

**COUNTY OF HIDALGO
URBAN COUNTY PROJECT**

FIXED-UNIT PRICE CONSTRUCTIONS AGREEMENT

This Fixed-Unit Price Construction Agreement, effective as of January 25, 2005, between the Urban County Program of the County of Hidalgo, Texas ("County") and Proyecto Azteca ("Contractor"), a non-profit corporation, for the construction of fifteen emergency housing Homes ("Homes").

WHEREAS, County obtained a grant from the Department of Housing and Urban Development for the construction of Homes, and

WHEREAS, County accepted bids for the construction of the Homes and the County accepted the bid from Contractor, and

NOW THEREFORE, County and Owner agree as follows:

I. General Terms

Date: 1/25/05

County's Mailing Address:

County of Hidalgo, Urban County Program
1916 Tesoro Blvd
Pharr, Texas 78577

Contractor's Mailing Address:

Proyecto Azteca
PO Box 27
San Juan, TX 78589

Project Description: Construction of fifteen frame pre-manufactured housing Homes with layouts with the specifications set forth on Exhibit A attached hereto and made a part hereof.

Contract Sum:

Stipulated sum: FOUR HUNDRED THIRTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$432,500), as per the Home pricing set forth on Exhibit A

II. Definitions

"Plans" means all plans and specifications for the Improvements (dated and initialed by County and Contractor), including the specifications attached hereto as Exhibit A.

"Improvements" means the Homes to be constructed at Contractor's site according to the Plans.

The "Work" means the physical activities, materials, and equipment relating to the construction of the Improvements.

"Commencement Date" means the date on which both parties have executed this Fixed-Unit Price Agreement.

"Completion Date" means the date of Substantial Completion of a Home and notice to County, but not later than (a) thirty days following the Commencement Date with respect to one Home of each type specified on Exhibit A and (b) thirty days following County's request with respect to the remaining twelve homes, unless extended by the terms of the Contract Documents, force majeure delays, or other delays not within Contractor's control.

"Concealed Conditions" means preexisting physical conditions situated below the surface of the ground, or concealed or unknown conditions in an existing structure, at variance with the conditions indicated in the Contract Documents or differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents.

"Contract Documents" means this Fixed-Unit Price Agreement, the Plans, warranty documents, and any other documents governing the Work (collectively, the "Agreement").

"Scope of Work" means the Work covered by the Contract Documents.

"Substantial Completion" or "Substantially Complete" means a Home has been completed in accordance with the Plans and applicable laws, and the Home is habitable and fit for its intended use except for minor "punch list" items, which are typically completed or cured following the delivery of the Home as specified by County and the taking of possession by County.

II. Precommencement and General Matters

A. Contractor agrees to—

1. Provide certificates of insurance.

2. Obtain Contractor's risk insurance coverage for casualty loss and public liability in reasonable amounts, to protect Contractor and County.

3. Contractor agrees to ensure that it has obtained all licenses, permits or other authorizations necessary for it to manufacture the Homes.

B. The following are stipulated:

1. *Change Orders.* Contractor is under no duty to make any changes in the Plans requested by County.

2. *Consumer Products.* "Consumer Products," as defined by the Federal Trade Commission, are excluded from Contractor's warranty only to the extent individual manufacturers' warranties are passed through Contractor and assigned to County, with a copy received by County. Contractor assigns and passes through to County the manufacturers' warranties on all appliances and equipment. In the case of passed-through and received manufacturers' warranties on Consumer Products, County's recourse is directly to the manufacturer, and Contractor will have no responsibility for them, except for problems relating to Contractor's installation and hookup of the items.

3. *Funding; Commitment of Current Revenues Only.* The parties acknowledge that the funding for the Homes comes from the Grant and from the County's other funds. In the event that, during any term hereof, the governing body of County does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other parties. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.

4. *Inspections.* Contractor will cooperate with County in arranging for inspections by representatives of County of the progress of construction from time to time and will promptly comply with County's requirements or satisfy any objections regarding construction of the Improvements or the progress thereof. County shall be entitled to: (i) use its own personnel; or (ii) to designate an architect, engineer or other third party; to make any inspections or certifications required by County, and County shall not be required to make any payments until County has received inspections and certifications satisfactory to it.

