

#4(M)

STATE OF TEXAS]

COUNTY OF TRAVIS]

SECTION 1 PARTIES TO CONTRACT

This contract and agreement is made and entered into by and between the Office of Rural Community Affairs, an agency of the State of Texas, referred to as the "Office", and the County of Polk, referred to as the "Contractor". 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 and agreement shall commence on June 22, 2008, and shall terminate on June 21, 2010, unless otherwise specifically provided by the terms of this contract.

SECTION 3. CONTRACTOR PERFORMANCE

The Contractor shall conduct, in a satisfactory manner as determined by the Office, a community development program, referred to as CDBG, in a non-entitlement area under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. Sec. 5301 et seq.), referred to as the Act. The Contractor 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 Project Implementation Schedule, referred to as Exhibit C; the Applicable Laws and Regulations, referred to as Exhibit D; the Certifications, referred to as Exhibit E; the assurances, certifications, and all other statements made by the Contractor in its application for the project funded under this contract; and with all other terms, provisions, and requirements set forth in this contract. The Contractor 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 use of the new or improved facilities and activities for the contract obligations to be fulfilled and before submitting the Project Completion Report to this Office. If the persons to benefit from the activities described in Exhibit A are not receiving the service or a benefit, the Contractor is liable to repay to the Office any associated disallowed costs.

The Contractor shall adhere to the Project Implementation Schedule timelines for key project activities as shown in Exhibit C. The Office may require the Contractor to submit written justification for any contract activity that is not completed by the end of the month specified on the schedule in Exhibit C. These key activities include Procurement of Professional Services Completed, Plans and Specifications Completed/Submitted for Approval, Environmental Review Completed, Clearance of Special Conditions, Wage Rate Request/Decision/10-Day Call, Bid Advertisement/ Construction Contract Awarded, Construction - 50 percent of TxCDBG project complete, Construction - 50 percent of TxCDBG funds requested from the Office; Construction - 75 percent of TxCDBG project complete, Construction - 75 percent of TxCDBG funds requested from the Office, Construction - 90 percent of TxCDBG project complete, Construction - 90 percent of TxCDBG funds requested from the Office, Final Inspections Completed, and Close-out documents submitted to the Office.

A. Measure of Liability

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

1. It is expressly understood and agreed by the parties that the Office's obligations under this section 4 are contingent upon the actual receipt of adequate state or federal funds to meet Office's liabilities under this contract. If adequate funds are not available to make payments under this contract, Office shall notify the Contractor in writing within a reasonable time after such fact is determined. Office shall terminate this contract and will not be liable for failure to make payments to the Contractor under this contract.
2. The Office shall not be liable to the Contractor for any costs incurred by the Contractor, or any portion thereof, which has been paid to the Contractor or is subject to payment to the Contractor, or has been reimbursed to the Contractor or is subject to reimbursement to the Contractor by any source other than the Office or the Contractor.
3. The Office shall not be liable to the Contractor for any costs incurred by the Contractor which are not allowable costs, as set forth in Section 6 (A) of this contract.
4. The Office shall not be liable to the Contractor for any costs incurred by the Contractor or for any performances rendered by the Contractor which are not strictly in accordance with the terms of this contract, including the terms of Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E of this contract.
5. The Office shall not be liable to the Contractor for any costs incurred by the Contractor in the performance of this contract which have not been billed to the Office by the Contractor 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 Office shall not be liable for costs incurred or performances rendered by the Contractor before commencement of this contract or after termination of this contract, unless the Contractor receives written approval from the Office and they are specifically identified in Exhibit A, Performance Statement and Exhibit B, Budget, of this contract.
7. The Office shall not be liable for costs incurred and reserved on the Certificate of Expenditures if such costs are not billed to the Office within ninety days after the contract's termination date. An exception will be made for the reserved funds for the final 5% administrative drawdown 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 Office within twelve months after the end of the Contractor's fiscal year that follows the termination date of this contract. The Office shall deobligate all reserved funds not requested under this subsection.

B. Excess Payments

The Contractor shall refund to the Office any sum of money which has been paid to the Contractor by the Office, which the Office determines has resulted in overpayment to the Contractor, or which the Office determines has not been spent by the Contractor strictly in accordance with the terms of this contract. Such refund shall be made by the Contractor to the Office within thirty (30) working days after such refund is requested by the Office.

