

#31(c)
AGENDA ITEM

FORT BEND COUNTY FY 2009
COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: September 15, 2009 Submitted By: Marilyn Kindell *mkindell*
Department: Community Development
Court Agenda Date: September 22, 2009 Phone Number: 281-341-4410

SUMMARY OF ITEM: Take all appropriate action to ratify the approval of Contract No. 70090009 between Fort Bend County and Texas Department of Housing & Community Affairs for Hurricane IKE/Dolly Funding under the Consolidated Security, Disaster Assistance and Continuing Appropriations Act of 2009 in the amount of \$1,582.107 and authorize judge to sign all documents pertaining to the program.

RENEWAL AGREEMENT/APPOINTMENT YES NO X
REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES NO X
List Supporting Documents Attached: Copy of executed contract

FINANCIAL SUMMARY:

BUDGETED ITEM: YES NO X

FUNDNG SOURCE: Accounting Unit: N/A Account Number: N/A
Activity (If Applicable): N/A
DESCRIPTION OF LAWSON ACCOUNT: CDBG IKE

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:
Original Form Submitted with back up to County Judge's Office (✓ when completed)
If by E-Mail to ospindon@co.fort-bend.tx.us If by Fax to (281) 341-8609
Distribute copies with back-up to all listed below. If by fax, send to numbers below:

X	Auditor	(281-341-3774)	X	Comm. Pct. 1	(281-342-0587)
X	Budget Officer	(281-344-3954)	X	Comm. Pct. 2	(281-403-8009)
	Facilities/Planning	(281-633-7022)	X	Comm. Pct. 3	(281-242-9060)
	Purchasing Agent	(281-341-8642)	X	Comm. Pct. 4	(281-980-9077)
	Information Technology	(281-341-4526)	X	County Clerk	(281-341-8697)
	Other:		X	County Atty	(281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

COUNTY JUDGE RECEIVED
SEP 16 2009

9-24-09 copy received

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CONTRACT NO. 70090009 FOR

COMMUNITY DEVELOPMENT PROGRAMS
HURRICANE IKE/DOLLY FUNDING UNDER THE
CONSOLIDATED SECURITY, DISASTER ASSISTANCE, AND CONTINUING
APPROPRIATIONS ACT OF 2009
PUBLIC LAW 110-329

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 Fort Bend County, 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.

SECTION 2. CONTRACT PERIOD

This Contract shall commence on September 11, 2009 ("Start Date"), and shall expire on September 10, 2011 ("End Date"), unless otherwise specifically provided by the terms of this Contract.

SECTION 3. SUBRECIPIENT PERFORMANCE

- A. The Subrecipient shall conduct, in a satisfactory manner as determined by the Department, a Community Development Block Grant Disaster Recovery Program, referred to as CDBG, for disaster relief, long-term recovery, and restoration of housing including affordable rental housing in areas declared federal disaster areas in 2008 as detailed in the State of Texas Action Plan dated as of March 4, 2009, referred to as the Plan for Disaster Recovery under the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009. The term "Subrecipient" is defined in the Plan, and does not necessarily have the same meaning as a "subrecipient" as defined in CDBG regulations. The Subrecipient shall perform all activities in accordance with applicable Texas statutes and Department rules, 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 legally eligible to receive such services and/or benefits and are actually 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 eligible and/or are not receiving the service or a benefit, the Subrecipient is liable to repay to the Department any associated disallowed costs.

- B. The Department has established reasonable thresholds that are commensurate with the progress of the Contract. The thresholds for contracts funded under the CDBG Disaster Recovery program are subject to 10 Texas Administrative Code Part 1, Chapter 54, Community Development Block Grant Disaster Recovery and will be evaluated starting from the Contract begin date.

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 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 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 ninety (90) days following expiration 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 expiration 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, 24 CFR Part 58, and all other applicable regulations.

7. The Department shall not be liable for costs incurred and reserved on the Certificate of Expenditures if such costs are not billed to the Department within ninety (90) days after the Contract's expiration date. An exception will be made for the reserved funds for the final 5% administrative draw down for programmatic closure. Audit funds reserved on the Certificate of Expenditures eligible for reimbursement under the provisions of Section 19 of this Contract shall be billed to the Department within twelve months after the end of the Subrecipient's fiscal year that follows the expiration date of this Contract. The Department shall deobligate all reserved funds not requested under this Subsection.

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. No additional funds will be distributed until such repayment is made.

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 \$1,582,107.

