- ii. **Estimating Construction Costs After Site Evaluation.** The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials, or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory Work done by the Owner, as well as from the drawings and Work Specifications made a part of the Project. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Owner.
- iii. **Warranty of Completion Per Work Specification.** The Contractor acknowledges the performance requirements established in the Work Specifications and warrants that all Work undertaken will conform to said Specifications.
- iv. **Differing Site Conditions.**
 - a. **Contractor Notification to City.** The Contractor will promptly, and before the conditions are disturbed, give a written notice to the City of: (i) subsurface or latent physical conditions at the site which differ materially from those indicated in the Work Specifications; or (ii) recently discovered physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized in the Work Specifications.
 - b. **City Inspection of Site.** The City will investigate the site conditions promptly after receiving the notice. Work will not proceed at the affected site, except at the Contractor's risk, until the City has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under the Construction Contract, whether or not changed as a result of the conditions, the

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Contractor will notify the City and Owner in writing within seven (7) Calendar Days after receipt of such instructions and, in any event, before proceeding with the Work. An equitable adjustment in the Contract Amount, the delivery schedule, or both may be made—per Program requirements at the sole discretion of the City.

c. City Approval. No request by the Contractor for an equitable adjustment to the Contract Amount under this clause will be allowed, unless the Contractor has complied with the Notice requirements herein.

d. Equitable Adjustment for Site Conditions. No request by the Contractor for an equitable adjustment to the Contract Amount for differing site conditions will be allowed without prior approval of City and Owner. Equitable adjustments will not be made after final payment.

C. Extra Work.

i. Authorization. The Contractor will not be entitled to any additional Compensation for any extra work not set forth in the Work Specifications unless extra Work is authorized in writing by the Owner and the City in the form of a change order.

ii. Change Order Threshold. Written change orders that either singly or in the aggregate do not exceed 25 percent of the original Construction Contract amount may be made with approval by the City and Owner. The original Contract Amount will not be increased by more than 25 percent. The Owner, Contractor, and Project Coordinator will sign this change order. **NO WORK OUTSIDE THE WORK DESCRIPTION WILL BEGIN BY A CONTRACTOR OR SUB-CONTRACTOR BEFORE A CHANGE ORDER IS PREPARED BY THE HOUSING REHABILITATION OFFICE AND ALL APPROPRIATE SIGNATURES ARE IN PLACE.**

The City has no responsibility to pay for work that has not been approved on a change order.

In the event the Contractor and Owner contract separately to complete additional work outside the scope of work approved by the City, said additional work will be completed before the commencement of the City's project, or begun after the completion of the City's project.

In the event that the Extra Work required for completion of the Project exceeds the twenty-five percent (25%) threshold mentioned above, the Work on the Project will cease and the Project will be terminated. The remaining Work will be re-bid per Program Requirements and State of Texas statutes.

iii. Payment of Change Orders. Invoices for changes, alterations, modifications, deviations, extra orders, and related costs will not be recognized or paid for except

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when written change orders are approved and executed by the Owner, Contractor and City. Contractor's failure to include any such costs in the final invoice will act to Waive and Release any claim for that cost.

- iv. **Cost Reasonableness.** Prior to granting approval of any and all change orders, the City will complete a Cost Reasonableness to ensure the value of the Extra Work is in line within Program Requirements and the value determination outlined herein. No change order will be approved that exceeds or is less than 10% of the cost reasonableness.

D. Payment of Labor and Materials. Unless otherwise specified in the Work Specifications [Construction Contract], the Contractor will provide and pay for all labor, materials, equipment, tools, construction equipment water, light, heat and power, transportation, superintendence, temporary construction of every nature, taxes legally payable because of contract work, and all other facilities and services necessary for the proper execution and Completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated into the Work Specifications and deliver the Project complete in every respect within the specified time.

E. Property Liens. The Contractor will not subject the materials and equipment utilized in the Project to any conditional sales agreement, bailment, lease, or other agreement reserving unto seller any right, title, or interest therein. Title to all materials, but not risk of loss, will pass to the Owner upon delivery to the Property.

F. Signatory The Contractor may authorize his superintendent or other individuals to sign for him and his name if the Contractor has filed with the Owner and the City a notarized statement evidencing such authorization and authenticating the signature to be so honored.

Contractor agrees, in the event it intends to file any mechanics' or materialmen's lien or claim thereof against the Property, within three (3) Working Days of such notice, copies of the same will be provided to the Community Services Division, whose address is City of Plano, 777 E. 15th Street, Plano, Texas 75074.

G. Sustainability Material Selection. In keeping with Program initiatives, policies and commitments, construction practices and material selections which promote environmental awareness, conservation and efficiency are encouraged; and to the greatest extent feasible, the Contractor will:

- i. recycle construction debris, waste and packaging;
- ii. utilize weather seal walls and ceilings, doors and windows, mechanical penetrations, etc.;

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- iii. use high efficiency components, devices and appliances (Energy Star rated, low flow fixtures, etc.) if available at a reasonable cost;
- iv. select and install materials and components with low environmental impact in manufacture, processing and distribution; and
- v. select and install materials and components with maximum durability, lowest toxicity and the greatest benefit to the health and safety of the occupants.

The Contractor may obtain information regarding the City's sustainability policies at the link below:

<http://www.plano.gov/documentcenter/view/430>

H. Value Determination. All material and component selections are based on value determination by the:

- i. lowest installation cost;
- ii. lowest operating and maintenance costs;
- iii. longest life and proven durability; and
- iv. City's sustainability initiatives.

I. Substitution/Replacement of Material. While items being replaced will be similar, upgraded items will not be specified under Program Requirements. Consideration of features of existing components being replaced will be secondary to primary considerations of cost, efficiency, availability and other Program objectives.

J. Owner Selection of Certain Materials.

- i. **Materials.** The Owner(s) may select those materials and colors specified on the Work Specifications.
- ii. **Out-of-Stock Items.** Should an item be out-of-stock or is no longer in production, the Contractor, upon written consent of the City and the Owner, will provide a substitute of like quality and cost. No items will be placed on back-order.

K. Other Materials

- i. **Quality, Industry Standards, Manufacturer's Warranty.** All Work will be done and all materials furnished in strict conformity with the Work Specification, other Contract Documents and recognized industry and Program Property Standards. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for connecting the products,

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systems or items of equipment will also be provided. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents, the current edition at the time of Contract execution will apply, unless another edition is specified in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees will apply in full, except that they do not supersede more stringent standards set out in the Work Specifications.