C. Limit of Liability

Notwithstanding any other provision of this contract, the total of all payments and other obligations incurred by the Office under this contract shall not exceed the sum of Two Hundred Forty-four Thousand and No/100 Dollars (\$244,000).

SECTION 5. METHOD OF PAYMENT

A. The Contractor shall submit to the Office at its offices in Travis County, Texas, a properly completed Request for Payment form and State of Texas Purchase Voucher, as specified by the Office, as often as actually needed. The Office shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment until the Office has reviewed and approved such Request.

B. The Contractor'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 Contractor shall establish procedures to minimize the time elapsing between the transfer of funds from the Office to the Contractor 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 Contractor'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 Contractor shall comply with the Regulations in Exhibit D and, 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 Office of the Governor 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 Office of Management and Budget (OMB) Circular A-87, as supplemented by UGCMS and this contract.

B. The Contractor shall comply with the requirements set forth in 24 C.F.R. Section 570.489(e) of the Regulations to account for program income related to activities financed in whole or in part with funds provided under this contract.

1. The Contractor 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 Contractor shall provide reports of program income to the Office with each form submitted by the Contractor in accordance with Section 5 of this contract, and at the termination of this contract.

2. Program income earned by the Contractor during the period of this contract shall be retained by the Contractor and utilized by the Contractor to fund performances specified in this contract, in the manner specified, prior to requesting additional funds from the Office.

3. At least sixty (60) days prior to the termination of this contract, the Contractor shall submit a plan to the Office for its approval which specifies the manner in which the Contractor proposes to use any unexpended program income earned under this contract to continue the performance specified in this contract in the manner specified. Any program income earned by the Contractor from this contract, prior to the establishment and approval of a Revolving Loan Fund plan by the Contractor must be returned to the Office. In the event the Office does not approve the plan submitted by the Contractor, the Contractor shall return such program income to the Office within thirty (30) working days after receipt of the Office's notification of disapproval.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

A. The Contractor 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 CFR Section 570.490 of the Regulations in Exhibit D, 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 Contractor shall retain such records, and any supporting documentation, for the greater of four years from the day the Contractor submits its final audit report and all other pending matters are closed. If an expenditure or audit report has been waived, the retention period starts on the day the report would have been due or the period required by other applicable laws and regulations as described in the Regulations in Exhibit D.

B. The Contractor shall give the United States Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the Auditor of the State of Texas, an office or agency of the State of Texas, and the Office, 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 Contractor pertaining to this contract. Such rights to access shall continue as long as the records are retained by the Contractor. The Contractor 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 Contractor shall include the substance of this Section 7 in all subcontracts.

SECTION 8. REPORTING REQUIREMENTS

A. The Contractor shall submit to the Office such reports on the operation and performance of this contract as may be required by the Office including but not limited to the reports specified in this Section 8.

B. The Contractor shall submit to the Office no later than the twentieth (20th) day of the month after the end of each calendar quarter of the contract period specified in Section 2, a Quarterly Progress Report of the progress, in narrative form, of all construction and nonconstruction activities by budget categories 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. The Quarterly Progress Report shall be in a format prescribed by the Office and shall include all such activities, expenditures, and obligations made or performed under this contract during the previous quarter.

C. The Contractor shall submit a Certificate of Expenditures to the Office no later than sixty (60) days after the contract termination date or at the conclusion of all contract activities as determined by the Office. The Certificate of Expenditures shall be in a format prescribed by the Office and shall be accompanied by a final Project Completion Report of all activities performed under this contract.

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 Contractor fails to submit to the Office in a timely and satisfactory manner any report required by this contract, the Office may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by the Contractor. If the Office withholds such payments, it shall notify the Contractor in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by the Office until such time as the delinquent obligations for which funds are withheld are fulfilled by the Contractor.

E. The Contractor is required to immediately report to the Office any incident of criminal misapplication of Texas Community Development Block Grant (TxCDBG) funds associated with this contract.