SECTION 5. METHOD OF PAYMENT

- A. The Subrecipient shall submit to the Department at its offices in Travis County, Texas, a properly completed Request for Payment form and/or a properly completed State of Texas Purchase Voucher, 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. Approval and disbursal are subject to audit and adjustment as specified elsewhere herein.
- 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, PROGRAM INCOME, AND REVERSION OF ASSETS

- A. If the Subrecipient is a governmental entity, except as specifically modified by law or the provisions of this Contract, the Subrecipient shall comply with the Regulations in Exhibit C and, for matters not addressed therein, with 24 CFR 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 Governor's Office under the Uniform Grant and Contract Management Act (Tex. Gov't. Code Ann. Chapter 783; referred to as "UGCMS"), 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 UGCMS and this Contract.
- B. If the Subrecipient is a nonprofit organization, except as specifically modified by law or the provisions of this Contract, the Subrecipient shall comply with the Regulations in Exhibit C and, for matters not addressed therein, with 24 CFR Part 84, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations" (referred to as the "Common Rule") as modified by the rules promulgated by the Governor's Office under the Uniform Grant and Contract Management Act (Tex. Gov't. Code Ann. Chapter 783; referred to as "UGCMS"), 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-122, as supplemented by UGCMS and this Contract.
- C. Subrecipient may not retain program income (as defined at 24 CFR 570.500) of any kind, however derived, under this Contract, including the retention of program income to fund other eligible CDBG Disaster Recovery activities. Subrecipient shall comply with the requirements of 24 CFR 570.489(e) to account for program income, repayments, and recaptured funds related to activities financed in whole or in part with funds provided under this Contract. Subrecipient shall provide reports of program income as requested by Department. Program income derived under this Contract must be submitted to Department within seven (7) business days of receipt.
- D. Upon expiration of this Contract, the Subrecipient shall transfer to the Department any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.
- E. Any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 must either:
1. Meet one of the three National Objectives of the CDBG program until five years after expiration of this Contract; or

2. Be disposed of in a manner that results in the Department being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. (Reimbursement is not required after five years.)

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 or A-122, as applicable, 24 CFR 570.490 of the Regulations in Exhibit C, 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: (i) five years after close-out of this Contract; (ii) if notified by the Department in writing, the date that the final audit is accepted with all audit issues resolved to the Department's satisfaction, or (iii) a date consistent with the period required by other applicable laws and regulations as described in 24 CFR 570.487 and 570.488.
- B. The Subrecipient shall cooperate fully with any audit, review, or investigation of the CDBG Program by the Department or any state or federal body lawfully conducting any such audit, review or investigation and 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, an Department or agency 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 to the Department no later than the tenth day of the month after the end of each calendar month of the Contract period specified in Section 2, a Monthly Progress Report of the progress, in a format prescribed by the Department, of all activities performed pursuant to Exhibit A, Performance Statement, and of the expenditures and obligations of funds by budget category made pursuant to Exhibit B, Budget, of this Contract. Monthly reports are due for the first year of the contract period or until one hundred percent (100%) of contract funds are obligated for specific CDBG Disaster Recovery activities and the Six-Month Benchmark requirements are met. Quarterly Progress Reports shall be due on the tenth day of the month after the end of each calendar

quarter once the requirements of the Six-Month Benchmark have been met and Monthly Progress Reports are no longer required. The Quarterly Progress Report shall be in a format prescribed by the Department and shall include all such activities, expenditures, and obligations made or performed under this Contract during the previous calendar quarter. The Department reserves the right to modify this reporting structure from time to time.

- C. The Subrecipient shall submit an executed Certificate of Expenditures to the Department no later than sixty (60) days after the contract expiration 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.
- D. 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.
- E. The Subrecipient is required to immediately report to the Department any incident of known or suspected criminal misconduct of funds associated with this Contract including but not limited to this misapplication of funds or falsification of records.

SECTION 9. MONITORING

The Department reserves the right to perform periodic on-site visits, including technical assistance and monitoring visits, of the Subrecipient's and the Subrecipient's subcontractors' compliance with the terms and conditions of this Contract, and of the adequacy and timeliness of the Subrecipient's and the subcontractors' performances under this Contract. After each such visit, the Department shall provide the Subrecipient with a written report of the findings. If a report notes deficiencies in the Subrecipient's or subcontractors' performance under the terms of this Contract, the report shall include requirements for the timely correction of such deficiencies by the Subrecipient and subcontractors. Failure by the Subrecipient or subcontractors 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 CONTRACTOR

It is expressly understood and agreed by the parties that the Department is contracting with the Subrecipient as an Independent Contractor, 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 received a Notice To Proceed (NTP) from the Department which will include the Department of Labor (DOL) General Wage Decision for the county in which the project is located. Before an NTP may be released by the Department, the Subrecipient must:

1. Designate a Labor Standards Officer (LSO) and submit a completed Appointment of Labor Standards Officer form provided by the Department;
2. Conduct a Preconstruction Conference using a form provided by the Department and submit the completed form, including signatures of all conference participants, to the Department.
3. Submit a copy of the building permit provided by the local jurisdiction authorizing start of construction.

