

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CONTRACT NO. 7006000002 FOR

**COMMUNITY DEVELOPMENT PROGRAMS
HURRICANE RITA FUNDING UNDER
DISASTER RELIEF FUND AS PROVIDED BY P.L. 109-234**

STATE OF TEXAS §

COUNTY OF TRAVIS §

SECTION 1. PARTIES TO CONTRACT

This contract and agreement is made and entered into by and between the Texas Department of Housing and Community Affairs, an agency of the State of Texas, referred to as the "Department", and the City of Houston, Texas a political subdivision of the State of Texas, referred to as the "Subrecipient". The parties have severally and collectively agreed and by the execution are bound to the mutual obligations and to the performance and accomplishment of the described tasks as identified within the Texas Action Plan and the City of Houston and Harris County Amendment to the Texas Action Plan approved by the U.S. Department of Housing and Urban Development ("HUD") on April 13, 2007 and August 29, 2007 and hereafter amended and funded under P.L. 109-234.

SECTION 2. CONTRACT PERIOD

This contract and agreement shall commence on August 29, 2007, and shall terminate on August 31, 2010, unless otherwise specifically provided by the terms of this contract.

SECTION 3. SUBRECIPIENT PERFORMANCE

The Subrecipient shall conduct, in a satisfactory manner as determined by the Department, a community development program, referred to as CDBG, for emergency relief in the Hurricane Rita Federally Declared Disaster area as detailed in the Plan. The Subrecipient shall perform all activities in accordance with the terms of the Performance Statement, referred to as Exhibit A; the Budget, referred to as Exhibit B; the Applicable Laws and Regulations, referred to as Exhibit C; the Certifications, referred to as Exhibit D; the assurances, certifications, and all other statements made by the Subrecipient in its application for the project funded under this contract; and with all other terms, provisions, and requirements set forth in this contract. The Subrecipient shall ensure that the persons to benefit from the activities described in Exhibit A, Performance Statement, of this contract are receiving the service or a benefit from the expenditure of funds under this contract. If the persons to benefit from the activities described in Exhibit A are not receiving the service or a benefit, the Subrecipient is liable to repay to the Department any associated disallowed costs.

SECTION 4. DEPARTMENT OBLIGATIONS

A. Measure of Liability

In consideration of full and satisfactory performance of the activities referred to in Section 3 of this contract, the Department shall be liable for actual and reasonable costs incurred by the Subrecipient during the contract period for performances rendered under this contract by the Subrecipient, subject to the limitations set forth in this Section 4.

1. It is expressly understood and agreed by the parties that the Department's obligations under this Section 4 are contingent upon the actual receipt of adequate state or federal funds to meet Department's liabilities under this contract. If adequate funds are not available to make payments under this contract, Department shall notify the Subrecipient in writing within a reasonable time after such fact is determined. Department shall terminate this contract and will not be liable for failure to make payments to the Subrecipient under this contract.
2. The Department shall not be liable to the Subrecipient for any costs incurred by the Subrecipient, or any portion thereof, which has been paid to the Subrecipient or is subject to payment to the Subrecipient, or has been reimbursed to the Subrecipient or is subject to reimbursement to the Subrecipient by any source other than the Department or the Subrecipient.
3. The Department shall not be liable to the Subrecipient for any costs incurred by the Subrecipient which are not allowable costs, as set forth in Section 6 (A) of this contract.
4. The Department shall not be liable to the Subrecipient for any costs incurred by the Subrecipient or for any performances rendered by the Subrecipient which are not strictly in accordance with the terms of this contract, including the terms of Exhibit A, Exhibit B, Exhibit C, and Exhibit D of this contract.
5. The Department shall not be liable to the Subrecipient for any costs incurred by the Subrecipient in the performance of this contract which have not been billed to the Department by the Subrecipient within sixty (60) days following termination of this contract unless otherwise provided for in the Certificate of Expenditures referred to in Section 8 (C) of this contract.
6. The Department shall not be liable for costs incurred or performances rendered by the Subrecipient before commencement of this contract or after termination of this contract, unless the Subrecipient receives written approval from the Department and such costs are specifically identified in Exhibit A, Performance Statement and Exhibit B, Budget, of this contract and are undertaken in accordance with the requirements of 24 CFR Part 570, Subpart I and 24 CFR Part 58.
7. Except for costs reserved in accordance with Section 25 of this contract, the Department shall not be liable for costs incurred and reserved on the Certificate of Expenditure if such costs are not billed to the Department within ninety days after the contract's termination date. Audit funds reserved on the Certificate of Expenditure eligible for reimbursement under the provisions of Section 19 of this contract shall be billed to the Department within nine months after the end of the Subrecipient's fiscal year that follows the termination date of this contract. The Department shall deobligate all reserved funds not requested under this subsection.
8. The Department shall not be obligated to pay for any expenses of the Subrecipient under this Contract that HUD determines are not reimbursable with federal grant funds. Should the Subrecipient receive any federal grant funds from the Department that HUD determines at any time are not subject to payment with federal grant funds, the Subrecipient shall refund to the Department any and all such amounts that have been paid by the Department to the Subrecipient.

