

**WEBB COUNTY
CAA SELF-HELP CENTER
*RECONSTRUCTION (MHU Replacement) CONTRACT***

This contract is entered into between Javier Davila, and Gricelda Davila, a married couple, hereinafter referred to as the "Owner" and CMH Homes, Inc., hereinafter referred to as the "Contractor". The Owner is the recipient of a Reconstruction Home Forgivable Loan. This contract is termed Contract number SHC 7220013 – RECON -02.

WITNESSETH THAT:

Whereas, the Owner desires to engage the contractor to perform certain work on Owner premises located at 118 E. Mendoza St., and being described as follows to wit; Situated in Webb County, Texas and being "The Surface Estate Only" of Lot 6, Block 19, of Pueblo Nuevo Subdivision, a subdivision of Webb County, Texas, according to map or plat thereof recorded in Volume 5 at Page 9 of the Map Records of Webb County, Texas.

Whereas, the Owner desires to construct, rehabilitate, reconstruct, and/or improve the said premises in accordance with the plans specifications and conditions set forth in Exhibits A and B attached hereto, and;

Whereas, insofar as this contract is concerned, the term "Contractor" shall mean the actual construction company selected to carry out all rehabilitation/reconstruction work, the term "Webb County" shall mean the Webb County Community Action Agency, and the term "Owner" shall mean the recipient of a New Construction /Rehabilitation/Reconstruction Forgivable Loan as indicated by their signature in this Contract.

NOW, THEREFORE, the parties do mutually agree as follows:

Section I.

Employment of Contractor: The Owner hereby engages the Contractor to perform the services and supply the materials hereinafter set forth in Exhibit A, attached and made part of this contract.

Section II.

Scope of Services: The Contractor shall perform all of the services and furnish all the materials necessary to make the improvements described in Exhibit A.

Section III.

Standards: The improvements to be made and/or constructed by the Contractor are set forth in Exhibit A and such work shall conform to the standards and conditions set out in Exhibit B, attached and made part of this Contract.

Section IV.

Owner Occupancy: Owner will remain in their Manufactured Housing Unit (MHU) during the MHU Replacement process. Once Utility services have been relocated to the installed replacement (New) MHU, the homeowner will be allowed to relocate along with all desired belongings to the new unit. The homeowner will be given no more than three (3) days to vacate the old MHU before demolition begins. Plumbing and electrical services should generally be operable for at least one hour per day unless impossible during some phase of work, in which case waiver of these requirements may be granted by Webb County.

Section V.

Time of Performance: The Contractor shall, within **3** calendar days from the date of the Notice to Proceed, begin actual performance hereunder and all work to be performed by the Contract shall be completed in accordance with the plans, specifications and conditions **within 45 calendar days thereafter.** (Monday, April 25, 2022 through Thursday, June 9, 2022).

Section VI.

CHANGE ORDERS In the event either party requests a change from the agreed Scope of Work or Quote in this Agreement, a written change order making such a request shall be prepared by Contractor in accordance with the proposed change. If the Owner or Third-Party Inspector ("Inspector") requests a change be executed, Owner or Inspector shall, in a timely manner, inform Contractor (via email) of the request. Contractor shall then prepare a written change order in accordance with said request and submit to Owner for Owner's approval and signature. As soon as Owner signs the change order approving the proposed change, Owner shall submit, via email, the approved/signed order to Contractor. Contractor shall begin performance in accordance with change order only after Contractor receives the written and approved/signed change order. If Contractor requests a change order, Contractor shall prepare a written change order, submit it to Owner for its approval and signature, and the resultant change only will begin on the approved change after Contractor receives the signed change order. Change orders may increase the payment the Owner must pay to Contractor. **IN NO EVENT MAY THE TOTAL COST OF CHANGE ORDERS EXCEED TWENTY-FIVE PERCENT (25%) OF THE TOTAL AMOUNT OF THIS AGREEMENT.**

Section VII.

Subcontracting: The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of any person either directly or indirectly employed by him. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the Owner.

Section VIII.