5. *Insurance.* Contractor shall provide: (a) coverage to protect the County against all claims arising from Contractor's performance hereunder; and (b) coverage to protect County from actions by a third party against Contractor as a result of this Agreement. The insurance policy required by this paragraph shall be for not less than the amount required by law or such amounts as the parties shall otherwise agree, whichever is greater, and shall include coverage for liabilities

assumed by this Agreement, as applicable to the obligations of Contractor hereunder. Contractor shall continuously maintain such accident, general liability, worker's compensation, and automobile insurance, as required by law, to include protecting Contractor, its officers, employees, and agents from and against any and all liability caused by or arising out of any aspect of this Agreement and the furnishing of the Homes to County, including the payment of damages and attorneys' fees. Contractor will pay all premiums on all insurance policies required from time to time during the progress of construction, and furnish to County additional and renewal insurance policies with companies, coverage, and amounts satisfactory to County. Contractor shall provide proof of insurance coverage to County upon request. County shall be an additional named insured on all insurance policies required under this provision.

6. *Additional Obligations.* County and Contractor further agree that:

(a) The Improvements will be constructed and fully equipped in a good and workmanlike manner with materials of high quality, using all new materials, strictly in accordance with the plans and specifications approved by County, and that the Improvements will comply with:
(i) all applicable housing quality standards contained applicable Federal and State laws.

(b) No changes will be made in the Plans except on the written approval of the same by County.

(c) Contractor will promptly furnish County, at County's request, after execution thereof, executed copies of all contracts between Contractor and subcontractors, and of all contracts between Contractor and its suppliers, as well as contracts between subcontractors and their suppliers.

(d) Contractor will not suffer or permit any liens against the Homes or any mechanics' or materialmen's lien claims to be filed or otherwise asserted against any property on which the Homes are to be located and will promptly discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof; provided, however, that Contractor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim on furnishing to County such security or indemnity as it may require.

(e) All of the personal property, fixtures, attachments, and equipment delivered on, attached to, or used in connection with the construction of the Improvements or the operation thereof will be kept free and clear of all liens, encumbrances, and security interests whatsoever, and County will be the absolute owner of such personal property, fixtures, attachments, and equipment and Contractor will, from time to time, furnish County with satisfactory evidence of such ownership, including searches of applicable public records.

(f) Contractor will keep accurate and proper books and records of the construction of the Improvements, and will at all reasonable hours allow County or its representatives to examine such books and records and all contracts and bills relating to the construction of the Improvements.

(g) Contractor shall not discriminate against any employee or applicant for employment because of sex, race, creed, color, national origin or handicap and shall take affirmative action to ensure that during the application process and during employment applicants and employees are treated without regard to their race, creed, color, national origin or handicap. Such action shall include, but not be limited to hiring and employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall continuously post in conspicuous places, readily available to employees and applicants for employment, notices in form satisfactory to the County, setting forth the provisions of this non-discrimination provision and such other notices as may be required by law.

(h) Contractor will account separately for all funds received and disbursed by it in relation to this Agreement. Contractor will comply with any specified accounting, reporting, and auditing requirements applicable to any state of federal funds paid to Contractor under this Agreement.

(i) Contractor shall coordinate with Mike Mesa, or such other person as designated by County, with respect to all matters concerning this Agreement.

III. Following Completion of Precommencement Matters

A. Contractor agrees to—

1. Obtain any necessary permits and commence the Work within thirty days after County has completed all of County's obligations under the Precommencement Matters.
2. Diligently prosecute the Work to completion and substantially complete the Work according to the Plans by the Completion Date.
3. Pay all valid bills and charges to subcontractors and other parties for material or labor relating to the Improvements.
4. Keep the Homes and any property on which it installs a Home from claims of liens for labor or material arising directly through Contractor, except that Contractor may reasonably dispute any claim.