Subrecipient must participate in a pre-construction conference for every project where Davis-Bacon applies that will be conducted by the Department and will cover Davis-Bacon labor laws and Department labor standards obligations. The Department's Labor Standards Specialist may waive participation in the preconstruction conference contingent on a Subrecipient's demonstrated experience with the Department's labor standards mandates and Davis-Bacon enforcement requirements, at the Department's sole discretion. If the Subrecipient is approved to conduct the preconstruction conference without the participation of the Department's Labor Standards Specialist, approval of the preconstruction package and form(s) to be used during the preconstruction conference is required. A preconstruction conference sign-in sheet confirming participation must be executed by participants and submitted to the Department. Participants must include, at a minimum, Subrecipient, Owner and/or Developer, Prime Contractor and designated Labor Standards Officer.

Subrecipient must ensure that construction contracts to which federal labor standards requirements apply include the requirement to comply with CDBG regulations at 24 CFR 570.603 and Department of Labor regulations at 29 CFR Parts 1,3,5,6 and 7. Each construction contract should include as an attachment HUD 4010 Federal Labor Provisions and HUD Handbook 1344 – Davis Bacon Act.

B. In no event shall any provision of this Section 11, specifically the requirement that the Subrecipient obtain a Notice to Proceed, 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 this 11 does not constitute adoption, ratification, or acceptance of the Subrecipient's or subcontractor'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 this 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 under the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, 24 CFR Part 84 or 85, as applicable, 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 ten percent (10%) of each construction or rehabilitation subcontract entered into by the Subrecipient for not less than thirty (30) days after construction completion or until the Department determines that the 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 in accordance with Section 7 and must include the substance of Section 7 in all subcontracts.
- F. The Subrecipient shall include in any subcontracts that failure to adequately perform under this Contract may result in penalties including the possibility of 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 CFR 570.489(h) of the federal regulations.
- B. In all cases not governed by Subsection A of this Section 12, no persons specified in Subsection C of this Section 12 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 of this Section 12 apply to any person who is an employee, agent, consultant, department, or elected official or appointed official of the Subrecipient or of a subcontractor of the Subrecipient.
- D. The Subrecipient shall include the substance of this Section 12 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 United States Department of Housing and Urban Development on faith-based activities at 24 CFR 570.200(j).

SECTION 14. LEGAL AUTHORITY

- A. The Subrecipient represents and warrants to the Department and agrees with the Department as follows:
 - 1. The execution, delivery, and performance of this Contract have been duly authorized by all necessary legal and administrative action on behalf of the Subrecipient.
 - 2. The Contract represents the legal, valid, and binding agreement of the Subrecipient, enforceable in accordance with its terms. Except as the same may be affected by laws regarding bankruptcy, creditors' rights, and general principles of equity.
 - 3. The execution, delivery, and performance of this Contract will not violate or result in the breach or violation of any law, rule, order, policy statement, agreement, or other requirement to which Subrecipient is subject and will not require any consent or approval that has not already been obtained or any action that has not already been taken.
 - 4. The person who is executing this Contract for and on behalf of Subrecipient has been duly authorized, for and on behalf of Subrecipient, to execute this Contract and currently holds the office and is actively serving in the capacity indicated.
 - 5. There are no pending or threatened legal, regulatory, or administrative proceedings the outcome of which, if decided adversely to the Subrecipient, would materially and adversely affect its ability to perform its obligations under the Contract.

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 under this Contract; and 2) any claim against the Subrecipient under this Contract, 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 Term and Amendments" under the State of Texas Action Plan for CDBG Disaster Recovery under the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009.
- B. It is understood and agreed by the parties that performances under this Contract must be rendered in accordance with the State of Texas Action Plan for CDBG Disaster Recovery under the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, dated as of March 4, 2009, 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 Department as part of the Plan.
- C. Any alterations, additions, or deletions to the terms of this Contract which are required by or the result of changes in federal or state law or regulations, including waivers granted by the United States Department of Housing and Urban Development specific to Public Law 110-329 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 program budget categories of Exhibit B, Budget, without requiring an amendment to this Contract, or otherwise requiring the Department's prior written approval provided that:
1. The cumulative dollar amount of all transfers among program budget categories is equal to or less than ten percent (10%) of the total amount budgeted for program budget categories as specified in Exhibit B, Budget; and
 - (i) the transfer will not result in a decrease in the number of households to be served; and
 - (ii) the national program objective that will be met with the transfer of funds will be the Low to Moderate Income national program objective.
 2. The Subrecipient submits a budget revision report to the Department, on a form specified by the Department, prior to the Subrecipient's first request for payment following any such transfers made in accordance with this Subsection D and Citizen Participation

Requirements under Section 21 of this Contract. Transfers from program budget categories to administration or project delivery is prohibited.