SECTION 9. MONITORING

The Office reserves the right to perform periodic on-site monitoring of the Contractor's compliance with the terms and conditions of this contract, and of the adequacy and timeliness of the Contractor's performances under this contract. After each monitoring visit, the Office shall provide the Contractor with a written report of the monitor's findings. If the monitoring reports note deficiencies in the Contractor's performances under the terms of this contract, the monitoring report shall include requirements for the timely correction of such deficiencies by the Contractor. Failure by the Contractor 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 Office is contracting with the Contractor as an Independent Contractor, and that the Contractor, as such, agrees to the extent allowed by law to hold the Office harmless and to indemnify the Office 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 Contractor under this contract.

SECTION 11. SUBCONTRACTS

A. Except for subcontracts to which the federal labor standards requirements apply, the Contractor may subcontract for performances described in this contract without obtaining the Office's prior written approval. The Contractor shall only subcontract for performances described in this contract to which the federal labor standards requirements apply after the Contractor has submitted a Subcontractor Eligibility form, as specified by the Office, for each such proposed subcontract, and the Contractor has obtained the Office's prior written approval, based on the information submitted, of the Contractor's intent to enter into such proposed subcontract. The Contractor, in subcontracting for any performances described in this contract, expressly understands that in entering into such subcontracts, the Office is in no way liable to the Contractor's subcontractor(s).

B. In no event shall any provision of this Section 11, specifically the requirement that the Contractor obtain the Office's prior written approval of a subcontractor's eligibility, be construed as relieving the Contractor 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 Contractor. The Office's approval under Section 11 does not constitute adoption, ratification, or acceptance of the Contractor's or subcontractor's performance. The Office maintains the right to insist upon the Contractor's full compliance with the terms of this contract, and by the act of approval under Section 11, the Office does not waive any right of action which may exist or which may subsequently accrue to the Office under this contract.

C. The Contractor shall comply with 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 Contractor shall maintain a retainage in the amount of five percent (5%) of each construction or rehabilitation subcontract entered into by the Contractor until the Office determines that the Federal labor standards requirements applicable to each such subcontract have been satisfied.

SECTION 12. CONFLICT OF INTEREST

A. The Contractor shall ensure that no employee, officer, or agent of the Contractor 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 Contractor 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, officer, or elected official or appointed official of the Contractor or of a subcontractor of the Contractor.

D. The Contractor shall include the substance of this section in all subcontracts.

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

A. The Contractor 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 Contractor 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 Contractor under this contract shall involve, nor shall any portion of the funds received by the Contractor 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 Contractor shall comply with the regulations promulgated by the U.S. Department of Housing and Urban Development on faith-based activities at 24 CFR Sec. 570.200(j).

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

SECTION 15. LITIGATION AND CLAIMS

The Contractor shall give the Office immediate notice in writing of 1) any action, including any proceeding before an administrative agency, filed against the Contractor arising out the performance of any subcontract; and 2) any claim against the Contractor, the cost and expense of which the Contractor may be entitled to be reimbursed by the Office. Except as otherwise directed by the Office, the Contractor shall furnish immediately to the Office copies of all pertinent papers received by the Contractor with respect to such action or claim. The Contractor shall provide a notice to the Office within 30 days upon filing under any bankruptcy or financial insolvency provision of law.

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.
- B. It is understood and agreed by the parties that performances under this contract must be rendered in accordance with the Act, the Regulations of the Office, assurances and certifications made to the Office by the Contractor, and the assurances and certifications made to the United States Department of Housing and Urban Development by the State of Texas with regard to the operation of the TxCDBG Program. Based on these considerations, and in order to ensure the legal and effective performance of this contract by both parties, it is agreed by the parties that the performances under this contract are amended by the provisions of the TxCDBG Project Implementation Manual and any amendments thereto and may further be amended in the following manner: The Office 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. Such policy directives shall be promulgated by the Director of the TxCDBG in the form of TxCDBG issuances, shall have the effect of qualifying the terms of this contract and shall be binding upon the Contractor, as if written herein, provided however that the policy directives and any amendments to the TxCDBG Project Implementation Manual shall not alter the terms of this contract so as to release the Office of any obligation specified in Section 4 of this contract to reimburse costs incurred by the Contractor prior to the effective date of the amendments or policy directives.
- 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 Contractor may make transfers of funds between or among budget categories of Exhibit B, Budget, without requiring an amendment to this contract, or otherwise requiring the Office's prior written approval provided that:

1. The cumulative dollar amount of all transfers among direct budget categories is equal to or less than ten percent (10%) of the total amount of this contract as specified in Section 4 (C);
2. The transfer will not change the scope or objective of the projects funded under this contract; and
3. The Contractor submits a budget revision report to the Office, on a form specified by the Office, simultaneously with the submission of the Contractor's first request for payment following any such transfers made in accordance with this Subsection D.