- ii. **Approval of Materials and Substitutes Thereof.** No refurbished, reconditioned, or other previously utilized materials or supplies will be used without the prior signed authorization of the City and Owner. The Contractor will bear the risk of any delay in performance caused by submitting substitutions.
- iii. **Handling and Storage of Materials and Equipment.** Only materials and equipment which are to be used directly in the Work will be brought to and stored on the Project site. After equipment is no longer required to complete the Project, it will be promptly removed from the Project site. Protection of construction material and equipment from weather, theft, damage and all other perils is solely the responsibility of the Contractor.

- L. **Permits, Codes and Licenses.** Contractor agrees to secure and pay for all necessary permits and licenses required for Contractor's performance and to adhere to applicable local codes and requirements whether or not covered by the Work Specifications and drawings for the Work, including any Contractor registration requirements.

All Work required under the Work Specifications will comply with all requirements of federal, state and local law including permitting and licensing requirements. Failure of Contractor to comply with federal, state and local laws may result in immediate termination of the Contract and/or ineligibility to receive payment for Work on the Project.

- 7. **Pre-Construction Conferences.** Pre-construction conferences are only applicable for Owners/Projects approved for Limited Repairs, Gut Rehabilitation, and Reconstruction assistance.

- A. **Conference Itinerary.** Prior to beginning the Work, the Owner, Contractor and City will attend a pre-construction conference at a time and place determined by the City. At the pre-construction conference, the Parties will discuss and finalize schedules, including commencement date, and/or Work submitted for review. No later than seven (7) Calendar Days prior to the pre-construction conference, the Contractor will submit to the City and Owner the following documents:

- i. **Subcontractor Information.** Names, addresses and contact information of all proposed Subcontractors in writing on a Subcontractors Utilization Report;

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- ii. Project Manager Information.** Name, local office, phone number, address and e-mail address for the Contractor and his/her Project manager; and
- iii. Drawings.** For Reconstruction Projects, three (3) copies of all shop and/or setting drawings or schedules.
- B. Signing Contract and Issuing Notice-to-Proceed.** After the Contractor and Owner execute the Construction Contract Documents, the Notice-to-Proceed will be forwarded by the City to both Parties. The Contractor agrees that time is of the essence in executing the said documents.
- 8. Project Commencement and Completion.** The Contractor will perform the Work in an expedient and efficient manner to complete the Work within the times specified in the Contract Documents and the Notice-to-Proceed.
- A. Commencement.** The Contractor agrees to commence the Work after receipt of a written Notice-to-Proceed, unless otherwise agreed to through an approved change order and no later than five (5) Calendar Days for Emergency Repair Projects, and ten (10) Calendar Days for Limited Repair, Gut Rehabilitation and Reconstruction Projects.
- For Limited Repair, Gut Rehabilitation and Reconstruction Projects, the Notice-to-Proceed may not be given, nor may any Work be commenced, until the Construction Contract is fully executed and complete, including all required Contract Documents and commitment and insurance documents.
- The Contractor must immediately notify City staff if it cannot commence Work within the timelines specified herein. If Contractor fails to notify the City, and/or to commence the Work within the timeframe specified in this Paragraph, the City will consider the Contractor no longer in Good Standing, subject to the conditions outlined herein.
- B. Completion Deadline.** The Notice-to-Proceed establishes a deadline for completion of construction that must be strictly complied with by the Contractor unless otherwise agreed in writing by the City.
- C. Construction Account.** The City will encumber funds for the completion of a Project for the length of time established on the Notice-to-Proceed, but no longer than the 120 Calendar Days for Limited Repair Assistance, up to 180 days for Gut Rehabilitation assistance, and 210 days for Reconstruction Assistance noted in the “Extension of Time” provision herein.
- D. Extensions of Time.** The City may approve extension of times as requested by the Contractor and signed by the Owner no less than five (5) Calendar Days prior to the end of the established construction timeframe. In no case will such extension exceed 120 Calendar Days from the date on the Notice-to-Proceed for Limited Repair

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Assistance, 180 for Gut Rehabilitation Assistance, and 210 days for Reconstruction Assistance.

- E. Certificate of Completion and Release.** Contractor will provide written notice to the City when it believes that the Work has reached Final Completion. Within five (5) Calendar Days the City and Owner will inspect and determine whether the Work is finally complete. If Work is not complete, then a Housing Punch List of needed Work will be prepared. If the Work is accepted as complete and Contractor has delivered all relevant close-out documents such as certificates of acceptance or completions issued by state, municipal or other authorities, “as built” drawings, warranties, guarantees, required additional materials, releases, operation and maintenance manuals, the Contractor will forward to the City and Owner a Certificate of Completion and Release.
- F. Payment.** If the Project exceeds 120 days and no bonafide extension was provided and approved by City Staff, no additional construction costs will be paid on the Project.
- 9. Contractor Default.** In the event the Contractor has defaulted on the Construction Contract, been terminated from the job, or the Contractor has quit the job, the entire Fund, any part thereof, or balance remaining therein, will be liquidated damages to the Owner and utilized in accordance to Program Requirements for completion of the Project. Within five (5) days after said default, contract termination, or quitting the job, the Contractor will supply the last invoice to include all approved Work completed through the default, termination, or quitting date. The Contractor will be compensated per the “Compensation” provisions herein, and after the remaining Work has been completed. Moreover, Contractors may be charged any fees stipulated in the construction contract, and additional costs above the contract amount, which are necessary to finish the work that has not been completed. Any payment due the Contractor will occur after the completion of said Project.
- 10. Termination Other Than Contractor Default.** In the event of termination of the Construction Contract by the Contractor for any reason other than Contractor default, the Owner will, within five (5) Calendar Days of the termination pay the Contractor for that portion of the work completed up to the date of termination less warranty escrow.

In such event, the Compensation due the Contractor is equal to the amount provided on the Construction Contract plus approved, written change orders, less liquidated damages and fees provided for in the Construction Contract, less incomplete Work Specifications. The Parties agree that the City's estimate will be conclusive and that the Contractor will hold City harmless for payment for termination of the Agreement other than Contractor Default.

11. Liquidated Damages, Fees, and Incentive Pay.

- A. Contractor Delay.** No claim will be made by the Contractor for damages resulting from hindrances or delays from any cause during the progress of any portion of the Work provided for in the Construction Contract Documents. Contractor understands

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and agrees, however, that failure to comply with any time or performance requirements in accordance with the Contract Documents will result in damage to Owner and City.