B. Contractor agrees not to delay the work.

C. County agrees to—

1. Pay to Contractor the Contract Sum, disbursed according to the following payment schedule, subject to Contractor's satisfaction of its obligations hereunder and in accordance with the terms hereof:

a. 50% of the Contract Sum allocated to a Home shall be payable upon Contractor's completion of 50% of the Work for such Home.

b. 40% of the Contract Sum allocated to a Home shall be payable upon Contractor's Substantial Completion of the Home.

c. 10% of the Contract Sum allocated to a Home shall be payable upon Contractor's final delivery of the Home, following issuance of the certificate of occupancy for such Home.

No such payments shall be due until seven days following County's receipt of written notice from Contractor that the required Work on the Home is complete and ready for County's inspection. In the event County determines upon any such inspection that the Work has not been satisfactorily completed, County may withhold such payment upon written notice to Contractor of the corrections or additional Work needed to earn such payment.

2. Deliver to Contractor, within a reasonable time following inspection of a Home or delivery of a Home to County, written notice of Work not accepted, with specific reasons and reasonable requirements stated for causing the Work to be accepted.

D. County agrees not to delay or interfere with the progress of the Work.

E. Contractor and County agree that—

1. If County, at any time before or during the progress of the Work, wants any modifications made to the Plans ("Changed Work"), County will request in writing that Contractor undertake the Changed Work. If Contractor agrees to do the Changed Work, Contractor may submit to County an estimate of the cost of the Changed Work and an extension of the Completion Date to reflect the additional time required for completing it. If a preapproved written change order including the cost, is not obtained, such changes shall not be made by Contractor. The Contract Sum and the Completion Date will automatically adjust to incorporate any change orders that are approved by writing by County but only to the extent of the cost specified therein.

2. Should Contractor encounter Concealed Conditions, County shall have the option to negotiate with Contractor to equitably adjust the portion of the Contract Sum applicable to the Home by change order or to select a different location for delivery of the Home .

3. Contractor occupies the status of an independent contractor, as that term is defined in the construction industry.

4. Unless otherwise specifically provided, reference to any equipment, material, article, or patented process by trade name, make, or catalog number is regarded as establishing a standard of quality and is not construed as limiting competition. Contractor may, at Contractor's option, use any equipment, material, article, or patented process that is substantially equal to that named.

5. Contractor has the right to subcontract any part or all of the Work, subject to (a) County's prior written approval of the subcontractor and (b) the subcontractor's compliance with all

provisions of this Agreement.

IV. Following Substantial Completion

A. Contractor agrees to—

1. Remove debris and surplus materials occasioned by the Work.
2. Notify County on Substantial Completion of the Work.
3. Deliver possession of the Homes to County on the day specified by County following payment by County of the amount for such Home specified in Section III.C.1.a. and b., subject to the storage and delivery instructions provided by County.
4. Release the Work and any property on which a Home is located from all claims, including claims of subcontractors and materialmen, on receipt of final payment.
5. Store the Homes on Contractor's property, at Contractor's cost and liability for a year or such shorter period as specified by County, and maintain insurance on such Homes as specified by County.
6. During the one year period following Substantial Completion of the Home, move the home to the location within the County of Hidalgo specified by County.

B. County agrees to—

1. Accept delivery of each Home within one year of the Substantial Completion of such Home..
2. Pay to Contractor the final payment for such Home in accordance with the terms of this Agreement.

V. Representations, Warranties, Additional Covenants and Indemnities

A. Contractor represents and warrants to County the following:

1. Contractor has all necessary right, title, license and authority to enter into this Contract and the execution and performance of this Agreement by Contractor have been duly authorized by all necessary laws, resolutions and corporate action.
2. Contractor is, and agrees that throughout the term Contractor shall be, qualified to do business in the State of Texas.

3. There are no taxes due and owing to the State of Texas, the County of Hidalgo, or any political subdivision thereof, and Contractor agrees that Contractor shall not become delinquent on any such taxes during the term of this Agreement.

4. Contractor carries, and agrees that it shall maintain throughout the term of this Agreement, sufficient insurance to provide sufficient and adequate protection to County under the indemnity provision, for any potential liabilities that accrue arising from or related to this Agreement, including without limitation workers compensation and general liability insurance.