Insurance: The Contractor shall maintain Contractor's Public Liability and Property Damage Insurance during the term of the contract, and must provide proof of such insurance before the contract is awarded. Furthermore, the contractor hereby indemnifies and holds harmless the County of Webb and its employees and representatives from all liability and property damage, sickness or disease, or contractor's performance under this contract, the financial integrity of Contractor is of interest to the Owner, therefore, subject to the right of Contractor to maintain reasonable deductibles in such amounts as are approved by the Owner. Contractor shall obtain and maintain in full force and effect for the entire duration of this agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company (Best's Key Insurance Company Rating Guide, current edition and/or as amended) and/or otherwise acceptable to Webb County/Webb County Risk Manager, the following types and amounts. The Contractor shall not commence work under this Agreement until it has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, or shall the Contractor allow any subcontractor to commence work on its Subcontract until the insurance required of the Subcontractor has been so obtained and approved.

Compensation Insurance: The Contractor shall procure and shall maintain during the life of this Contract Workers' Compensation Insurance as required by applicable State or Territorial law for all of his/her employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the

Contractor's Workers' Compensation Insurance. In the case where any class of employees engaged in hazardous work on the project under this Contract and is not protected under the Workers' Compensation Statute, The Contractor shall provide and shall cause each Subcontractor to provide adequate employee's liability insurance for the protection of such of his/her employee as are not otherwise protected.

Contractor's Public Liability Insurance: Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amount of not less than \$1,000,000 for bodily injury, including accidental death, to any one person and an amount not less than \$1,000,000 on account of any one occurrence: Property Damage in the amount not less than \$100,000 per occurrence and \$200,000 aggregate; and Vehicle Liability of \$100,000 for any one person or \$200,000 for each occurrence.

Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each of his/her Subcontractor to procure and shall maintain during the life of his /her Subcontractor, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amount specified above or, (2) insure the activities of his/her Subcontractors in his/her policy specified above.

Scope of Insurance and Special Hazards: The insurance required above, shall provide adequate protection for the Contractor and his/her Subcontractor's, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazard which may be encountered in the performance of this Contract.

Builder's Risk Insurance (Fire and Extended Coverage): The Contractor shall procure and shall maintain during the life of this Contract Builder's Risk Insurance (Fire and Extended Coverage on a 100 percent (100%) completed value basis on the insurable portion of the project. The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as the Insured.

Proof of Carriage of Insurance: The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The Insurance covered by this certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the Owner." The Owner, the Contractor, and Subcontractor (as their interests may appear), shall be named as Insureds or Additional Insureds. Webb County, Texas, a political subdivision of the State of Texas shall be named as an additional name insured party with respect to General Liability, Builder's Risk, Fire and/or Automobile Liability. A blanket waiver of subrogation in favor of Webb County, Texas, a political subdivision of the State of Texas shall be contained in the Workers' Compensation, and all liability policies.

A Performance Bond is required for construction work if the contract is in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000) and a Payment Bond is required if a construction contract is in excess of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS \$25,000 in statutory compliance with applicable provisions of the Texas Government Code, and/or Webb County Proposal and/or Bid Specification/Requirements. Bonds must be issued by companies authorized and admitted to do business in the State of Texas and rated A+ or better by A.M. Best Company (Best's Key Rating Guide, current Edition, and as amended) and/or otherwise acceptable to the Owner.

**** THE NOTICE TO PROCEED SHALL NOT BE ISSUED TO THE CONTRACTOR BY WEBB COUNTY WITHOUT THE DELIVERY OF ALL STATUTORILY REQUIRED PERFORMANCE AND/OR PAYMENT BONDS AND/OR PROOF OF ALL REQUIRED INSURANCE POLICIES TO WEBB COUNTY BY CONTRACTOR**

RELATIONSHIP OF PARTIES: Contractor is engaged under this Agreement as an **"INDEPENDENT CONTRACTOR"** and not as an agent or employee of Owner. Contractor is not entitled to benefits of any kind to which Owner's employees are entitled, including but not limited to unemployment compensation, workers' compensation, health insurance, or retirement benefits. Contractor assumes full responsibility for payment of all federal, state and local taxes or contributions, including but not limited to, unemployment insurance, social security, Medicare, and income taxes with respect to Contractor and Contractor's employees. This Agreement does not create a partnership or a joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party has any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against, or in the name of, or on behalf of the other party.