Contractor agrees that **ONE HUNDRED AND NO/100 DOLLARS (\$100.00)** per day is the minimum value of the costs and actual damage caused by failure of Contractor to comply with any time or performance requirements under the Contract Documents, and fees (i.e. liquidated damages) must be paid directly to the City prior to submission of an invoice and not deducted from the final invoice.

To prevent payment of Liquidated Damages as noted herein, a Contract extension date may be given provided a change order is generated by the City and includes Project Coordinator, Contractor and Owner signatures. The Contractor, however, will not be eligible to receive an Incentive Payment when approved extensions for Project completion are given.

- B. Relocation Costs Associated with Contractor Delays.** With respect to rehabilitation of rental Property, in the event the occupant has temporarily relocated from the Property, as required by the Work Specifications to allow for completion of the Work; and, the work is not completed in the timeframe specified in the Contract Documents; and the delays are attributed to Contractor failure to manage work schedules, the Contractor will pay the Owner as liquidated damages any excess hotel and other relocation charges of the Owner beyond those initially approved by the City. Delays attributed to inclement weather, natural disasters and other events for which the Contractor has no control, the Contractor will notify staff and document reasons for delays. In such circumstances, no liquid damages will be calculated, nor assessed.
- C. Lead Clearance Test.** For each lead clearance test after the first one, the Contractor will pay \$150.00 to the City.
- D. Other Expenses.** Unless otherwise specified in the Contract Documents to the contrary, all monies related to hindrances and delays and to offset any direct and extraordinary expense related to the delay are due as liquidated damages payable to the City.
- E. Incentive Pay.** The City agrees to pay Contractor Incentive Pay for completing the terms and conditions under the Program and the Contract Documents ahead of schedule. All City inspections must be completed, along with all final acceptances signed, and required paperwork submitted before the Work will be determined to be complete. When the Work is finished before time stipulated in the Notice-to-Proceed (as modified by change order), the City will pay the Contractor the amount of **FIFTY AND NO/100 DOLLARS (\$50.00)** per day for each day the Project is completed early, with the Incentive Pay total not to exceed **FIVE HUNDRED AND NO/100 DOLLARS (\$500.00)**.

12. Suspensions and/or Debarments.

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Contractors may be suspended for up to 5 years or debarred permanently from the program. Reasons for either suspension or debarment are determined on a review of documents and information on file, statements of fact from parties to the contract, witness statements, and on a case-by-case basis. The Suspension Review Board will hear any appeal of a suspension or debarment, and their decision will be final. The Suspension Review Board is composed of the Purchasing Manager, the Director of Finance, and the Director of Budget and Research.

The causes for which a Contractor may be suspended or debarred permanently are as follows:

- A.** Failure to complete a job during any 12-month period;
- B.** Failure to pay sub-contractors;
- C.** Failure to make a reasonable effort to honor warranties;
- D.** Consistent failure to complete Work within the time allotted by the contract;
- E.** Consistently poor workmanship;
- F.** Excessive customer complaints due to failure to return calls, complete warranty repairs as specified in the Construction Contract, utilize poor quality material, complete work in an unprofessional workmanship manner and manage subcontractors;
- G.** Excessive submissions of poorly completed documents and forms during the Project construction period causing delays and additional costs to City Program administration.
- H.** Failure to renew insurance while under contract;
- I.** Consistent failure to comply with Housing Rehabilitation Program policies;
- J.** Possession or use of illegal or controlled drugs and/or alcohol on the job by the Contractor, Contractor's employees, or any subcontractors;
- K.** Falsifying any information provided on or with the Contractor Application;
- L.** Contractor default on a construction contract;
- M.** Contractor failure to maintain a Good Standing status at all times as defined in the Housing Rehabilitation Program Policies;
- N.** Contractor's failure to provide the necessary qualification documents as provided in the Vendor Management System;
- O.** Criminal activity; and

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- P.** Contractors involved in any dispute resolution that results in usage of the Warranty Escrow, loss to the City, or that the City finds in default of their Contractor agreement will be permanently barred from participating in the housing rehabilitation program, and, if appropriate, may be subject to legal action by the City.

13. Inspection and Acceptance of Construction.

- A.** The Contractor will maintain an adequate inspection system and perform such inspections as will ensure that the Work completed conforms to the Work Specification. All Work is subject to Owner and City inspection and testing at places and at reasonable times before Acceptance to ensure strict compliance with the Contract Documents.
- B.** The Contractor will, without charge, replace or correct Work found by the City not to conform to the Work Specifications or quality standards acceptable to the City of Plano. The Contractor will promptly segregate and remove rejected material from the Work site.
- C.** If the Contractor does not promptly replace or correct rejected Work, the City may withhold payment or terminate for default per the conditions set herein.
- D.** The Contractor will notify the City, as to the date when in its opinion all or a designated portion of the Work will be completed and ready for inspection. Acceptance will be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Owner's right under any warranty or guarantee.

14. Contractor Obligations During Construction.

At a minimum, Contractors will conform in accordance with the construction management requirements stipulated below.

- A. Permits.** When approved Work requires permitting, before Work starts on a Project, a copy of the permit from Building Inspection must be submitted to Community Services. If a copy of the permit is not received by the Housing Rehabilitation office by the time Work begins, as determined by the Notice-to-Proceed, the job will be stopped by the Project Coordinator until a copy of the permit is submitted.

The City of Plano Building Inspection Department will inspect all items on the Work Description for compliance and completion. A copy of the Work Description must be posted for Building Inspection at the Project site.

While Work is in progress, the Contractor must request that the Building Inspection Department make the required plumbing, electrical, mechanical, and final inspections. Other inspections will be performed by Housing Rehabilitation staff.

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In some cases, electrical, plumbing, and HVAC work may not require a permit from Building Inspection. Even though a permit is not required, all such work must be completed by a licensed electrician, plumber, or HVAC (sub)/Contractor.