B. Excess Payments

The Subrecipient shall refund to the Department any sum of money which has been paid to the Subrecipient by the Department, which the Department determines has resulted in overpayment to the Subrecipient, or which the Department determines has not been spent by the Subrecipient strictly in accordance with the terms of this contract. Such refund shall be made by the Subrecipient to the Department within fifteen (15) working days after such refund is requested by the Department. If the Subrecipient believes the request for refund is made in error, the Subrecipient may appeal the decision to the Department consistent with the rule found in 10 Texas Administrative Code §1.7 whereby Subrecipient would be considered an Applicant for these purposes and the necessary grounds to appeal are found to be valid by way of this contract. No additional funds will be distributed until such repayment is made or appealed.

C. Limit of Liability

Notwithstanding any other provision of this contract, the total of all payments and other obligations incurred by the Department under this contract shall not exceed the sum of forty (40) million dollars.

SECTION 5. METHOD OF PAYMENT

- A. The Subrecipient shall submit to the Department at its offices in Travis County, Texas, a properly completed CDBG Expenditure Report and Draw Request form, as specified by the Department, as often as actually needed. The Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment until the Department has reviewed and approved such Request.
- B. The Subrecipient's requests for the advance of funds shall be limited to the minimum amounts needed for effective operation of programs under this contract, and shall be timed as closely as possible to be in accord with actual cash requirements. The Subrecipient shall establish procedures to minimize the time elapsing between the transfer of funds from the Department to the Subrecipient and shall ensure that such funds are disbursed as soon as administratively possible.
- C. Notwithstanding the provisions of Section 5 (A) of this contract, it is expressly understood and agreed by the parties that payments under this contract are contingent upon the Subrecipient's full and satisfactory performance of its obligations under this contract.
- D. It is expressly understood and agreed by the parties that any right or remedy provided for in this Section 5 or in any other provision of this contract shall not preclude the exercise of any other right or remedy under this contract or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 6. UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES,
AND PROGRAM INCOME

- A. Except as specifically modified by law or the provisions of this contract, the Subrecipient shall comply with the Plan for CDBG Disaster Recovery Grantees under the P.L. 109-234, for matters not addressed therein, with 24 C.F.R. Part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" (referred to as the "Common Rule") as modified by the rules promulgated by the Department of the Governor under the Uniform Grant Management Act (TEX. GOV'T. CODE ANN. Chapter 783; referred to as "UGMS."), in performing this contract. The allowability of costs incurred for performances rendered shall be determined in accordance with Department of Management and Budget (OMB) Circular A-87, as supplemented by UGMS and this contract.
- B. The Subrecipient shall comply with the requirements set forth in 24 C.F.R. Section 570.503(b)(3) to account for program income related to activities financed in whole or in part with funds provided under this contract.
 - 1. The Subrecipient shall maintain records of the receipt, accrual, and disposition of all program income in the same manner as required for all other funds under this contract, and the Subrecipient shall provide reports of program income to the Department with each form submitted by the Subrecipient in accordance with Section 5 of this contract, and at the termination of this contract.
 - 2. Program income earned by the Subrecipient during the period of this contract, if any, shall be retained by the Subrecipient and utilized by the Subrecipient to fund performances specified in this contract, in the manner specified, prior to requesting additional funds from the Department.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. The Subrecipient shall maintain fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner which conforms to OMB Circular A-87, 24 C.F.R. Section 570.490 of the Regulations, and this contract. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this contract. The Subrecipient shall retain such records, and any supporting documentation, for the greater of three years from closeout of this contract or the period required by other applicable laws and regulations as described in the Regulations.
- B. The Subrecipient shall give the United States Department of Housing and Urban Development, the Inspector General, the General Accounting Department, the Auditor of the State of Texas, and the Department, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by the Subrecipient pertaining to this contract. Such rights to access shall continue as long as the records are retained by the Subrecipient. The Subrecipient agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.
- C. The Subrecipient shall include the substance of this Section 7 in all subcontracts.

SECTION 8. REPORTING REQUIREMENTS

- A. The Subrecipient shall submit to the Department such reports on the operation and performance of this contract as may be required by the Department including but not limited to the reports specified in this Section 8.
- B. The Subrecipient shall submit a Certificate of Expenditures to the Department no later than sixty (60) days after the contract termination date or at the conclusion of all contract activities as determined by the Department. The Certificate of Expenditures shall be in a format prescribed by the Department and shall be accompanied by a final Project Completion Report of all activities performed under this contract.
- C. In addition to the limitations on liability otherwise specified in this contract, it is expressly understood and agreed by the parties that if the Subrecipient fails to submit to the Department in a timely and satisfactory manner any report required by this contract, the Department may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by the Subrecipient. If the Department withholds such payments, it shall notify the Subrecipient in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by the Department until such time as the delinquent obligations for which funds are withheld are fulfilled by the Subrecipient.
- D. The Subrecipient is required to immediately report to the Department any incident of criminal misapplication of funds associated with this contract.