SECTION 17. SUSPENSION

Notwithstanding the provisions of TEX. GOVT. CODE ANN. Chapter 2251, in the event the Contractor fails to comply with any term of this contract, the Office may, upon written notification to the Contractor, suspend this contract in whole or in part and withhold further payments to the Contractor, and prohibit the Contractor from incurring additional obligations of funds under this contract.

SECTION 18. TERMINATION

A. The Office 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 Office determines that the Contractor has failed to comply with any term of this contract. The Office shall notify the Contractor in writing prior to the thirtieth (30th) day preceding the date of termination of such determination; 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 Contractor 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 Office shall not be liable to the Contractor or to the Contractor's creditors for costs incurred after termination of this contract.

D. Notwithstanding any exercise by the Office of its right of suspension under Section 17 of this contract, or of early termination pursuant to this Section 18, the Contractor shall not be relieved of any liability to the Office for damages due to the Office by virtue of any breach of this contract by the Contractor. The Office may withhold payments to the Contractor until such time as the exact amount of damages due to the Office from the Contractor is agreed upon or is otherwise determined.

SECTION 19. AUDIT

A. The Contractor 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.** Contractors 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, Office 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.

(b) **Audit Required-State Financial Assistance.** Contractors 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 sec. __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.

2. **Audit Expenses.** Notwithstanding Section 4, the Contractor 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 Office under this contract, provided however that the Office shall not make payment for the cost of such audit services until the Office has received a satisfactory audit report and invoice, as determined by the Office, from the Contractor; 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 Contractor 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 TxCDBG funds expended of the total funds expended by the Contractor.

3. The Contractor shall submit one (1) copy of the report of such audit to the Office within thirty (30) days after the completion of the audit, but no later than nine (9) months after the end of the Contractor's audit period (i.e., after the Contractor's fiscal year end). The Contractor 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 Office or its authorized representative. The Contractor 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 Contractor shall ensure the Audit Report submitted also includes the submission of the CPA Management Letter if a Management Letter was issued to the Contractor by it's CPA firm. Failure by the Contractor 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 TxCDBG Program, and the issuance of new contracts for funding awards.

4. Notwithstanding the requirements after paragraphs "A-1 through 3" of this Section 19, the Contractor shall submit within 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 Contractor 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, Section 26 Audit, item (d). If the Contractor did not exceed the threshold, the Contractor shall include with the ACF or statement, a list of all open Office contracts providing financial assistance and the corresponding activity. Failure by the Contractor 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 TxCDBG Program, and the issuance of new contracts for funding awards.
5. Pursuant to the Texas Administrative Code §5.167(c), "Chapter 2105, Texas Government Code, requires that all subrecipients of federal block grants be included under the provisions of the Uniform Grant and Contract Management Standards." The Uniform Grant and Contract Management Standards (UGMS) (D) sec. 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 office 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 Contractor's responsibility to make this request to the governor's office 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 Office, 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 Office reserves the right to conduct an annual financial and compliance review of funds received and performances rendered under this contract. The Contractor agrees to permit the Office or its authorized representative to audit the Contractor's records and to obtain any documents, materials, or information necessary to facilitate such review.
- C. The Contractor understands and agrees that it shall be liable to the Office for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this contract. The Contractor further understands and agrees that reimbursement to the Office of such disallowed costs shall be paid by the Contractor from funds which were not provided or otherwise made available to the Contractor under this contract.
- D. The Contractor shall take such action to facilitate the performance of such audit or audits conducted pursuant to this Section 19 as the Office may require of the Contractor. Contractor 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 Office shall not release any funds for any costs incurred by the Contractor under this contract until the Office has received a copy of any audit report required by this Section 19.
- E. The Contractor 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 Office 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. Contractor 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. Contractor 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

SECTION 20. ENVIRONMENTAL CLEARANCE REQUIREMENTS

A. The Contractor understands and agrees that by the execution of this contract the Contractor shall assume the responsibilities for environmental review, decision making, and other action which would otherwise apply to the Office under Section 5304(f) of the Act, in accordance with and to the extent specified in 24 CFR Part 58. In accordance with Section 58.77(b) of such regulations, the Contractor further understands and agrees that the Contractor shall handle inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

B. 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; and
3. The payment or reimbursement of reasonable project engineering and design costs incurred for this project.