5. Contractor does not, and agrees that throughout the term of this Agreement it shall not, discriminate against any employee, subcontractor or other person or entity on account of race, color, handicap, religion, sex, national origin, age, veteran status, disability or political affiliation. Without limiting the generality of the forgoing, Contractor agrees that it shall not discriminate against employees, subcontractors or other persons who have or are perceived to have a handicap because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. Contractor shall post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment and shall throughout the term comply with all applicable non-discrimination laws;

6. Contractor does, and agrees that it will throughout the term of this Agreement, comply with all applicable laws, rules, regulations and ordinances relating to the performance of its obligations hereunder

7. Contractor does, and agrees that it shall throughout the term of this Agreement, assure that all subcontractors, employees and the related service providers are properly certified and qualified.

8. Contractor possesses, and shall maintain throughout the term of this Agreement, any and all necessary licenses and/or permits required by state, federal or local authorities to conduct its business as conducted on the date hereof, to enter into and to perform this Agreement.

9. Contractor possesses the necessary skills and expertise to perform its obligations hereunder.

10. There are no current pending legal or administrative proceedings relating to the conduct of its business.

11. With respect to each Home,

a. The Home is constructed and assembled in accordance with all building codes, standards, requirements and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974, Chapter 1201 of the Texas Occupations Code and any other applicable standards, laws, rules, codes, regulations and ordinances.

b. The Home and all appliances and equipment included in the Home are free from defects in materials or workmanship and are installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment.

c. Installation of the Home will be completed in accordance with all applicable governmental standards, laws, rules, codes, regulations and ordinances.

d. The Home is fit for its intended purpose and suitable for habitation.

e. The Home will be constructed in accordance with the Plans.

Contractor shall promptly repair at its cost and expense any Home not meeting the Plans or otherwise in violation of any of the warranties or agreements contained herein within one year of delivery of such Home to County.

B. Contractor understands that County relied and is relying on Contractor's representations and warranties as a material element of this Agreement.

C. Contractor will notify County immediately upon the termination, cancellation, revocation or suspension of any permits, licenses or eligibility referenced in this Agreement or otherwise required by applicable law, in which event County may, in its sole discretion, immediately terminate this Agreement. In addition, Contractor will notify County within three (3) business days of the filing of any legal or administrative proceeding affecting or in any manner relating to its fulfillment of its obligations hereunder.

D. ***Indemnification.*** Contractor will indemnify and hold County harmless from any and all claims, actions, liability, and expenses (including costs of judgments, settlements, court costs, and attorneys' fees, regardless of the outcome of such claim or action) (i) with respect to the breach, or, with respect to any third party claims, alleged breach, of this Agreement or any representation, warranty, covenant or agreement contained herein or (ii) caused by, resulting from, or alleging negligent or intentional acts or omissions or any failure to perform any obligation undertaken or any covenant in this Agreement, whether such act, omission, or failure was the Contractor's or that of any person providing services hereunder through or for the Contractor. Upon written notice from County, Contractor will resist and defend at its own expense, and by counsel reasonably satisfactory to County, any such claim or action. County shall have the right to retain counsel it selects. This provision shall survive the expiration or earlier termination of this Agreement.

VI. Default and Termination

1. ***Licenses and Permits.*** If any required license or permit has not been issued within ten business days of completion of all Precommencement Matters, County may terminate this Agreement by written notice within ten business days and recover out-of-pocket costs from

Contractor; otherwise, County must give Contractor ten days' written notice and opportunity to cure before terminating this Agreement.

2. *Performance.* If Contractor fails to Substantially Complete the first three Homes within thirty days from the Contract Date, County may unilaterally terminate this Agreement by written notice within forty days from the Contract Date, in which case this Agreement will terminate, and the performing party is entitled to recover reasonable out-of-pocket costs from the nonperforming party.

3. *County's Default.* Each of the following constitutes a material breach of this Agreement by County ("County's Default"): (a) failing to fully and timely perform any covenant of County under this Agreement; (b) making any representation to Contractor found to be materially false, misleading, or erroneous; and (c) substantially breaching any of County's obligations under this Agreement.