SECTION 9. MONITORING

The Department reserves the right to perform periodic on-site monitoring of the Subrecipient's and the Subrecipient's subSubrecipients' compliance with the terms and conditions of this contract, and of the adequacy and timeliness of the Subrecipient's and the subSubrecipients' performances under this contract. After each monitoring visit, the Department shall provide the Subrecipient with a written report of the monitor's findings. If the monitoring reports notes deficiencies in the Subrecipient's or subSubrecipients' performances under the terms of this contract, the monitoring report shall include requirements for the timely correction of such deficiencies by the Subrecipient and subSubrecipients. Failure by the Subrecipient or subSubrecipients to take action specified in the monitoring report may be cause for suspension or termination of this contract, as provided in Sections 17 and 18 of this contract.

SECTION 10. INDEPENDENT SUBRECIPIENT

It is expressly understood and agreed by the parties that the Department is contracting with the Subrecipient as an Independent Subrecipient, and that the Subrecipient, as such, agrees to the extent allowed by law to hold the Department harmless and to indemnify the Department from and against any and all claims, demands, and causes of action of every kind and character which may be asserted by any third party occurring or in any way incident to, arising out of, or in connection with the services to be performed by the Subrecipient under this contract.

SECTION 11. SUBCONTRACTS

- A. Except for subcontracts to which the federal labor standards requirements apply, the Subrecipient may subcontract for performances described in this contract without obtaining the Department's prior written approval. The Subrecipient shall only subcontract for performances described in this contract to which the federal labor standards requirements apply after the Subrecipient has submitted a SubSubrecipient Eligibility form, as specified by the Department, for each such proposed subcontract, and the Subrecipient has obtained the Department's prior written approval, based on the information submitted, of the Subrecipient's intent to enter into such proposed subcontract. The Subrecipient, in subcontracting for any performances described in this contract, expressly understands that in entering into such subcontracts, the Department is in no way liable to the Subrecipient's subSubrecipient(s).
- B. In no event shall any provision of this Section 11, specifically the requirement that the Subrecipient obtain the Department's prior written approval of a subSubrecipient's eligibility, be construed as relieving the Subrecipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all of the terms of this contract, as if such performances rendered were rendered by the Subrecipient. The Department's approval under Section 11 does not constitute adoption, ratification, or acceptance of the Subrecipient's or subSubrecipient's performance. The Department maintains the right to insist upon the Subrecipient's full compliance with the terms of this contract, and by the act of approval under Section 11, the Department does not waive any right of action which may exist or which may subsequently accrue to the Department under this contract.
- C. The Subrecipient shall comply with State of Texas Action Plan for CDBG Disaster Recovery Grantees under the Department of Defense Appropriations Act, 2006 dated as of May 9, 2006, 24 CFR Section 85.36, this contract and all applicable federal, state and local laws, regulations, and ordinances for making procurements under this contract.
- D. The Subrecipient shall maintain a retainage in the amount of five percent (5%) of each construction or rehabilitation subcontract entered into by the Subrecipient until the Department determines that the Federal labor standards requirements applicable to each such subcontract have been satisfied.
- E. The Subrecipient shall include language in any subcontract that provides the Department the ability to directly review, monitor, or audit the operational and financial performance or records of work performed under this contract.
- F. The Subrecipient shall include in any subcontracts that failure to adequately perform under this contract may result in penalties up to and including debarment from performing additional work for the Department.

SECTION 12. CONFLICT OF INTEREST

- A. The Subrecipient shall ensure that no employee, officer, or agent of the Subrecipient shall participate in the selection, or in the award or administration of a subcontract supported by funds provided if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: 1) The employee, officer, or agent; 2) any member of his or her immediate family; 3) his or her partner; or, 4) any organization which employs, or is about to

employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. The Subrecipient shall comply with Chapter 171, Texas Local Government Code and 24 C.F.R. 570.489(h) of the federal regulations.

- B. In all cases not governed by Subsection (A) of this Section, no persons specified in subsection (C) of this Section who exercise or have exercised any functions or responsibilities with respect to the activities assisted under this contract or any other CDBG contract or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have any interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.
- C. The conflict of interest provisions of Subsection (B) apply to any person who is an employee, agent, consultant, Department, or elected official or appointed official of the Subrecipient or of a subSubrecipient of the Subrecipient.
- D. The Subrecipient shall include the substance of this section in all subcontracts.

SECTION 13. NONDISCRIMINATION, RELIGIOUS ACTIVITY, AND FAITH-BASED ORGANIZATIONS

- A. The Subrecipient shall ensure that no person shall on the ground of race, color, national origin, religion, sex, age, or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or be denied access to any program or activity funded in whole or in part with funds made available under this contract.
- B. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in this program and activities funded under this contract. The Subrecipient receiving funds under this contract shall not discriminate against an organization on the basis of the organizations' religious character or affiliation. None of the performances rendered by the Subrecipient under this contract shall involve, nor shall any portion of the funds received by the Subrecipient under this contract, be used to engage in inherently religious activities. Funds made available under this contract may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Funds made available under this contract may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities. Where a structure is used for both eligible and inherently religious activities, funds made available under this contract may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to funds provided under this contract. The Subrecipient shall comply with the regulations promulgated by the U.S. Department of Housing and Urban Development on faith-based activities at 24 C.F.R. Sec. 570.200(j).

