

Tri-Party Agreement
RFB #16-043

This Agreement is made and entered into among **Alice L. Taylor** of Brazos County, Texas, ("Owner"), the **City of Bryan, Texas**, ("City"), and **Quality Works Construction, Inc.** of Harris County, Texas, ("Contractor"). This Agreement covers specified work at the site described as:

2303 Staunton Drive
Bryan, Texas 77803

Being all those certain lots, tracts or parcels of land lying and being situated in Brazos County, Texas and being all of Lot Seven (7) and the adjoining 1/2 of Lot Eight (8), Block Thirteen (13), MARGARET WALLACE SUBDIVISION, an addition to the City of Bryan, Texas, according to plat recorded in Volume 138, page 574, Deed Records of Brazos County, Texas., also known as 2303 Staunton Drive ("Property").

ARTICLE 1
DEFINITIONS

- 1.1** Adjusted Contract Sum – means the consideration to be paid to Contractor, in the amount of **\$107,800.00** which may be adjusted in the future by change order.
- 1.2** City – means the City of Bryan, acting through the City Council, City Manager, and/or the City's Community Development Service's Construction Project Specialist, under whose supervision this Agreement, including the plans and specifications, were prepared, and who will inspect and issue instructions.
- 1.3** Close Out – means the Contractor's completion of all the requirements to receive retainage, including but not limited to finishing any punch list items, providing affidavits of all bills paid, providing releases of materialmen's liens, and any other documentation required by the City.
- 1.4** Commencement Date – means the deadline for the Contractor to pull a building permit and commence the Work of this Agreement, which shall be ten days following the date of the Notice to Proceed.
- 1.5** Contract Time – means the amount of time allotted for the substantial completion of the Work, which shall be **150** days starting from when a Notice to Proceed is issued by the City, unless adjusted by a Change Order.
- 1.6** Contractor – means the individual or entity listed above, as well as its employees, agents, or representatives authorized to participate in the work that is the subject of this Agreement.
- 1.7** Day(s) – means calendar days unless explicitly stated otherwise.
- 1.8** Owner – means the undersigned record owners of the Property that is the subject of this Agreement. However, from time to time, throughout the course of this Agreement, the City may assert the rights of, or act on behalf of, the Owner(s).
- 1.9** Parties – means the Owner, City, and Contractor collectively.

- 1.10** Payable loan – means the portion of the allocation for the construction of this dwelling that must be repaid by the Owner, in accordance with the terms of a separate instrument, which amounts to **\$109,006.79**, at **zero percent (0%)** interest over the course of **30** years.
- 1.11** Substantial completion – means that the Certificate of Occupancy has been issued for the dwelling and it has been made suitable for its intended use, but still may require minor miscellaneous work and adjustments.
- 1.12** Work – means the construction and related services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work also includes labor, materials, equipment, and services to be provided by subcontractors.

ARTICLE 2 **CONTRACT DOCUMENTS**

- 2.1** The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplemental, and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. All of these documents are attached to this Agreement, and shall be considered a part of this Agreement for all intents and purposes as if set forth verbatim herein. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended result. In case of conflict, the order of precedence for contract documents shall be: 1) this Agreement; 2) the plans and specifications; 3) the Notice to Proceed, and, 4) Community Development Services' General Specifications.
- 2.2** Execution of this Agreement by the Contractor is a representation that the Contractor has visited the site and become familiar with the local codes and conditions under which the Work is to be performed. Contractor further represents that the Work can be completed within the Contract Time, as may be amended by change order.