- E. Reduced beneficiaries or activities, due to extenuating or unforeseeable circumstances, may be allowed as approved by the Department. The Department's Executive Director or its designee, may authorize, execute, and deliver amendments to any Contract. The Department, at its discretion and in coordination with a Subrecipient, may increase a contract budget amount and the number of activities and beneficiaries based on the availability of CDBG Disaster Recovery funds, the exemplary performance in the implementation of a Subrecipient's current contract, and available time.

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. Subrecipient acknowledges that it does not have a right to suspension as a pre-requisite to termination.

SECTION 18. TERMINATION

- A. The Department shall have the right to terminate this Contract, in whole or in part, at any time before the expiration date 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 this Contract to be terminated. The termination date will have the same meaning as the contract expiration date.
- 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 this 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 there under. 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. **Audit Required-Federal Awards.** Subrecipients expending \$500,000 or more in Federal financial assistance for any fiscal year, beginning with fiscal years 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, 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 OMB Circular A-133 §__.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.

2. **Audit Required-State Financial Assistance.** Subrecipients that expended \$500,000 or more in total State Financial Assistance 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 and the Uniform Grant Management Standards (UGMS) as adopted June 2004. For purposes of this Section 19, "State Financial Assistance" (or cost reimbursement Contract) means assistance that non-state entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, and other assistance, but does not include amounts received as an reimbursement for services rendered to individuals as described in § __.205 (f). "State Financial Assistance" (or cost reimbursement Contract) is received directly from state awarding agencies or indirectly from pass-through entities under a federal block grant. State financial assistance also does not include federal awards as defined by OMB Circular A-133.

3. **Audit Expenses.** Notwithstanding Section 4, 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. Therefore, when submitting a request for audit fees reimbursement, the Subrecipient shall submit an invoice that clearly shows the total cost of the audit and the corresponding prorated charge per funding source. In addition, when applicable, an explanation shall be

submitted with the reimbursement request supporting why the percentage of audit fee charges exceeds the percentage amount of CDBG funds expended of the total funds expended by the Subrecipient.

4. 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 Subrecipient's audit period (i.e., after the Subrecipient's fiscal year end). 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 contractor contact information, including contact person, mailing address, telephone, fax number and e-mail address. The Subrecipient shall ensure the Audit Report submitted also includes the submission of the CPA Management Letter if a Management Letter was issued to the Subrecipient by its CPA firm. 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 CDBG Disaster Recovery Program, and the issuance of new Contracts for funding awards.

5. Notwithstanding the requirements of paragraphs A-1 through 4 of this Section 19, the Subrecipient shall submit within sixty (60) days after 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, §_.26 (d). If the Subrecipient did not exceed the threshold, the Subrecipient shall include with the ACF or statement, a list of all open Department Contracts providing financial assistance and the corresponding activity. 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, eligibility to apply under the CDBG Program, the issuance of new contracts, or increase in the funding award.

6. Chapter 2105, Texas Government Code, requires that all subrecipients of federal block grants be included under the provisions of the Uniform Grant Contract Management Standards (UGCMS) (D) §____.400 requires "Recipients who are required to have a single audit and receive state or federal awards for more than one state agency shall have a state single audit coordinating agency. The governor's Department shall designate a state single audit coordinating agency based upon the state awarding agency that provides the predominant amount of direct funding to a recipient and other factors, as appropriate, to ensure equitable and manageable workloads." Further, it is the Subrecipient's responsibility to make this request to the governor's Department pursuant to the Texas Administrative Code 5.167(c)(2), "To have a state single audit coordinating agency designated a recipient must submit a written request to the Governor's Budget and Planning Department, P.O. Box 12428, Austin, Texas 78711. This request must list the state agencies providing financial assistance with the grant amounts for the year to be audited and indicate that the governing body has authorized the initiation of the single audit."

B. Notwithstanding Subsection A of this Section 19, the Department reserves the right to conduct financial and compliance reviews of funds received and performances rendered under this Contract. The Subrecipient agrees to cooperate with any such review or audit

and 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. Subrecipient shall establish written standard operating procedures and internal controls to include the timely procurement of a CPA firm to start and complete the year end single audit report if applicable, in order to comply with contractual and regulatory requirements. The Department shall not release any funds for any costs incurred by the Subrecipient under this Contract until the Department has received a copy of any audit report required by this Section 19.
- 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 three 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 Office, 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 Office 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 subcontractors 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 the National Environmental Policy Act of 1969 (NEPA) and the related activities listed in HUD's implementing regulations at 24 CFR Parts 50, 51, 55 and 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 CFR Parts 50, 51, 55 and Part 58. No funds may be requested or obligated to an activity before the completion of the environmental review process, including the requirements of 24 CFR 58.6, and written clearance has been provided by the Department unless the activity is an exempt activity under 24 CFR 58.34(a).
- B. If funds are provided under this Contract to a "state recipient," the recipient is delegated authority as the Responsible Entity (RE) and makes all environmental clearance

determinations. The Department assumes the role of HUD pursuant to 24 CFR Part 58, "Subpart H – Release of Funds for Particular Projects" and is responsible for reviewing and approving the Request for Release of Funds and granting the recipient the Authority to Use Grant Funds.