- B. Abiding by the Work Specifications.** No deviations from the specifications will be allowed. For example: if the specifications state you must primer the exterior and then paint with semi-gloss and you do not primer before painting, the Project Coordinator will stop Work and decide the appropriate course of action. You may be required to re-do the Work, or you may be held financially responsible for your deviation. Failure to do the Work as specified may result in immediate suspension from the program.
- C. Payment of Construction Related Items.** Except as otherwise specifically stated in the Work Specifications, the Contractor will provide and pay for all materials, labor, tools, and equipment, transportation, superintendence, temporary construction of every nature, taxes legally payable because of Contract Work, and all other services and facilities of every nature whatsoever necessary to perform the Work Specifications and deliver the Project complete in every respect within the specified time.
- E. Project Management and Verification of Data and Calculations.** The Contractor will adequately supervise the Work to ensure compliance with the Work Specifications and the Program Requirements. The Contractor will lay out the Work and be responsible for all lines, levels, and measurements of all Work executed under per the Program Requirements. He/she will verify the figures before laying out the Work and will be held responsible for any error resulting from his/her failure to do so.
- F. Protection of Property.** Contractor will take proper precautions to protect the Owner's property, and adjacent or adjoining property, or any property that in proximity to the Project, which might be injured or seriously affected by any process to be undertaken under Project, from any damage or injury by reason of said process, and the Contractor will be liable for any and all claims for such damage on account of its failure to fully protect such property.
- G. Clean Work Area.** The Contractor will confine all operations (including storage of materials) on Owner's premises to areas authorized or approved by the City and Project Coordinator. The Contractor will at all times keep the work area, including storage areas, free from accumulations of waste materials.

After completing the Work and before Final Inspection, the Contractor will:

- i.** remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the Owner and all rubbish caused by its work;
- ii.** leave the work area in a clean, neat and orderly condition satisfactory to the City;

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- iii. perform all specified tests; and
 - iv. deliver any installation in complete and operating condition.
- H. Health, Safety and Accident Prevention.** In completing the Project, the Contractor will:
- i. Ensure that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety;
 - ii. Protect the lives, health, and safety of other persons;
 - iii. Prevent damage to property, materials, supplies, and equipment; and,
 - iv. Avoid work interruptions.
 - v. For these purposes, the Contractor will:
 - a. Provide appropriate safety barricades, signs, and signal lights;
 - b. As appropriate, furnish, install, and maintain ample sanitary facilities for the workers. These facilities will be sufficient to meet the Project needs and be located in an area satisfactory to the City. All such facilities and services will be furnished in strict accordance with governing health regulations; and,
 - c. Include the terms of this clause in every Subcontractor contract that such terms will be binding on each Subcontractor.
- I. Corrective Action on Non-Compliance Issues.** If noted during an inspection, the City will notify the Contractor of any noncompliance with the requirements of the Health, Safety and Accident Prevention provision herein and of the required corrective action thereof. This notice, when delivered to the Contractor or the Contractor's representative at the site of the Work, will be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor will immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the City may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor will not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- J. Subcontractor Compliance.** The Contractor will be responsible for its Subcontractors' compliance with the Contractor Obligation provisions of this Agreement.

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- K. Protection of Existing Vegetation, Structures, Utilities and Improvements.** During construction, the following will apply:
- i.** The Contractor will preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under the Contract Documents, and which do not unreasonably interfere with the Work required under said Documents.
 - ii.** The Contractor will only remove trees when specifically authorized to do so, and will avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of the Work, or by the careless operation of equipment, or by workmen, the Contractor will trim those limbs or branches to a clean cut.
 - iii.** Prior to disturbing the ground on the construction site, the Contractor will ensure that all underground utility lines are clearly marked.
 - iv.** The Contractor will shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the Project.
 - v.** Any new equipment temporarily removed as a result of Work during the Project will be protected, cleaned, and replaced in the same condition as at the time of commencement of the Project.
 - vi.** New Work which connects to existing Work will correspond in all respects with that to which it connects unless otherwise required by the Work Specifications.
 - vii.** No structural members will be altered or in any way weakened without the written authorization of the Owner and City, unless such Work is clearly specified in the plans or Specifications.
 - viii.** If the removal of the existing Work exposes discolored or unfinished surfaces, or Work out of alignment, such surfaces will be refinished, or the material replaced as necessary to make the continuous Work uniform and harmonious. This, however, will not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening Work, unless such refinishing or reconstruction is specified in the plans or Specifications.
 - ix.** The Contractor will give all required notices to any adjoining or adjacent property owner or other party before the commencement of any Work.

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- x. The Contractor will repair any damage to vegetation, structure, equipment, utilities, or improvements, including those that are the property of third party, resulting from failure to comply with the requirements of the Work Specifications or failure to exercise reasonable care in performing the Work. If the Contractor fails or refuses to repair the damage promptly, the City with approval of the Owner may have the necessary Work performed and charge the cost to the Contractor.
- L. Temporary Buildings and Transportation of Materials.** Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Owner and City, as appropriate and specified in the Work Specifications, and will be built with labor and materials furnished by the Contractor without expense to the Owner. The temporary buildings and utilities will remain the property of the Contractor and will be removed by the Contractor at its expense upon Completion of the Work.
- M. Hours of Work.** The hours of work will be negotiated between the Owner and the Contractor and laid out in the Contract Documents, and consistent with the City of Plano noise ordinances.
- N. Contractor Termination of Project Responsibility.** The Contractor's responsibility for the Project will terminate when all Work has been completed, the Final Inspection made, and said Work Specifications have been accepted by the Owner and the City. The Contractor will then be released from further obligation except as required by the warranties specified herein.

15. Specifications and Drawings for Construction

- A.** The Contractor will keep on the Work site a copy of the drawings and specifications and will at all times give the City access thereto. Anything mentioned in the Work Specifications and not shown on the drawings, or shown on the drawings and not mentioned in the Work Specifications, will be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the Work Specifications will govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter will be promptly submitted to the City, who will promptly make a determination in writing which will be binding on the Contractor. Any adjustment by the Contractor without City's written authorization will be at its own risk and expense. The City will furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- B.** If the Contract Documents require Shop Drawings, the Contractor will coordinate all such drawings, and review them for accuracy, completeness, and compliance with other requirements and will indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the City without evidence of the Contractor's approval may be returned for resubmission. The City will indicate an approval or disapproval of the Shop Drawings and if not approved as submitted will indicate the Owner's reasons therefore. Any Work done before such approval will be at the

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Contractor's risk. Approval by the City will not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements under the Contract Documents.