ARTICLE 3 **DATE OF COMMENCEMENT, TIME, & COMPLETION**

- 3.1** The Parties agree that Work may only commence when the City provides Contractor with a Notice to Proceed, which will state the Date of the Notice to Proceed, the Date of Commencement, and the Deadline for Substantial Completion (which is calculated based on the Contract Time). The deadline for Substantial Completion as specified on the Notice to Proceed is binding, unless the Contract Time is modified by a duly executed Change Order.
- 3.2** The Contract Time may be extended by change order if Contractor experiences delays that could not have been reasonably anticipated prior to the execution of the original Notice to Proceed. Causes for such delays must be directly related to the Work and include, but are not limited to: 1) weather conditions, fire, or other act of God; 2) conditions on the property; and 3) failures by subcontractors or materialmen. In order to be eligible for a change order, the Contractor must notify the City of the cause for the delay when applying for a progress payment. The Contractor

must inform the City of the date, the nature of the delay, the Work to be performed that day, and if necessary provide an explanation for why other portions of the Work could not be performed.

- 3.3** The City will not unreasonably withhold approval change order extending the deadline for completion of the Work, but may refuse to allow a change order if 1) the weather was not abnormal for the season and should have been anticipated; 2) weather was not directly related to the delay (i.e. other portions of the Work could have been done indoors); 3) delays caused by subcontractors or materialmen were reasonably avoidable; 4) the delay was not timely claimed by the Contractor; or 5) the City determines for another specific reason that the delay was unjustifiable.
- 3.4** Time limits contained in the Contract Documents, including the Notice to Proceed (to be prepared at a later date), are of the essence of this Agreement.

ARTICLE 4
CONSIDERATION, PROGRESS PAYMENTS, & RETAINAGE

4.1 Consideration –

- 4.1.1 The City will allocate funds for the Owner sufficient to pay for all costs related the construction of this dwelling, including but not limited to the Adjusted Contract Sum, filing fees, title search costs, and survey fees. The Owner will execute documents granting City rights to secure repayment of a portion of that amount and to ensure compliance with the requirements of federal law. If the City assesses liquidated damages against the Contractor in accordance with this Agreement, the Adjusted Contract Sum will be modified by the City, and principal of the Payable Loan shall be reduced accordingly.
- 4.1.2 On the basis of the above allocation, the City will pay the Contractor in current funds for the Contractor's performance of this Agreement, the Adjusted Contract Sum in six installments: five progress payments and a final payment of retainage.

4.2 Progress Payments –

- 4.2.1 Progress payments of eighteen percent (18%) of the adjusted contract sum (twenty percent less retainage) will be paid upon substantial completion of each of the phases of the work, which are roughly equal to twenty percent of the total project. Portions of the work may be completed in a different order than that set forth in this schedule, provided that the City determines that Contractor has completed substantially the same amount of work and the progress has progressed proportionally. The City may require that Contractor complete additional items in order to achieve the required parity. The draw schedule for progress payments is based on completion of the phases of the work as follows:
- a. 20% complete = demolition, plumbing below grade rough-in and connection to taps, and foundation pour.
 - b. 40% complete = plumbing top-out, framed walls and ceiling joists, exterior sheathing, rafters, decking, shingles installed, cornice / exterior trim installed and primed, windows and doors installed, tubs installed.

- c. 60% complete = HVAC rough, electrical rough, insulation installed, sheetrock, TB&F / textured, exterior siding / brick installed, interior trim installed.
 - d. 80% complete = cabinetry complete, interior and exterior paint, vinyl floors laid, electrical fixtures installed, door and cabinetry hardware installed.
 - e. 100% complete = appliances set, plumbing fixtures installed, carpet installed, driveway, stoops, and sidewalks poured and finished, condensing unit installed, clean up.
- 4.2.2 To receive a progress payment, Contractor must submit an application for payment to the City listing the items completed, the percentage draw requested, as well as signed Waivers of Mechanics Lien for each subcontractor who completed their work during the portion of the project for which payment is sought. If the appropriate documentation has been received and City determines that the relevant portion of the project is substantially complete, City will prepare the appropriate documents, obtain the appropriate signatures, and submit the documents to the City of Bryan Finance Division. If the City has assessed liquidated damages against the Contractor for failure to substantially complete the work on time, such damages will be withheld from the final progress payment.
- 4.2.3 In the interest of ensuring that the project does not fall behind, the City will set interim deadlines in the Notice to Proceed for each phase of the Project listed in the above schedule. Other provisions of this agreement notwithstanding, failure to meet an interim deadline is not, by itself, a material breach of this Agreement; and liquidated damages may not be assessed for failure to meet an interim deadline.