C. The Contractor shall prepare a written Environmental Assessment of its activities in accordance with 24 C.F.R. Part 58, Subpart E, and the TxCDBG Project Implementation Manual. The Contractor must then follow the steps specified in this subsection to ensure compliance with the National Environmental Policy Act (NEPA). When the Environmental Assessment is completed, the Contractor must follow one of the following two (2) procedures. The first is a Finding of Significant Impact, in which the Request for Release of Funds for the project is an action which may significantly affect the quality of the human environment. If this is the case, the Contractor must then prepare an Environmental Impact Statement in accordance with Subpart F or Subpart G of 24 C.F.R. Part 58. The second and more common procedure must be followed for all projects not requiring an Environmental Impact Statement. The Contractor in this instance must publish, in the manner prescribed in 24 C.F.R. Sections 58.43 and 58.45, a combined legal notice in a single publication: A Finding of No Significant Impact (FONSI), and a Notice of Intent to Request Release of Funds (NOI/RROF). In the first part of this notice, the Contractor certifies that, as a result of the Environmental Assessment, the project is not an action which may or will significantly affect the quality of the human environment. The Contractor shall then provide the public with at least fifteen (15) calendar days to comment on this combined notice following its publication date, unless exceptional circumstances exist as specified in 24 C.F.R. Section 58.46. If no unresolved problems occur, the Contractor must then concurrently submit to the Office the following documents:

1. Request for Release of Funds and Certification (form HUD 7015.15);
2. Statutory Checklist (Covering 24 CFR Part 58.5) and HUD Compliance Documentation Checklist (Covering 24 CFR Part 58.6);
3. Published FONSI and NOI/RROF; and

4. Publisher's Affidavit (only needed if sending a photocopy of the publication and not an original full page of the newspaper with publication title and date.)

Upon receipt of such documents, the Office must allow a fifteen (15) calendar day comment period to expire before it can formally release any project funds which are subject to the environmental review regulations. The Contractor must comply with all other applicable environmental requirements as specified in Exhibit D of this contract. The Contractor shall document its compliance with such other requirements in its environmental review file. The environmental review file and source documentation must be maintained as part of the environmental review record.

SECTION 21. CITIZEN PARTICIPATION REQUIREMENTS

- A. The Contractor shall provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which the funds provided under this contract are used, in accordance with Section 570.486 of the Regulations and this contract;
- B. The Contractor shall hold a public hearing concerning any activities proposed to be added, deleted, or substantially changed, as determined by the Office, from the activities specified in Exhibit A, Performance Statement, of this contract;
- C. Prior to the termination of this contract, the Contractor shall hold a public hearing to review its performance under this contract;
- D. For each public hearing scheduled and conducted by the Contractor under this section, the Contractor 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 Contractor'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 Spanish, if appropriate. The Office shall accept articles published in such newspapers which satisfy the content and timing requirements of this subsection. In addition, the Contractor 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 Contractor 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 Contractor 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 termination of this contract. The Contractor shall make such records available to the public in accordance with TEX. GOV'T. CODE ANN. Chapter 552.
- F. Complaint Procedures. The Contractor shall maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Such procedures shall comply with the Office's requirements. The Contractor 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.

A. The Office shall not release any funds for any costs incurred by the Contractor under this contract until the Office has received a copy of the Contractor's previous fiscal year audit report or certification from the Contractor 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 Office shall specify the content and form of such certification.

B. The Office shall not be liable to the Contractor for any costs incurred by the Contractor under this contract until the Office receives a properly completed Depository/Authorized Signators Form, as specified by the Office, from the Contractor.

C. The Contractor shall not advertise or solicit bids for construction or rehabilitation of a project assisted with funds provided under this contract until the Contractor has received the applicable prevailing wage rates from the Office.

D. In accordance with Section 18 of this contract, this contract shall terminate six (6) months after the commencement date specified in Section 2 unless activities specified in Section 20 or listed under Section 22 funded under this contract have begun by such date.