SECTION 14. LEGAL AUTHORITY

- A. The Subrecipient assures and guarantees that the Subrecipient possesses the legal authority to enter into this contract, receive funds authorized by this contract, and to perform the services the Subrecipient has obligated itself to perform.
- B. The person or persons signing and executing this contract on behalf of the Subrecipient, or representing themselves as signing and executing this contract on behalf of the Subrecipient, do hereby warrant and guarantee that he, she or they have been duly authorized by the Subrecipient to execute this contract on behalf of the Subrecipient and to validly and legally bind the Subrecipient to all terms, performances, and provisions set forth.
- C. The Department shall have the right to suspend or terminate this contract if there is a dispute as to the legal authority of either the Subrecipient or the person signing this contract to enter into this contract or to render performances. The Subrecipient is liable to the Department for any money it has received from the Department for performance of the provisions of this contract, if the Department has suspended or terminated this contract for reasons enumerated in this Section 14.

SECTION 15. LITIGATION AND CLAIMS

The Subrecipient shall give the Department immediate notice in writing of 1) any action, including any proceeding before an administrative agency, filed against the Subrecipient arising out the performance of any subcontract; and 2) any claim against the Subrecipient, the cost and expense of which the Subrecipient may be entitled to be reimbursed by the Department. Except as otherwise directed by the Department, the Subrecipient shall furnish immediately to the Department copies of all pertinent papers received by the Subrecipient with respect to such action or claim.

SECTION 16. CHANGES AND AMENDMENTS

- A. Except as specifically provided otherwise in this contract, any alterations, additions, or deletions to the terms of this contract shall be by amendment in writing and executed by both parties to this contract and subject to the provisions of the section titled "Contract Amendments" under the State of Texas Action Plan for CDBG Disaster Recovery Grantees under P.L. 109-234.
- B. It is understood and agreed by the parties that performances under this contract must be rendered in accordance with the Plan, the Regulations of the Department, assurances and certifications made to the Department by the Subrecipient, and the assurances and certifications made to the United States Department of Housing and Urban Development by the Departments as part of the Plan. This contract may be further be amended in the following manner: The Department may from time to time during the period of performance of this contract issue policy directives which serve to establish, interpret, or clarify performance requirements under this contract.
- C. Any alterations, additions, or deletions to the terms of this contract which are required by changes in Federal or State law or regulations are automatically incorporated into this contract without written amendment, and shall become effective on the date designated by such law or regulation.

- D. Notwithstanding Subsection A of this Section 16, the Subrecipient may make transfers of funds between or among budget categories of Exhibit B, Budget, provided that the cumulative dollar amount of all transfers among direct budget categories is equal to or less than five percent (10%) of the total amount of this contract as specified in Section 4(C) herein and a Budget Modification Form is submitted to the Department for each transfer. Such transfers may only be made after receiving approval from the Department of each Budget Modification Form. Transfers that exceed five percent (10%) must be approved by the Governing Board of the Department.

SECTION 17. SUSPENSION

Notwithstanding the provisions of TEX. GOV'T. CODE ANN. Chapter 2251, in the event the Subrecipient fails to materially comply with any term of this contract, the Department may, upon written notification to the Subrecipient, suspend this contract in whole or in part and withhold further payments to the Subrecipient, and prohibit the Subrecipient from incurring additional obligations of funds under this contract.

SECTION 18. TERMINATION

- A. The Department shall have the right to terminate this contract, in whole or in part, at any time before the date of completion specified in Section 2 of this contract whenever the Department determines that the Subrecipient has failed to comply with any material term of this contract. The Department shall notify the Subrecipient in writing of such determination prior to the thirtieth (30th) day preceding the date of termination; the reasons for such termination; the effective date of such termination; and in the case of partial termination, the portion of the contract to be terminated.
- B. Either of the parties to this contract shall have the right to terminate this contract, in whole or in part, when both parties agree that the continuation of the activities funded under this contract would not produce beneficial results commensurate with the further expenditure of funds; provided that both parties agree, in writing, upon the termination conditions, including the effective date of such termination; and in the case of partial termination, the portion of the contract to be terminated.
- C. Upon termination or receipt of notice to terminate, whichever occurs first, the Subrecipient shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts related to the performance of this contract or the part of this contract to be terminated, and shall cease to incur costs thereunder. The Department shall not be liable to the Subrecipient or to the Subrecipient's creditors for costs incurred after termination of this contract.
- D. Notwithstanding any exercise by the Department of its right of suspension under Section 17 of this contract, or of early termination pursuant to this Section 18, the Subrecipient shall not be relieved of any liability to the Department for damages due to the Department by virtue of any breach of this contract by the Subrecipient. The Department may withhold payments to the Subrecipient until such time as the exact amount of damages due to the Department from the Subrecipient is agreed upon or is otherwise determined.