- C. It will be the responsibility of the Contractor to make timely requests for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which will be required in the planning and production of the Work. Such requests may be submitted as the need arises, but each such request will be filed in ample time to permit appropriate action to be taken by all Parties involved so as to avoid delay.
- D. After approval of the shop drawings, the Contractor will submit three (3) copies (unless otherwise indicated) of all Shop Drawings as called for under the various headings of the specifications. One (1) set (unless otherwise indicated) of all Shop Drawings will be retained by the Owner, one will be retained by the City and one set will be returned to the Contractor after City review. As required by the City, the Contractor, upon completing the Work under the Work Specifications, will furnish a complete set of all Shop Drawings as finally approved. These drawings will show all changes and revisions made up to the time the Work is completed and accepted.
- E. This "Specification and Drawings for Construction" clause will be included in all subcontracts at any tier. It will be the responsibility of the Contractor to ensure that all Shop Drawings prepared by Subcontractors are submitted to the City.

16. As-Built Drawings.

- A. As appropriate, the Contractor will provide the City accurate information to be used in the preparation of permanent As-Built Drawings. For this purpose, the Contractor will record on one set of Work Specifications drawings all changes from the installations originally indicated, and record final location of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.
- B. As appropriate, this clause will be included in all Subcontracts at any tier. It will be the responsibility of the Contractor to ensure that all As-Built Drawings prepared by Subcontractors are submitted to the City.

17. Protection Against Claims of Subcontractors, Laborers, Material men and Furnishers of Machinery, Equipment and Supplies. The Contractor will make all the provisions of this paragraph part of the Construction Contract.

THE CONTRACTOR WILL INDEMNIFY AND HOLD THE OWNER AND CITY OF PLANO HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIAL MEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF,

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EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THE CONSTRUCTION DOCUMENTS.

- A. Lien Waivers.** Prior to the final payment of any Compensation to the Contractor, the Contractor will deliver to the City a list of all Subcontractors, laborers, or suppliers that were used to perform any Work under the Work Specifications with the request for final payment. Upon completion of the Project and as part of the final request for payment, the Contractor will furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged or waived. If the Contractor fails to provide the lien waivers, final payment will not be due until the Contractor has delivered to the City of Plano with copies to the Owner a complete release of all liens for Work completed arising out of the Work Specifications. After receipt of said waivers, and any other satisfactory evidence indicating that all liabilities have been fully discharged, payments to the Contractor will be resumed in full, in accordance with the terms of the Program Requirements; but in no event will the provisions of this paragraph be construed to impose any obligation upon the City of Plano by the Contractor.

The lien waivers will include the mailing address and contact information (telephone numbers and e-mail addresses) of the Subcontractors.

- 18. Warranty.** The warranty period commences on the day the Owner executes the Owner Work Acceptance form and terminates 12 months after the execution thereof.

- A. Warranty Policy.** The City's warranty policy herein will apply to all housing rehabilitatoin projects.

- i.** All Work completed during the rehabilitation, including major structural components and mechanical systems of the home, are covered by a one (1) year warranty from the Completion of the Project. The Contractor warrants for one (1) year that all workmanship and materials provided to the Owner under the Project will be new unless otherwise approved in advance by the City and that all Work will be of good quality, free from faults and defects, and in conformance with the Work Specifications, the other Contract Documents, and recognized industry standards.
- ii.** The warranty will provide that improvements, hardware, and fixtures whatever kind or nature installed or constructed on said property by the Contractor are of good quality and free from defects in workmanship or material or deficiencies subject to the warranty contained in this paragraph provided.

- B. Warranty List.** It is the Contractor's responsibility to provide the Owner on the date of request for final payment a copy of the manufacturer's warranty of all items repaired or replaced.

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- C. Subcontractors and Warranties.** Contractor agrees that all the warranties contained herein will apply to all Work performed under the Project, including that performed by any Subcontractors.
- D. Defective Work Discovered During Warranty Period.** If any of the Work is found or determined to be either defective or otherwise not in accordance with the Work Specifications within the warranty periods, Owner will send a written notice of defects and request for warranty Work to the Contractor. For non-emergency related defective Work, it is recommended that Owner sends any notice and request for warranty Work. The request should provide a reasonable detailed description of each issue in need of repair. Upon written notice from the Owner to the Contractor that there is a defect in Work completed, the Contractor will immediately make such repairs in order to remove the defect but in no event later than 20 (twenty) Calendar Days from said notification. In the event of emergency related defective Work, the Contractor will make reasonable efforts to respond within twenty-four (24) hours of said notification, and cure said defect, if appropriate or practicable, within seventy-two (72) hours of said notification.

E. Warranty Disputes.

i. Contitions for Warranty Disputes:

In the event of a dispute between the Owner and the Contractor that cannot by resolved by the parties, the Owner or Contractor may submit a grievance with the City for the following reasons:

- a. Communication breakdown between the Owner and the City, or the Owner and the Contractor;
 - b. Poor workmanship or material;
 - c. Failure of the Contractor to complete repairs timely; or
 - d. Alleged failure of the Contractor to honor the one-year warranty.
 - e. **Note:** Contractual issues unrelated to the Program may not be brought before the City. For example: specifications outside those Work Specifications that have been approved and agreed to by both the Owner and the Contractor and have entered into contractually may not be brought before the City Staff.
- ii. Warranty Disipute Process.** Upon notification, City will schedule a warranty dispute inspection between the Contractor and Owner to determine if the disputed matter is subject to the agreed upon Work Specifications. Both Contractor and Owner agree to attend all warranty dispute inspections.

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Upon completion of all warranty dispute inspections, City will forward to the parties an itemized list of approved warranty items for repair. Should Contractor fail or refuse to repair the disputed items City will utilize any remaining Warranty Escrow funds to repair the approved disputed items. Owner must select a contractor appearing on the City's vendor's list to repair all approved disputed items.

If neither the Owner nor Contractor is able to agree to the itemized list or if the repairs exceed the available funds in Warranty Escrow, the parties may resolve all ongoing disputes in a Court of competent jurisdiction according to the laws of the State of Texas.

1. Contractor and Owner Warranty Responsibilities. Owner and Contractor acknowledge and agree they are responsible for obtaining and reviewing the most current Housing Rehabilitation Guidelines prior to filing for and requesting a dispute resolution.

2. Contractor Compliance with Warranty Provisions. Contractors who fail to honor warranty work will permanently be barred from participating in the housing rehabilitation program. If appropriate, the City may pursue other legal remedies available under Texas law.