E. Public buildings, facilities, centers, constructed with Office of Rural Community Affairs (ORCA) Community Development Block Grant (CDBG) assistance shall have permanent signage placed in a prominent visible public area with the wording provided below. The formatting of such signage will be at local discretion to best fit the architectural design of the facility constructed but should be legible from at least three feet distance.

Other construction projects, e.g., water transmission lines, sewer collection lines, drainage, roadways, housing rehabilitation, etc. utilizing ORCA CDBG funding shall have temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the locality as directed by the owner.

Project Sign Wording:

"This project is funded by the Office of Rural Community Affairs of the State of Texas, to strengthen and enhance the quality of life in smaller and rural communities with funds allocated by the United States Department of Housing and Urban Development through the Community Development Block Grant Program."

F. Prior to the Office's release of funds for the construction of the sewer system improvements described in Exhibit A, Performance Statement, of this contract, the Contractor shall provide certification to the Office from the Texas Commission on Environmental Quality that plans, specifications, and related documents for its sewer system improvements have been prepared by a registered professional engineer and that the review of such plans, specifications, and related documents meet the applicable Texas Commission on Environmental Quality review requirements described in Title 30 of the Texas Administrative Code, Chapter 317 (30 TAC 317.1 et seq.).

G. PROJECT MAPPING/DESIGN INFORMATION AND COPYRIGHT

1. The Contractor shall receive and maintain a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the Contractor. The digital copy provided shall

not include a digital representation of the engineer's seal but the accompanying documentation from the engineer shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the Contractor. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be received and maintained by Contractor in written form. The Contractor shall provide the Office upon request a copy of all the electronic files and other data received, including the original vector data, and all documentation in electronic format, on a CD or other media in a file format determined by the Office. If requested by the Office, the Contractor shall ensure that the CD copy of all the electronic files and other data provided to the Office are properly identified. Specifically, the CD label shall show the Contractor's name, the Office's assigned contract number, the contents of CD, the preparer's name, and the name of the software package(s) used to generate the maps on the CD.

2. Where activities supported by this contract produce copyrightable material, the Contractor shall not assert any rights at common law or in equity or establish any claim to statutory copyright in such material without the Office's prior written approval. The Office reserves a royalty-free, nonexclusive, and irrevocable license to copy, produce, publish, and use such material, and to authorize others to do so.

3. Provisions appropriate to effectuate the purposes of this subsection must be in all employment contracts, consultant contracts, including engineering consultant contracts, and other contracts or agreements in which funds received by the Contractor under this contract are involved.

SECTION 23. DEBARMENT

A. By signing this contract, the Contractor 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 Contractor shall receive the certification provided by the Office from each proposed subcontractor under this contract and its principals.

B. By signing this contract, the Contractor 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 Contractor is required to immediately report to the Office 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 24. 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 Contractor 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 Contractor, the State of Texas, or the government of the United States.

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 Contractor in accordance with Section 3 of this contract:

- 1. Exhibit A, Performance Statement, 1 Page
- 2. Exhibit B, Budget, 2 Pages
- 3. Exhibit C, Project Implementation Schedule, 1 Page
- 4. Exhibit D, Applicable Laws and Regulations, 3 Pages
- 5. Exhibit E, Certifications, 2 Pages

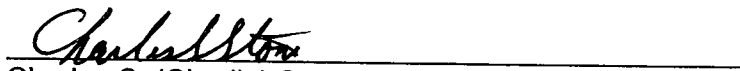
SECTION 26. VENUE

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

WITNESS OUR HANDS EFFECTIVE June 22, 2008.


 John P. Thompson, County Judge
 County of Polk

Approved and accepted on behalf of the Office of Rural Community Affairs.


 Charles S. (Charlie) Stone, Executive Director
 Office of Rural Community Affairs

This contract is not effective unless signed by the Executive Director of the Office of Rural Community Affairs or by the Executive Director's authorized designee.

*approved by
Commissioner Court
7.22.2008*

PERFORMANCE STATEMENT

County of Polk

Contractor shall carry out the following activities in the target area identified in its 2007/2008 Community Development Fund/Community Development Supplemental Fund 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 Contractor 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.