Section IX.

Permits and Licenses: All permits and licenses necessary for the execution and completion of the work shall be secured and paid for by the Contractor, including all mandatory inspections/permits required by Local, Federal and State Agencies.

Section X.

Affirmative Action: The Webb County Community Action Agency to the greatest extend feasible will require each applicant, recipient, contractor or subcontractor, pursuant to Section 3 of the Housing and Urban Development Act of 1968 (12 USC 170 LU), as amended, to offer employment opportunities to lower income residents of the project area, and that contracts for work or materials in connection with the project, to the greatest extend feasible, be awarded to minority owned businesses in the project area which are owned or substantially owned by persons residing in the project area.

Section XI.

Amendment: No change may be made to this contract except by an amendment signed by both parties. In no event shall any change in this Contract be made without the written consent of Webb County.

Section XII.

Compensation: the Owner agrees to pay the Contractor the sum of **Ninety Seven Thousand, Four Hundred Thirty Five Dollars and No Cents (\$ 97,435.00)** for the labor, services and materials to be provided herein.

Section XIII.

Method of Payment: The Owner agrees to pay the Contractor in accordance with either of the following schedules:

- A. Payment in full upon satisfactory completion of entire work, less a 10% retainage of the total contract amount to be paid to contractor 30 days after final inspection and acceptance of the certificate of completion or;
- B. Four (4) or less progress payments and one final retainer payment will be accepted. Progress payments will be based on the percentage of completion of acceptable work and proper installation of materials as certified by the Webb County SHC Construction Coordinator. A progress payment shall not be for less than 20% (twenty percent) of the total construction/reconstruction cost. Final payment will be made upon satisfactory completion

of all construction / reconstruction and demolition work and proper installation of all materials as specified in the plans, specification's and conditions incorporated into this Contract as Exhibit A, less a 10% retainer of the total contract amount to be paid to contractor thirty (30) days after final inspection and acceptance of the certificate of completion. Should any of the progress inspections fail and a second inspection is needed to authorize payment of percentage completed, the contractor will be charged one hundred dollars (\$100.00) per extra inspection resulting from failed inspections.

- C. Final Bills Paid Affidavit Required. *It is hereby expressly acknowledged, consented and agreed to by Contractor that the final payment due for the services rendered pursuant to this Agreement shall not be issued to Contractor until Contractor has signed and sworn to the Final Bills Paid Affidavit confirming payment to each of its subcontractors, laborers, suppliers, and materialmen in full for all labor and materials to Contractor for or in connection, renovation, or repair of improvements on or relating to the subject project/property or any portion thereof, pursuant to and in accordance with Sections 53.085 and 53.259 of the Texas Property Code, and that the intentional, knowing, or reckless making of a false or misleading statement in the Affidavit constitutes a criminal offense under said sections cited herein-above and is a Class A Misdemeanor.*

All payments are subject to satisfactory intermediate and final inspections by Webb County. Moreover, Webb County must complete the applicable Certificate of Completion before each payment. If Webb County and Owner deem it expedient to accept work done at variance with plans and specifications of the contract, an equitable deduction from the contract amount, based solely upon judgement of Webb County shall be made therefrom.

Retainage: Ten percent (10%) of the contract price shall be retained for thirty (30) days after completion to serve as security for any corrective action against defective work or use of improper materials. If defects or deficiencies are found, the Contractor shall be notified of it and shall be required to take prompt appropriate corrective measures.

Payment Authorization: The signature of Owner, Contractor and representative of Webb County shall be required on all authorizations for payment. However, the requirement of signature of Owner may be waived in either of the following two circumstances:

1. Webb County Construction Coordinator has found all work to be acceptable, and the Owner does not comprehend work acceptability; or
2. Owner has either left the city or cannot be located due to failure to notify Webb County of his current address.

- D. **SUBSTANTIAL COMPLETION:** Substantial Completion is the stage in the progress of the completion of the work covered by this Agreement where the work at the Premises is sufficiently complete in accordance with the work specified in "Scope of Work" as set forth in Exhibit A, including completion of all post-construction clean-up on and about the Premises, and all required demolition work, which shall be required to be confirmed in writing as being substantially completed, by the execution and issuance of a Certificate of Substantial Completion that is dated and signed by both the Webb Construction Coordinator and Owner, so that the Owner (or Owner's tenant) can occupy and/or utilize the Premises for the intended use.