- C. A non-governmental entity (nonprofit organization) is not delegated authority to become an RE and make environmental determinations and therefore, shall assist Department in completing the environmental review by providing all relevant documentation needed to perform an environmental review, or carry out mitigating measures required, or selecting an alternate property for assistance.
- D. 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.
- E. Funds provided under this Contract may not be used in connection with acquisition or rehabilitation or new construction of housing located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the locality in which the site is located is participating in the National Flood Insurance Program (NFIP) or less than a year has passed since FEMA notification regarding such hazards. Subrecipient must determine if the locality participates in the NFIP during the preliminary stages of the environmental clearance process.
- F. Subrecipients are responsible for informing property owners receiving disaster assistance in a floodplain that the property owner is required to purchase flood insurance and maintain such insurance. The property owner must also be notified that they have a statutory responsibility to notify any buyer of their property of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. Requirements are described below.
 - 1. Duty to notify. In the event of the transfer of any property described in Subsection F of this Section 20, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:
 - (i) Obtain flood insurance in accordance with applicable federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and
 - (ii) Maintain flood insurance in accordance with applicable federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.
 - 2. Failure to notify. If a transferor fails to provide notice as described above and subsequent to the transfer of the property:
 - (i) the transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;
 - (ii) the property is damaged by a flood disaster; and
 - (iii) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage,

the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the federal disaster relief assistance provided with respect to the property.

3. The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance was made available in a flood disaster area, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.

G. Funds provided under this Contract may be obligated and expended before the actions specified in this Section 20 occur only for the following eligible activities:

1. The payment of reasonable administrative costs related to the project;
2. Environmental studies, including environmental clearance activities required by this Section 20;
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 24 CFR §58.35(a) provided that there are no circumstances which require compliance with any other federal laws and authorities cited in 24 CFR 58.5.

H. Conditional Commitment of Funds. Responsible Entities may enter into an agreement for the conditional commitment of CDBG Disaster Recovery funds for a specific project prior to the completion of the environmental review process. The RE must ensure that any such agreement does not provide the subcontractor any legal claim to any amount of CDBG Disaster Recovery funds to be used for the specific project or site unless and until the site has received environmental clearance from the Department. The following language is acceptable in an otherwise appropriately drafted agreement:

Notwithstanding any provision of this [Agreement], the parties hereto agree and acknowledge that this [Agreement] does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by [the Subrecipient] of a release of funds from the United States Department of Housing and Urban Development [or the State of Texas] under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on the [Subrecipient's] determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

SECTION 21. CITIZEN PARTICIPATION REQUIREMENTS

A. The Subrecipient shall provide for and encourage citizen participation, particularly by low and moderate income persons who reside in areas in which the funds provided under this Contract are used, in accordance with 24 CFR 570.486 and this Contract. Citizen involvement shall be conducted in accordance with the State of Texas Action Plan, dated as of March 4, 2009, which includes providing program information in the appropriate languages for the geographic area served by the Subrecipient. Failure to adhere to citizen

participation and/or complaint requirements identified in the Plan shall constitute a material breach of this Contract.

- B. The Subrecipient shall provide the public reasonable notice, but not less than fifteen (15) days, of any activities proposed to be added, deleted, or substantially changed, as determined by the Department, from the activities specified in Exhibit A, Performance Statement, of this Contract.
- C. For each public hearing scheduled and conducted by the Subrecipient under this Section 21, the Subrecipient shall comply with the following requirements:
 - 1. Notice of each hearing shall be published in the non-legal section of a newspaper having general circulation in the Subrecipient's jurisdiction at least seventy-two (72) hours prior to each scheduled hearing. The published notice shall include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice shall be printed in both English and in the appropriate language for the geographic area as applicable. The Department shall accept articles published in such newspapers which satisfy the content and timing requirements of this Subsection. In addition, the Subrecipient shall prominently post such notices in public buildings and distributed to interested community groups.
 - 2. If any substantial changes are being requested concerning the activities included in this Contract, the public hearings shall be held after 5 p.m. on a weekday or on a Saturday or Sunday. The hearings must be conducted at a location convenient to potential or actual beneficiaries, with accommodation for the handicapped.
 - 3. When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, the Subrecipient shall provide an interpreter to accommodate the needs of the non-English speaking residents.
- E. Notwithstanding the provisions of Section 7 of this Contract, the Subrecipient shall retain documentation of the public hearing notices, a list of the attendees at each hearing, and minutes of each hearing held in accordance with this Section for a period of three (3) years after the expire of this Contract. The Subrecipient shall make such records available to the public in accordance with Tex. Gov't. Code Ann. Chapter 552.
- F. The Subrecipient shall maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Such procedures shall comply with the Department's requirements. The Subrecipient shall ensure that its citizens are aware of the location and hours at which they may obtain a copy of the written procedures and the address and phone number for submitting complaints.