3. Use of Warranty Escrow for Warranty Disputes. For Limited Repair and Gut Rehabilitation projects, Contractor and Owner further acknowledge and agree that if Warranty Escrow funds are used as part of a warranty dispute resolution, the use of said funds will not prevent the Owner from presenting subsequent warranty request or render any provision of this Contract void, voidable, or unenforceable.

19. Losses From Natural Causes. Unless otherwise specified, all loss or damage to the Contractor arising out of the nature of the Work to be done, or from the action of the elements, or from any unforeseen circumstance in the prosecution of same, or for unusual obstructions or difficulties which may be encountered in the prosecution of the Work, will be sustained and borne by the Contractor at his/her own cost and expense.

20. Compliance With Laws and Program Requirements.

A. Federal, State and Local Laws. The Contractor will comply with all local, State, and Federal laws, including all codes, ordinances, and regulations applicable to the Work to be done and the material utilized there under which exist by governmental bodies having jurisdiction or authority for such enactment.

B. Program Requirements. The Contractor agrees to comply with all Program Requirements, which include the City of Plano Policies and Procedures for the Housing Rehabilitation Program, requirements of the Work Specifications, and any Contract Documents that have been made part of the Project.

21. INDEMNITY.

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- A. THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH WILL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**
- B. CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR WILL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY WILL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR WILL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.**
- C. RELEASE. THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED UNDER THE PROJECT INCLUDING**

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THE WORK OF ANY SUBCONTRACTORS, AGENTS OR ASSIGNS, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE OWNER AND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE CONTRACTOR'S WORK. THIS RELEASE WILL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE, AND IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE WILL APPLY REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE OWNER OR CITY.

- 22. Insurance.** Contractor will procure and maintain for the duration of the contract insurance coverage as set forth in the Insurance Requirements marked **Exhibit "A"** attached hereto and incorporated herein by reference as part of the contract. Contractor will provide a signed insurance certificate verifying that they have obtained the required insurance coverage prior to the starting work on the Project.
- 23. Bonding.** All Reconstruction projects and projects valued greater than \$150,000 require bonding. The Warranty Escrow policy does not apply for any Project that requires bonding. Bonding will include bid bond, performance bond, and maintenance bond.
- 24. Miscellaneous Provisions.**
- A. Agreement Entirety.** This Agreement and the Housing Rehabilitation Policies and Procedures include the requirements for Contractor participation in the Program. No oral understandings, statements, promises or inducements contrary to the conditions of this Agreement exist. This Agreement cannot be changed without written approval of the City. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, will affect or modify any of the terms or obligations hereunder.
- B. Jurisdiction.** This Agreement will be governed by laws of the State of Texas; and venue for any action concerning this Agreement will be in the Collin County, Texas.
- C. Authority to do business.** The Contractor represents that it has a certificate of formation authorizing it to do business in the State of Texas, a registered agent, and registered office during the duration of this Agreement.

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- D. Authority to Contract.** Each party has the full power and authority to enter into and perform under this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.
- E. Waiver.** Failure of the City to enforce any provision of this Agreement will in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement. No term will be waived or breach excused unless a written waiver is approved by the City agreeing to waive the specific provision or excuse the specific breach. Waivers will be documented in writing. Policy waivers will not be considered or granted for requests that aviolate any HUD regulations or other federal, state and local laws.
- F. Headings, Gender, Number.** The article headings are used for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision herein.
- G. Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes.
- H. Written Notices.** All notices required or permitted under the terms of this Agreement and conditions of the Program will be in writing, unless and until otherwise specified.
- I. No Collusion.** To the best of its knowledge and belief, no federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of the City in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal Contract, grant, loan, or cooperative agreement.
- J. Interpretation of Phrases.** Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City and Owner is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import will mean approved by, accepted by, or satisfactory to the City and the Owner.
- K. Contractor Compliance.** The Contractor will comply with the law in effect at the time its services are rendered.
- 25. RESPONSIBILITY. THE CITY IS NOT A PARTY TO THE CONTRACT BETWEEN OWNER AND CONTRACTOR. THE CITY AND ITS REPRESENTATIVES ARE SOLELY CDBG AND HOME FUND ADMINISTRATORS AND AS SUCH ARE REQUIRED TO PROVIDE**

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INFORMATION AND MONITOR COMPLIANCE WITH CITY AND FEDERAL POLICIES AND REGULATIONS IN THE ADMINISTRATION OF THE PROJECT. ANY CONTRACT FORMS OR INFORMATION PROVIDED BY THE CITY DOES NOT CONSTITUTE LEGAL ADVICE TO OWNER OR CONTRACTOR AND IS FOR INFORMATIONAL PURPOSES ONLY. ANY DISPUTES, DISAGREEMENTS, FINES, CLAIMS, OR LAWSUITS ARISING OUT OF THE PROJECT BETWEEN OWNER AND CONTRACTOR ARE THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND OWNER AND CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY, RELEASE, AND HOLD HARMLESS CITY FROM SAME.

- 26. Conflict of Interest.** Contractor acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "B"**.
- 27. Good Standing.** The Contractor must remain in Good Standing as defined by the Program rules throughout his/her participation in the Program. Failure to remain in Good Standing may result in removal of Contractor from the Contractor List, prohibition of Contractor from future bidding on CDBG projects with the City, and/or suspension or debarment from participating in the Program.

Good Standing also includes complying with the most current revision of the Housing Rehabilitation Contractor Participation Requirements, which has been attached to this document.

- 28. Annual Renewal Requirements.** On an annual basis, Community Services staff will forward a renewal form for inclusion in the Vendor List. At renewal time and throughout participation in the Housing Rehabilitation Program, your company must remain in good standing status. Good standing status includes:
- A.** Maintaining the appropriate liability insurance requirements;
 - B.** Having the financial capacity to start and complete Work;
 - C.** Meeting the credit thresholds;
 - D.** Being free from any civil or criminal lawsuit or judgment that would impede the company's or your ability as owner of the company to complete rehabilitation Work;
 - E.** Having no warranty complaints from existing housing rehabilitation Owners that resulted in warranty dispute resolution involving usage of the Warranty Escrow, loss to the City, or that the City finds in default of their Contractor agreement;
 - F.** Not appearing on HUD's excluded party list;