Date for Substantial Completion/Liquidated Damages: The date of substantial completion of this construction project shall be **Forty-Five (45) Calendar Days**, after the date of commencement of construction as set forth the written and dated notice to proceed issued by Owner to Contractor.

The time set forth in the proposal for the completion of the Work is an essential element of the Agreement. For each working day under the conditions described in the preceding Paragraph that any work shall remain uncompleted after the expiration of the working days specified in the Agreement, together with any additional working days allowed, the amount per day given in the following schedule will be deducted from the money due or to become due the Contractor, not as a penalty but as liquidated damages.

Said Contractor further agrees to **CONTINUOUSLY PURSUE AND COMPLETE THE WORK** within **FORTY FIVE (45) CALENDAR DAYS**. **Contractor and Owner do hereby acknowledge that "actual damages are uncertain and would be difficult of ascertainment" and therefore both parties do hereby mutually agree that the following stipulated sum of per diem liquidated damages is a reasonable amount. The parties further express and acknowledge that the amount of liquidated damages is meant to be "compensatory" and not "punitive", and Contractor further agrees to pay, as liquidated damages, the sum of TWO HUNDRED DOLLARS (\$200.00) per day for each consecutive day there-in-after the date of substantial completion, as herein provided above.**

Section XIV.

Workmanship: The work to be done by the Contractor shall be executed as specified in the plans, specifications, and conditions and performed in a good and workmanlike manner. All materials used in the construction, rehabilitation, renovation and improvements of the premises shall be new unless otherwise expressly set forth in the specifications.

Section XV.

Workmanship and Materials Guarantees: the Contractor shall guarantee the work performed for a period of 30 days from the date of final acceptance of all work required by the Contract. Any defects that appear within these (30) days and arise out of defective or improper materials or workmanship shall be corrected and made good by the Contractor at **contractor's expense**. Defects due to negligence on the Owner's part shall not be covered. Additionally, electrical, plumbing and roofing shall be guaranteed for a period of one (1) year from the date of final acceptance of all work. Contractor agrees that Webb County shall make determination of defect.

Section XVI.

Inspection of Work: Webb County shall be provided with accessibility to all work areas at all times. Inspections by Webb County shall be promptly made. If any work should be covered up without approval or consent of Webb County, it must, if required by Webb County, be uncovered for examination at the **Contractor's expense**. The owner agrees to provide access to any duly authorized representative of Webb County for the purpose of inspections, payment requisition signatures from the Owner, or for any purpose related to the rehabilitation of the dwelling unit.

Section XVII.

Disputes/Venue: In the event of any minor dispute(s) relating to the program, the work quality, and/ or any matter relating to interpretation of this Contract, the parties shall first attempt to mediate the dispute with the Webb County Community Action Agency for attempted resolution. If the parties are unable to resolve the dispute, then the parties shall proceed to resolve the dispute by litigation in Webb County Courts, where exclusive venue shall lie in the event of any such litigation.

Section XVIII.

Non-liability of Webb County: the parties hereto agree to hold Webb County harmless from any claim or damages arising out of the undertaking and execution of this contract between the contractor and the owner.

Section XIX.

Default: In case of any default by the contractor, the Owner and Webb County shall jointly determine whether to continue under the Contract or to terminate it.

NOTE: Contractor is in default if MHU Replacement and Demolition work is not completed as specified in this Contract within the allotted time period as provided in Section V herein above. The Webb County Community Action Agency and the Owner will determine if the delays were acceptable and honor an extension. In the event that the reasons for the delays are unacceptable, liquid damages shall be assessed and mediation will be attempted or a Webb County Court of law shall determine the extent of the liquid damages.

Section XX.