SECTION 22. SPECIAL CONDITIONS

- A. The Department shall not release any funds for any costs incurred by the Subrecipient under this Contract until the Department has received a copy of the Subrecipient's most recent fiscal year audit report or certification from the Subrecipient that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of and accounting for funds provided under this Contract. The Department shall specify the content and form of such certification.

- B. The Department shall not be liable to the Subrecipient for any costs incurred by the Subrecipient under this Contract until the Department receives a properly completed Depository/Authorized Signators Form, as specified by the Department, from the Subrecipient.
- C. The Subrecipient shall not advertise or solicit bids for construction or rehabilitation of a project assisted with funds provided under this Contract until the Subrecipient has received the applicable prevailing wage rates from the Department when federal labor standards requirements will apply
- D. In accordance with Section 18, this Contract shall terminate six (6) months after the commencement date specified in Section 2 unless activities funded under this Contract have begun by such date.
- E. The Subrecipient shall provide a copy of its proposed housing guidelines for Department review and approval prior to awarding assistance under the terms of this Contract and prior to the Department's release of construction funds for such activities. The Subrecipient's housing guidelines must include, among other things, provisions for compliance with Section 31 of the Federal Fire Prevention Control Act of 1974 (which requires that any housing unit rehabilitated with Department funds be protected by a hard-wired or battery-operated smoke detector) and provisions for compliance with Lead-Based Paint requirements (which contains requirements relating to eliminating as far as practicable the hazards of lead poisoning due to the presence of lead-based paint in any housing unit rehabilitated with Department funds). The housing guidelines must be posted on Subrecipient's website throughout program administration.
- F. The Subrecipient shall utilize the Department's required forms, as specified by the Department, throughout program administration. The required forms will be posted on the Department's website.
- G. Notwithstanding Section 4(A)(6), the Subrecipient shall be allowed, upon written approval of the Department, to incur costs prior to the commencement date specified in Section 2. Such costs may only be incurred for activities described in Exhibit A, Performance Statement, provided that these activities meet the requirements of 24 CFR Part 570 Subpart I and 24 CFR Part 58.
- H. The Subrecipient shall ensure that any housing rehabilitation or reconstruction contractor/builder, as defined by the Texas Residential Construction Commission or its successor agency, making improvements to or reconstructing an existing home at a cost exceeding ten thousand dollars (\$10,000) under the housing rehabilitation assistance provided for in Exhibits A and B of this Contract, is registered with the Texas Residential Construction Commission or its successor.

SECTION 23. FRAUD, WASTE, AND ABUSE

- A. The Department will monitor all contract expenditures for quality assurance and to prevent, detect, and eliminate fraud, waste and abuse. The Department will particularly emphasize mitigation of fraud, abuse and mismanagement related to accounting, procurement, and accountability which may also be investigated by the State Auditor's Office. Reports from the

State Auditor's Office will be sent to the Office of the Governor, the Legislative Audit Committee and to the Department's Governing Board.

- B. Subrecipients are required to report instances of suspected fraud, waste or abuse to the United States Department of Housing and Urban Development's Office of Inspector General and the State Auditor's Office. Any application for assistance received from a households that contains blatantly false information, in the estimation of the Subrecipient, should be referred to HUD OIG and SAO for further investigation.

SECTION 24. DEBARMENT

- A. 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 subcontractor under this Contract and its principals.
- B. By signing this Contract, the Subrecipient certifies that it is not debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24. Further, the Subrecipient is required to immediately report to the Department if it is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24.

SECTION 25. 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 26. RETAINAGE

In addition to the amount retained by the Department for labor standards compliance in accordance with Section 11(d) of this Contract, as applicable, Department shall retain ten percent (10%) of each construction or rehabilitation subcontract to ensure that the performance and quality of work being performed is satisfactory. Final payment of the retainage will not be paid until all programmatic requirements are met, all claims and disputes have been settled, all warranties have been received and all liens have been released.

SECTION 27. ADMINISTRATIVE COSTS DRAWDOWN

The Department has established reasonable thresholds for costs that are commensurate with the progress of the project and the associated administrative duties. Administrative drawdown thresholds for contracts funded under the CDBG Disaster Recovery Program are subject to 10 Texas Administrative Code Part 1, Chapter 54, Community Development Block Grant Disaster Recovery and will be evaluated starting from the Contract commencement date.

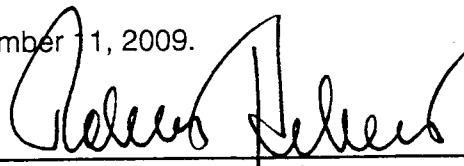
SECTION 28. VENUE

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

SECTION 29. 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, 2 Pages
 - 2. Exhibit B, Budget, 1 Page
 - 3. Exhibit C, Applicable Laws and Regulations, 2 Pages
 - 5. Exhibit D, Certifications, 3 Pages

WITNESS OUR HANDS EFFECTIVE September 11, 2009.