Sewer Facilities

Contractor shall assist the Memorial Point Utility District in addressing excessive inflow and infiltration problems at the Shelter Cove neighborhood. Contractor shall install approximately four thousand linear feet (4,000 l.f.) of six-inch (6") and eight-inch (8") sewer line, fifty linear feet (50 l.f.) of fourteen-inch (14") steel casing by boring, tie-in to the existing lift station, service connections, fourteen (14) manholes, two hundred fifty square yards (250 s.y.) of pavement repair, and clearing and grubbing. Construction shall take place in the following locations:

<u>STREET</u>	<u>FROM</u>	<u>TO</u>
Little John Drive	Lift Station 3 to FM 3277	sewer easement for Coventry Drive
sewer easement between FM 3277 and East Sherwood Drive	Little John Drive	Summit Drive
Summit Drive	FM 3277	sewer easement between East Sherwood Drive and West Sherwood Drive

These activities shall benefit two hundred sixty-four (264) persons, of which two hundred twenty-seven (227) or eighty-six percent (86%) are of low to moderate income.

Engineering

Contractor shall ensure that the amount of the Office funds expended for all eligible project-related engineering services, including preliminary and final design plans and specifications, all interim and final inspections, and all special services does not exceed the amount specified for engineering in Exhibit B, Budget.

Administration

Contractor shall ensure that the amount of the Office 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.

BUDGET

County of Polk

<u>LINE</u>	<u>CATEGORIES</u>	<u>CONTRACT FUNDS</u>	<u>OTHER FUNDS</u>	<u>TOTAL</u>
1a.	Water Facilities	\$	\$	\$
1b.	Sewer Facilities	\$ 192,450	\$ -0-	\$ 192,450
2.	Solid Waste Disposal Facilities	\$	\$	\$
3.	Other Public Utilities	\$	\$	\$
4.	Street Improvements	\$	\$	\$
5.	Flood and Drainage Facilities	\$	\$	\$
6.	Neighborhood Facilities/ Community Centers	\$	\$	\$
7.	Senior Centers	\$	\$	\$
8.	Centers for the Handicapped/ Sheltered Workshops	\$	\$	\$
9.	Parks, Playgrounds, and Other Recreational Facilities	\$	\$	\$
10.	Fire Protections Facilities and Equipment	\$	\$	\$
11.	Parking Facilities	\$	\$	\$
12.	Pedestrian Malls and Walkways	\$	\$	\$
13.	Specially Authorized Assistance to Privately Owned Utilities	\$	\$	\$
14.	Specially Authorized Public Facilities and Improvements	\$	\$	\$
15.	Public Services (LIMITED TO 15% OF REQUEST)	\$	\$	\$
16.	Interim Assistance	\$	\$	\$

<u>LINE</u>	<u>CATEGORIES</u>	<u>CONTRACT FUNDS</u>	<u>OTHER FUNDS</u>	<u>TOTAL</u>
17.	Rehabilitation of Private Properties (Housing)	\$	\$	\$
17a.	Rehabilitation of Private Properties (Water Service)	\$	\$	\$
17b.	Rehabilitation of Private Properties (Sewer Service)	\$	\$	\$
18.	Rehabilitation of Public Residential Structures	\$	\$	\$
19.	Public Housing Modernization	\$	\$	\$
20.	Clearance Demolition Activities	\$	\$	\$
21.	Historic Preservation	\$	\$	\$
22.	Removal of Architectural Barriers	\$	\$	\$
23.	Code Enforcement	\$	\$	\$
24.	Acquisition	\$	\$	\$
25.	Relocation Payments & Assistance	\$	\$	\$
26.	Economic Development Loan	\$	\$	\$
27.	Economic Devel. Interest Subsidy	\$	\$	\$
28.	Economic Devel. Loan Guarantee	\$	\$	\$
29.	Special Activities by Local Devel Corporations, Etc.	\$	\$	\$
30.	Engineering/Architectural Serv. (Total for all construction accounts)	\$ 21,700	\$ 13,300 ¹	\$ 35,000
31.	Planning & Urban Env. Design (NOT TO EXCEED 16%)	\$	\$	\$
32.	General Administration	\$ 29,850	\$ -0-	\$ 29,850
TOTALS		\$ 244,000	\$ 13,300	\$ 257,300