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- G.** Having the appropriate certifications and licenses current to include lead-based paint certification per State and EPA requirements; and
 - H.** Having all required permits and/or licenses current.
 - I.** **Note:** As a matter of quality control, the City will review all renewal documents and verify that you are not on the list of debarred Contractors maintained by the Department of Housing and Urban Development. In addition, we will: verify your insurance coverage; ensure that your corporate charter is in good standing with the State of Texas, conduct credit checks, verify all reference, and conduct a reasonable background check on the company and the owners.
- 29. Applicable Federal Requirements.** As appropriate, the Contractor will make the provisions of this paragraph part of the Construction Contract.
- A. Record Retention.** The Contractor and his/her Subcontractors will keep records pertaining to this Project for five (5) years after the Project completion date.
 - B. Lead-Based Paint.** As applicable, the Contractor agrees to comply with the procedures related to removal and non-use of lead-based paints in accordance with the Lead-Based Paint Poisoning Prevention Act (42 USC 4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S. C. 4851-4856), and 24 CFR 35, subparts A, B, J, K, and R. In an effort to reduce lead-based paint hazards, the use of lead-based paint is strictly prohibited in residential structures. The Contractor agrees by executing this Agreement that lead-based paint will in no way be utilized on any Project. Additionally, the following will apply:
 - i. Rule.** Effective April 22, 2010, Contractors performing lead-based paint related Work must comply with the “Lead: Renovation, Repair and Painting” rule established by the United States Environmental Protection Agency (EPA). The rule requires training, certification and other related compliance issues. Information regarding this rule may be obtained through the following link:
nbnnews.com/NBN/issues/2009-03-23/Remodelers/index.html
 - ii. Certification.** All Contractors and Subcontractors performing any lead-paint Work must provide proof of the lead-based paint certification to the City prior to executing any Construction Contract with the Owner. Information regarding the lead-based paint certification may be obtained at the following link:
www.epa.gov/lead/pubs/renovation.htm
 - C. Equal Employment Opportunity (Executive Orders 10925, 11114, or 11246).** For all Contracts in excess of \$10,000, the Parties hereto understand that the funds to be used to pay the Contractor's Compensation will be made available through a federal grant. Both Parties warrant and represent to each other and to the City that there will be no discrimination upon the basis of race, color, religion, national origin, or sex,

**City of Plano
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disability, veteran's, marital or economic status, regarding the Work to be performed under the Construction Contract, and that the Parties will comply with all pertinent federal, state, and local laws and regulations in this regard. During the performance of the Construction Contract, the Contractor agrees as follows:

- i. The Contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, sex, national origin, or disability. Such action will include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of Compensation, and (viii) selection for training, including apprenticeship.
- ii. The Contractor will post applicable HUD notices in conspicuous places available to employees and applicants for employment. The notices are available at the HUD website.
- iii. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.

D. Subcontracting with Small and Minority Business Firm, Women's Business Enterprises and Labor Surplus Area Firms. For Projects funded with HOME monies, the Contractor and Subcontractor will take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when **economically feasible**, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- iv. Establishing delivery schedules, where the requirements of the Construction Contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- v. Using the services and assistance of the U. S. Small Business Administration, the Minority Business Development Agency of the U. S. Department of Commerce, and State and local governmental small business agencies. Information on small and minority business firms, women's business enterprises, and labor surplus areas may be found on the following link: <http://www.sba8a.com>

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- vi. When applicable, the Contractor will utilize a form specified by the City to documents his/her efforts in subcontracting to minority or women Owned business enterprises. Said form will be delivered at the end of the Project, along with the final invoice, as part of the documents submitted to City for final payment.
- E. Clean Air and Water.** For Construction Contracts and/or Subcontracts in excess of \$100,000, in compliance with regulations issued by the United States Environmental Protection Agency (EPA), 40 CFR Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Contractor agrees to:
- i. Not utilize any facility in the performance of the Construction Contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list;
 - ii. Promptly notify the City if a Facility the Contractor intends to use in the performance of the Construction Contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;
 - iii. Comply with all requirements of the Air Act and the Water Act, including the requirements of Section 114 of the Air Act and Section 308 of the Water Act, and all applicable clean air and clean water standards; and,
 - iv. Include or cause to be included the provisions of this clause in every subcontract, and take such action as HUD may direct as means of enforcing such provisions.
- F. Davis-Bacon Act ((40 U.S.C. 276a to 276a-7) as supplemented by the Department of Labor regulations (29 CFR part 5)).** This provision will apply for CDBG Projects with eight or more units or HOME Projects with 12 or more units, and expenditures in excess of \$2,000. All laborers and mechanics employed by contractors and subcontractors in the performance of construction Work financed in whole or in part with CDBG or HOME assistance will be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor. HUD Form 4010 will apply and become part of the Construction Contract when the Contract and Project meet the above referenced parameters. The Contractor will consult with the City on completion and delivery of all Davis-Bacon Act related forms and requirements.
- G. Equal Opportunity For Business and Lower-Income Persons [HUD ACT OF 1968, (aka SECTION 3)].** Contractors will to the greatest extent feasible provide economic opportunities in the form of employment and/or training to qualified low- and very low-income persons. The policy will result in a reasonable level of success in the recruitment, employment, and utilization of low- and very-low income residents and other eligible persons and business by Contractors working on contracts partially

**City of Plano
Housing Rehabilitation Program
Contractor Participation Requirements and Agreement**

or wholly funded with the United States Department of Housing and Urban Development (HUD) monies. The City will examine and consider a Contractor's potential for success by providing employment and business opportunities to low- and very-low income eligible persons prior to acting on any eligible proposed contract award.

- H. Prohibition of Kickbacks.** The Contractor nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm, or person to submit a collusive or sham Bid in connection with the Contractor for which a Bid has been submitted or to refrain from bidding in connection with such Construction Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm, or person to fix any overhead, profit, or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement, any advantage against the City of Plano, Texas in the Counties of Collin and Denton or any person interested in the proposed Construction Contract; and

The price or Contract Amount quoted are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Per the Copeland "Anti-Kickback" Regulations [(18 U.S.C. 874) as supplemented in 29 CFR Part 3], all mechanics and laborers employed in the development of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 40 U.S.C. 276c, 29 CFR Part 3), the full amounts due at time of payment. For the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

**City of Plano
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Contractor Participation Requirements and Agreement**

Part IV. EXECUTION OF AGREEMENT The effective date of this Agreement is _____, _____.

CONTRACTOR:

Company name: _____ Date: _____

By: _____ Office Number: _____

Name: _____ Cell Number: _____

Title: _____ Fax Number: _____

Address: _____ Email: _____

_____ Website: _____

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

THIS INSTRUMENT was acknowledged before me on the ____ day of _____ 2012
by _____.