Termination: Any of the following is a material breach and is a grounds for termination of this contract:

1. Failure of the contractor to proceed with the contract work assigned to him within (3) days having received the Notice to Proceed.
2. Failure of the contractor to attend to the work required for ten (10) consecutive working days constitutes abandonment of the work.
3. Failure of the Contractor to perform in accordance with this contract and its plans, specifications and conditions as contained in Exhibits A and B. In the event that there is a conflict between any provisions of this Contract and its Exhibits, the Webb County Community Action Agency shall determine the appropriate procedures to be followed.
4. Failure of the contractor to complete the work as specified in this Contract within the allotted time period as provided in Section V herein above.

NOTE: The Webb County Community Action Agency shall have the option to extend the period for contract completion when it makes a determination that such extension is necessary. Possible circumstances permitting the extension of said contract are as follows:

- a. The original period of work schedule for said contract is determined to be unreasonable.
- b. The start-up time for the contract in question was erroneous and a later contract start-up time was actually approved by Owner and Webb County.

- c. Inclement weather prevents production for a substantial period during the contract.
- d. Failure of the Contractor to correct poor workmanship or deficiencies in the Workmanship as identified by the owner or the Webb County Community Action Agency. In the event that there is a disagreement concerning a deficiency, the Webb County Community Action Agency shall make the determination of acceptability.
- e. Failure on the part of either the contractor or the Owner to continue with the work in a professional and considerate manner. Problems related to the contractor-owner relationship that result in the inability of the contractor to continue with the Contract will be evaluated and a determination will be made by the Webb County Community Action Agency whether termination of Contract is warranted.

Section XXI.

Procedures on Termination: in the event that a Contract termination is warranted, the following procedures shall be adhered to;

1. The Webb County Community Action Agency on behalf of the Owner shall give the Contractor written notice of termination.
2. If the contract has been terminated, the Owner, in conjunction with the Webb County Community Action Agency, will proceed to re-contract to have the work completed. Any costs involved in the completion of the work shall be paid for from remaining funds owed to the original Contractor at date of termination from the original contract. The Contractor in default, shall be responsible for any damages resulting to the Owner by reason of said, default, including any additional costs incurred in having the work re-contracted to, or completed by, others.

Section XXII.

Notice: Notices given by the owner and or Webb County to the Contractor shall be considered given for the purpose of this Contract if mailed by regular mail or delivered in person to the Contractor at the following address:

| | |
|---------------------------|--|
| Company Name: | CMH Homes Inc. |
| Contractor's Name: | Tony Arauzo |
| Address: | 2272 Austin Hwy, San Antonio, Texas 78218 |
| Email Address: | <u>Tony.Arauzo@ClaytonHomes.com</u> |
| Contact Number: | (210) 654-7999 Office |

Section XXIII.

No Assignment: The contractor shall not assign the Contract unless he obtains written consent from the Owner and Webb County

Section XXIV.

General Provisions:

1. This Contract and its exhibits embody the entire agreement of the parties.
2. The Contractor agrees to perform the work required by this Contract in an occupied property /residence, and the Owner agrees that neither he or any household members, tenants, agents, or employees, will hinder or delay the Contractor's work.
3. Lead-based paint will not be used in the rehabilitation of any structure.
4. The parties further state that to the best of their knowledge, no member of the Webb County Commissioners Court, or the Webb County Community Action Agency, and no other officer, employee, or agent of said authority who exercises any functions or responsibilities in connection with the carrying out of the project to which this Contract pertains, has any interest, personal or financial, direct or indirect, in this Contract.

Section XXV.

Effective Date of contract: This Contract is binding upon parties on date of signatures and actual performance shall begin within ten (10) days of date of the Order to Proceed by Webb County.

Signed this 20th day of April, 2022.



Javier Davila, Owner



Gricelda Davila, Owner

CMH Homes, Inc.



Tony Arauzo, General Manager

WEBB COUNTY, TEXAS



TANO E. TIJERINA
WEBB COUNTY JUDGE

Date: April 20, 2022

ATTESTED:


Margie Ramirez Ibarra RL
Margie Ramirez Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Ray Rodriguez
Ray Rodriguez, Asst. General Counsel
Webb County Civil Legal Division

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s). Passed and approved by the Webb County Commissioners Court on April 11, 2022; Item No. (42).

CONTRACT ATTACHMENTS

ATTACHMENTS:

- Exhibit A: Work Specifications for the work to be done under this Contract.
- Exhibit B: HUD Model Manufactured Home Installation Standards.