4. *Contractor's Default.* Each of the following constitutes a material breach of this Agreement by Contractor ("Contractor's Default"): (a) delaying the Work such that the progress of the Substantial Completion of the Improvements falls more than thirty days behind the time shown for completion of the Work; (b) failing to fully and timely perform any covenant of Contractor under this Agreement; (c) making any representation to County found to be materially false, misleading, or erroneous; (d) substantially breaching any of Contractor's obligations under this Agreement or (e) the Work is not performed in accordance with the applicable standards.

5. *Remedies.* If one party defaults, and the default is not cured within ten days of written notice specifically describing the default, this Agreement may be terminated by written notice from the nondefaulting party to the defaulting party.

6. In the event of such termination, Contractor shall only be entitled to payment of that portion of the Contract Sum applicable to Homes Substantial Completed prior to such termination, and delivered to County within thirty days of such termination; subject to Contractor's compliance with all of the terms of the Agreement applicable to such Home.

VII. Miscellaneous Provisions

1. *Agreement of Parties.* This Agreement together with any attachments, constitute the entire agreement of the parties, and there are no oral agreements.

2. *Amendment of Agreement.* This Agreement may be amended only by an instrument in writing signed by the parties.

3. *Attorney's Fees.* If either party retains an attorney to enforce this Agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees, court and other costs, and related expenses.

4. *Binding Effect.* This Agreement binds, benefits, and may be enforced by the parties and their respective representatives, successors in interest, and, if permitted, their assigns.

5. *Counterparts.* If this Agreement is executed in multiple counterparts, all counterparts taken together will constitute this Agreement.

6. *Relationship of Parties.* Contractor, at all times, will act as an independent contractor and will not act or hold itself out to third parties as an employee or agent of County in the provision of services under the terms of this Agreement. County will not withhold income tax or FICA tax on behalf of Contractor or any of Contractor's partners, employees, subcontractors or agents. In addition, none of the foregoing shall have any claim under this Agreement or otherwise against County for vacation pay, sick leave, unemployment insurance, worker's compensation, retirement benefits, disability benefits, or employee benefits of any kind. Contractor will have the exclusive responsibility for the payment or provision of all such taxes and benefits and arrangement for all insurance coverages for its employees, agents, officers or partners, and shall discharge such obligations fully.

7. *Notices.* Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the Homeed States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

8. *Time.* Time is of the essence. Unless otherwise specified, all references to days mean calendar days. Business days exclude all Saturdays, Sundays, and national holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or national holiday, that obligation is performable on the next business day.

9. *Alternative Dispute Resolution.* The parties agree to mediate in good faith before filing a suit for damages.

10. *Gender and Number.* All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

11. *Conflict with Applicable Law.* Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

12. *Illegal Purposes.* Contractor is prohibited from expending any funds received hereunder for illegal purposes. Further Contractor shall not give to any County employee any gifts, favors or payments.

13. *No Waiver.* No waiver by County of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

14. *Texas Law to Apply.* This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

15. *Additional Documents.* The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

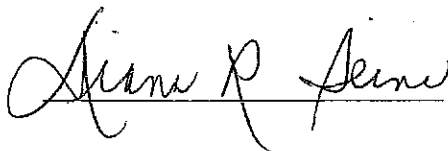
16. *Assignment.* This Agreement shall not be assignable without the prior written consent of County.

17. *Headings.* The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

18. *Authority to Execute.* County and Contractor each represent and warrant that this Agreement constitutes the valid and enforceable obligation of such party in accordance with its terms.

Executed and effective as of the date and year first written above.

COUNTY OF HIDALGO
URBAN COUNTY PROGRAM

By: 

PROYECTO AZTECA

By: 

Its: _____

Exhibit A

See plans attached hereto and made a part hereof.

Each Home shall have:

1. Central air conditioning with units reasonably large enough to cool the entire Home
2. a utility room
3. railings for all stairs
4. 20 yards of caliche for foundation

SS
LZ X
EZIED PIARF
EZIED PIARF