SECTION 19. AUDIT

A. The Subrecipient shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this contract, subject to the following conditions and limitations:

1. (a) **Audit Required-Federal Awards.** Subrecipients expending \$500,000 or more in Federal financial assistance for any fiscal year end, beginning with fiscal year ending January 31, 2004 and after, shall have a single audit conducted in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501, and OMB Circular No. A-133 - Revised as of June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations." Alternatively, the Department may require a program specific audit for certain situations and when the Single Audit Act does not apply. For purposes of this Section 19, "Federal financial assistance" means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in §__205 (h) and §__205 (i). The term includes awards of Federal financial assistance received directly from Federal agencies, or indirectly through other units of State and local government.
(b) **Audit Required-State Awards.** Subrecipients that expended \$500,000 or more in State Awards for any fiscal year, beginning with fiscal years ending January 31, 2004 and after, shall have a single or program specific audit conducted for that year in accordance with provisions of the State of Texas Single Audit Circular. For purposes of this Section 19, "State Award" means state financial or cost reimbursement contracts received directly from state awarding agencies or indirectly from pass-through entities under a federal block grant. State award does not mean state financial assistance and state cost-reimbursement contracts received directly or indirectly under the terms of other federal awards. State awards do not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. State awards also do not include federal awards as defined by OMB Circular A-133.
2. Notwithstanding Section 4(A)(5) and Section 4(A)(6), the Subrecipient shall utilize funds budgeted under this contract to pay for that portion of the cost of such audit services properly allocable to the activities funded by the Department under this contract, provided however that the Department shall not make payment for the cost of such audit services until the Department has received a satisfactory audit report and invoice, as determined by the Department, from the Subrecipient; the invoice submitted for reimbursement should clearly show the percentage of cost relative to the total single audit cost of the audit services.
3. The Subrecipient shall submit one (1) copy of the report of such audit to the Department within thirty (30) days after the completion of the audit, but no later than nine (9) months after the end of the audit period. The Subrecipient shall ensure that the audit report is made available for public inspection within thirty (30) days after completion of the audit. Audits performed under Subsection A of this Section 19 are subject to review and resolution by the Department or its authorized representative. The Subrecipient shall ensure the Audit Report submitted include either in the report or as part of the cover letter, auditor and Subrecipient contact information, including contact person, mailing address, telephone, fax number and e-mail address. Failure by the Subrecipient to submit a completed single audit package as described in the audit requirements by the required due date could affect funding for all existing contracts, eligibility to apply under

the Texas Community Development Program, and the issuance of new contracts for funding awards.

4. Notwithstanding the requirements in paragraphs "A-1 through 3" of this Section 19, the Subrecipient shall submit within 60 days of its fiscal year end an Audit Certification Form (ACF) or a similar statement. The ACF or statement will include information indicating if the Subrecipient has or has not met the \$500,000 expenditure threshold that will require a Single Audit Report in accordance with the Uniform Grant Management Standards, Subpart C-Post Award Requirements. Failure by the Subrecipient to submit an ACF or a similar statement or failure to submit a completed single audit package as described in the audit requirements by the required due date could affect funding for all existing contracts.
- B. Notwithstanding Subsection A of this Section 19, the Department reserves the right to conduct an annual financial and compliance review of funds received and performances rendered under this contract. The Subrecipient agrees to permit the Department or its authorized representative to audit the Subrecipient's records and to obtain any documents, materials, or information necessary to facilitate such review.
 - C. The Subrecipient understands and agrees that it shall be liable to the Department for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this contract. The Subrecipient further understands and agrees that reimbursement to the Department of such disallowed costs shall be paid by the Subrecipient from funds which were not provided or otherwise made available to the Subrecipient under this contract.
 - D. The Subrecipient shall take such action to facilitate the performance of such audit or audits conducted pursuant to this Section 19 as the Department may require of the Subrecipient.
 - E. The Subrecipient shall procure audit services through an open, competitive process at least once every four years. The auditor shall retain working papers and reports for a minimum of five years after the date of issuance of the auditor's report to the auditee. Audit working papers shall be made available upon request to the Department at the completion of the audit, as a part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right to obtain copies of working papers, as is reasonable and necessary.
 - F. Subrecipient understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Department, or any successor agency, to conduct an audit or investigation in connection with those funds. Subrecipient further agrees to cooperate fully with the State Auditor's Department or its successor in the conduct of the audit or investigation, including providing all records requested. Subrecipient will ensure that this clause concerning the authority to audit funds received indirectly by subSubrecipients through Subrecipient and the requirement to cooperate is included in any subcontract it awards.

SECTION 20. ENVIRONMENTAL CLEARANCE REQUIREMENTS

- A. The environmental effects of each activity carried out with funds provided under this contract must be assessed in accordance with the provisions of National Environmental Policy Act of 1969 and the related activities listed in HUD's implementing regulations at 24 C.F.R. Part 58. Each such activity must have an environmental review completed and support documentation prepared complying with the National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58. No funds may be committed to an activity before the

completion of the environmental review process, including the requirements of 24 C.F.R. Sec. 58.6.