4.3 Retainage –

- 4.3.1 Ten percent (10%) of each payment will be held as a retainage, for a final payment equaling ten percent (10%) of the adjusted contract sum. Contractor is entitled to retainage only after Close Out has been completed by the Contractor. Contractor agrees to complete the Close Out within thirty days following substantial completion of the work.
- 4.3.2 To complete Close Out, Contractor must submit the following: 1) Application for Payment; 2) Waiver of Mechanics Lien for each trade and material supplier for the project; 3) an Affidavit of All Bills Paid; 4) the Punch List with signatures from the Parties; and 5) any other documentation reasonably required by the City. If the City has assessed liquidated damages against Contractor for failure to complete the Close Out within thirty days, such damages shall be withheld from the final payment (retainage).
- 4.3.3 After receiving application and supporting documentation, and verifying that all required work has been completed, City will prepare the appropriate documents, obtain the appropriate signatures, and submit the documents to the City of Bryan Finance Division, and Contractor can expect payment of progress payments and retainage within thirty days from the date of City's submission.

4.4 Liquidated Damages –

- 4.4.1 If Contractor fails to Substantially Complete the Work by the deadline for Substantial Completion in the Notice to Proceed, or as amended by change order, the City will assess Contractor \$100 a day for every day until the Certificate of Occupancy is issued and the Work is substantially complete.
- 4.4.2 If the Contractor fails to complete the Close Out within thirty days following the date the Work is substantially complete, the City will assess Contractor \$100 a day for every day until Close Out is complete.
- 4.4.3 These sums represent liquidated damages, as actual damages would be impossible to determine when this Agreement is signed.

ARTICLE 5 **OWNER'S OBLIGATIONS**

- 5.1 Owner shall obtain fire (flood where mandatory) insurance coverage for the appraised value of the structure after construction and maintain said insurance coverage for the duration of the Lien Statement, with the City of Bryan listed as Loss Payee.
- 5.2 Upon receipt of the Certificate of Occupancy and taking possession of the Property, Owner shall perform (or caused to be performed) proper maintenance, repair, and general upkeep of the Property (including any structures thereon) and will comply-with all City Ordinances and Code requirements related to same.
- 5.3 In consideration of the loan funding for the construction of the Owner's property as described above, the Owner hereby releases and discharges the City of Bryan, its agents, employees or servants from liability for any and all damages to the Owner's property, real or personal, or personal injuries resulting from work related to such improvements which may arise as a result of action on the part of the Contractor or independent contractor who provides these services.

ARTICLE 6 **CONTRACTOR'S OBLIGATIONS**

- 6.1 The Contractor agrees to obtain the necessary building permit(s) and begin the Work within ten days of the date of the Notice to Proceed, and to substantially complete the Work within the Contract Time.
- 6.2 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement, unless Contract Documents give other specific instructions concerning these matters.
- 6.3 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, heat, utilities, transportation, and 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 in the Work. Unless otherwise provided in the Contract Documents, the Contractor shall pay sales, consumer, use, and other similar taxes which are legally enacted when bids are

received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, and shall secure the building permit and other permits and governmental fees, licenses, and inspections necessary for the proper execution and completion of the Work.