Notary Public, State of Texas

**City of Plano
Housing Rehabilitation Program
Contractor Participation Requirements and Agreement**

**EXHIBIT A
CITY OF PLANO
GENERAL CONTRACTUAL INSURANCE REQUIREMENTS**

Vendors/Contractors performing work on City property for the City of Plano shall provide the City a certificate of insurance evidencing the coverage's and coverage provisions identified herein. Vendors/Contractors shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of insurance as required herein or that the subcontractors are included under the vendors/contractor's policy. The City, at its discretion, may require a certified copy of the policies, including all relevant endorsements.

All insurance companies must be authorized by the Texas Department of Insurance to transact business in the State of Texas, must be acceptable to the City of Plano and be placed with an insurer possessing an A-VII A. M. Best rating or better.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and higher limits of coverage or provisions depending on the nature of the work.

1. The following insurance requirements, coverage's and limits apply to most minor construction (Non-CIP), renovation, service provider, installation and maintenance services, work on City property and professional service contracts.
2. Purchases of non-hazardous commodities, equipment, materials and products from distributors and retailers do not require any specific insurance.
3. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment or property may require customized insurance requirements in addition to the general requirements listed.

Commercial General Liability Insurance—(Required for all minor construction, renovation, service provider contracts involving installation, maintenance or work on City property)

Commercial general liability insurance shall be written on an ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability policy, including coverage for City with respect to liability arising out of the completed operations.

\$1,000,000 Limit per Occurrence/Aggregate

\$1,000,000 Limit for Personal/Advertising Injury and Products/Completed Operations

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Contractor Participation Requirements and Agreement

Pollution Legal Liability Insurance: If the contract requires hazardous waste removal, clean up or remediation, Pollution Legal Liability Coverage will be required with limits not less than **\$3,000,000.00** per accident and **\$5,000,000.00** per occurrence.

Commercial Automobile Liability—(Required for all contracts involving the use of vendor/contractor owned, non-owned or hired automobiles)

Vendor/contractor shall maintain business automobile liability insurance with a limit of not less than **\$1,000,000** each accident or Combined Single Limit.

Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles). Vendor/contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability obtained by vendor/contractor pursuant to this section or under any applicable automobile physical damage coverage.

Workers' Compensation & Employer Liability—(Required for all vendors/contractors with employees who perform work or contract services on City property)

Vendor/contractor shall maintain workers' compensation insurance in the amounts required by appropriate state workers compensation statutes. The employer's liability limit shall not be less than **\$1,000,000**.

The City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the workers' compensation policy, including coverage for City under any contracts with any sub-contractors of Vendor/contractor. Vendor/contractor waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under vendors/contractor's workers' compensation and employer's liability. Vendor/contractor must cause a waiver of subrogation to be effected under its workers' compensation coverage.

Sole Proprietors and companies with no employees may be exempt from this requirement.

Cyber Liability—Coverage in place naming the City of Plano, Texas, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the Cyber Liability policy, including coverage for the City with respect to liability arising out of all errors and omissions of vendor/contractor or products. Coverage shall be no less than **\$1,000,000.00 each claim and \$3,000,000.00 in the aggregate**.

Professional Liability (E&O) Insurance--(Required for all Professional Service contracts including but not limited to: architects, engineers, consultants, counselors, medical professionals, attorneys, accountants, etc.)

Professional Liability Coverage (E&O) may be written on a claims made basis but must include an extended reporting period of at least three years after contract completion.

City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the E&O policy, including coverage for City with respect to liability arising out of all errors and omissions of vendor/contractor.

A fiduciary bond in favor of the City of Plano, Texas for not less than **\$2,000,000**

Minimum Limit of **\$1,000,000** Each Claim and **\$1,000,000** Aggregate

**CITY OF PLANO
HOUSING REHABILITATION PROGRAM
CONTRACTOR PARTICIPATION AGREEMENT**

General Requirements Applicable to All Insurance

1. The vendor/contractor shall obtain and maintain the minimum insurance coverage set forth in this section during the entire contract period.
2. The vendor/contractor agrees that the insurance requirements specified herein do not reduce the liability vendor/contractor has assumed in any indemnification/hold harmless section of the contract.
3. Coverage shall be on a primary basis and non-contributory with any other insurance coverage and/or self-insurance carried by City.
4. Vendor/contractor is responsible for providing the City a minimum of 30 days' notice of a material change or voluntary cancellation of insurance coverage required under this contract and notice within 10 days of any notice of termination no matter the cause.

Evidence of Insurance Required

Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this contract, vendor/contractor shall furnish City a Certificate(s) of Insurance (COI) on a form approved by the Texas Department of Insurance and signed by an authorized representative of each insurer.

The COI shall List each insurer's NAIC Number or FEIN and list the City of Plano, Risk Management Division, 1520 K Avenue, Suite 117, Plano, Texas, 75074 in the Certificate Holder Section.

**CITY OF PLANO
HOUSING REHABILITATION PROGRAM
CONTRACTOR PARTICIPATION AGREEMENT**

**EXHIBIT B
INSURANCE REQUIREMENT AFFIDAVIT**

(To be completed by appropriate Vendor/Contractor Insurance Agent)

I, the undersigned agent, certify that the insurance requirements contained in this proposal document have been reviewed by me with the below identified vendor/contractor. If the below identified vendor/contractor is awarded this contract by the City of Plano, I will be able, within ten (10) working days after being notified of such potential award or at contract renewal, to furnish a valid Certificate of Insurance to the City meeting all of the requirements contained in this proposal.

Agent's Printed Name

Agent's Signature

Name of Insurance Agency

Address of Agency

City, State, Zip

Phone number where Agent may be contacted

E-Mail address of Agent

Vendor/Contractor Name: _____

SUBSCRIBED AND SWORN to before me by the above named _____

on this the _____ day of _____, 20____.

Notary Public in and for the State of _____

NOTE TO INSURANCE AGENT:

IF THIS TIME REQUIREMENT IS NOT MET, THE CITY HAS THE RIGHT TO DECLARE THIS VENDOR NON-RESPONSIVE AND AWARD THE CONTRACT TO THE NEXT LOWEST PROPOSER MEETING THE SPECIFICATIONS. IF YOU HAVE ANY QUESTIONS CONCERNING THESE REQUIREMENTS, PLEASE CONTACT THE CITY OF PLANO PURCHASING DIVISION AT 972-941-7557.