- B. The Department is responsible for release of funds requests and is the Responsible Entity (RE) that assumes all environmental responsibilities of the U.S. Department of Housing and Urban Development pursuant to 24 CFR Part 58, "Subpart H – Release of Funds for Particular Projects." The Subrecipient is not delegated authority to become an RE and make environmental determinations and therefore, shall assist the Department in completing the environmental review by providing all relevant information needed to perform an environmental review, or carry out mitigating measures required, or selecting an alternate property for assistance. The Subrecipient shall attend implementation training for environmental assessments.
- C. The assessments must be satisfactory to the Department. This contract is conditional in nature and does not grant the Subrecipient legal claim to any CDBG funds for a specific project or site until the environmental review process is approved by the Department. The agreement to provide funds to the project is conditional on the Department's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.
- D. Funds provided under this contract may be obligated and expended before the actions specified in this Section occur only for the following eligible activities:
 - 1. The payment of reasonable planning and administrative costs related to the project;
 - 2. Environmental studies, including environmental clearance activities required by this Section;
 - 3. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration; and
 - 4. Any of the categorical exclusions listed in Section 24 CFR Sec. 58.35(a) provided that there are no circumstances which require compliance with any other federal laws and authorities cited in Sec. 58.5.

SECTION 21. CITIZEN PARTICIPATION REQUIREMENTS

Citizen involvement shall be conducted in accordance with the Plan. Failure to adhere to citizen participation and/or complaint requirements identified in the Plan shall constitute a material breach of this contract.

SECTION 22. DEBARMENT

By signing this contract, the Subrecipient certifies that it will not award any funds provided under this contract to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. The Subrecipient shall receive the certification provided by the Department from each proposed subSubrecipient under this contract and its principals.

SECTION 23. POLITICAL AID AND LEGISLATIVE INFLUENCE PROHIBITED

- A. None of the funds provided under this contract shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of the Subrecipient from furnishing to any member of its governing body upon request, or to any other local or state official or employee or to any citizen information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official for supplying such information shall subject the person initiating the action to immediate dismissal from employment.
- B. No funds provided under this contract may be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of the Subrecipient, the State of Texas, or the government of the United States.

SECTION 24. ADMINISTRATIVE COSTS DRAWDOWN

The Department has established reasonable drawdown thresholds for administrative costs that are commensurate with the progress of the project and the associated administrative duties. The Subrecipient shall use the following thresholds when requesting administrative funds:

Threshold 1: Allows the Subrecipient to draw up to ten percent (10%) of the actual allowable administrative costs incurred at the initial stage of the Contract, with the remaining ninety percent (90%) funded on a pro-rata basis, based on project fund disbursement.

SECTION 25. VENUE

For purposes of litigation pursuant to this contract, venue shall lie in Travis County, Texas.

SECTION 26. ORAL AND WRITTEN AGREEMENTS

- A. All oral and written agreements between the parties to this contract relating to the subject matter of this contract that were made prior to the execution of this contract have been reduced to writing and are contained in this contract.
- B. The attachments enumerated and denominated below are hereby made a part of this contract, and constitute promised performances by the Subrecipient in accordance with Section 3 of this contract:
 - 1. Exhibit A, Performance Statement, 1 Page
 - 2. Exhibit B, Budget, 2 Pages
 - 3. Exhibit C, Applicable Laws and Regulations, 3 Pages
 - 4. Exhibit D, Certifications, 2 Pages

WITNESS OUR HANDS EFFECTIVE «Start_Date».

Signatory
City Of Houston

Approved and accepted on behalf of the Texas Department of Housing and Community Affairs.

Michael G. Gerber
Texas Department of Housing and Community Affairs

This contract was approved by the Board of Directors on _____, and is not effective unless signed by the Executive Director of the Texas Department of Housing and Community Affairs or his authorized designee.

EXHIBIT A

CONTRACT NO. 7006000002

PERFORMANCE STATEMENT

City of Houston

The Subrecipient shall carry out the following activities in the target area identified in the Plan related to the Hosuton and Harris County Amendment for the dedicated funds in the amount of forty (40) million dollars. The persons to benefit from the activities described in this Performance Statement must be receiving service or a benefit from the use of the new or improved facilities and activities for the contract obligations to be fulfilled. The Subrecipient shall ensure that the amount of funds expended for each activity described does not exceed the amount specified for such activity in Exhibit B, Budget.

The attached plan is incorporated herin by reference and includes the scope of the work to be performed.

Project Description

The Subrecipient will provide program services to the City of Houston through two different program activities: \$20,000,000 is budgeted for the Multi-Family Housing Community program through the Houston Police Department and \$20,000,000 for the Apartments to Standards program for rehabilitation of multifamily housing stock. Both activities will meet the Low to Moderate Income CDBG National Objective. Program services must be for needs resulting from Hurricane Katrina, Rita or Wilma.

Administration

The Subrecipient may expend funds provided under this contract for all eligible project-related administration activities and the State of Texas Action Plan for CDBG Disaster Recovery Grantees under the Department of Defense Appropriations Act, 2006 dated as of May 9, 2006 in an amount that is not more than **two-million and No/100 Dollars (\$2,000,000)**.

The Subrecipient shall draw funds in accordance with Section 5 and 26, Administrative Costs Drawdown, and must ensure that the amount of the Department funds expended for all eligible project-related administration activities, including the required annual program compliance and fiscal audit, does not exceed the amount specified for administration in Exhibit B, Budget.