- 6.4 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out this Agreement. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor assumes the responsibility to maintain sanitary conditions for the entire duration of project. The Contractor shall be responsible to the City for the acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.
- 6.5 The Contractor warrants to the City and Owner that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse or modification not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required or requested by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 6.6 The Contractor shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work. The Contractor shall promptly notify the City if the Drawings and Specifications are observed by the Contractor to be at variance therewith, before bids are submitted.
- 6.7 The Contractor shall review, approve, and submit to the City, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents.
- 6.8 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work the Contractor shall remove from and about the Project, waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. **All waste, demolition materials and construction debris shall be properly disposed of in the Brazos Valley Solid Waste Management Agency (BVSWM) Twin Oaks Landfill or other certified Class I landfill site as approved in writing by the City.** A Construction Waste Manifest for each truck or trailer load, signed by the landfill operator must be presented to the City before the payment of the final draw.
- 6.9 The Contractor shall provide the City access to the work in preparation and progress wherever located. This includes keys to all locked doors at Work site.
- 6.10 To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the Owner, the City, and agents of the City from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly

employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

ARTICLE 7 **CITY'S OBLIGATIONS**

- 7.1** The City shall monitor the progress and quality of the Work, from time to time, during the course of the Work and at any time at the request of the Owner.
- 7.2** Based on the City observations and evaluations of the Contractor's Applications for Payment, the City will review and certify the substantial completion of the work and the amounts due the Contractor and will issue Certificates for Payment in such amounts upon successful review of the Application for Payment.
- 7.3** The City will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor or in situations where the City deems applicable. The City will make initial decisions on all claims, disputes or other matters in question between the Owner and Contractor, but will not be liable for results of any interpretations or decisions rendered in good faith. The Owner Representative's decisions in matters relating to aesthetic effect will be final.
- 7.4** The City has authority to reject Work which does not conform to the Contract Documents. If the Contractor fails to correct rejected Work or persistently fails to carry out the Work in accordance with the Contract Documents, the City, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- 7.5** The City will review, approve, or take other appropriate action upon the Contractor's submittals such as shop drawings, product data, and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

ARTICLE 8 **SUBCONTRACTS**

- 8.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after the execution of the contract documents, shall furnish in writing to the City the names of the Subcontractors, their Federal Identification Number and the Dollar Amount for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the City has made reasonable and timely objection, based upon the Subcontractor or Subcontractor's business being listed in the Lists of Parties Excluded From Federal Procurement or Non-procurement Programs Manual, debarment as a Contractor from the State list of debarred contractors, or being rejected from the City of Bryan's list of Qualified Contractors for any reason.
- 8.2** Contracts between the Contractor and Subcontractors shall: (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the City.

ARTICLE 9
CHANGES IN WORK

- 9.1** Subject to the restrictions of the City’s purchasing policy, state law, and federal regulations, the parties may alter the Work of this Agreement, which includes of additions, deletions, and modifications of the Work as defined by the Contract Documents, as well as adjusting the Contract Sum and Contract Time accordingly by written Change Order signed by the Parties and adopted in accordance with the procedure outlined below. The starting price of any contract required by law to be publicly bid may not be increased by more than 25%.
- 9.1.1 After determining the nature of the change, the City will ask Contractor for a bid for the Change Order, including a price and an estimate on how much additional time, if any, will be necessary.
- 9.1.2 Within ten calendar days, the Contractor must submit a bid for the Change Order stating any additional time needed and an itemized price sheet including:
- i. Cost of materials, equipment, and labor (direct costs)
 - ii. Cost of Overhead - Not to exceed five percent of the total direct costs.
 - iii. Profit - Not to exceed ten percent of the total direct costs.
- 9.1.3 Upon receipt of the bid for the Change Order, the City will approve or deny the Change Order bid in writing, in accordance with the City’s purchasing policy and state law, as they may be amended. Change Orders must be signed by authorized representatives of all three Parties.
- 9.2** Work not directly interfering with, or directly held up by, the proposed change shall continue. Otherwise, no work shall be performed until written approval is received by the Contractor from the City. The parties understand and fully agree that at no time prior to written approval of acceptance is the City obligated to approve a change. Contractor also assumes the responsibility of any work performed prior to receipt of written approval of said Change Order, including cost of work, labor, etc., and may be held responsible for any damages including cost to correct damages done to project by Contractor performing work that was performed without an approved Change Order or Construction Change Directive. Any approved Change Orders shall be attached to, and for all intents and purposes, become a part of this Agreement.