¹ Memorial Point Utility District of Polk County (cash contribution)

EXHIBIT C
PROJECT IMPLEMENTATION SCHEDULE
CONTRACT NUMBER 728340

County of Polk

Activity	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Completed by Last Day of Month:																								
Procurement of Professional Services Completed		X																						
Plans and Specifications Completed					X																			
Plans and Specifications Submitted for Approval						X																		
Environmental Review Completed						X																		
Clearance of Special Conditions							X																	
Wage Rate Request/Decision/10-Day Call							X																	
Bid Advertisement / Construction Contract Awarded								X																
Construction - 50% TxCDBG project complete													X											
Construction - 50% TxCDBG funds requested from Office														X										
Construction - 75% TxCDBG project complete															X									
Construction - 75% TxCDBG funds requested from Office																X								
Construction - 90% TxCDBG project complete																	X							
Construction - 90% TxCDBG funds requested from Office																		X						
Final Inspections Completed																			X					
General Administration																						X		
Close-out documents submitted to Office																							X	

CONTRACT START DATE

CONTRACT ENDING DATE

June 22, 2008

June 21, 2010

THE APPLICABLE LAWS AND REGULATIONS

The Contractor shall comply with the Act and Regulations specified in 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 Contractor under this contract including but not limited to the laws, and the regulations promulgated thereunder specified in Section I through VII of this Exhibit D.

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;

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 Contractor 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 Contractor 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 Office thereunder.

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities, 24 CFR Part 58, as amended.

In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume the environmental responsibilities for projects under programs cited in §58.1(b), and in doing so must comply with the provisions of the National Environmental Policy Act of 1969, as amended and the Council on Environmental Quality regulations contained in 40 CFR parts 1500 through 1508. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in §58.5 [below]. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) Historic Properties

- (1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in §58.17 for Section 17 projects.
- (2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).
- (3) Federal historic preservation regulations as follows:
 - (i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG) and
 - (ii) 36 CFR part 801 with respect to UDAG.
- (4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) Floodplain management and wetland protection

- (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A.)
- (2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121 particularly sections 2 and 5.

(c) Coastal Zone Management

- (1) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) Sole source aquifers

- (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e).
- (2) Sole Source Aquifers (Environmental Protection Agency-40 CFR part 149.)

(e) Endangered species

- (1) The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536)

(f) Wild and scenic rivers

- (1) The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) Air quality

- (1) The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. 7506(c) and (d)).
- (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 CFR parts 6, 51, and 93).

(h) Farmland protection

- (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).
- (2) Farmland Protection Policy (Department of Agriculture-7 CFR part 658).

(i) HUD environmental standards

- (1) Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51) other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303(a)(3).
- (2) HUD Notice 79-33; Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979. All properties that are being proposed for use must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. The environmental review of non-residential property, (or multi-family housing with five or more dwelling units, including leasing) must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any hazards. Particular attention must be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes. The Contractor shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) Environmental justice

- (1) Executive Order 12898 of February 11, 1994 --- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

(k) Other requirements - See 24 CFR Part 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, (67 FR 77141).

EXHIBIT E

CERTIFICATIONS

WITH RESPECT TO THE EXPENDITURE OF FUNDS PROVIDED UNDER THIS CONTRACT BY THE County of Polk, 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.) AND THE FAIR HOUSING ACT (42 U.S.C. SEC 3901 et seq.), AND THAT IT WILL AFFIRMATIVELY FURTHER FAIR HOUSING, AS SPECIFIED BY THE OFFICE;
- (3) IT WILL PROVIDE FOR OPPORTUNITIES FOR CITIZEN PARTICIPATION, HEARINGS AND ACCESS TO INFORMATION WITH RESPECT TO ITS COMMUNITY DEVELOPMENT PROGRAMS, AS SPECIFIED BY THE OFFICE;
- (4) 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).
- (5) 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 OFFICE.
- (6) 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.

CERTIFICATION REGARDING LOBBYING FOR
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTSCounty of Polk

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 OFFICER OR EMPLOYEE OF AN AGENCY, A MEMBER OF CONGRESS, AN OFFICER 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 OFFICER OR EMPLOYEE OF ANY AGENCY, A MEMBER OF CONGRESS, AN OFFICER 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.