Robert Hebert, County Judge
Fort Bend County

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

Michael G. Gerber
Texas Department of Housing and Community Affairs

The Governing Board of the Department conditionally approved funding to Fort Bend County on July 30, 2009, 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. 70090009

PERFORMANCE STATEMENT

Fort Bend County

The Subrecipient shall carry out the following activities in the target area identified in its 2009 CDBG Disaster Recovery application. 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.

Project Description

The Subrecipient will provide owner homeowner repair, reconstruction, and new construction activities not to exceed one million three hundred forty-four thousand seven hundred ninety-two and no/100 (\$1,344,792.00)

Homeowner Repair, Reconstruction, New Construction

The Subrecipient will provide homeowner repair, rehabilitation, and new construction assistance activities. These activities shall benefit thirty eight (38) persons, of which thirty-eight (38) or one hundred percent (100%) are of low to moderate income.

Homeowner repair and rehabilitation assistance will not exceed forty thousand and no/100 (\$40,000.00). Rehabilitation includes repairs or renovations of a limited specified area or portion of a housing structure. The Subrecipient must ensure that upon completion, rehabilitated portions of properties comply with local building codes, and that the entire structure complies with local health and safety codes and standards, and housing quality standards (HQS).

Homeowner reconstruction and new construction assistance will not exceed one hundred twenty-five thousand and no/100 (\$125,000.00). All reconstructed and newly constructed housing units comply with the universal design features in new construction, established by §2306.514, Texas Government Code, energy standards as verified by a RESCHECK certification, and the International Residential Codes, as required by Subchapter G, Chapter 214, Local Government Code.

Project Thresholds

The Department has established reasonable thresholds for costs that are commensurate with the progress of the project and the associated administrative duties. Project thresholds for contracts funded under the CDBG Disaster Recovery program are subject to 10 Texas Administrative Code Part 1, Chapter 54, Community Development Block Grant Disaster Recovery and will be evaluated starting from the Contract begin date.

The Department may approve revised benchmarks and/or lower percentages for good cause.

Administration and Project Delivery

The Subrecipient shall draw funds in accordance with Section 27, Administrative Costs Drawdown and shall 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 these activities in Exhibit B, Budget.

The Subrecipient may expend funds provided under this contract for reasonable administrative and project delivery costs directly related to this contract in accordance with Sections 3, 4, and 5 of this Contract and the State of Texas Action Plan dated as of March 4, 2009 in an amount that is not more than **two hundred thirty-seven thousand three hundred fifteen and no/100 Dollars (\$237,315.00)**.

EXHIBIT B

CONTRACT NO. 70090009
BUDGET
Fort Bend County

<u>ACTIVITY CODE</u>	<u>CATEGORIES</u>	<u>ACTIVITY FUNDS</u>
4-NR	Owner-Occupied Rehabilitation	\$1,344,792.00
4-PD	Project Delivery	\$79,105.00
206-GA	General Administration	\$158,210.00
	TOTAL	\$1,582,107.00

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 CFR 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 CFR 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 CFR Part 107 shall be a proper basis for the imposition of sanctions specified in 24 CFR 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 CFR Part 8. By signing this Contract, the Subrecipient understands and agrees that the activities funded shall be operated in accordance with 24 CFR 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 CFR Part 42, and 24 CFR Section 570.606.

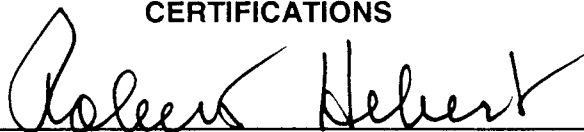
VII. FAITH-BASED ACTIVITIES

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

EXHIBIT D

CERTIFICATIONS

I, Robert Hebert



CERTIFY WITH RESPECT TO THE EXPENDITURE OF FUNDS PROVIDED UNDER THIS CONTRACT BY THE Fort Bend County, THAT;