ARTICLE 10
CORRECTION OF WORK

- 10.1** The Contractor shall correct Work rejected by the City within seven calendar days from receipt of written notice from City, or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed, and shall correct any Work found not to be in accordance with the requirements of the Contract Documents within a period of one year from the date of Substantial Completion of this Agreement or by terms of an applicable special warranty required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor.
- 10.2** Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents. Establishment of the one-year time period above relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to

comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

ARTICLE 11 **PROTECTION OF PERSONS & PROPERTY**

- 11.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:
- a) employees on the Work and other persons who may be affected thereby;
 - b) the Work and materials and equipment to be incorporated therein; and
 - c) other property at the site or adjacent thereto.
- 11.2** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss.
- 11.3** The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible except for damage or loss attributable to acts or omissions of the City, its employees, or agents.

ARTICLE 12 **INSURANCE & BONDS**

- 12.1** The Contractor shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance for protection from claims under Workers' Compensation Acts and other Employee Benefit Acts which are applicable, claims for damages because of bodily injury, including death, and from claims for damages, other than to the Work itself, to property which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for no less than limits of liability specified by the City in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under this Agreement. Certificates of such insurance shall be filed with the City prior to the commencement of the Work. Only insurance carriers licensed to do business in the State of Texas with an A.M. Best Rating of "A" will be accepted.
- 12.2** The City of Bryan insurance requirements are as follows:
- a) Statutory Worker's Compensation Insurance, with Employers' Liability Insurance in the amount of \$500,000. In the event any work is sublet, the Contractor shall require the Subcontractor similarly to provide the same coverage and shall himself acquire evidence of such coverage on behalf of the Subcontractor. Waiver of subrogation is required.
 - b) Commercial General Liability Insurance with a \$1,000,000 Combined Single Limit. The policy shall be on the Standard ISO version occurrence form, and shall include coverage

for acts of independent Contractors, and shall name the City of Bryan as an additional insured. **No "claims made" policies are acceptable without prior approval by the City Attorney.**

- c) Automobile Public Liability Insurance with a \$1,000,000 Combined Single Limit on all self-propelled vehicles used in connection with the contract, whether owned, non-owned or hired.
- d) Owner's Protective Liability with a \$1,000,000 Combined Single Limit, naming the City of Bryan as an additional insured. **Required on contracts of \$50,000 or more.**

12.3 The Certificates of Insurance furnished to the City shall contain a provision that coverage under such policies shall not be canceled or materially changed until at least 30 days prior written notice has been given the City of Bryan.

12.4 In accordance with Texas Government Code section 2253.021, if the Contract Sum exceeds \$50,000, a payment bond must be obtained; and if the Contract Sum exceeds \$100,000, a performance bond must also be obtained. The terms of such bonds shall be governed in accordance with Texas law and the requirements of the bonding company.

ARTICLE 13 **BREACH & WAIVER**

13.1 The following is a non-exclusive list of conditions that constitute a breach of this Agreement by Contractor:

- a) defective work not being remedied;
- b) claims filed by third parties;
- c) failure of the Contractor to make payments to subcontractors or suppliers for Work in place for labor, materials, or equipment;
- d) evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- e) failure to begin the Work and/or obtain building permit by the Commencement Date;
- f) evidence that the Work will not be completed within the Contract Time and the retainage will not be adequate to cover the actual or liquidated damages for the anticipated delay;
- g) persistent failure to meet interim deadlines; or
- h) persistent failure to carry out the Work in accordance with the Contract Documents.