EXHIBIT B

**CONTRACT NO. 7006000002
BUDGET**

City of Houston

<u>LINE CATEGORIES</u>	<u>CONTRACT FUNDS</u>	<u>OTHER FUNDS</u>	<u>TOTAL</u>
1. Multi-Family Housing Community Program	\$20,000,000	\$	\$20,000,000
2. Apartments to Standards Program	\$20,000,000	\$	\$20,000,000
3. General Administration	\$ 2,000,000	\$	\$ 2,000,000
TOTALS	<u>\$42,000,000</u>	<u>\$ 0</u>	<u>\$42,000,000</u>

EXHIBIT C

THE APPLICABLE LAWS AND REGULATIONS (unless specifically waived)

The Subrecipient shall comply with Section 3 of this contract and with the OMB Circular and federal regulations specified in Section 6 of this contract; Cash Management Improvement Act regulations (31 C.F.R. Part 205); and with all other federal, state, and local laws and regulations applicable to the activities and performances rendered by the Subrecipient under this contract including but not limited to the laws, and the regulations promulgated thereunder specified in Section I through VII of this Exhibit C.

I. CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964, (42 U.S.C. Section 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. Sec 3601 et seq.), as amended, and implementing regulations, and it will affirmatively further fair housing;

Executive Order 11063, as amended by Executive Order 12259, and 24 C. F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063". The failure or refusal of the Subrecipient to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. Sec. 6101 et seq.);

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this contract, the Subrecipient understands and agrees that the activities funded shall be operated in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. Sec. 4151 et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

II. LABOR STANDARDS

The Davis-Bacon Act, as amended (40 U.S.C. Secs. 276a - 276a-5);

The Contract Work Hours & Safety Standards Act (40 U.S.C. 327 et seq.);

The Copeland "Anti-Kickback" Act (18 U.S.C. Sec. 874).

III. EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Sec.1701u).

IV. LEAD-BASED PAINT

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Sec. 4831(b)) and the procedures established by the Department thereunder.

V. ENVIRONMENTAL LAW AND AUTHORITIES

“Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities,” 24 CFR Part 58, and the laws and authorities specified at 24 CFR Sections 58.5 and 58.6.

VI. ACQUISITION/RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Sec. 4601 et seq.), 24 C.F.R. Part 42, and 24 C.F.R. Section 570.606.

VII. FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, and 24 CFR Sec. 200(j)

EXHIBIT D
CERTIFICATIONS

I, _____ Name _____ of
administrator _____

CERTIFY WITH RESPECT TO THE EXPENDITURE OF FUNDS PROVIDED UNDER THIS CONTRACT BY THE CITY OF HOUSTON, THAT;

(1) IT WILL MINIMIZE DISPLACEMENT OF PERSONS AS A RESULT OF ACTIVITIES ASSISTED WITH SUCH FUNDS;

(2) THE PROGRAM WILL BE CONDUCTED AND ADMINISTERED IN CONFORMITY WITH THE CIVIL RIGHTS ACT OF 1964 (42 U.S.C. SEC. 2000a et seq.), SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (12 USC 1701u), THE FAIR HOUSING ACT (42 U.S.C. SEC 3901 et seq.), AND IMPLEMENTING REGULATIONS; AND THAT IT WILL AFFIRMATIVELY FURTHER FAIR HOUSING, AS SPECIFIED BY THE DEPARTMENT;

(3) IT WILL PROVIDE FOR OPPORTUNITIES FOR CITIZEN PARTICIPATION, HEARINGS AND ACCESS TO INFORMATION WITH RESPECT TO ITS DISASTER RELIEF PROGRAM, AS SPECIFIED BY THE DEPARTMENT;

(4) FUNDS WILL BE USED SOLELY FOR NECESSARY EXPENSES RELATED TO DISASTER RELIEF, LONG-TERM RECOVERY, AND RESTORATION OF INFRASTRUCTURE IN THE MOST IMPACTED AND DISTRESSED AREAS RELATED TO THE CONSEQUENCES OF HURRICANE RITA;

(5) IT WILL GIVE MAXIMUM FEASIBLE PRIORITY TO ACTIVITIES THAT WILL BENEFIT LOW-AND MODERATE-INCOME FAMILIES;

(6) THE AGGREGATE USE OF FUNDS PROVIDED UNDER THIS CONTRACT SHALL PRINCIPALLY BENEFIT LOW-AND-MODERATE INCOME FAMILIES IN A MANNER THAT ENSURES THAT AT LEAST 50 PERCENT OF THE AMOUNT IS EXPENDED FOR ACTIVITIES THAT BENEFIT SUCH PERSONS;

(7) IT WILL NOT ATTEMPT TO RECOVER ANY CAPITAL COSTS OF PUBLIC IMPROVE-MENTS ASSISTED IN WHOLE OR IN PART WITH SUCH FUNDS BY ASSESSING ANY AMOUNT AGAINST PROPERTIES OWNED AND OCCUPIED BY PERSONS OF LOW AND MODERATE INCOME, INCLUDING ANY FEE CHARGED OR ASSESSMENT MADE AS A CONDITION OF OBTAINING ACCESS TO SUCH PUBLIC IMPROVEMENTS UNLESS (A) SUCH FUNDS ARE USED TO PAY THE PROPORTION OF SUCH FEE OR ASSESSMENT THAT RELATED TO THE CAPITAL COSTS OF SUCH PUBLIC IMPROVEMENTS THAT ARE FINANCED FROM REVENUE SOURCES OTHER THAN SUCH FUNDS; OR (B) FOR PURPOSES OF ASSESSING ANY AMOUNT AGAINST PROPERTIES OWNED AND OCCUPIED BY PERSONS OF MODERATE INCOME, THE SUBRECIPIENT CERTIFIES THAT IT LACKS SUFFICIENT FUNDS UNDER THIS CONTRACT TO COMPLY WITH THE REQUIREMENTS OF CLAUSE (A).