- (1) IT WILL GIVE MAXIMUM FEASIBLE PRIORITY TO ACTIVITIES THAT WILL BENEFIT LOW-AND MODERATE-INCOME FAMILIES;
- (2) THE AGGREGATE USE OF FUNDS PROVIDED UNDER THIS CONTRACT SHALL PRINCIPALLY BENEFIT LOW INCOME PERSONS AND MODERATE INCOME PERSONS WILL NOT BENEFIT TO THE EXCLUSION OF LOW INCOME PERSONS;
- (3) IT IS IN COMPLIANCE WITH RESTRICTION ON LOBBYING REQUIRED BY 24 CFR PART 87, TOGETHER WITH DISCLOSURE FORMS;
- (4) IT WILL MINIMIZE DISPLACEMENT OF PERSONS AS A RESULT OF ACTIVITIES ASSISTED WITH SUCH FUNDS, AND HAS IN EFFECT AND IS FOLLOWING A RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN IN CONNECTION WITH ANY ACTIVITY ASSISTED UNDER THIS CONTRACT;
- (5) 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 BY CONDUCTING AN ANALYSIS TO IDENTIFY IMPEDIMENTS TO FAIR HOUSING CHOICE, TAKE APPROPRIATE ACTIONS TO OVERCOME THE EFFECTS OF ANY IMPEDIMENTS IDENTIFIED THROUGH THAT ANALYSIS, AND MAINTAIN RECORDS REFLECTING THE ANALYSIS AND ACTIONS IN THIS REGARD IN ACCORDANCE WITH 24 CFR 487(B)(2), AS SPECIFIED BY THE DEPARTMENT;
- (6) IT WILL PROVIDE FOR OPPORTUNITIES FOR CITIZEN PARTICIPATION, HEARINGS AND ACCESS TO INFORMATION WITH RESPECT TO ITS DISASTER RECOVERY PROGRAM, AS SPECIFIED BY THE DEPARTMENT;
- (7) FUNDS WILL BE USED SOLELY FOR NECESSARY EXPENSES RELATED TO DISASTER RELIEF, LONG-TERM RECOVERY, AND RESTORATION OF HOUSING IN AREAS AFFECTED BY THE HURRICANE;
- (8) IT WILL NOT ATTEMPT TO RECOVER ANY CAPITAL COSTS OF PUBLIC IMPROVEMENTS 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 CONTRACTOR CERTIFIES THAT IT LACKS SUFFICIENT FUNDS UNDER THIS CONTRACT TO COMPLY WITH THE REQUIREMENTS OF CLAUSE (A).

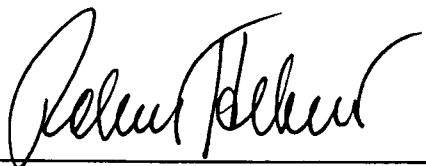
(9) IT WILL ADOPT AND ENFORCE A POLICY PROHIBITING THE USE OF EXCESSIVE FORCE BY LAW ENFORCEMENT AGENCIES WITHIN ITS JURISDICTION AGAINST ANY INDIVIDUAL ENGAGED IN NONVIOLENT CIVIL RIGHTS DEMONSTRATIONS AND A POLICY OF ENFORCING APPLICABLE STATE AND LOCAL LAWS AGAINST PHYSICALLY BARRING ENTRANCE TO OR 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.

(11) IT WILL NOT DUPLICATE ANY BENEFITS PURSUANT TO THE STAFFORD ACT IN RELATION TO THE EXPENDITURE OF FUNDS UNDER THIS CONTRACT AND FURTHER THAT DISASTER RECOVERY FUNDS WILL NOT BE EXPENDED ON A PROJECT FOR WHICH FUNDS WERE PREVIOUSLY DISALLOWED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(12) IT WILL NOT KNOWINGLY EMPLOY AN UNDOCUMENTED WORKER, WHERE "UNDOCUMENTED WORKER" MEANS AN INDIVIDUAL WHO, AT THE TIME OF EMPLOYMENT, IS NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE TO THE UNITED STATES OR AUTHORIZED UNDER LAW TO BE EMPLOYED IN THAT MANNER IN THE UNITED STATES. IF, AFTER RECEIVING A PUBLIC SUBSIDY, SUBRECIPIENT, OR A BRANCH, DIVISION, OR DEPARTMENT OF SUBRECIPIENT IS CONVICTED OF A VIOLATION UNDER 8 U.S.C. SECTION 1324A, SUBRECIPIENT SHALL REPAY THE PUBLIC SUBSIDY WITH INTEREST, AT A RATE OF 5% PER ANNUM, NOT LATER THAN THE 120TH DAY AFTER THE DATE TDHCA NOTIFIES SUBRECIPIENT OF THE VIOLATION IN ACCORDANCE WITH HOUSE BILL 1196.

(13) IT IS NOT INELIGIBLE TO RECEIVE THIS CONTRACT AND ACKNOWLEDGES THAT THIS CONTRACT MAY BE TERMINATED AND PAYMENT WITHHELD IF THIS CERTIFICATION IS INACCURATE IN ACCORDANCE WITH SECTION 2261.053, TEXAS GOVERNMENT CODE.


Name

September 11, 2009
Date

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

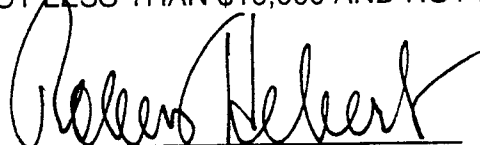
THE UNDERSIGNED Fort Bend County

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 AWARDED 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: September 10, 2009

County Judge
TITLE