13.2 It is a breach of this Agreement if the City fails to timely pay Contractor (i.e. within 30 days following a request for payment) if the request for payment is in order and the relevant work is substantially and satisfactorily complete.

13.3 The making of final payment shall constitute a waiver of claims by the City except those arising from:

- a) liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- b) failure of the Work to comply with the requirements of the Contract Documents; and
- c) terms of special warranties required by the Contract Documents.

13.4 Acceptance of final payment by the Contractor, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 14
REMEDIES FOR BREACH

- 14.1** If the City breaches this Agreement, the Contractor must give the City written notice of the alleged breach and thirty days to cure. If City fails to cure the breach, Contractor may terminate this Agreement and recover from the City payment for Work in place.
- 14.2** If the Contractor breaches this Agreement, the City must give the Contractor written notice of the alleged breach and thirty days to cure. If the Contractor fails to cure the breach, City may deduct the cost thereof, including compensation for the City's services and expenses made necessary thereby, from the payment then or thereafter due the Contractor. Alternatively, at the City's option, and upon certification by the City that sufficient cause exists to justify such action, the City may terminate this Agreement and take possession of the site and of all materials from the Contractor, and may finish the Work by whatever method the City deems expedient and necessary. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor, but if such costs exceed such unpaid balance, the Contractor shall pay the difference to the City.
- 14.3** In addition to any other remedies available under this Agreement, or at law, the City retains the right to remove the Contractor from the List of Qualified Contractors for the following reasons:
- a) Breach of Contract.
 - b) Failure on the part of the Contractor to follow the conditions of this Agreement.
 - c) Failure to act in good faith.
 - d) Failure to meet deadlines and complete work promptly.
 - e) Poor workmanship as determined by City.
 - f) Frequent omissions in construction practices, whether corrected or not.
 - g) Failure to comply with all federal, state, and local regulations.
 - h) Any other breach of this Agreement the City deems applicable.

ARTICLE 15
MISCELLANEOUS PROVISIONS

- 15.1** All written notices required by this Agreement shall be sent by Certified Mail Return Receipt Requested or personally delivered to the addresses below:

City

Community Development Services
Attn: **Eric Barton**
405 W. 28th St.
Bryan, Texas 77803
(979) 209-5185

Owner

Alice L. Taylor
2303 Staunton Drive

Bryan, TX 77803
(979) 822-7534

Contractor

Quality Works Construction. Inc.

ATTN: Misheck Kiragu
16503 North Mist Dr.
Houston, TX 77073
(224) 717-9331

- 15.2 The Contract shall be governed by the laws and ordinances of the City of Bryan and HUD guidelines where applicable.
- 15.3 Should any litigation ensue over the terms and conditions of this Agreement, the laws of the State of Texas shall apply. The venue of any lawsuit filed over the terms and conditions of this Agreement shall be Brazos County, Texas. The prevailing party to any such suit is entitled to attorney's fees and costs in accordance with Texas law.
- 15.4 If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
- 15.5 No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
- 15.6 City's failure to take action to enforce this Agreement in the event of Developer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.

Signed and executed by the Contractor, Owner and City this _____ day of _____, 2016 at Bryan, Brazos County, Texas. This Agreement shall become effective immediately upon its execution.

OWNER

CITY OF BRYAN

Alice L. Taylor, Owner

MAYOR

ATTEST

CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY

STATE OF TEXAS §
 § **ACKNOWLEDGMENT**
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for Brazos County, Texas, on this day personally appeared **Alice L. Taylor**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 2016.

Notary Public in and for
The State of Texas

My commission expires:_____

CONTRACTOR

Misheck Kiragu – Quality Works Construction, Inc.

STATE OF TEXAS §
 § **ACKNOWLEDGMENT**
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for Brazos County, Texas, on this day personally appeared **Misheck Kiragu**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 2016.

Notary Public in and for
The State of Texas

My commission expires:_____