(8) IN THE EVENT THAT DISPLACEMENT OF RESIDENTIAL DWELLINGS WILL OCCUR IN CONNECTION WITH A PROJECT ASSISTED WITH TCDP FUNDS, IT WILL

FOLLOW A RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN, AS SPECIFIED BY THE DEPARTMENT.

(9) IT SHALL ADOPT AND ENFORCE A POLICY PROHIBITING THE USE OF EXCESSIVE FORCE BY LAW ENFORCEMENT AGENCIES WITHIN ITS JURISDICTION AGAINST ANY INDIVIDUAL ENGAGED IN NONVIOLENT CIVIL RIGHTS DEMONSTRATIONS AND A POLICY OF ENFORCING APPLICABLE STATE AND LOCAL LAWS AGAINST PHYSICALLY BARRING ENTRANCE TO OR EXIT FROM A FACILITY OR LOCATION WHICH IS THE SUBJECT OF SUCH NONVIOLENT CIVIL RIGHTS DEMONSTRATION WITHIN ITS JURISDICTION.

(10) IT WILL NOT USE FUNDS PROVIDED UNDER THIS CONTRACT FOR ANY ACTIVITY IN AN AREA DELINEATED AS A SPECIAL FLOOD HAZARD AREA IN FEMA'S MOST CURRENT FLOOD ADVISORY MAPS UNLESS IT ALSO ENSURES THAT THE ACTION IS DESIGNED OR MODIFIED TO MINIMIZE HARM TO OR WITHIN THE FLOODPLAIN IN ACCORDANCE WITH EXECUTIVE ORDER 11988 AND 24 CFR PART 55.

Name

Date

**CERTIFICATION REGARDING LOBBYING FOR
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

THE UNDERSIGNED CITY OF HOUSTON

CERTIFIES, TO THE BEST OF ITS KNOWLEDGE AND BELIEF, THAT:

(1) NO FEDERAL APPROPRIATED FUNDS HAVE BEEN PAID OR WILL BE PAID, BY OR ON BEHALF OF THE UNDERSIGNED, TO ANY PERSON FOR INFLUENCING OR ATTEMPTING TO INFLUENCE AN DEPARTMENT OR EMPLOYEE OF AN AGENCY, A MEMBER OF CONGRESS, AN DEPARTMENT OR EMPLOYEE OF CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH THE AWARDING OF ANY FEDERAL CONTRACT, THE MAKING OF ANY FEDERAL GRANT, THE MAKING OF ANY FEDERAL LOAN, THE ENTERING INTO OF ANY COOPERATIVE AGREEMENT, AND THE EXTENSION, CONTINUATION, RENEWAL, AMENDMENT, OR MODIFICATION OF ANY FEDERAL CONTRACT, GRANT, LOAN, OR COOPERATIVE AGREEMENT.

(2) IF ANY FUNDS OTHER THAN FEDERAL APPROPRIATED FUNDS HAVE BEEN PAID OR WILL BE PAID TO ANY PERSON FOR INFLUENCING OR ATTEMPTING TO INFLUENCE AN DEPARTMENT OR EMPLOYEE OF ANY AGENCY, A MEMBER OF CONGRESS, AN DEPARTMENT OR EMPLOYEE OF CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH THIS FEDERAL CONTRACT, GRANT, LOAN, OR COOPERATIVE AGREEMENT, THE UNDERSIGNED SHALL COMPLETE AND SUBMIT STANDARD FORM - LLL, "DISCLOSURE FORM TO REPORT LOBBYING", IN ACCORDANCE WITH ITS INSTRUCTIONS.

(3) THE UNDERSIGNED SHALL REQUIRE THAT THE LANGUAGE OF THIS CERTIFICATION BE INCLUDED IN THE AWARD DOCUMENTS FOR ALL SUBAWARDS AT ALL TIERS (INCLUDING SUBCONTRACTS, SUBGRANTS, AND CONTRACTS UNDER GRANTS, LOANS, AND COOPERATIVE AGREEMENTS) AND THAT ALL SUBRECIPIENTS SHALL CERTIFY AND DISCLOSE ACCORDINGLY.

THIS CERTIFICATION IS A MATERIAL REPRESENTATION OF FACT WHICH RELIANCE WAS PLACED WHEN THIS TRANSACTION WAS MADE OR ENTERED INTO. SUBMISSION OF THIS CERTIFICATION IS A PREREQUISITE FOR MAKING OR ENTERING INTO THIS TRANSACTION IMPOSED BY SECTION 1352, TITLE 31, U.S. CODE. ANY PERSON WHO FAILS TO FILE THE REQUIRED CERTIFICATION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$10,000 AND NOT MORE THAN \$100,000 FOR EACH SUCH FAILURE.

SIGNED: _____

NAME

DATE: _____

TITLE

